

Determining whether the AUS-UK FTA is a success for London

Blog post by Senior Associate Joe Armitage, 15 June 2021

Following a post-NATO dinner between the premiers of Australia and the UK, it was announced that a free trade agreement between the two countries had been agreed in 'broad terms'. Further details are expected to be fleshed out soon, but it is not yet clear when the full text of the agreement will be finalised from a technical perspective and published.

This is the first trade agreement that the UK government has been a party of which was not negotiated by the EU or with the EU. The rest to date - including the FTAs with Japan, Canada and Mexico - have broadly been roll-overs of EU trade agreements that the UK benefitted from when it was part of the bloc. Given this, the outcome of the AUS-UK FTA presents an opportunity to assess the ways the UK's Department for International Trade has both sought to focus on different outcomes and navigated some important potential tensions with a trade partner in Australia whose own negotiating style has been heavily influenced by the US.

With respect to the Australia deal, there are a number of outcomes to look at in detail when the deal is published in full. Three of these are listed below. All in their way are tests for UK negotiators and the UK government.

The first of these concerns the environment, and specifically the UK's preference that Australia agree a substantial climate change chapter with clear specificity on commitments. Failure to secure this would sit badly with the wider aims of the UK's year of environmental leadership and host of COP26. The UK would like this deal to showcase its ability to use trade agreements with other nations to support progressive climate policies.

The second relates to investment screening and investment protection. The UK has adopted an increasingly interventionist approach in these areas over the last couple of years. It will be interesting to see whether Australia has sought any specific clarifications or protections in this area - and how explicitly the UK has sought to protect the things like the UK Takeover Panel's relatively new powers that - in certain circumstances - can make a transaction contingent on acquiree(s) making certain R&D and employee retention commitments.

The final area worth looking out for in the deal relates to technical barriers to trade (TBT), specifically the extent to which there is any variation in commitments the UK made in the EU-UK TCA and the provisions in the AUS-UK FTA.

The UK will be alert to the need to make its commitments to Australia compatible with its TCA commitments, especially in areas such as use of international standards. The narrower scope for defining international standards in the TCA is arguably in tension with the wider approach in CPTPP - so the compromise will be important to watch closely.

The more politically salient issue of agricultural tariff cuts will no doubt dominate the coverage of the deal when it is finally published but these other areas above also matter for the evolving strategy - and credibility - of the UK as a newly independent trade negotiator. Whilst the speed of this FTA is impressive, as the first one largely negotiated from scratch, outside the EU's orbit and with a trade partner shaped heavily by the US' preferences, it is also a test of how the UK manages its new status as a navigator between these two approaches.