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Claire Baker MSP
Convener
Economy and Fair Work Committee
The Scottish Parliament

By email to:
economyandfairwork.committee@parliament.scot

25 January 2024

Dear Claire,

COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP (CPTPP) - SECTION 42 REPORT

We are writing to make you aware that the UK Government laid the required Section 42 report for the UK's accession to the Comprehensive Agreement for Trans-Pacific Partnership (CPTPP) in the UK Parliament on 11 January 2024.

The CPTPP is a free trade agreement comprising 11 countries in the Asia-Pacific region. Following the completion of ratification processes, the UK will be the first non-founding member to join the bloc. While signed on 16 July 2023, the UK's accession to the CPTPP will only enter into force once the UK and all CPTPP parties have finished their respective legislative processes. This is expected to happen in the second half of 2024.

The Secretary of State for International Trade is required by Section 42 of the Agriculture Act 2020 to produce a report on completed Free Trade Agreements (FTA) and to lay these reports in the UK Parliament, prior to formal ratification procedures under the Constitutional Reform and Governance (CRaG) Act 2010. The purpose of the report is to inform parliamentary scrutiny of Free Trade Agreements (FTAs) by explaining how a specific trade agreement is consistent with the maintenance of UK levels of statutory protection for: (a) human, animal or plant life or health, (b) animal welfare, and (c) the environment.

As set out in the CRaG Act, the UK Parliament will have 21 sitting days from 11 January to consider the report.

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While Section 42 of the Agriculture Act 2020 does require that a copy of the report is provided to Scottish Ministers, it makes no provision for laying the report in the Scottish Parliament. This is part of the wider limitations in opportunities for public and parliamentary scrutiny of trade deals afforded through the CRaG process. The process does not provide an opportunity for scrutiny by, and does not require the agreement of, the Scottish Parliament and, as a result, the Scottish Parliament has no role in the ratification process of UK trade deals.

Given the lack of formal role afforded to the Scottish Parliament through the formal CRaG process, we are writing to you and the Convener of the Rural Affairs and Islands Committee to make you aware of the report. A copy of the report is included alongside this letter and will also be provided to the Scottish Parliament Information Centre. In this way, we aim to ensure that Members of the Scottish Parliament are as fully informed as possible of these important trade policy developments.

Despite our concerns about the process outlined above, the Scottish Government continues to work constructively with UK counterparts on preparation for the UK's accession to the CPTPP. This has included recommending that the Scottish Parliament consents to technical amendments to devolved public procurement legislation necessary to comply with CPTPP, which are being made by the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill.

Scottish Government comments on the findings of the Section 42 Report

As noted above, the scope of the Section 42 report is limited to considering the extent to which the CPTPP agreement is consistent with the maintenance of the statutory protections on human, animal or plant health and life, animal welfare and the environment. It takes no account of wider aspects of the deal that could have a significant impact on the Scottish economy. As well as setting out the Scottish Government's views on the findings of the report specifically, we have therefore also highlighted below our views on these broader aspects of accession to the CPTPP.

Agri-food impacts

While Scotland will not be compelled directly to change our domestic regulations in agri-food following accession to the trading bloc, that does not mean that domestic producers and consumers will not be adversely impacted. The Sanitary and Phytosanitary (SPS) chapter will, over time, be open to dispute settlement, meaning, for example, that other members of the trade bloc will be able to raise disputes over our current import bans on products such as hormone treated beef. In addition, our own industries may feel disadvantaged where they consider that SPS standards in other countries are less onerous than UK standards, and their producers are able to export goods to the UK by virtue of CPTPP membership. UK Animal Health and Welfare and Food Safety standards are some of the most stringent in the world.

While we hope that any challenges made to UK domestic legislation would be unlikely, the provisions in the CPTPP SPS chapter are a departure from the European standard approach of the precautionary principle, in favour of the scientific style chapter text. This indicates a potential shift in our approach towards mitigating proven harms, rather than taking a precautionary approach to a range of harms beyond human health. If a member of the bloc did challenge UK domestic regulations, this could have a significant impact domestically and on our trade with other partners with high similarly standards, such as the EU.

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There are other potential harms within the agreement, for example, around the displacement of domestically produced vegetable oils competing with palm oil from Malaysia, and egg producers have raised specific concerns around competition from settings with lower animal welfare standards, in particular eggs caged hens in Mexico. While there may be benefits for producers looking to diversify supply chains across the globe, using the rules of origin allowances in this deal, this may take time and is an extremely technical process for companies to use to their advantage, particularly given the distances involved.

The main benefit for the agri-food sector appears to be the reduction of tariffs on Scotch whisky. While this is welcome, it must not come at the expense of other parts of our vital agri-food sector.

Unfortunately, the risks highlighted above come as part of joining a trade bloc with predefined rules. That means that key priorities for the Scottish Government, such as Geographical indicators, Animal Welfare and Anti-Microbial Resistance text, are far away from what we would consider acceptable. We will urge the UK Government to include these key areas in the review of the CPTPP agreement which will take place this year.

Technical Barriers to Trade

The Section 42 Report fails to recognise that Article 8.6 of the CPTPP Agreement has the potential to open up competition between the UK Accreditation Service (UKAS) and commercial, for-profit, conformity assessment bodies. Currently, UKAS is the National Accreditation Body (NAB) for the UK. UKAS is a non-profit-distributing private company, limited by guarantee. It operates as an independent body providing a public authority activity and operating in the public interest. The report does not explain what impacts a more commercial approach by NABs from other CPTPP countries to work done by British Conformity Assessment Bodies (CABs) may have on independent conformity assessment in the UK and on the role of CABs in the statutory protection of human, animal or plant life or health, animal welfare, and the environment. In order for UKAS to best serve its public interest role in relation to these statutory protections, accreditation of CABs in the UK should remain impartial and free from commercial pressure. Introducing an element of profit incentive to accreditation of the CAB sector in the UK, as the CPTPP agreement is potentially doing, could undermine this principle.

In addition, changes to devolved legislation to introduce a legal definition of ice wine were required to comply with Annex 8A of the agreement, on Wine and Distilled Spirits. Although a relatively minor issue, Scotland had very little choice about falling into line with the position negotiated by the UK Government on this. As the Report states, this change does not adversely impact statutory protections. However, any requirement to make further changes on technical detail to devolved legislation as a result of future reserved trade policies and negotiations could undermine the ability of the Scottish Parliament to regulate in its interests on certain devolved matters.

Environment and Climate Change

The Scottish Government raised concerns, throughout negotiations, in relation to the environmental impacts of joining the CPTPP. We therefore welcome the report's findings that the risk of increased palm oil production and associated deforestation are low, and that the CPTPP does not require the UK to change its existing levels of statutory environmental

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protection. However, the UK Government must continue to monitor the impact of the CPTPP in these important areas.

We also recognise that, as part of accession negotiations, the UK Government agreed a Joint Statement on Climate Change, the Environment, and Sustainable Trade, with several CPTPP members. However, such statements are not a substitute for the lack of ambitious climate and trade provisions within the CPTPP agreement itself, especially given that the statement was only signed by five current CPTPP members.

Scottish Government views on UK Accession to CPTPP

[Scotland's Vision for Trade](#), published and presented to the Scottish Parliament in January 2021, sets out the principles which underpin our trade decisions and relationships: inclusive growth, wellbeing, sustainability, net-zero and good governance. These are the guiding principles that we use as the basis to inform our views on the UK Government's approach to FTA negotiations and, in particular, the final agreement.

Economic impacts of CPTPP Accession

In general, the Scottish Government recognises that there are some modest benefits forecast for Scotland's economy as a result of the UK joining the CPTPP. Our analysis of the agreement found that, while overall impacts on GDP seem marginal – especially given that the UK already has preferential trade agreements with nine of the eleven CPTPP member countries – there may be some limited benefits for our food and drink producers and services industries, including financial and business services. Benefits to these sectors, in which Scotland is a world leader, would be welcomed, particularly in light of the challenges they are facing following the UK's exit from the EU and unsatisfactory UK trade deals with Australia and New Zealand.

We remain concerned however at the continued lack of data disaggregation for Scotland in the UK Government's scoping and impact assessments for FTAs, including for the UK's accession to the CPTPP. While an estimate of overall changes to Scotland's Gross-Value Added has been provided, specific impacts according to sector, region and protected groups, within Scotland, were not included in the assessments, and so potentially significant impacts could have been missed. This inevitably limits our understanding of the impacts, in Scotland, of CPTPP accession, particularly given significant differences in Scotland's economy, demography and geography to the rest of the UK.

Animal welfare and Antimicrobial Resistance (AMR)

It is disappointing that this deal contains no specific text on either Animal Welfare or Antimicrobial Resistance (AMR) considerations. Scotland, and the UK as a whole, should be global leaders in promoting high standards and protecting animals and consumers.

Although the UK has agreements already in place with many of the CPTPP member countries, the unharmonized approach to animal welfare in the trade bloc is counter-productive. Including basic commitments, such as baseline welfare standards or non-regression, would not have been a radical step. Our domestic agri-food producers are already facing an unlevel playing field as a result of the bilateral UK trade deal with Australia. To expect our farmers to produce to the very high standards that consumers enjoy and expect, and compete against produce from around the bloc, which would be illegal to produce here in Scotland, is yet another

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example of the UK Government's approach to trade failing to provide adequate protection for our domestic sector.

The failure to include any text on Antimicrobial Resistance is also deeply regrettable. The Scottish Government recognises that AMR is a serious threat to health globally. It requires a transnational, 'One Health' approach, which considers the interdependencies between human health, animal health and the environment.

The inclusion of provisions relating to animal welfare and AMR were therefore a priority for the Scottish Government and the lack of text addressing these issues may set yet another precedent, posing a risk to the ability of the UK Government to secure such provisions in future FTAs. The Welsh Government have raised similar concerns on both of these issues.

Investor State Dispute Settlement

The Scottish Government has long-standing concerns about the inclusion of Investor-State Dispute Settlement (ISDS) provisions in trade agreements, including in the CPTPP. The Scottish Government's position, as set out in the [Vision for Trade](#), is that no future ISDS system should prevent the UK and Scottish Governments from making laws on health, social, environmental and economic matters. We also have concerns around the potential cost and other resource implications of ISDS court cases, even if they are ultimately defended successfully.

In addition to our concerns therefore about the UK Government signing up to ISDS provisions with other CPTPP members, we also question why they have done so while simultaneously disapplying these same provisions with Australia and New Zealand.

While the Scottish Government has raised these concerns on several occasions, including through Ministerial correspondence, the UK Government has yet to address them fully.

Scottish Government involvement in the negotiation of UK accession to CPTPP

As with all trade agreements, the Scottish Government has sought to engage constructively throughout the negotiation of the UK's accession to the CPTPP and following signature. Scottish Government Ministers and officials have been in regular contact with counterparts in the UK Department for Business and Trade and Department for Environment, Food and Rural Affairs (DEFRA) to represent Scotland's interests, priorities and concerns, including through providing detailed written comments.

From early 2023, Devolved Governments and the Department for Business and Trade have been operating under an improved Information Sharing Protocol. Under this protocol the Scottish Government, along with the other Devolved Governments, have been given sight of, and had the opportunity to provide input and comment on, a far wider range of negotiating texts than previously.

While information sharing in itself is not sufficient and must be accompanied by greater influence in the decisions that lead up to trade agreements being concluded, we have seen some benefits of this more collaborative approach, including throughout the CPTPP negotiation process.

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However there have been occasions when the sharing of information has not met the expectations of this protocol. For example, the impact assessment produced by the Department for Business and Trade was only shared with Scottish Government officials at the same time as the CPTPP accession documents were formally signed and the assessment had become publicly available. The UK Government has acknowledged that this situation fell below the standards expected from their engagement with the Devolved Administrations and I hope to see improvements in the handling of future trade agreements.

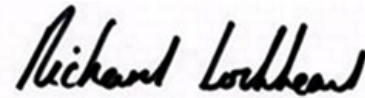
The Scottish Government has consistently made the case for a role for the Scottish Parliament in the development and scrutiny of FTAs. While the making of international treaties is reserved, modern FTAs cover a wide range of matters, both reserved and devolved, and can have a significant impact on our economy. It is important that your Committee is given the opportunity to examine this analysis of the CPTPP Agreement, which we hope members will find useful.

We welcome any feedback from the Committee, regarding the issues described in this letter, and would be happy to answer any further questions the Committee may have.

Yours sincerely,



MAIRI GOUGEON



RICHARD LOCHHEAD

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