

Trade Policy

Response to UK Government Consultations on Future Free Trade Agreements

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Scottish Government
Riaghaltas na h-Alba
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CHAPTER 1 – SCOTTISH GOVERNMENT APPROACH

1. This paper provides the Scottish Government's initial response to the issues raised in the UK Government's three consultations on the UK's future trade relationships with Australia, New Zealand, and the United States of America, and the possible UK accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).
2. The paper considers the following main issues:
 - Scotland's interests in relation to future trade arrangements generally, including the Scottish Government's approach to the content and conduct of trade deals and trade policy (i.e. both what and how we want to trade); and
 - The potential impact of pursuing bilateral trade deals with these particular countries, and of joining the CPTPP (a trade agreement between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam, expected to partially enter into force from 30 December 2018).

Importance of International Trade and Investment to Scotland

3. Scotland is a trading nation, an outward looking country operating in a global and ever changing marketplace. For centuries, our businesses have sought to find and develop new markets, recognising the crucial importance of international trade and investment to our economic wellbeing, creating new economic opportunities, boosting employment, and fostering innovation. Exporters are amongst our most productive and innovative businesses.
4. However, the potential benefits of trade are about more than economics. *How we trade* tells us much about the country we are and the values we hold. Our ability to create a more productive and fairer Scotland depends more than ever on trading with the rest of the world, and on attracting investment into our economy, our businesses and our assets. We want more businesses across Scotland to sell more goods and services to more markets. We want existing investors to develop, grow and expand in Scotland. And we want new investors to see Scotland as a place where they can thrive and contribute to a stronger and more inclusive economy and fairer world.
5. The Scottish Government is fully committed to providing leadership in the face of global challenges, delivering the United Nations' 2030 Agenda for Sustainable Development¹. We believe that international trade can promote inclusive economic growth both for Scotland and its trading partners, and act as a vehicle to help address global challenges such as poverty and climate change.

¹ United Nations (2015) Transforming our world: the 2030 Agenda for Sustainable Development http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

Benefits of EU Membership

6. The Scottish Government continues to believe that the best option for the future wellbeing and prosperity of Scotland, and the UK as a whole, is to remain in the EU. That position has been consistent since well before June 2016, when the people of Scotland voted overwhelmingly to remain in the EU. They did so for powerful social and economic reasons: for the social, employment and environmental protections the EU offers to its citizens and workers; the opportunities afforded by access to a single market of more than 500 million people; and the firm belief that freedom of movement is a good thing.

7. The benefits of EU membership to Scotland from an economic and trading perspective are clear. The EU is the largest single market for Scotland's international exports, with exports worth £12.7 billion in 2016, supporting directly and indirectly hundreds of thousands of jobs across Scotland. This represents 43% of our total international exports, more than exports to the USA, Asia, South America and the Middle East combined. A further 12% of Scotland's international exports - £3.7 billion - were to countries with which the EU has a trade agreement.

8. The EU already has a number of existing trade arrangements in force relating to the countries in this consultation. These include the 2008 EU-Australia Partnership Framework, 2017 EU New Zealand Partnership Agreement, the Comprehensive Economic and Trade Agreement with Canada (CETA), the 2002 EU Chile Association Agreement, the 1997 EU Global Agreement with Mexico, and the 2013 Comprehensive Trade Agreement with Peru. Free Trade Agreements with other CPTPP countries, Japan and Singapore, are pending ratification with the European Parliament, agreement in principle has been reached on a trade agreement with Vietnam and on modernisation of the existing Mexico Agreement, negotiations are ongoing with Australia and New Zealand, and a technical scoping exercise is in process for a trade agreement with the USA.

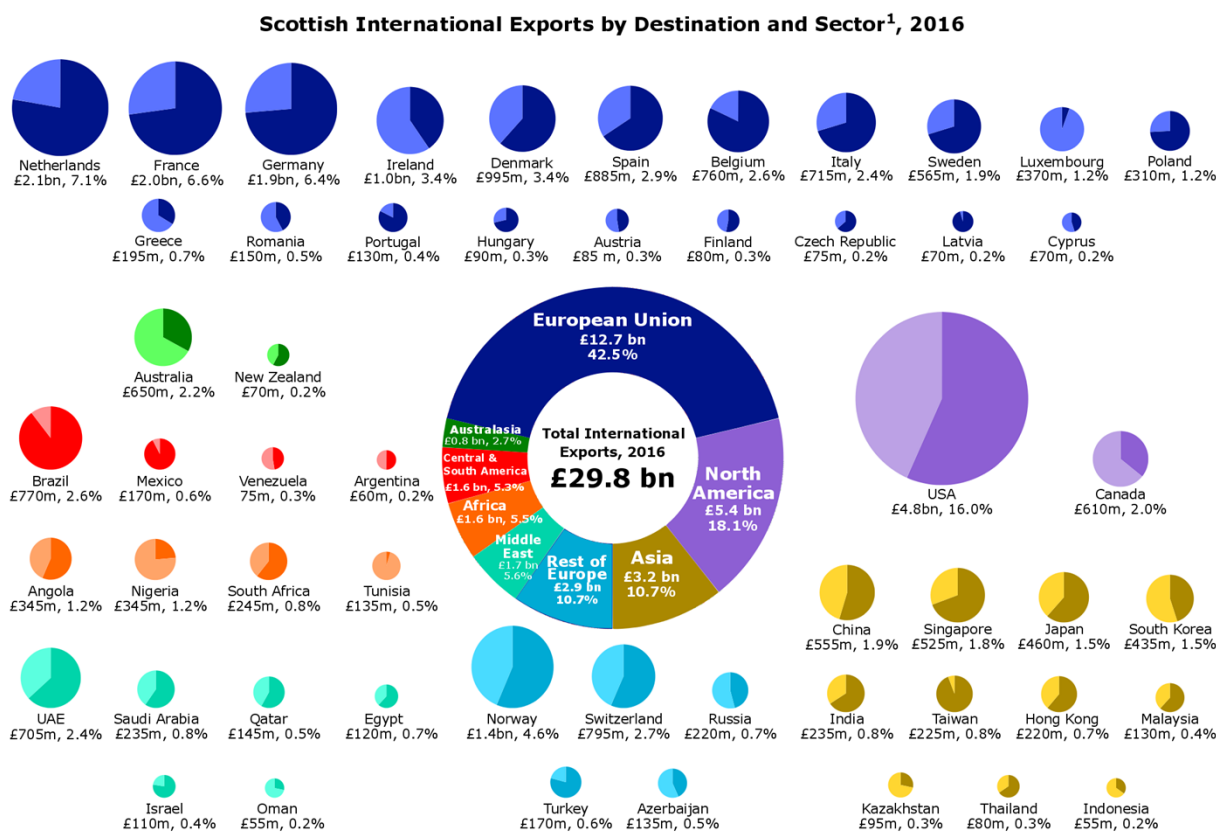
Table 1: Top 20 Export Destinations, 2016 (£million)

Rank	Destination	Total Exports (£m)	% of Total	Rank	Destination	Total Exports (£m)	% of Total
1	USA	4,775	16.0	11	Belgium	760	2.5
2	Netherlands	2,115	7.1	12	Italy	715	2.4
3	France	1,960	6.6	13	UAE	705	2.4
4	Germany	1,910	6.4	14	Australia	650	2.0
5	Norway	1,365	4.6	15	Canada	610	2.0
6	Ireland	1,025	3.4	16	Sweden	565	1.9
7	Denmark	995	3.3	17	China	555	1.9
8	Spain	855	2.9	18	Singapore	525	1.8
9	Switzerland	795	2.7	19	Japan	460	1.5
10	Brazil	770	2.6	20	South Korea	435	1.5

Source: Exports Statistics Scotland (2018)²

² Scottish Government (2018) Export Statistics Scotland 2016
<https://www.gov.scot/Resource/0053/00530678.pdf>

Chart 1 – Scottish International Exports by Destination and Sector



1. Darker section of pie charts refer to manufacturing sectors (including Agriculture etc.) and lighter section refer to service sectors

Source: Export Statistics Scotland

9. The UK Government suggests – including in these consultations – that leaving the EU, Single Market and Customs Union will create opportunities to greatly expand trade further afield. However, most economists and businesses agree that the so called ‘gravity effect’ in trading relationships – the tendency for countries to trade most with markets closest to them – is likely to prevail, making it harder to establish and grow markets further afield, such as Australia and New Zealand.

10. In addition, the argument that any decline in trade with the EU from being outside the Single Market and Customs Union could be offset by exporting more to other countries has been consistently rebutted by a range of experts, including Sir Martin Donnelly, former Permanent Secretary in the UK Department for International Trade, who concluded in his speech at Kings College London in February 2018 that:

“Even implausibly favourable market access deals with some third countries are arithmetically unable to make up for the loss of unrestricted access to more local EU markets in which so many UK producers are currently integrated.”³

³ Speech to King’s College London, 28 February 2018 <https://www.kcl.ac.uk/business/assets/PDF/Sir-Martin-Donnelly-UK-trade-and-exports.pdf>

11. As *Scotland's Place in Europe: People, Jobs and Investment*⁴ demonstrated, even if the UK signed agreements with the ten biggest non-EEA single country trading partners (including USA, China and Canada) – a process that would take many years – this would only cover 37% of Scotland's current exports compared to 43% of current exports going to the EU.

12. Imports are also a vital part of the trade picture. Allowing cross-border flows of goods and services increases the range of goods and services available to both businesses and consumers, and enables businesses and the public sector to have access to a cheaper and wider range of raw materials, parts, components and services from multiple countries, allowing them to form global value chains. From the perspective of prospective trading partners, the attractiveness of the UK as a trading partner immediately diminishes if it is no longer able to operate as a gateway to Europe for third countries. That is particularly true in respect of regulated trade, where any derogation from EU single market standards is likely to adversely affect the attractiveness of the UK market.

13. In addition, trade and investment in an increasingly service-based economy is tied closely to the mobility of skills and labour. No model of international partnership will provide anything close to the same benefits as the EU's free movement of people, goods, services and capital. It is clear that any benefits from the ability to pursue new trade deals would be far outweighed by being outside the Single Market and Customs Union and being unable to automatically benefit from reciprocal entitlements under EU free trade agreements and related benefits, such as the cumulation principle for rules of origin.

14. Protecting our economy and our trading relationship with the world is one of the many reasons that we have argued that remaining in the Single Market and Customs Union would be the least damaging option for a UK outside of the EU. There is clear and substantial evidence that such membership would help to protect businesses, communities and individuals from some of the inevitable damage that Brexit will cause. We will continue to make the case for continued membership of the Single Market and Customs Union and encourage others to support us.

15. However, and especially with the UK's future trading relationship with the EU still so uncertain, it is right that the Scottish Government, as a responsible government, makes preparations for all exit possibilities, in order to protect Scottish interests as far as possible. Our recently published paper, *Scotland's Role in the Development of Future UK Trade Arrangements*⁵ (discussed below), opened that discussion, by considering the *processes* that should be put in place to allow the development of future trade arrangements that work to the benefit of all nations of the UK. In arguing for change, it recognised that Scotland's policy and sectoral interests and priorities will at times differ from those of the rest of the UK. This paper considers what those interests and priorities are in the context of the current consultations and potential new trading arrangements.

⁴ Scottish Government (2018) *Scotland's Place in Europe: People, Jobs and Investment*
<http://www.gov.scot/Resource/0053/00530160.pdf>

⁵ Scottish Government (2018) *Scotland's Role in the Development of Future UK Trade Arrangements*
<https://www.gov.scot/publications/scotlands-role-development-future-uk-trade-arrangments>

Scotland's Role in the Development of Future UK Trade Arrangements

16. The Scottish Government's recent discussion paper on this issue sought to open a conversation on Scotland's role in the development of the UK's future trade arrangements, to ensure that the interests of consumers, businesses, civic Scotland and others are taken into account in the negotiation and agreement of future trade deals and that such trade arrangements respect devolved competencies, including the right to regulate.

17. As the paper – and indeed these consultations – acknowledge, trade agreements have changed considerably in the last 40 years, and now affect a wide range of devolved interests, which impact on the interests and daily lives of Scotland's businesses and citizens. The conduct and content of trade policy and agreements therefore have, and will continue to have, very important implications for Scotland.

18. If the UK leaves the EU and Customs Union, it will become solely responsible for negotiating trade deals. As our response to these consultations demonstrates, Scotland and the rest of the UK will sometimes have very different interests in some negotiations, both in terms of our sectoral priorities, and the value we place on particular social, environmental, ethical or other concerns. Those differences would be best addressed before reaching the negotiating table, not least to reassure our trading partners that any agreements reached will have broad support and will endure. Our discussion paper argued therefore that it is essential to put in place a decision-making process that protects Scotland's economic and social interests. Such a process would require a radical overhaul of the existing, inadequate, arrangements within the UK for developing, scrutinising and agreeing trade deals. That overhaul is required even if the UK continues as an EU Member state and a member of the Customs Union, but becomes particularly urgent in the context of the 'hard Brexit' envisaged in these consultations.

19. There is broad agreement – including in the Scottish Parliament – that the way trade agreements are developed within the UK cannot remain the same. Scotland wants to be a constructive partner to the other nations of UK and a fair trading partner to countries around the world. However, the UK Government's approach so far does not appear to be keeping pace with the scale of change required. In particular, there has been very little direct engagement with stakeholders and other interest groups across the UK. What consultation there has been appears to place the interests and involvement of the devolved nations on a par with sectoral interests.

20. This approach must change if we are to ensure proper democratic engagement in the development of trade deals and that the interests and priorities of all in the UK are properly represented, protected and promoted. As we argued in our discussion paper⁶, the Scottish Government and Scottish Parliament must have a guaranteed role in all stages of the formulation, negotiation, agreement and implementation of future trade deals and future trade policy. That must start with

⁶ Scottish Government (2018) Scotland's Role in the Development of Future UK Trade Arrangements <https://www.gov.scot/publications/scotlands-role-development-future-uk-trade-arrangments>

proper involvement in the assessment of the desirability of new trade deals, including the identification of target countries or blocs for new agreements.

Summary of Scottish Government approach to Trade Deals

21. Our response to these consultations sets out the Scottish Government's initial views on the direction and content of future trade policy generally, and on the markets specifically being consulted on. In doing so, it highlights - through reference to current trade flows - particular sectors and transversal interests which the Scottish Government would wish to see protected or promoted in future trade deals. Recognising the ever widening scope of modern trade agreements, it also sets out those aspects of trade deals where the Scottish Government would wish to see a particular approach taken to protect and promote a range of social, environmental, ethical and other goals, i.e. *how* we want to trade, as well as *what* we want to trade.

22. Membership of the EU, Single Market and Customs Union has given the UK a strong framework for protecting and advancing individual and collective rights, as well as a range of broader societal interests. Not only do they protect the interests of workers through a variety of measures, and adopt strategies for promoting greater inclusion for Small and Medium Enterprises (SMEs) and under-represented groups, they also ensure a high level of environmental protection, measures to combat climate change, and high regulatory and animal welfare standards. It is vital that, if the UK leaves the EU, these protections are not lost or traded away in the interests of securing a trade deal.

23. Responding to these concerns, the UK Government has made a number of explicit commitments that future trade deals will not affect the governance of the health service, will not lead to a reduction in existing food safety, and animal health and welfare standards, and will not threaten our ability to pursue domestic public policy objectives. We welcome those commitments, but they must be adhered to throughout the course of what may be difficult negotiations. Future trade deals must not be at the expense of our vital public services, taking into account the specific characteristics of the Scottish NHS, or result in any lowering of standards.

24. Through our approach to trading, we can promote human rights and environmental standards, challenge corruption and share knowledge, skills and technical expertise for global good. Sustainability and inclusion must lie at the core of our future trade policy.

25. Modern EU and international trade policy reflects these values, notably through negotiations on Trade and Sustainable Development by reference to global standards, and recent developments to promote gender equality through trade. We must take a robust approach to monitoring trade and sustainable development considerations at all stages of the negotiation and implementation process that is at least as comprehensive as the European Commission's Sustainability Impact Assessment approach.

26. Future trade agreements must reflect our wider international ambitions, maintaining and promoting our existing environmental and social protections, and avoiding jeopardising our commitment to social democracy in pursuit of pure

economic gain. Our place in the world depends in part on the relations we build through trade. It is vital that Scotland's voice and priorities are heard in the selection and development of future trade deals.

Next Steps

27. In formulating this response to the UK Government's four consultations, we have considered Scotland's existing trading relationships with the countries in question, focussing in particular on where Scotland's interests and negotiating priorities may differ from those of the UK in relation to the four potential trade deals specifically. This response also considers the Scottish Government's priorities in relation to trade deals more generally, by looking at both specific sectors of the Scottish economy and specific elements of modern trade deals. That analysis underlines the central importance of prioritising the preservation and promotion of our trading relationship with the EU.

28. This paper should be seen as the first stage in setting out the Scottish Government's views on and approach to trade deals generally, and as the beginning of our involvement in developing the UK's position on the four specific potential trade deals. We will continue to undertake more detailed analysis of Scotland's sectoral interests and the potential effect of new trade agreements on existing trade flows. In line with the proposals set out in *Scotland's Role in the Development of Future UK Trade Arrangements*⁷, that ongoing analysis should form part of the Scottish Government's continuing contribution to the development of negotiating mandates and commencement and conduct of formal negotiations. We expect the UK Government to work with us and the other devolved administrations to bring together detailed knowledge and understanding of each of our economies in a rigorous impact assessment process, capable of detecting national and regional variation. Only such thorough analysis will give us the information we need to identify the real risks and opportunities in these markets, and inform an evidence-based trade policy that delivers for all of our nations and regions.

29. The publication of these four consultations marks the beginning of the process for the first independent trade negotiations conducted by the UK since the 1970s. The progress of these initial negotiations will act as a key test of the UK's approach to developing new trade deals, and of the UK Government's commitment to formulating an inclusive trade policy that delivers for every part of the UK. The approach taken so far, characterised by a lack of consultation with the devolved administrations on which markets to target, limited engagement with stakeholders, and a lack of impact assessment at national and regional level, falls far short of the sort of process we would expect to see in the future, particularly if the UK leaves the EU, Single Market and Customs Union. We are therefore seeking urgent discussions with the UK Government and other devolved administrations on how this procedure can be improved from now on, and before future consultations are launched.

⁷ Scottish Government (2018) *Scotland's Role in the Development of Future UK Trade Arrangements* <https://www.gov.scot/publications/scotlands-role-development-future-uk-trade-arrangments>

CHAPTER 2 - THE FOUR MARKETS

30. *Scotland's Role in the Development of Future UK Trade Arrangements*⁸ envisages the involvement of the devolved administrations in future trade policy beginning at a very early stage, with the assessment of the desirability of particular new trade details, and the identification of countries or trading blocs for new agreements. It also envisages a process of assessing the likely impact of any new deals on a sectoral and geographic basis, to ensure that decisions to enter into new arrangements are taken in the knowledge of the possible impact for all parts of the UK.

Choice of Markets⁹

The Importance of the EU Market

31. As we and others have repeatedly argued, leaving the EU, Single Market and Customs Union will cause real and significant issues across the Scottish economy. The EU is the largest single market for Scotland's international exports, representing 43% of our total international exports, and worth £12.7 billion in 2016. A further £3.7 billion of exports - accounting for a further 12% of Scotland's international exports – are to countries with which the EU already has a trade agreement in place.

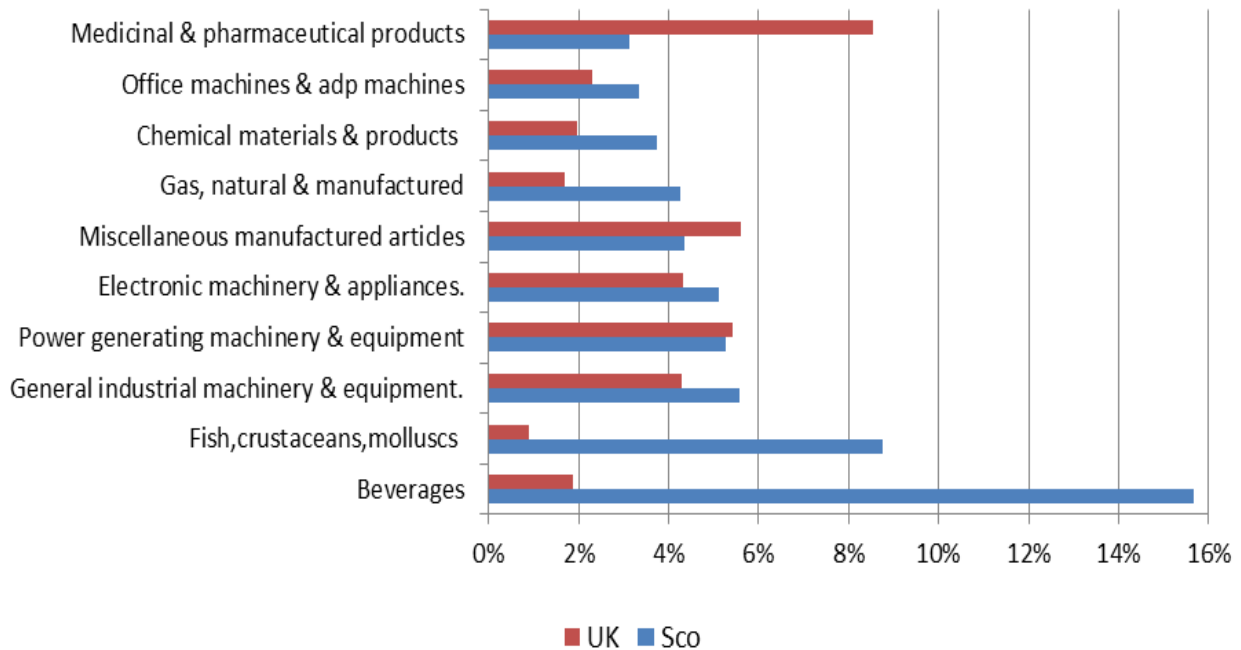
32. The two largest sectors of Scottish exports to the EU are, by some way, coke, refined petroleum and chemical products and food and drink. The EU is a particularly important destination market for exports from the coke and refined petroleum sector, accounting for more than 80% of Scotland's international exports in that sector.

33. While there are some similarities, Chart 2 demonstrates there are some significant differences between Scotland and the UK's export profiles to the EU. Sectors such as beverages (spirits), and fish, crustaceans, molluscs (seafood) for example, are relatively much more important to the Scottish economy than they are to the UK as a whole.

⁸ Scottish Government (2018) *Scotland's Role in the Development of Future UK Trade Arrangements* <https://www.gov.scot/publications/scotlands-role-development-future-uk-trade-arrangments>

⁹ This and the following introductory sections use the following data sources. For goods data: HMRC Regional Trade Statistics <https://www.uktradeinfo.com/Statistics/RTS/Pages/default.aspx> . For services data, Scottish data is from: Scottish Government (2018) *Export Statistics Scotland 2016* <https://www.gov.scot/Resource/0053/00530678.pdf>, while ONS Pink Book data <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/datasets/3tradeinservicesthepinkbook2016> is used for the UK as a whole.

Chart 2 - Exports of goods by sector as a share of total EU exports – Scotland and UK (for Scotland’s ten most important sectors by value in 2017)



HMRC Regional Trade Statistics

Note – HMRC trade statistics use an alternative methodology based on apportionment of UK data. These statistics include estimates for Petroleum and North Sea related exports, while Export Statistics Scotland does not. Petroleum and related materials have not been included in the chart above.

34. The seafood industry is an important example of a sector where Scotland may have very different considerations from the UK as a whole in trade deals. In 2017, 92,000 tonnes of fresh Atlantic salmon – one of the UK’s top food exports - worth £600 million, was exported from the UK (of which 99% was Scottish). The aquaculture sector directly employs more than 2,000 people and contributes around £220M in gross value added to the Scottish economy, with significant wider impacts across the supply chain (estimated to be around £620M in GVA and 12,000 jobs across the Scottish economy). The EU is a vital market for Scottish seafood products, accounting for 77% of seafood exports in 2017 and, while the UK as a whole is a net importer of fish, Scotland is a net exporter to the EU and the rest of the world. Disadvantageous non-tariff barriers in particular could have a devastating impact on the export of fresh seafood. These differential interests need to be protected in considering future trade agreements, in particular with countries seeking to boost their own domestic market.

35. There are some key differences in our trade in services too. In particular, professional, scientific and technical and real estate services account for a much larger share of Scottish service sector exports to the EU, compared to Great Britain.

36. The evidence clearly demonstrates the importance of the EU market to both Scotland and the UK. The Scottish Government’s view is that we should remain in the EU. If Scotland and the UK leave the EU, we must prioritise the important markets we already have, ideally by remaining in the Single Market and Customs Union.

37. In addition, any work to identify markets and develop trade deals must have the need to preserve our relationship with the EU at its core by, for example, retaining a high level of regulatory alignment with the EU. As illustrated above, that work must also be based on a thorough understanding of differences between the economies and trading profiles of Scotland and the rest of the UK, and how they stand to be affected by potential trade deals. That is why involving the devolved administrations at an early stage – starting with the identification of which markets to prioritise – is crucial.

The four consultations

38. While recognising the important links between the UK and **Australia** and **New Zealand**, it is not clear from the consultations why DIT have chosen to prioritise these markets in seeking new trade deals. We note in particular that both the UK and Scotland's existing trade flows with these two countries are comparatively small - as demonstrated later in this chapter - and that physical distance is likely to prove a limiting factor in any attempts to substantially increase trade levels. Further analysis at a national and regional level should therefore be undertaken to assess the potential for growth in those markets, as well as any potential disadvantages for our domestic producers.

39. In contrast, the **USA** is already a significant trading partner for both the UK and Scotland. However, the Scottish Government believes that any future negotiation of an agreement with the USA would need to be handled carefully, given public sensitivities over, for example the negotiations on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and USA. In particular, the Scottish Government argued during the course of those negotiations that any potential economic benefits from an agreement with the USA should not come at the expense of vital public services at home. The right of governments to regulate must be protected, and there must be no lowering of standards in relation to human and employment rights and environmental safeguards, or in areas such as food safety, all areas critical to the maintenance of consumer confidence.

40. Four of the eleven members of the **CPTPP** appear in the top twenty Scottish trading partners, set out in **Table 1**. We recognise the potential benefits that could arise from membership of such a regional – as opposed to bilateral - trade deal, including the possibility of participation in cross-border Asia-Pacific value chains and the enhancement of trade and investment relations. However, it is difficult to assess the UK Government's proposal to accede to the Agreement when it has not yet entered into force, and the accession processes and procedures are as yet largely unknown. In particular, we note the terms of the existing agreement may leave little room for renegotiation. Given the UK Government's stated intention to transition existing and pending EU free trade agreements with Canada, Mexico, Chile, Peru, Japan, Singapore and Vietnam, and the fact that it is suggesting simultaneously negotiating with two other CPTPP members - Australia and New Zealand – it is not clear why priority is being given to beginning CPTPP negotiations now, before the agreement has entered into force.

41. For the reasons set out earlier, and because of the importance of the EU market to Scotland and the UK, domestic standards and regulations must remain in

as close alignment with the EU as possible. We note that achieving this could potentially be rendered more complicated by the UK's prospective negotiations with the EU on the Future Economic Partnership, and the EU's simultaneous trade negotiations with some of the countries dealt with in these consultations.

42. In general, our initial analysis suggests that new trade deals with the markets proposed would be highly unlikely to deliver a sufficient trade increase to offset the effect of leaving the EU Single Market and Customs Union. In terms of goods, the EU accounts for 49% of Scotland's exports. In comparison, the combination of Australia, New Zealand, the USA and the CPTPP countries accounts for only 20% of goods exports. The Scottish Government believes that trade with the European Union should be the priority in the UK's post-Brexit trade policy and negotiating positions with new markets should be informed by this goal.

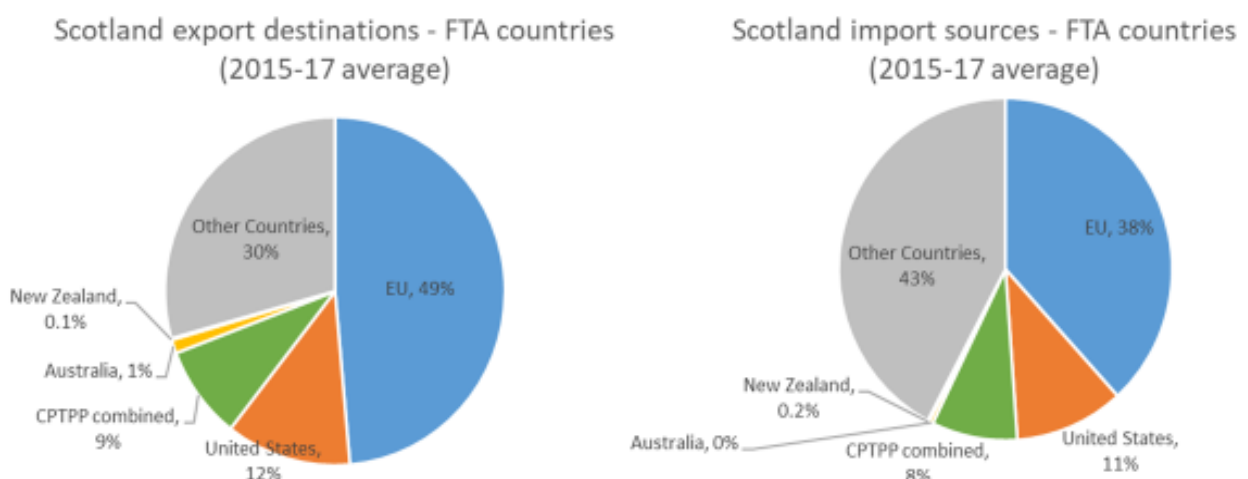
43. The following Scottish Government analysis demonstrates that, while there are some similarities, there are also some significant differences between Scotland and the rest of the UK in terms of existing trade flows with these markets. These differences need to be recognised and taken into account in any initial selection of potential future trading partners, and throughout the development of a UK wide negotiating position, ahead of any discussions.

Overview

44. The markets consulted on accounted for around 20% of both Scotland's annual **goods** exports and imports, averaged over 2015-17.

Chart 3 – Scotland export destinations and import sources (2015-17 average)

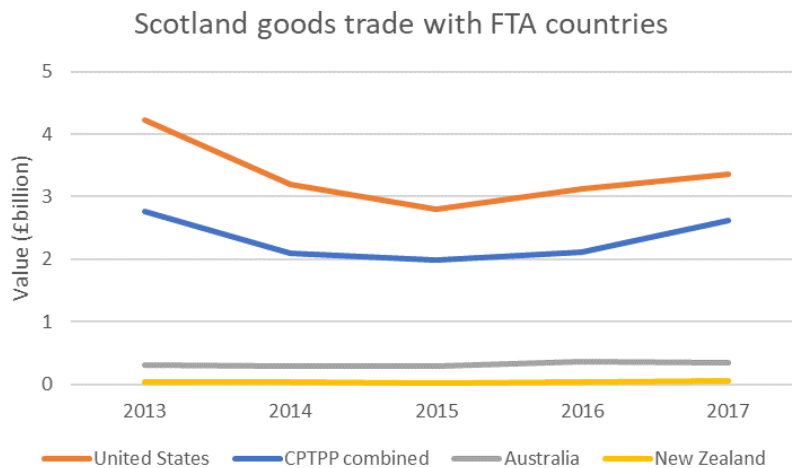
FTA countries combined make up around 20% of Scotland's goods exports and imports



Note: Australia and NZ are currently represented both separately and within the figures for CPTPP.

45. Although relatively small compared to Scotland’s exports to the EU and rest of the world, Scotland’s exports to these markets have in general been growing faster than the UK’s exports. Scottish exports to the USA and CPTPP countries in particular have shown growth over the last decade.

Chart 4 – Scotland’s goods exports, 2013 to 2017



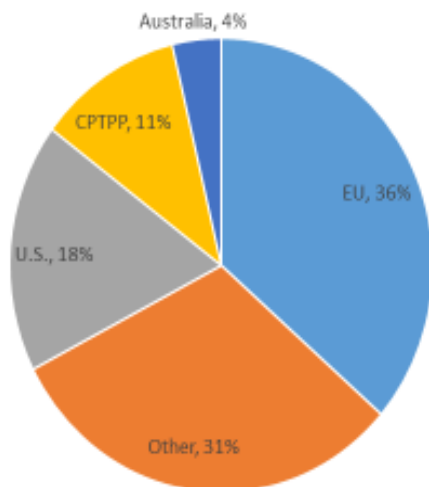
46. Scotland currently has **goods** trade surpluses with all four of the potential trade agreement markets, while the UK currently has a deficit with New Zealand and CPTPP. However, there are important differences in terms of current sectors of trade between Scotland and the UK as a whole that suggest that Scotland’s interests in these potential agreements may differ from that of the UK.

47. For all four markets, beverages are Scotland’s top export sector, accounting for between 23% and 31% of Scotland’s exports to the relevant countries. For the UK as a whole, beverages represents a significantly less important sector for all four markets. Meanwhile, road vehicles make up a significant proportion of all-UK exports, but are comparatively far less significant for Scotland. This suggests that, when negotiating free trade agreements, Scotland may have very different interests to the rest of the UK. In the circumstances, it is essential that these differences are understood and taken into account as part of the negotiating process, not ignored or sacrificed in order to reach a deal.

48. The markets consulted on made up around 30% of Scotland’s overall **services** exports in 2016, broadly in line with the UK (and compared to 36% currently to the EU). Of the markets considered, the highest proportion of Scotland’s services exports are to the USA (18%), followed by CPTPP, including Australia and New Zealand (11%) and Australia (4%). There is currently very little trade in services with New Zealand.

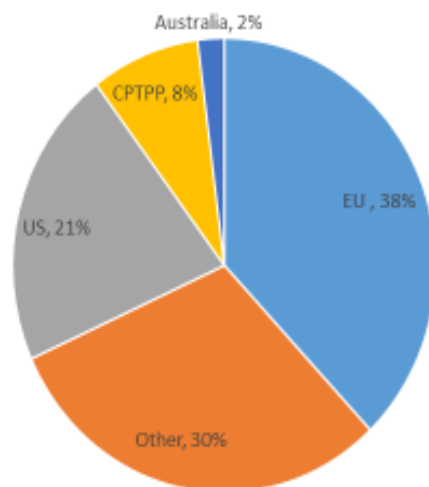
Chart 5 – Services exports, 2016 – Scotland and UK

Scotland's Export Destinations - FTA Countries (2016)



Source: Export Statistics Scotland

UK Export Destinations – FTA Countries (2016)



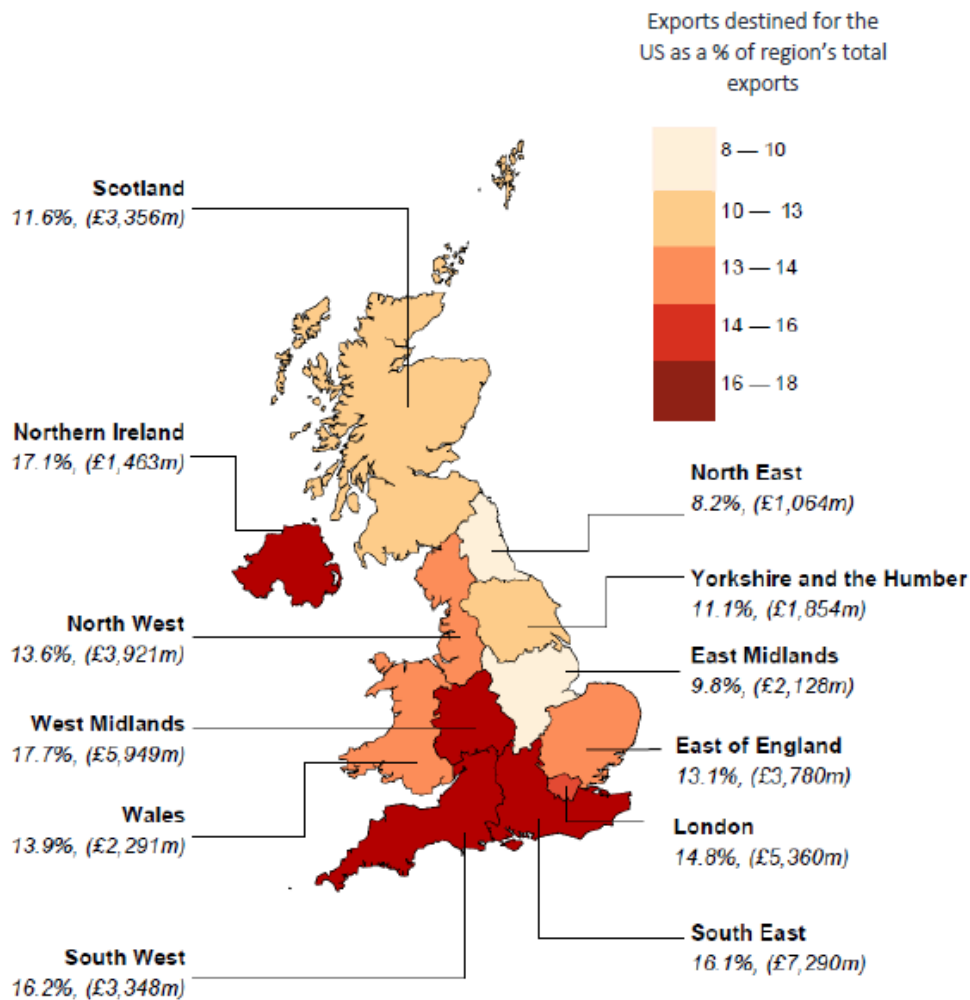
Source: UK Pink Book

49. The following section considers the UK and Scotland's existing trade flows with each of the potential markets in greater detail. The differences highlighted are important, in that they illustrate the different sectoral priorities that Scotland and the rest of the UK could have in future trade negotiations.

USA

50. Scotland has a **goods** surplus with the USA, with exports comprising 11.6% of Scotland's international exports in 2017 (representing Scotland's largest existing market among the four considered). While imports from the USA are broadly similar for Scotland and the UK as whole, export patterns differ significantly, with beverages making up a significant portion of Scotland's exports – 31% - and food, chemicals and related products showing strong growth in recent years. For example, the value of Atlantic salmon exported to the USA is higher than for any other region. Beverages account for only 3% of goods exports to the USA for the UK as a whole. In contrast, medicinal and pharmaceutical products, road vehicles and other manufactured articles are significantly more important exports for the UK as a whole than for Scotland.

Chart 6 – Exports of goods to the USA by UK region, 2017

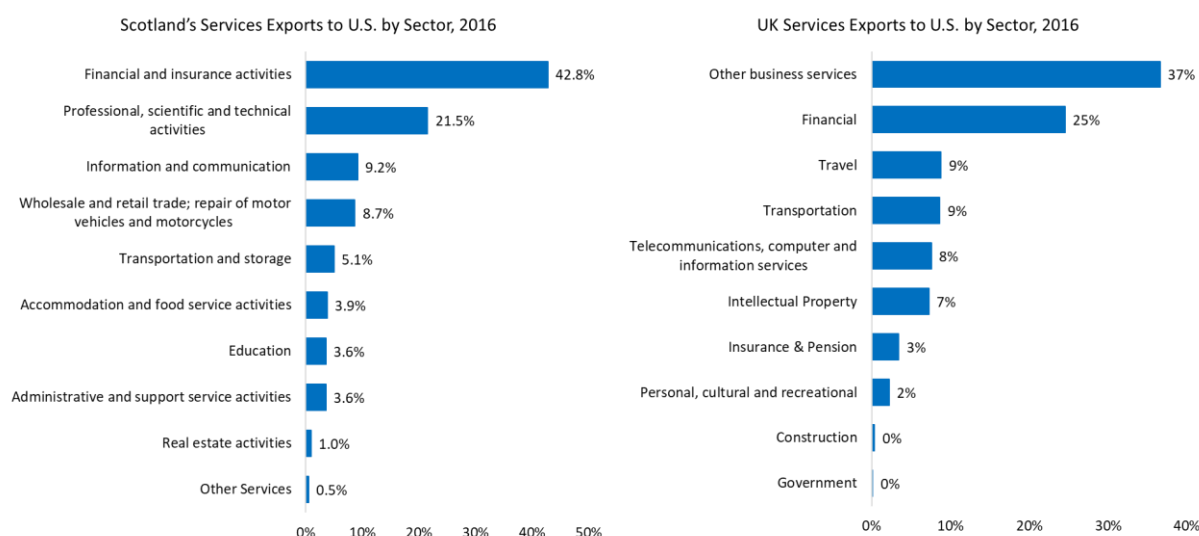


Source: Department for International Trade (2018) Information pack for the consultation relating to a bilateral Free Trade Agreement between the United Kingdom and the United States of America.

51. The USA is already Scotland's largest single country **services** trading partner, with Scotland's services exports to the USA representing 18% of its international service exports in 2016. Scotland's services exports to USA have grown faster than those of the UK as a whole, at a rate of 7.3% per annum between 2002 and 2016.

52. While service exports to the USA from Scotland and the UK as a whole are dominated by the same sectors - financial services and business/professional services - financial and insurance activities are considerably more important to Scotland, representing 42.8% of exports to the USA, as opposed to 28% for the UK as a whole. Service exports in this area grew by 392% in finance and insurance activities (12% per annum) and by 207% (8.3% per annum) in professional services between 2002 and 2016, driving Scottish growth in services exports to the USA.

Chart 7 – Services exports to the USA by sector, 2016 – Scotland and UK



Note: the Scotland and UK data sources use different sector classifications. Hence, they may not be directly comparable.

53. In terms of services exports, it is not clear the extent to which a trade agreement with the USA that included services would boost Scottish exports. Barriers to trade in services typically arise from domestic regulation in other countries, and the experience of free trade agreements is that they only tend to reduce some of these barriers. While the USA is already an important market for Scottish and UK services, areas which could potentially be of interest in terms of potential expansion of trade - such as insurance - encounter significant barriers, often at state level. Analysis of the terms of the recently agreed USA-Mexico-Canada Agreement (USMCA) suggest some progress in addressing barriers to trade in services, including in relation to financial services. However, they also suggest that the USA's preference is for provisions in this areas to remain comparatively narrow in scope. The potential gains therefore remain uncertain.

Australia

54. Reflecting the generally accepted principle in trade economics that economies tend to trade most with their closest neighbours, Australia is generally a relatively small market for economies in the northern hemisphere, with the EU in total only accounting for around 16% of Australia's goods trade.

55. Australia is an even smaller market for Scotland's exports, representing around 1% of Scotland's international **goods** exports, averaged over 2015-17. However, Scotland exports significantly more goods to Australia than it imports. Once again, the export of beverages is much more important to Scotland than to the UK as a whole, representing Scotland's most important export to Australia. In light of the strategic importance of Scotch Whisky as an export, in March 2014, the Scotch Whisky Association successfully registered "Scotch Whisky" as a certification trademark in Australia, ensuring a route for protection under Australian national law. Other significant export interests are machinery and transport equipment. Feeding stuff for animals also makes up a much more significant proportion of

Scotland's exports to Australia than for the UK as a whole, with food and chemicals and related products exports to Australia growing substantially over the last decade.

56. The pattern of **goods imports** from Australia to Scotland is similar to that for the UK as a whole, however Scotland's imports are more concentrated in a few sectors, including beverages and medicinal and pharmaceutical products.

Chart 8 – Scotland's goods exports and imports with Australia, 2013 to 2017

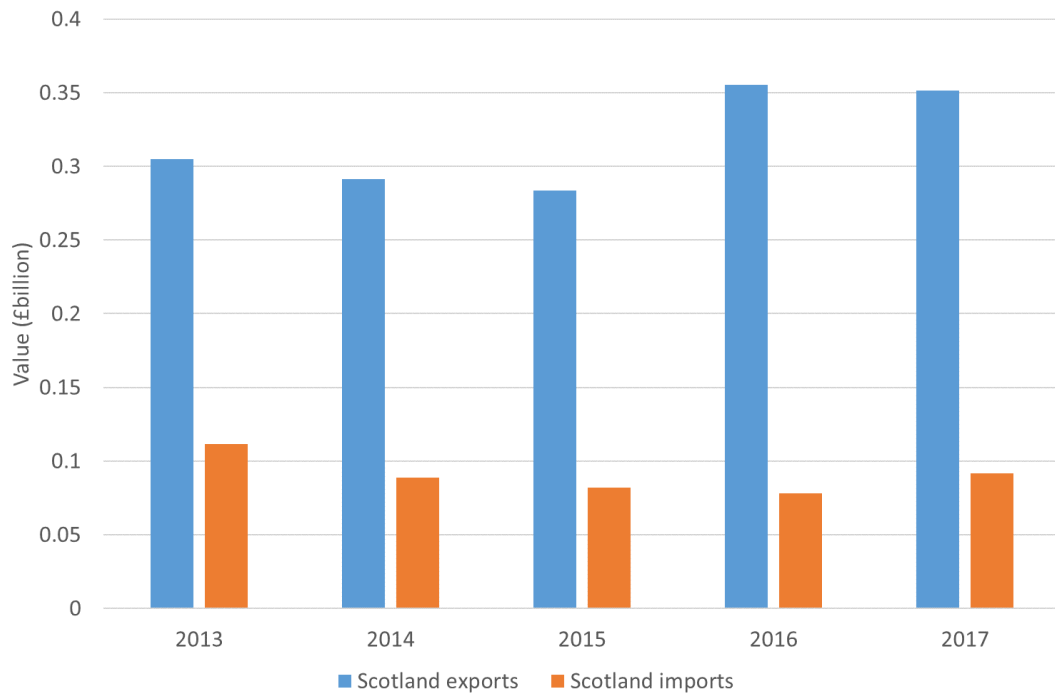
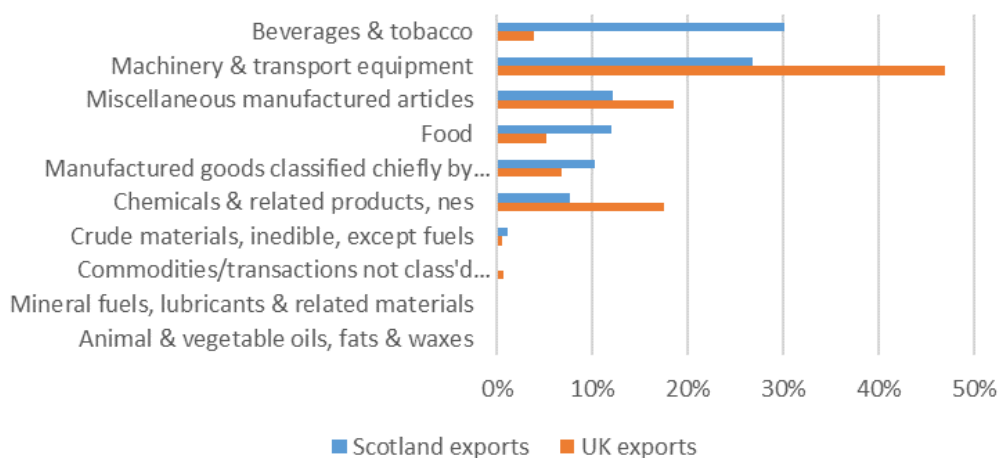
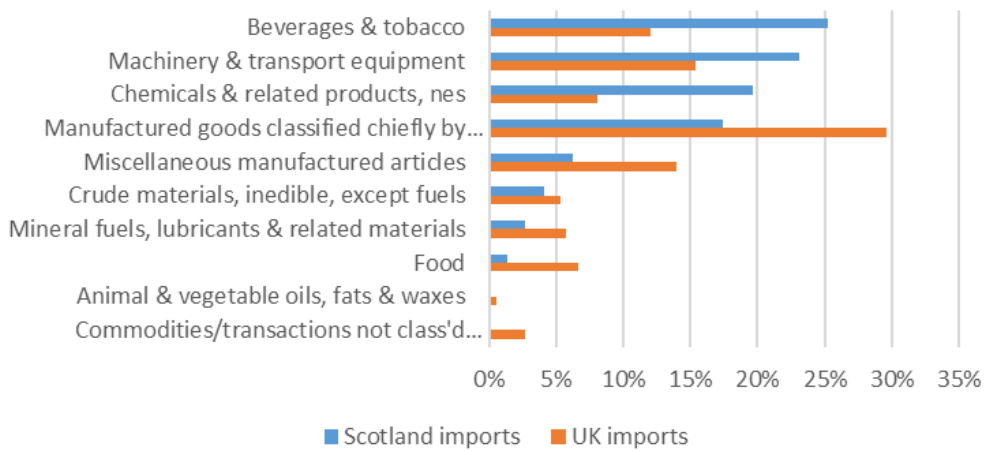


Chart 9 – Goods trade with Australia – Scotland and UK

Comparing Scotland and UK exports to Australia
(2015-17 average)



Comparing Scotland & UK imports from Australia (2015-17 average)

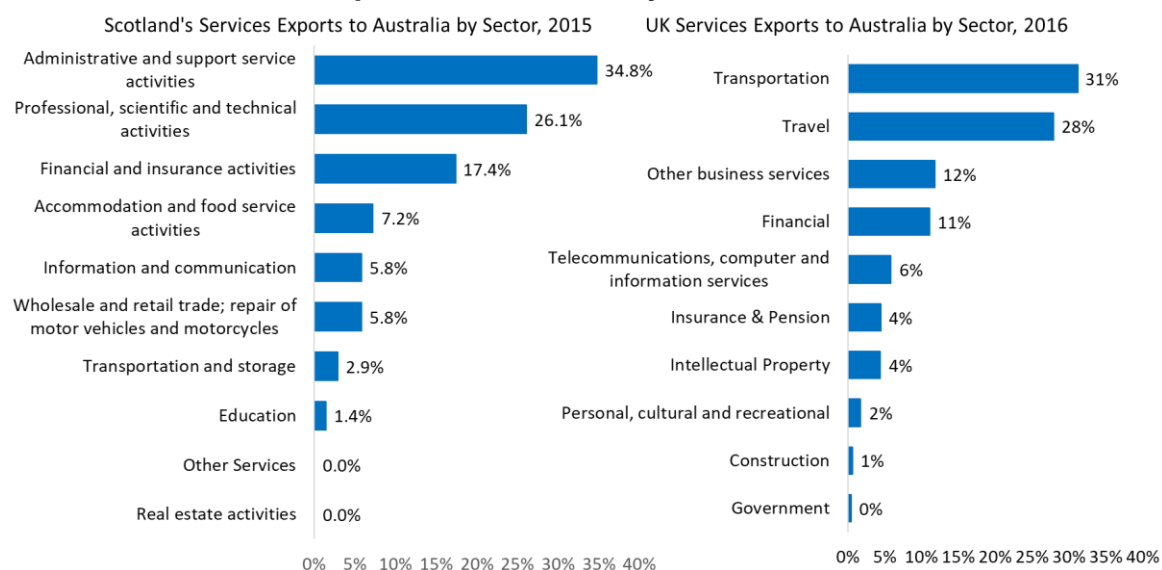


57. While Australia only accounts for 4% of Scotland's **services** exports (and just 2% of the UK's services exports), those exports have grown consistently over time from £105 million in 2002 to £435 million in 2016, representing growth of 314%, or 10.7% per annum.

58. For most of the past 14 years, the UK's services exports to Australia grew at a faster rate than Scotland's services exports, although Scotland's services exports have outpaced UK growth since 2014.

59. In addition, Scotland's services exports differ significantly from the UK as a whole, with administrative and professional services (34.8% and 26.1% respectively) accounting for the majority of Scotland's service sector exports to Australia, whereas transportation and travel account for the majority of UK service sector exports (31% and 28%).

Chart 10 – Services exports to Australia by sector, 2015 – Scotland and UK



Note 2015 figures used for Scotland due to data to disclosive data in 2016. Also, the Scotland and UK data sources use different sector classifications. Hence, they may not be directly comparable.

60. Given the modest value of existing trade between Scotland and Australia, and the geographical distance between them, further analysis is required to establish how a trade agreement might boost Scottish trade with Australia.

New Zealand

61. While the UK is New Zealand’s fourth largest source of imports in **goods** and **services**, Scotland’s exports to New Zealand are generally very small – around £50m per annum.

62. With the exception of 2015, Scotland exports more **goods** to New Zealand than it imports. Beverages, other transport equipment, medicinal and pharmaceutical products and power generating machinery and equipment make up a much more significant proportion of Scotland’s exports to New Zealand, than for the UK as a whole. Scotland’s export of chemicals and related products, machinery and transport equipment and food have grown well over the last decade.

63. In terms of **goods imports**, the food sector is considerably more important to the UK as a whole than it is to Scotland (representing 46% of the UK’s imports from New Zealand, as opposed to 4% of Scotland’s imports).

Chart 11 – Scotland’s goods exports and imports with New Zealand, 2013 to 2017

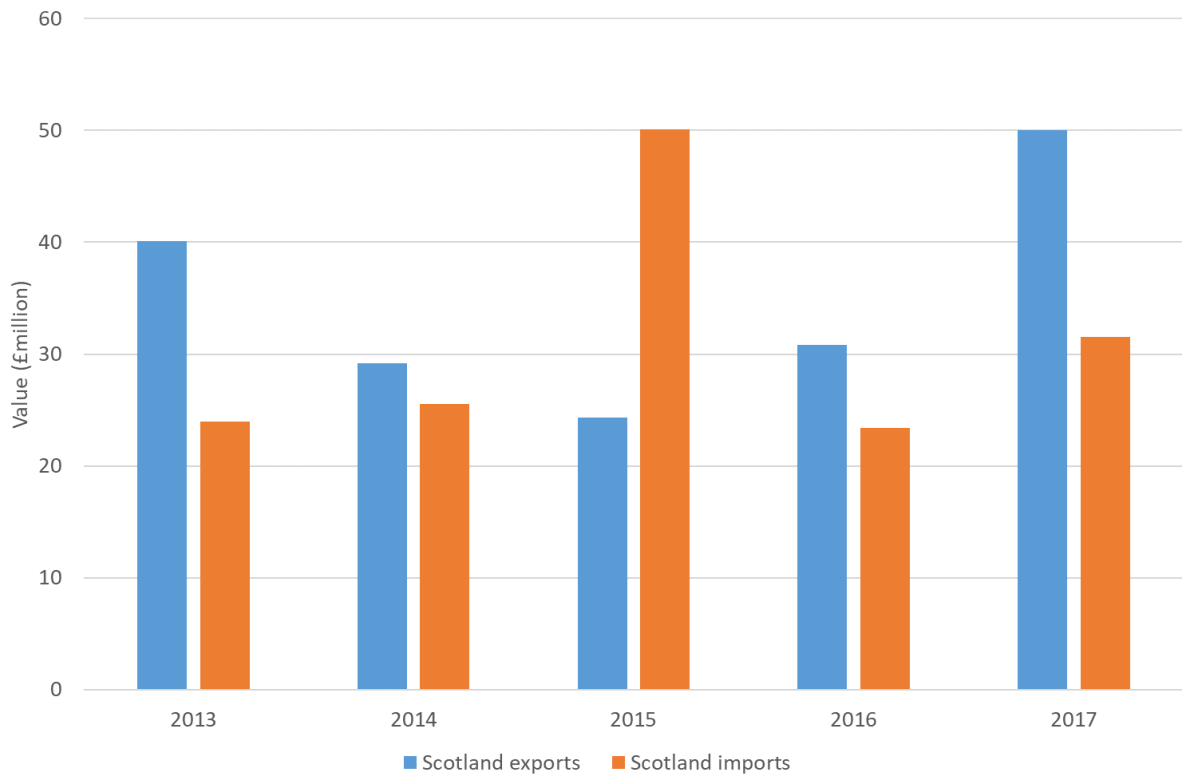
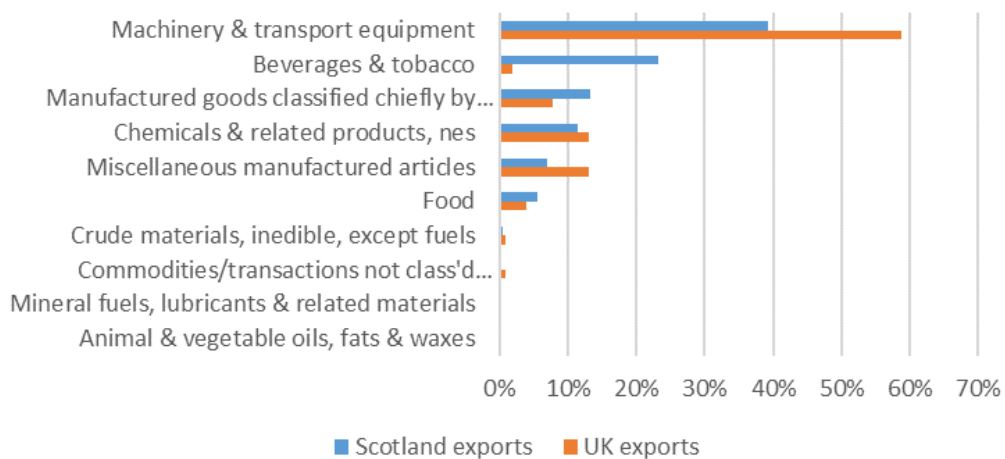
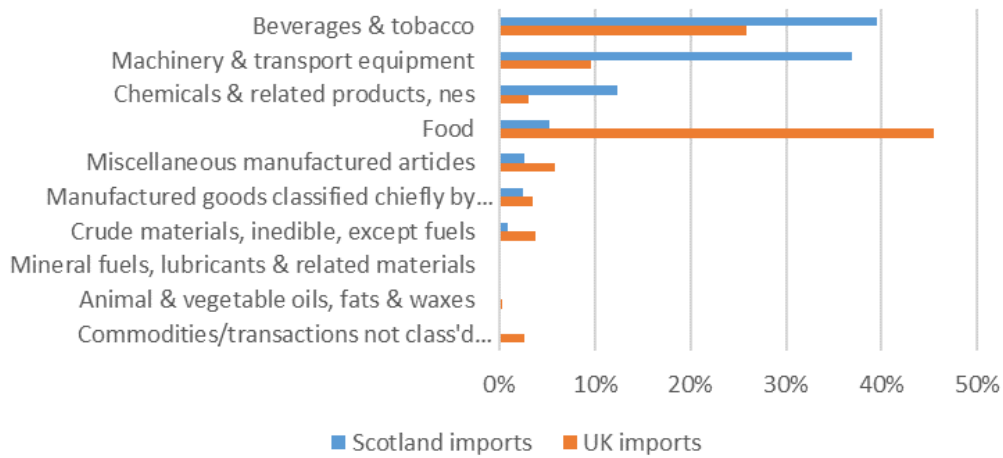


Chart 12 – Goods trade with New Zealand (2015-17 average) – Scotland and UK

Comparing Scotland and UK exports to NZ
(2015-17 average)



Comparing Scotland and UK imports from NZ (2015-17 average)

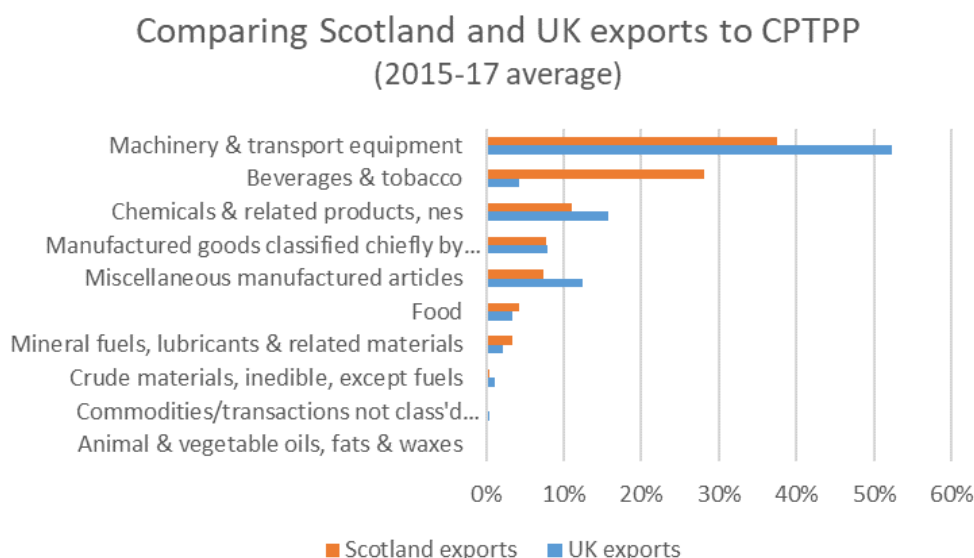


64. Statistics on Scotland’s share of New Zealand’s service markets are not available. However, comparing the UK’s exports to New Zealand with Scotland’s top international exports shows that business services and financial services are the sectors likely to have the greatest potential for Scotland’s services exporters, and we would seek enhanced access to these markets. However, as Scotland’s share of New Zealand’s overall market is relatively small, it may prove difficult to generate additional economic value for our service exporters as a result of a new trade agreement .

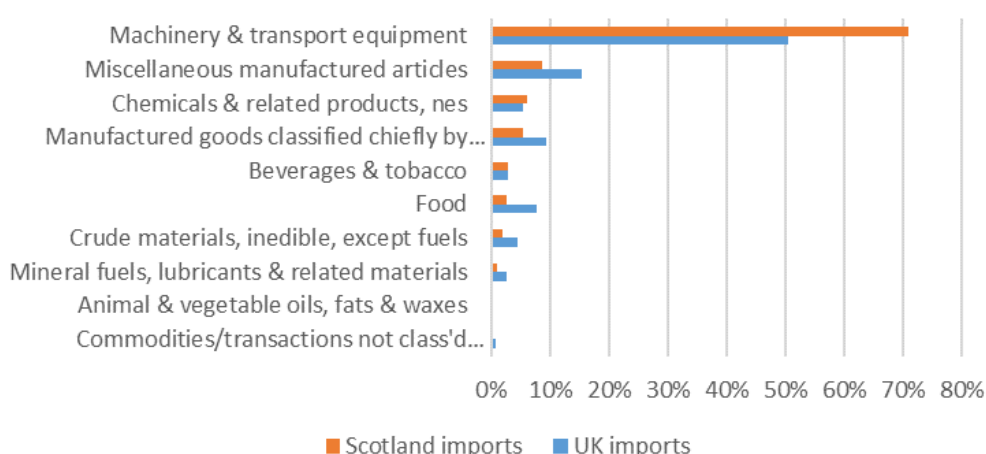
CPTPP

65. CPTPP countries (including Australia and New Zealand) represented 9% of Scotland’s international **goods** exports trade, and 8% of imports, averaged over 2015-17. Again, beverages is a particularly important export industry to CPTPP countries that is not shared with the UK as whole (28% of Scotland’s exports averaged over 2015-2017, as compared to 4% of the UK as a whole). In contrast, road vehicles (14% for the UK, 2% for Scotland) and medicinal and pharmaceutical products (8% for the UK, 2% for Scotland) make up a large share of the UK’s exports, but a small share of Scotland’s. Scotland’s exports of chemicals and related products and food have grown strongly in recent years.

Chart 13 – Goods trade with CPTPP countries (2015-17 average) – Scotland and UK



Comparing Scotland and UK imports from CPTPP (2015-17 average)

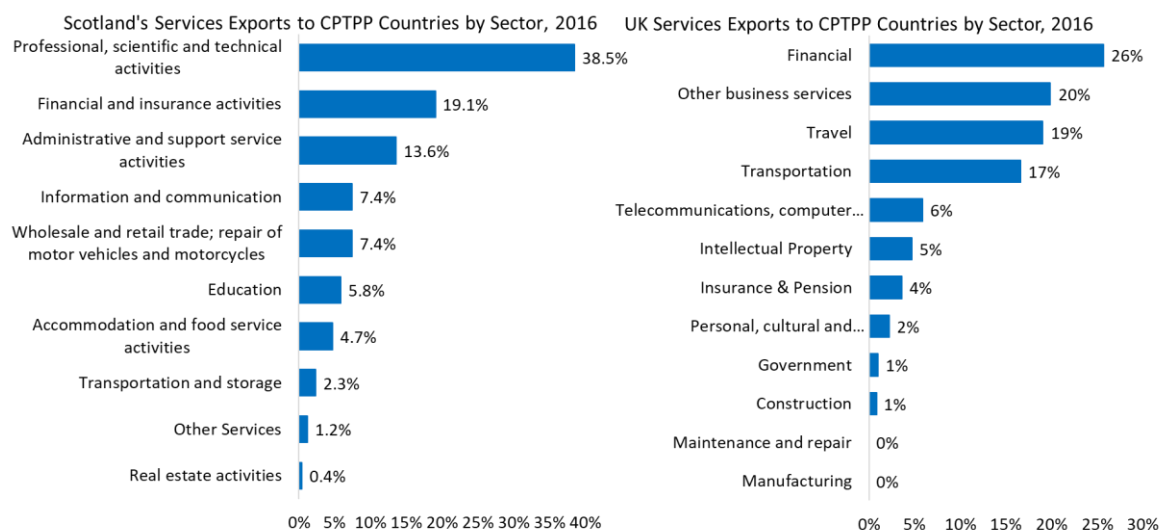


66. In terms of **goods imports**, other transport equipment and power generating machinery and equipment make up a much more significant proportion of Scotland's imports from CPTPP countries than the UK as a whole. In contrast, road vehicles and telecoms make up a large proportion of UK imports (18%, averaged over 2015-2017), but only 2% of Scottish imports.

67. CPTPP countries represent 11% of Scotland's international **services** exports, 8% for the UK as a whole. Scotland's total services exports to CPTPP countries - including Australia - have grown consistently over time from £445 million in 2002 to £1,285 million in 2016, representing a growth rate of 189%, or 7.9% per annum. Exports have grown at a similar rate for Scotland and the UK as a whole since 2002. Again, financial services and business/professional services dominate Scotland's service exports, although the biggest growth per annum since 2002 has been seen in administrative and support service activities, currently the third most important

sector in Scotland's services trade with CPTPP countries, and representing 13.6% of exports.

Chart 14 - Services exports to CPTPP countries by sector, 2016 – Scotland and UK



Note: the Scotland and UK data sources use different sector classifications. Hence, they may not be directly comparable.

68. Almost two thirds of Scotland's service exports to CPTPP countries are to Australia and Canada. 90% are shared between Australia, Canada, Japan and Singapore. The remaining 10% is shared between Malaysia, New Zealand, Brunei, Chile, Mexico, Peru and Vietnam.

Table 2: Scotland's Services Exports to CPTPP, by Country, 2016

	Service Exports 2016 (£m)	Proportion of CPTPP Total
CPTPP	1,285	100%
<i>of which...</i>		
<i>Australia</i>	<i>435</i>	<i>34%</i>
<i>Canada</i>	<i>390</i>	<i>30%</i>
<i>Japan</i>	<i>175</i>	<i>14%</i>
<i>Singapore</i>	<i>160</i>	<i>12%</i>
<i>Malaysia</i>	<i>50</i>	<i>4%</i>
<i>Other CPTPP</i>	<i>75</i>	<i>6%</i>

"Other CPTPP" includes New Zealand, Brunei, Chile, Mexico, Peru and Vietnam

69. CPTPP includes the liberalisation of services, and sets out rules around the number of business days that can be spent in each country, offering certainty for service providers, and enhancing the potential for global value supply chains in the Asia-Pacific region. However, the agreement takes a different approach to the current EU one on issues such as sanitary and phyto-sanitary measures, and provides limited coverage in relation to financial services (a key interest for Scotland and the UK). In addition, for the reasons set out earlier, the relative advantage to the UK of entering into a regional trade arrangement – as opposed to bilateral trade deals with member countries - requires more detailed assessment once the CPTPP has entered into force.

CHAPTER 3 - SECTORAL INTERESTS

70. The remainder of this document outlines a range of areas where the Scottish Government - and Scottish Parliament - may wish to take a different approach to that taken in other parts of the UK. This is not intended to be an exhaustive list, but to provide an illustration of why Scotland's views need to be taken into account in developing the future trade policy of the UK. The Scottish Government will continue to develop this material throughout our involvement in and contribution to the development of UK trade policy, to ensure that it reflects Scotland's interests.

GOODS

Food and Drink

71. Like many other sectors, the interests of the food and drink sector in Scotland would be best served by remaining in the EU Single Market and Customs Union, a far more important market for most Scottish producers than any of the countries currently being considered as part of these consultations, some of whom – would not be market priorities for Scottish producers.

72. If the UK leaves the Single Market and Customs Union, future trade deals must protect the interests of all food and drink producers in the UK. In particular, any trade deals with these countries must protect Scotland's specific food and drink interests and current standards.

73. Any future deal must maintain existing food standard and animal health and welfare standards, including:

- Mutual recognition of general rules required to achieve a high level of public health protection and food composition and labelling standards.
- Recognition and protection of specific domestic public health measures (in line with recognised WTO rules), introduced based on scientific evidence to guarantee the safety of high risk foods. For example, the ban on the sale of raw drinking milk in Scotland and the current EU wide ban on the marketing of specific highly toxic fish species.
- Mutual recognition of standards and assurance of official controls related to Sanitary and Phytosanitary checks, to minimise the burden of import and export border checks.
- As part of the mutual recognition process highlighted above, the facilitation of an efficient and effective system of regulatory supervision of official controls to provide assurance and maintain deals once secured.

Specific concerns about the trade deals proposed

74. The protection of Scotland's rural economy is one of our key priorities in any future trade deals. It is important that the UK Government recognises and acknowledges the importance of Scotland's rural economy in its overall approach to future trade deals, particularly in how it influences Scottish food and drink production.

75. While we recognise that there could be a potential to grow and expand exports, the continued lack of certainty surrounding the UK's departure from the EU makes it difficult to understand the potential capacity, regulatory standards and timeframe for future trade agreements. The Scottish Government's preference is to remain aligned with the conditions set through the EU, as this framework has set the high standards and quality that global consumers associate with Scottish products.

76. As stated above, not all of the potential trade agreements included in the current exercise would be key target markets for Scotland. The Scottish Government also notes that many of the countries being considered for early trade agreements are large, highly productive agricultural producers. Any agreement to lower barriers to these countries as part of a trade deal could potentially benefit consumers, but would need to be balanced against very serious consequences for some Scottish farm sectors, in particular sheep and beef, which are also among the most reliant sectors on EU-funded CAP payments. The experience of previous negotiations suggest that Australia and New Zealand in particular are both highly likely to push hard for the liberalisation of agricultural trade.

Australia

77. While offering little in the way of additional exporting opportunities - despite, for example, a low applied tariff on imported beef and lamb - a trade agreement with Australia could have a significant negative impact on the Scottish lamb industry in particular. Australia has, for some time, sought an uplift in the EU Tariff Rate Quota in relation to lamb. Increased market access for lamb is therefore likely to be high on their list of their priorities for a UK trade deal.

78. As the world's largest beef exporter, and a low cost producer, there is a possibility that beef access will also feature highly in Australia's priorities for a future trade deal with the UK. Different production standards and a different approach to sanitary and phyto-sanitary measures could also increase the potential for importing hormone-treated beef and dairy.

79. Australia is also potentially likely to be a key competitor with the UK on beef, lamb and crops, with the UK looking to open up new markets in these areas.

USA

80. As the USA is currently a significant importer of red meat, market access – particularly for higher quality, niche products, such as Aberdeen Angus - should be a key priority in any trade deal with the USA.

81. Although an agreement with the USA is not a priority for the Scotch Whisky Association, any future negotiations with the USA should seek to address customs fees (merchandise processing fee and a harbour maintenance tax). Removing these could save the industry an estimated £3.75m per annum in fees. A specific 'spirits annex' – as suggested during the TTIP negotiations - could promote improved regulatory coherence, setting globally relevant rules for labelling, certification and testing of spirit drinks and ensuring that the existing high quality standard EU definition of whisky is maintained in any future trade agreement.

82. As stated earlier in this response, the Scottish Government is particularly concerned to ensure that future trade deal negotiations – notably with the USA – do not lead to a reduction in existing UK **food safety, and animal health and welfare standards**. While the Scottish Government welcomes the UK Government's publicly stated commitment to maintaining such standards, they must be adhered to and upheld in negotiations.

83. In addition to these important public safety concerns, the potential for cheaper, lower standard food imports could place Scottish farmers at a competitive disadvantage, something noted by the House of Lords EU Energy and Environment Sub-Committee in its July 2018 report *Brexit: Farm animal welfare*.¹⁰ That in turn could potentially trigger a 'race to the bottom', with UK producers seeking to preserve market share by reducing standards. The Scottish Government is concerned, for example, about the following potential issues:

- A USA-UK trade deal could potentially open the door to imports of American foods grown using **pesticides**, which are currently banned in the EU on health and environmental grounds. It is possible that the USA would also push the UK to relax 'maximum residue levels' for pesticides in food.
- No **GM** crops are grown commercially in the UK. It is possible that the USA will argue that GM labelling, cultivation and import bans are discriminatory barriers to trade in a future scenario of a UK-USA trade agreement.
- 'Washing' butchered chickens in chlorinated water and spraying pig carcasses with lactic acid are not permitted in the EU. The UK is likely to come under pressure in a UK-USA trade agreement to relax the restriction on imports of these products.
- Similarly, the ban on the use of synthetic hormones to promote growth in farm animals, in place through EU Food Safety regulations, could be a key target for the USA to reverse in negotiations on a future UK/USA trade agreement.
- Powerful USA meat and grain corporations have been pressing the EU to remove restrictions on animal byproducts (abattoir offcuts and waste) in animal feedstuffs. This could become an issue for UK-USA talks.

¹⁰ House of Lords (July 2018) Brexit: farm animal welfare
<https://publications.parliament.uk/pa/ld201719/ldselect/ldeucom/15/1502.htm>

Geographical Indications

84. Securing a Geographical Indication (GI) for a product generally adds value to that product, by providing a guarantee of authenticity and quality that enhances the product's reputation. It also protects producers and consumers from counterfeit products or imitations.

85. The continuation of GIs in future trade agreements is crucially important for the range of Scottish products that have achieved this status. As a Member State, the UK has benefited from the EU's approach to GIs, with Scotland currently having 14 protected products, in addition to Scotch Whisky. Scotland holds some of the most valuable Geographical Indications in Europe, and they are worth more to Scotland and our economy than to the rest of the UK. Scotch Whisky alone accounted for £1.37bn exports to the EU in 2017¹¹, and two of our most iconic food products – Scottish Farmed Salmon and Scotch Beef – are amongst the highest value Protected Food Names in Europe, with export markets alone worth over £600m every year¹².

86. The EU places great importance on GIs within trade deals and has included long lists of them in its deals with Canada, Japan and others. The UK has until now been more reticent. The Scottish Government has been critical of the failure by the UK Government to nominate any UK GIs for inclusion in the CETA deal with Canada in particular. Due to the economic value and importance of Geographical Indications to Scotland and our economy, we believe that GIs should be included in any trade agreements as a matter of course.

87. Any future trade agreements must ensure that existing Geographical Indication protections are maintained, and allow additional GIs to be agreed. The Scottish Government notes that the equivalent models for protection in Australia, New Zealand and the USA are generally narrower in scope than the EU model, and are more analogous to a trade mark scheme, setting a higher bar for registration and protection for UK producers than the existing EU model. The USA was critical of the EU's approach to GIs in the EU-USA TTIP negotiations, suggesting this could be an issue in any negotiations on a future UK/USA trade agreement.¹³ In light of these divergent views and approaches, there is a risk that the USA, New Zealand and Australia will seek to link GI recognition with improved agricultural market access to the UK.

Marine

88. As emphasised in *Scotland's Role in the Development of Future UK Trade Arrangements: A Discussion Paper*¹⁴, the EU is a vital market for Scottish seafood products, accounting for 77% of seafood exports in 2017. While the UK as a whole is a net *importer* of fish, Scotland is a net *exporter* to the EU and the rest of the

¹¹ HMRC Overseas and Regional Trade Statistics - <https://www.uktradeinfo.com/Pages/Home.aspx>

¹² Ibid.

¹³ <http://capreform.eu/geographical-indications-gis-in-the-us-eu-ttip-negotiations/>

¹⁴ Scottish Government (2018) *Scotland's Role in the Development of Future UK Trade Arrangements* <https://www.gov.scot/publications/scotlands-role-development-future-uk-trade-arrangments>

world. Disadvantageous non-tariff barriers in particular could have a devastating impact on the export of fresh seafood.

89. Scotland has a thriving diverse aquaculture industry. The value of this industry to the overall economy does not fully reflect its importance to remote rural communities, many of which are highly dependent on aquaculture and wider seafood jobs.

90. Within Scotland the production of salmon and other fish, molluscs, crustaceans and seaweed produces high value products. Over the first nine months of 2018, the UK exported £367 million worth of Atlantic salmon globally. In the third quarter of 2018 (July – Sept), Atlantic salmon exports from the UK were valued at around £110 million. The Scottish Government supports the Aquaculture Industry Leadership Group and the industry’s growth strategy, which aims to increase the wider economic impact of the sector to £3.6 billion by 2030 and double the number of jobs to 18,000 by 2030.¹⁵

Table 3: The value (£) of Atlantic salmon Exports from the UK, by Region, in Q1- Q3, 2018¹⁶

Area	Q1- 3 2018
European Community	178,116,722
Asia and Oceania	76,671,833
Eastern Europe	143,992
Latin America & Caribbean	189,575
Middle East & N Africa	6,283,141
North America	103,291,580
Sub-Saharan Africa	67,975
Western Europe exc EC	2,002,465
Non-EU Total	188,650,561
Total Overseas	366,767,283

91. **The EU remains the largest single regional market for aquaculture products**, importing £178m (49%) of the UK’s salmon exports by value in the first nine months of 2018. In developing future UK trade policy and trading arrangements it will therefore be vital to ensure that access to the EU market, on favourable terms, is pursued and secured. **Considering the existing values of exported Scottish Salmon, and the importance this industry has to rural communities, it is not apparent how entering bilateral agreements with New Zealand, Australia and the USA could immediately mitigate the loss of favourable trading conditions with the EU.** That is important, because average import tariffs on salmon products for those countries – New Zealand, Australia and the USA - are generally very low, and currently would not have provided a large barrier to trade. In the absence of a

¹⁵ <https://www.gov.scot/Topics/marine/Fish-Shellfish>

¹⁶ Source: HMRC Overseas Trade Statistics.

Note 1: all salmon exports figures here refer to HS code 03021400 – Fresh/ chilled Atlantic salmon

Note 2: quarterly statistics are subject to change and may vary over the year, and between years, the figures for Q1 and Q2 2018 are therefore included for illustrative and comparative purposes only.

free trade agreement, the EU tends, however, to have higher tariffs on imports of salmon products when compared to some of these countries.

92. The UK already trades with the **CPTPP** countries, and already imports relatively large quantities of seafood and aquaculture product. Their domestic production and existing exporting capacity could potentially negatively impact the UK seafood and aquaculture sector by increasing their supply, undercutting prices and reducing the share of the domestic market in the UK in the absence of tariffs and lower non-tariff barriers. For example, Chile is a large producer of salmon, and could have the potential to increase its exports to the UK, if tariffs and non-tariff measured decreased. We therefore recommend that a detailed risk assessment is undertaken, to consider the potential impact on the Scottish seafood and aquaculture sector.

93. The catching sector is another important part of the rural economy within Scotland. When determining the scale of the potential benefits of entering trade agreements, it is important to consider the potential reductions in tariffs which could be achieved, by considering the existing tariffs on key seafood products. Table 4 sets out the existing average tariff value, by commodity, for key Scottish seafood products which could be applied under World Trade Organisation rules, if the UK leaves the European Union.

Table 4: The average tariff value by commodity for important Scottish seafood products

Country	Commodity			
	Cod	Haddock	Nephrops	Crab
Australia	\$0.017/kg	\$0.017/kg	0.017/kg	0%
Japan	1.9%	3.5%	5.6%	6.1%
New Zealand	0%	0%	3.8%	3.6%
USA	0%	0%	0%	3.8%
European Union	11.966%	8.2%	11.47%	7.6%

94. Table 4 demonstrates that cod and haddock could incur low tariffs from Australia, New Zealand and Japan. Tariffs on Nephrops and Crab from these countries are also relatively low. The USA also applies no tariffs on its cod, haddock and nephrops products, with a minimal tariff on crab products. As Table 4 shows, the European Union has the highest tariffs, which could be applied to these seafood products if the UK leaves the EU without a deal. Therefore, in relation to the catching sector, if considering tariff rates only, the benefits of tariff reductions through entering free trade agreements with Australia, New Zealand, the USA and by joining the CPTPP, are small and would not offset the increase in tariffs from the European Union. As the European Union is currently our largest market, and the existing tariff rates for key seafood products to Australia, New Zealand, the USA and Japan are relatively low, it is not immediately apparent how free trade agreements with those countries could help grow the Scottish catching sector.

95. Evidence from research commissioned by Marine Scotland¹⁷ to examine the impacts of trade scenarios post EU-exit suggests that the benefits to the UK of

¹⁷ The work carried out by Marine Scotland uses trade modelling and is based on hypothetical future scenarios.

extending free trade arrangements to the rest of the world are modest under current levels of UK production. The research estimated that the highest increase in exports would be for salmon, at 1.63%. The research also predicted modest increases in UK imports, with the highest increase estimated for cod, at 2.55%. However, higher tariffs on trade with the EU following Brexit could result in trade being diverted to other countries. Thus some of the countries identified - notably those with higher value markets such as Japan and USA - could become important export destinations for UK seafood. Further detailed analysis is required to forecast the anticipated benefit to Scottish seafood and aquaculture business.

96. Based on their existing levels of imports, the other CPTPP countries - which currently have higher tariff barriers - have relatively small seafood export markets. The countries party to the CPTPP represent a potentially huge market for Scottish seafood and aquaculture products. Together with the USA, they import seafood worth around £18 billion annually (based on 2016 and 2017 data). UK seafood and aquaculture products currently target premium markets, with Scottish seafood and aquaculture products trading on the high quality Scottish brand. Different countries have varying tastes in seafood and aquaculture products, which could provide cultural barriers to expanding our seafood/aquaculture trade.

97. The USA is an important export destination for UK seafood products, importing a value of £50 million from the UK with a total market size of \$8.9 billion in 2017 and \$8.3 billion in 2016. In relation to aquaculture products, the value of Atlantic Salmon exported to the USA is higher than any other region (£100 million in Q1-Q3 in 2018). This suggests that exporting products such as Atlantic Salmon to the USA – already an important market - could benefit from a free trade agreement. However current levels of tariff barriers are already low (for salmon it is zero, and for most key products generally low, as demonstrated in Table 4). This implies that the opportunity for the UK to further increase exports of seafood and aquaculture products to the USA under a free trade agreement, by reducing tariffs, could be small.

98. In summary, this area provides a particular example of where Scottish interests must be understood and taken into account to ensure that any decisions taken reflect a balanced, proportionate and representative assessment of Scottish activities. Any future UK trade policy must recognise and take into account the importance and specificities of Scotland's seafood industry – and its food and drink industry in general - its relationship with rural communities, and how barriers to trade can have a negative impact (a point illustrated recently by the USA proposal on cetacean control and export of farmed salmon - the UK's biggest food export).

99. Given the unique issues faced by Scotland's seafood industry, it is essential that the UK Government works with the Scottish Government to analyse the consultation responses received in this area, particularly where they relate to areas of devolved policy and expertise.

Tariff Policy

Industrial Goods

100. The very substantial reduction in tariffs achieved through the General Agreement on Tariffs and Trade (GATT) has been a major success of international trade policy, with the average tariff for major GATT participants falling from around 22% in 1947 to 5% at the end of the Uruguay Round in 1999.

101. As noted in the information pack accompanying the consultation on negotiations with the USA¹⁸, the simple average tariff on goods imported into the UK from the USA is 5.7%, and for the USA, 3.5%; with a trade-weighted average in both directions of only 1.6%.

102. For New Zealand, the simple average tariff on goods imported into the UK is 5.7%, and for New Zealand 2.1%; with a trade-weighted average of 21.6% and 3.4% respectively¹⁹, reflecting the imbalance in food and agricultural produce exports from New Zealand. With the exception of textiles, New Zealand's tariffs do not exceed 10%. In relation to Australia, the simple and trade-weighted average tariffs are more nearly in balance.²⁰

103. At this level, tariffs on industrial goods are not likely to have a significant effect on prices, or to have a significant protective effect, and are close to being described as 'nuisance' tariffs.

104. While it is understandable, with the more limited progress made since the end of the Uruguay Round of multilateral trade agreements within GATT, that attention is turning to bilateral agreements, the potential rewards are more limited. Elimination of tariffs, while presentationally attractive, may have little practical effect if the certification required to demonstrate compliance with rules of origin is complex – exporters may choose simply to continue to pay a Most Favoured Nation (MFN) tariff, rather than subject themselves to the onerous compliance process.

105. We note that the information packs attached to these consultations quote simple or trade-weighted *average* tariffs. Attention should be given to those items with higher tariffs - in relation to both defensive and offensive interests - and detailed analysis undertaken of the potential effects of liberalisation. Such analysis needs to take account of national or regional factors too, for example where the manufacture of a particular item is concentrated in one part of the UK.

¹⁸ Department for International Trade (2018) An information pack for the Consultation relating to a bilateral Free Trade Agreement between the United Kingdom and the United States of America https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752588/Information_pack_UK_US_FTA_consultation.pdf

¹⁹ Department for International Trade (2018) An information pack for the Consultation relating to a bilateral Free Trade Agreement between the United Kingdom and New Zealand https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752619/Information_pack_UK_New_Zealand_FTA_consultation.pdf

²⁰ Department for International Trade (2018) An information pack for the Consultation relating to a bilateral Free Trade Agreement between the United Kingdom and Australia https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752616/Information_pack_UK_Australia_FTA_consultation.pdf

Agri-food

106. In contrast to industrial goods, tariffs on agri-food goods are often considerably higher, and these items are commonly excluded from, or have more limited coverage in, trade agreements. For example, while CETA will eliminate 98% of tariffs between the EU and Canada, a far lower proportion of agri-food products are covered, with some such as poultry and meat largely exempt from tariff liberalisation.

107. The historic reasons for this difference between industrial goods and agri-foods are well known, and suggest that special care should be taken in relation to agri-foods. That will require detailed analysis – at least at product category level, if not at individual tariff line level – of the existing tariffs and the impacts on domestic producers and consumers of any proposed liberalisation. It is not evident that such analysis has been conducted by the UK Government.

108. Where the UK is not a significant producer, then in general the Scottish Government has no objection to the lowering of import tariffs, but this needs to be balanced with the achievement of a clear offensive goal. Where - as may be necessary in any negotiation - concessions are required in areas where the UK *does* have a producer interest, there should be detailed consideration of the impact of such concessions on different parts of the UK.

109. For sensitive products, where tariff elimination or significant reduction is unlikely to be achievable, we support the concept of the use of tariff-rate quotas to allow a limited quantity of product to benefit from favourable rates. Again, the balance of benefits and concessions, and their geographical distribution, needs to be considered carefully.

110. In relation to New Zealand, it is clear that there is already a considerable disparity in trade, with the UK as a net importer, despite the much higher tariffs faced by New Zealand exports, compared with the average tariffs of under 3% for exports to New Zealand²¹. There is little prospect of significant gain for UK producers through elimination of these New Zealand tariffs, but much to lose, should additional market access be granted.

Imports

111. Imports also form a vital part of the trade picture, and must be facilitated in any future trade arrangements. Allowing cross-border flows of goods and services increases the range of goods and services available to businesses and consumers. Openness to imports can also be an important avenue under which competition can be increased, providing incentives for businesses to innovate, in order to improve quality and remain competitive.

²¹ Department for International Trade (2018) An information pack for the Consultation relating to a bilateral Free Trade Agreement between the United Kingdom and New Zealand
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752619/Information_pack_UK_New_Zealand_FTA_consultation.pdf

112. Imports enable businesses to have access to a cheaper and wider range of raw materials, parts, components and services from multiple countries, allowing them to form global value chains. Such global value chains have become increasingly important in recent decades, increasing competitiveness and providing consumers with increased variety and choice. Even after allowing for the cost and time spent shipping materials across the world, it can be a more efficient and effective production model for businesses to import components from the best sources of supply.

113. The benefits of this can equally be felt by the public sector, where the ready availability of cheaper raw materials can have a positive impact on the cost and delivery times of government commitments. For example, the delivery of new homes, and the improvement of energy efficiency, are dependent on being able to import construction materials from a variety of countries quickly and at good prices.

SERVICES²²

114. This paper has also noted the growing importance of services to the Scottish economy, and the impact that leaving the EU, the Single Market and the Customs Union will have on our economy. The loss of the current level of access to EU markets will be very hard, if not impossible, to compensate for, even if we were to achieve implausibly favourable market access elsewhere.

115. Scotland's top international services exports include real estate, professional, scientific and technical activities, financial services and travel.

116. While goods make up the bulk of Scottish trade with the EU, services account for around 75% of Scotland's economic output²³. Services are also becoming increasingly important to the composition of Scotland's exports. Service sector exports to the EU, for example, have risen from 22% of total EU exports in 2002 to 33% of total EU exports in 2016. Presently there are relatively limited regulatory barriers to UK service providers selling their services across the EU. No free trade agreement in the world provides for this degree of freedom of movement of services.

117. While services have traditionally been a less regulated area than goods, that picture is changing, and we remain unconvinced that the benefits to be secured through free trade agreements in this area will achieve the degree of freedom of movement of services, professional persons and capital offered by the EU single market. Any service negotiations must include ambitious provisions for the free movement of workers and their family members for the purposes of delivering services both on a temporary and longer term basis. Likewise, Mutual Recognition of Professional Qualifications (MRPQ) is an increasingly important consideration, both for the provision of tradeable services and the recruitment of highly skilled, qualified people. In our analysis of existing international agreements, we have not been able to identify any precedents that reveal a similar level of ambition and scope as the existing framework of MRPQ currently available to the UK through EU Membership.

118. The UK Government gave an indication of its general thinking in terms of developing future trading arrangements on services in the July 2018 White Paper (albeit in the context of securing a new economic partnership with the EU). These proposals included the minimisation of discriminatory and non-discriminatory barriers to cross-border provision of services, with barriers permitted only where that is agreed upfront and based on the principles of the WTO General Agreement for Trade in Services framework. The UK Government is also looking for a system of mutual recognition of professional qualifications, enabling professionals to provide

²² Scottish data in this and the following services sections use the following data source: Scottish Government (2018) Export Statistics Scotland 2016 <https://www.gov.scot/Resource/0053/00530678.pdf>, while ONS Pink Book data <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/datasets/3tradeinservicesthepinkbook2016> is used for the UK as a whole.

²³ Scotland's Gross Domestic Product 4th Quarter (2017) <https://www.gov.scot/Resource/0053/00533858.pdf>

services across borders, mutually beneficial arrangements for professional and business services and new regulatory arrangements for financial services. We assume that the UK Government is contemplating a similar approach in relation to its broader negotiating strategy for trade in services.

119. As a starting point in the treatment of any future arrangements for the provision of services in trade agreements, the Scottish Government would aim to enable our service providers in our key export sectors to enhance their reputation and ensure that the arrangements do not act as a brake on growth. In particular, ambitious arrangements in relation to data and digital will be critical to supporting future growth.

120. We will continue to develop and expand on the position set out in this paper, in consultation with the UK Government and other devolved administrations. In the meantime, we have the following comments on a number of specific aspects.

Cross-Border Trade in Services

121. As far as possible, the Scottish Government is keen to reduce barriers to the trade in services, to enable our services sector to increase exports further.

122. The most significant barriers to trade in services for Scottish businesses are those which have been removed or addressed in the single market for services in the EU (i.e. establishment, regulatory compliance, restrictions on access, mutual recognition of professional qualifications and restrictions on annual travel).

123. While any future trade deal will need to be considered on its merits at the time of negotiation, it is worth noting the following key themes which emerge from recent trade deals that include services:

- EU / Australia - Australia seek to guarantee access for Australian services exporters to the EU, as well as create new opportunities in sectors of key commercial interest, such as in education, financial and professional services.
- EU / Japan - The financial services section contains specific definitions, exceptions and disciplines on new financial services, self-regulatory organisations, payment and clearing systems and transparency. It also includes specific rules on insurance services provided by postal entities. Many of these provisions are based on rules that have been developed in the framework of the WTO. The text further contains a dedicated part on regulatory cooperation for financial services and establishes a so-called Financial Regulatory Forum. The agreement includes a provision to reaffirm the Parties' right to regulate.
- USA/ Australia – Service exports receive legal protections that guarantee market access and non-discriminatory treatment, a framework for cooperation in the financial services market is established, parties recognise the value of pursuing more liberal air services arrangements and commitments are made on market access in telecommunications.

- Having analysed CETA, claimed to be the most liberalising services trade agreement signed by the EU, Julia Magntorn and L. Alan Winters (UK Trade Policy Observatory) argue:

Insurance, pension and financial services combined accounted for the largest share of UK services exports in 2015. This sector is one of the most restricted in CETA with cross-border trade being limited to a very narrow range of services, including insurance services related to transport and freight, certain types of banking services such as financial advisory services and portfolio management services. Overall, this considerably limits the scope for cross-border trade in financial services. There are further restrictions both at the EU-wide level and for individual member states, such as requirements related to establishment, specific legal forms, licensing and authorisation.²⁴

124. This analysis suggests that a free trade agreement based on CETA would not necessarily result in increased services exports for the UK, or Scotland in particular. This should be borne in mind in future negotiations with the EU.

125. In any future trade deal the Scottish Government would seek ‘best in class’ regulatory alignment (for example, the most robust, rather than the most liberal alignment), access to financial services markets for our ‘most exported’ products (for example, insurance), low cost payment and clearing systems, and national treatment of Scottish service providers.

126. In the context of the increasing digitalisation of trade, trade negotiations should provide rules covering digital trade and cross-border data flows, consumer protection in the online environment, electronic trust and authentication services, open internet access, unsolicited direct marketing communications, improvement of the conditions for international roaming and addressing unjustified data localisation requirements, while neither negotiating nor affecting the existing high standards for personal data protection.

Migration and Free Movement

127. Migration and the free movement of people afforded by EU membership, is crucial to the development of Scotland as an inclusive, fair, prosperous and innovative country. Our discussion paper *Scotland’s population needs and migration policy: Discussion paper on evidence, policy and powers for the Scottish Parliament*²⁵ examined in detail the importance to Scotland’s economic prospects and demographic sustainability of Scotland continuing to attract the level and nature of migration it needs. It also called for greater involvement in UK migration policy in support of Scotland’s needs, alongside options for new powers for the Scottish Parliament to allow Scottish Ministers to set rules and criteria for a new route to enable long-term migration to Scotland.

²⁴ UK Trade Policy Observatory (March 2018) Can CETA-Plus Solve the UK’s Services Problem? <http://blogs.sussex.ac.uk/uktpo/publications/can-ceta-plus-solve-the-uks-services-problem/>

²⁵ Scottish Government (2018) Scotland’s population needs and migration policy <https://www.gov.scot/publications/scotlands-population-needs-migration-policy/>

128. Population projections from the National Records of Scotland²⁶ and Office for National Statistics estimate that the number of deaths in Scotland will be greater than the number of births over the next 25 years and, therefore, all of Scotland's population growth will come through migration. The age profile of the population will also change, with people aged 75 and over projected to be the fastest growing age group in Scotland, increasing by 79% over the next 25 years, while the working age population will grow by only 1%. Migration is essential to sustaining and growing the working age population in Scotland.

129. Any future trade agreements must therefore ensure as an absolute minimum that workers continue to have the same access to work in other countries as currently afforded by EU membership. In some cases, more access may be required, depending on skills issues which may arise from our future relationship with the EU and UK Migration policy. This is particularly important in the case of services. There must also be continued provision for recognition of professional qualifications, at the very least aligned with current arrangements.

Temporary entry and stay of natural persons for business purposes

130. Under EU membership, freedom of movement of people allows a service provider from one country unlimited access to other countries within the EU to provide services without the requirement for a visa, work permit or registered office. The right to live and work in one country along with establishment in one country in the EU results in the right to live and work in all countries.

131. Outwith the EU, restrictions are in place in terms of limits on the number of days that can be worked, visas and work permits may be required and there are requirements with regard to legal establishment (having a legally recognised business established in the country).

132. However, research from economists Jonathan Eaton and Samuel Kortum, professors at Penn State University and Yale University respectively²⁷, has indicated geography matters almost as much to trade in finance, retail and other services as it does in goods. They found that, even though transport costs do not weigh on trade in services, the volume of services exports and imports is just as sensitive to distance as the trade in goods. If the distance between the buyer and seller roughly doubles, the volume of trade flows in goods and services more than halves.

133. This research suggests that trade agreements with distant countries - such as the subjects of these consultations - will not replace trade lost from nearby countries as a result of leaving the EU, and that existing trade flows to non-EU trading partners may be difficult to increase substantially, even with a free trade agreement in place.

²⁶ National Records of Scotland (2017) Projected Population of Scotland (2016-based) <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-projections/population-projections-scotland/2016-based>

²⁷ Financial Times, 24 September 2018, <https://www.ft.com/content/195fa088-bd84-11e8-8274-55b72926558f>

134. The EU / Japan trade agreement includes the following text:

Temporary movement of company personnel –all traditional categories such as intra-corporate transferees, business visitors for investment purposes, contractual service suppliers, and independent professionals, as well as newer categories such as short-term business visitors and investors. The EU and Japan have also agreed to allow spouses and children to accompany those who are either service suppliers or who work for a service supplier (covered by so-called "mode 4" provisions).

135. Perhaps most importantly, the parties to the agreement “*shall not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals of the other Party granted entry, in the form of numerical quotas or the requirement of an economic needs test*”.

136. In any future trade agreement, the Scottish Government would seek maximum access for individuals to work and live in third countries, through reduced restrictions on time spent in a country, and the removal of restrictions on the total number of contractual service suppliers and independent professionals granted entry, in the form of numerical quotas or the requirement of an economic needs test .

Mutual Recognition of Professional Qualifications (MRPQ)

137. The MRPQ Directive recognises a set of qualifications as equivalent, across the EU. No trade deal replicates this framework, with the result that there is little mutual recognition of qualifications, outwith a few core professions. As a result, leaving the EU presents a set of unique challenges, especially if the UK leaves in a no-deal scenario.

138. These challenges would also have to be overcome when seeking to agree alternative arrangements in future trade agreements, including devolved powers to regulate professions, which in a Scottish context include the regulation of teachers, social workers, the legal profession and certain property professionals. In addressing barriers to registration or recognition of professions under host country rules in trade negotiations, the UK Government should ensure it addresses barriers to access for professions in all four nations of the UK. For example, the Law Society of Scotland reports that there are more exemptions to requalification in Australia for those with an English solicitor qualification than those qualified in Scotland.²⁸

139. MRPQ enables three main activities:

- the exporting of professional services to countries who recognise UK domestic qualifications;
- the importing of professional services from countries whose domestic qualifications are recognised in the UK; and
- the domestic provision of services in the UK by people with a recognised qualification from another country.

²⁸ Law Society of Scotland (2018) https://www.lawscot.org.uk/media/361300/trade_negotiations_australia_october-18.pdf

140. Leaving the EU without a deal would leave the UK without a mechanism to recognise the qualifications of those coming from the EU after exit, or for new service providers trying to export professional services from the UK to the EU after exit. In the absence of any specific agreement, similar issues apply in relation to those professionals from outwith the EU.

141. The Scottish Government would seek the following in future trade agreements:

- A world class framework to promote the mutual recognition of qualifications in professional services in all future trade agreements based on Directive 2005/36/EC;
- Agreement for a core set of professions to be completed in tandem with trade negotiations (e.g. architecture) and to form part of the trade agreement;
- Ongoing engagement between international institutions.

Financial Services

142. Financial and insurance services are a significant export for Scotland, increasing by £290 million (22.2%) to £1.6 billion between 2015 and 2016. This was the largest annual increase in the nominal value of international exports in the services sector. In contrast to some other sectors, this growth is driven by exports to non-EU countries, representing £1.2 billion in 2016 (an increase of £355 million, 42.0% compared to 2015).²⁹

143. As home to the second largest financial services cluster in the UK and a historic financial services centre with over 300 years of financial services experience, Scotland has a clear offensive interest in promoting the financial and insurance services sector and sees clear risks in failing to secure continuity of trade. The report by 4-consulting – ‘*Economic Impact of Leaving the European Union*’ – presented to the Scottish Parliament’s Economy and Fair Work Committee on 2 November 2016 - highlighted the importance of financial services to the Scottish economy, concluding that:

“Edinburgh’s economy is more reliant on financial services than the London economy or any other UK city economy. Edinburgh’s share of financial services is markedly ahead of most large European cities. The latest available data from the Office for National Statistics (ONS) shows that financial services accounted for a higher share of Edinburgh’s national economy (23.8%) than London (18.9%) or any other city in the UK. This is measured by Gross Value Added (GVA) in 2014. Additional data published by Eurostat shows Edinburgh’s economy is more reliant on financial services than any other European city (for which data is available) apart from Luxembourg. (Eurostat data for some cities was only available for 2013)”³⁰

²⁹ <https://www2.gov.scot/Resource/0053/00530678.pdf>

³⁰ 4-Consulting (November 2016) Economic Impact of Leaving the European Union http://www.parliament.scot/S5_EconomyJobsFairWork/Inquiries/20161101_-_4-consulting.pdf

144. Scotland also has an important and growing financial technology (FinTech) sector. In April 2017, the Global FinTech Hub Federation (GFHF) ranked Edinburgh as joint 15th in a review of 44 international centres. FinTech Scotland's stated aim is to see Scotland recognised as a top five centre by 2020.

145. Employment in Scotland's Financial Services sector was 86,000 in 2016. The life and pensions sector in Scotland is particularly strong, accounting for 26.5% of the UK's total employment in the sector.

146. Since the EU referendum, it has been reported that other EU financial centres are keen to attract UK financial services companies, including FinTechs. FinTech is a global market, and it is important to continue to market Scotland's strengths and position as a good home for financial services, in competition with other international centres.

147. The financial services sector is important to Scotland for its direct contribution to our economy and for the essential support it provides to consumers and businesses in all economic sectors. Continued uncertainty over the inclusion of financial services in a future trade agreement risks jobs and future investment in the financial services sector across the UK.

Procurement

148. Generally, the scope of trade deals including procurement is determined by three factors: the bodies awarding contracts; the value of those contracts; and the subject of those contracts. For example, the European Directives cover contracts which are:

- awarded by all "bodies governed by public law";
- worth more than €144k (goods and services contracts awarded by central government bodies), €221k (goods and services contracts awarded by sub-central bodies), or €5,548,000 (works contracts); and
- not for an 'exempt' commodity or service, e.g. contracts for loans, land, arbitration services or legal representation in judicial proceedings.

149. By contrast, the scope of other agreements varies, with even the scope of the World Trade Organization Government Procurement Agreement varying from one party to another.

150. Reciprocity works by providing that economic operators from one signatory are only afforded the right of equal treatment and the right to seek judicial remedies in another signatory's jurisdiction to the extent that coverage is reciprocal.

151. This means that, to the extent to which public procurement is included in any bilateral or multilateral trade deals, Scottish contracting authorities would have a duty to afford equal treatment and non-discrimination to the products, services and companies of those other countries when awarding public contracts. Similarly, Scottish companies would be owed that duty when bidding for public contracts in those other countries. That could have advantages and disadvantages.

152. The European Public Procurement Directive is clear that “*nothing in this Directive obliges Member States to contract out or externalise the provision of services that they wish to provide themselves or to organise by means other than public contracts within the meaning of this Directive*”³¹. The Directive does not therefore force governments to contract out health or other services, for example, if the relevant government wishes to deliver these services themselves; the rules only engage once the decision has been made to contract out.

153. The UK is in the process of applying for independent membership of the 2014 Revised WTO General Procurement Agreement (GPA), as part of its preparations for Brexit. On the understanding that the UK schedules for accession represent meaningful market access, this means that bilateral negotiations for further access as part of a trade negotiation are likely to focus on sub-central government entities, including the devolved administrations. The relative significance of procurement spend in Northern Ireland, Scotland and Wales (highlighted by Kamala Dawar of the UK Trade Policy Observatory) will need to be taken into account in any such negotiations.³²

154. The Scottish Government is clear that any future trade negotiations and agreements that extend the scope of access for third countries to bid for public procurement opportunities in Scotland must be based on consent, and must ensure the retention of Scottish Ministers’ right to determine how services are delivered.

³¹ Directive 2014/24/EU of the European Parliament and of the Council (26 Feb 2014) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>

³² <http://blogs.sussex.ac.uk/uktpo/publications/brexit-and-government-procurement/>

REGULATION

155. Regulation protects consumers, businesses, communities and the environment.

156. In Scotland the scope of regulation includes reserved policy areas, such as employment and health and safety. Other areas are devolved to the Scottish Government, such as food standards, the environment, housing, liquor licensing, and agriculture.

157. On departure from the EU, existing arrangements governing regulation in the UK will be supplemented by common UK Frameworks (legislative and non-legislative) in policy areas formerly of EU competence that intersect with devolved areas. It is essential that the UK Government's approach to trade agreements takes into account the asymmetric architecture of regulation in the UK, so that the terms of international agreements are not imposed on devolved regulators or policy areas in a way that undermines our national approach to regulation, without consultation and due consideration of the balance of offensive and defensive interests across the UK. Facilitating future trade agreements must not be used as a pretext for constraining Scottish regulation in devolved areas.

158. The EU (Withdrawal) Act 2018 will convert EU law as it stands at the moment of exit into UK law, ensuring alignment with the EU on exit day. The extent to which the UK will be able to make regulatory offers in future trade agreements will depend significantly on the extent to which it is bound by the terms of its largest trading partner, the EU, through the Future Economic Partnership. In particular, the extent of coverage of the Common Rule Book for goods and terms of mutual recognition in other areas will determine the remaining areas where the UK can consider differentiated offers to third countries.

159. In *Scotland's Place in Europe*³³ we said that we would explore differentiated options for Scotland within the UK that provide the closest possible relationship with the EU and the European Single Market in the event that the UK Government chooses to leave the EU Customs Union and Single Market. This would include seeking to remain part of particular EU policies and initiatives.

160. To this end, we will consider trade agreement proposals through the lens of keeping pace with EU regulations, in particular where we have the powers to do so in devolved areas. The Scottish Government will uphold its right to regulate independently in devolved areas (including on goods, services and "level playing field" areas which fall within devolved competence, like environmental regulation), whatever the shape of the UK's future relationship with the EU and the rest of the world. Despite UK Government commitments, we remain concerned that, without underpinning harmonised regulation, protections may be eroded over time in reserved areas, particularly if the UK Government comes under pressure from international partners to liberalise regulations during negotiations on future trade agreements, such as these.

³³ Scottish Government (2016) *Scotland's Place in Europe*
<https://www.gov.scot/publications/scotlands-place-europe/>

161. It is essential that regulatory commitments entered into through future agreements remain high and in alignment with those in the EU, for their own sake, and to ensure we continue to be able to trade effectively with European neighbours in key sectors.

Animal Health

162. The Scottish Government supports trading arrangements which expand the opportunity for the export of animals and their products, based on their high quality, safety, health status and welfare, while ensuring that imports are subject to equivalent standards protecting consumers' health and interests.

163. Of the potential trade deals currently being consulted on by the UK Government, an agreement with the USA, while offering opportunities, could potentially carry with it substantial risks. In particular, any agreement with the USA must recognise the precautionary principle, and allow UK authorities to implement measures to protect public health, the environment, and consumer confidence. Different approaches to food safety must not allow the sale in Scotland of products whose safety is not demonstrated, or where there is a risk that the techniques - such as washing poultry meat with chlorine - may lead to lower hygiene standards.

164. More generally, future trade deals must not impose changes to devolved animal health, animal welfare or public health policies without the prior agreement of the Scottish Government, for example the Scottish Government's approach to Bovine Tuberculosis.

Plant Health

165. There are many plant pests and diseases which, if they were to become established in Scotland, could cause severe damage to our plants and trees. This could cause serious risk to both the wider ecosystem and our industries which supply plants and plant products. USA, New Zealand and Australia are just some of the countries which harbour pests and diseases that could have devastating impacts if they were to arrive in Scotland.

166. All plants and some seed, propagating material, and plant products arriving to the UK from countries outside the EU require a phytosanitary certificate demonstrating that the commodity meets the conditions set out by the EU, and that it has been inspected by an authorised person from the exporting country.

167. Although not common in free trade deals, there is the potential that some of these phytosanitary conditions could be lifted to allow free trade in these products. There should therefore be no amendments to existing procedures of phytosanitary conditions in future trade agreements. It is important that the UK plant health service can control plants and plant products entering the country based on current risk. Any lifting of phytosanitary measures in a free trade agreement could prevent immediate action on emerging risks.

Consideration of the Marine Environment & Sanitary/Phytosanitary measures

168. The quality of seafood imports to Scotland is an important consumer concern. Any future trade agreements must ensure that current UK environmental, sanitary and phytosanitary standards and protections are upheld, and enforceable. Agreed sanitary and phytosanitary standards should be demonstrably equivalent to Scottish standards and provide strong protections from invasive non-native species (INNS), animal and plant diseases and other health related concerns. In addition, and reflecting the importance of the EU market for Scottish seafood and aquaculture products, future trade agreements must not compromise our ability to export to the EU by lowering sanitary, phytosanitary or environmental standards.

Consumer Protection

169. The vast majority of consumer and competition rights in place in Scotland today derive from our membership of the EU. Overarching EU co-operation has ensured that Scottish consumers and businesses enjoy the same rights and protections as those throughout the EU, particularly for goods and services purchased outside the UK. In practical terms, the benefits delivered by EU membership to Scottish and UK consumers and markets are clear:

- co-ordinated action to deal with dangerous goods;
- faster and cheaper resolution of online contractual disputes;
- ensuring websites are respecting consumers;
- a complete ban on animals being used to test new cosmetics;
- free consumer advice on cross-border purchase problems (typically digital purchases made abroad and issues arising from physical travel to another EU country); and
- maximum roaming tariffs for data and voice communications while travelling in the EU.

170. At present, the power to regulate the sale and supply of goods – the power to set and enforce consumer law – remains reserved. As such, post-Brexit, the Scottish Government will be unable to ensure that Scottish consumers and businesses continue to enjoy the same rights and protections as those in the EU, particularly for goods and services purchased outside the UK.

171. As argued in *Scotland's Place in Europe*³⁴, the Scottish Government believes that Scotland's interests would be best served by the complete devolution of consumer protection powers – as is already the case in Northern Ireland – and by further devolution of competition powers.

172. *Scotland's Place in Europe: People, Jobs and Investment*³⁵ emphasised the importance to Scotland of guaranteed market access, shared regulation and

³⁴ Scottish Government (2016) *Scotland's Place in Europe*
<https://www.gov.scot/publications/scotlands-place-europe/>

³⁵ Scottish Government (2018) *Scotland's Place in Europe: People, Jobs and Investment*
<https://www.gov.scot/publications/scotlands-place-europe-people-jobs-investment/>

consumer protection, highlighting the potential threat of divergence of UK and EU consumer and competition laws and regulations following Brexit.

173. In its White Paper, *The future relationship between the United Kingdom and the European Union*³⁶, the UK Government committed to maintaining reciprocal UK-EU high levels of consumer protection. The Scottish Government welcomes this commitment. The UK Government must ensure that any future free trade agreements adhere to this commitment, to ensure there is no divergence or dilution in respect of consumer or competition protections.

174. Divergence from EU consumer and competition laws in the pursuit of new trade deals could put many of the benefits and safeguards we have enjoyed through the EU at risk, and create considerable friction in Scotland's consumer and competition interactions with EU Member States, making these less efficient, and more complicated and expensive. We may also forego greater consumer and competition protections in the future, for example, the further strengthening of enforcement of consumer rights through the on-going support of the common activities of the Consumer Protection Co-operation Network and the co-operative assistance afforded through the European Competition Network.

175. The position of the Scottish Government is clear: we will not accept a situation where consumers or businesses in Scotland have inferior rights and protections, compared to those in other EU countries. In addition, consumer concerns, such as those relating to safety and quality, must be of paramount consideration. The UK Government has said that it is committed to an inclusive process for developing the future trade policy of the UK. Along with an enhanced role for the devolved administrations and legislatures, any process for developing future trade arrangements must also ensure that consumer views are taken into account.

Hazardous Chemicals

176. In line with our overall approach to trade, the Scottish Government supports as frictionless a trade environment in chemicals and their mixtures as possible. However, any future trade agreement must maintain existing product standards in relation to imports, should include a requirement that any chemical tests or assessments are carried out in line with recognised good laboratory and other practice, and should acknowledge or commit to the need reduce animal testing and protect human health, animal health and the environment.

Technical Barriers to Trade

177. Modern trade agreements commonly include chapters on reducing technical barriers to trade. Australia, New Zealand and the USA all include such provisions as standard in their free trade agreements.

³⁶ UK Government (2018) *The future relationship between the United Kingdom and the European Union*
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf

178. The WTO's Technical Barriers to Trade agreement obliges members to seek to "prevent the creation of unnecessary and unjustified technical barriers to international trade"³⁷. However, that does not prevent signatories from regulating to protect legitimate interests, even if doing so would have a side effect of creating a technical barrier to trade.

179. For example, in June 2018 the Scottish Government introduced the Environmental Protection (Microbeads) (Scotland) Regulations 2018 to ban the manufacture and sale of rinse-off personal care products containing plastic microbeads which may cause harm to the marine environment, notifying the regulation to the WTO under the TBT Agreement. That ban could be considered a barrier to trade with countries which do not have such a ban in place. Nonetheless, there was an overriding policy interest in introducing it, because the ban provides preventative action on harmful substances entering the marine environment and helps deliver the Scottish Government's vision for clean, healthy, safe, productive and diverse seas, managed to meet the long-term needs of nature and people. That position must be maintained and promoted in any future trade agreements.

State Aid

180. Any future trade deals must respect the same State Aid principles as currently apply, to ensure a level playing field.

Intellectual Property

181. The WTO defines intellectual property (IP) rights as "*the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time*".

182. The EU includes chapters on IP in bilateral trade agreements, based on EU standards, and these may cover copyright, patents, enforcement, technology transfer, biodiversity and associated traditional knowledge.

183. The USA typically seeks to include IP chapters based on their legislation, including introducing a role for internet providers to police copyright infringements. Some commentators have suggested that this approach may encroach on basic human rights, such as the freedom of expression.

184. *The future relationship between the United Kingdom and the European Union*³⁸ notes that:

- The UK's intellectual property system is highly rated in international indices. For example, the UK is ranked third in the world in the Global Intellectual Property

³⁷ World Trade Organization (1995) Agreement on Technical Barriers to Trade
https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm

³⁸ UK Government (2018) *The future relationship between the United Kingdom and the European Union*
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf

Index ('Global IP Index', Taylor Wessing, June 2016) and fifth in the world in the Global Innovation Index 2017 ('Global Innovation Index 2017', The Global Innovation Index, 2017).

- The UK has ratified the Unified Patent Court Agreement and intends to explore staying in the Court and unitary patent system after the UK leaves the EU

185. Future trade deals must protect Scotland's key interests in food and drink, financial services, video games and oil and gas services alongside growing interests in the digital economy. In doing so, the Scottish Government supports a robust, EU compliant approach to IP. We would not support any dilution of rights or divergence from European standards including in respect of human rights of users and access to personal information, or the subservience of national law to that of another state in respect of enforcement.

Higher Education and Science

186. Future UK trade deals must fully respect the devolved nature of education and the different regulatory and legal systems that underpin it, and should ensure the continued mobility of students and researchers.

187. Any future trade deals with the countries consulted on should seek to maximise co-operation with New Zealand, Australia, USA and other countries in relation to - for example - supporting collaboration in science and research; and the further development of trans-national education by our Universities and by bodies such as the Scottish Qualifications Authority.

TRADE AND SUSTAINABILITY

188. Recent years have seen the debate around trade policy intensify, resulting in increased public interest in the subject. Concerns have focussed in particular on the impact of global competition and the potential impact on regulation, standards and jobs.

189. The Scottish Government believes that it is vital that future UK trade policy is transparent, inclusive and responsive to the sensitivities of the public. It should have at its core, an aim to improve conditions for consumers, workers and the self-employed, small, medium and large enterprises, and the poorest in developing countries. It should also seek to address the concerns of those who feel they are losing out from globalisation and uphold high standards for environmental protection, labour and human rights.

Energy and Climate Change

Workforce issues and Supply chain

190. The form of our future economic partnerships and trading arrangements will have a profound impact on the development of the energy sector in Scotland, the wider economy and the costs that consumers will bear.

191. The energy sector, for example, like many others within the Scottish economy, relies on the contribution of individuals to provide specialist services (e.g. electrical and gas engineering) and the accreditation of these skills across markets. Any constraints, imposed as a result of changes to trading arrangements, on the ability of energy firms to source these specialisms, and subsequent shortages in the labour market, could potentially result in higher cost operations and infrastructure development.

192. Membership of the European Single Market has resulted in the elimination of the vast majority of tariffs and technical barriers to trade in goods in the form of divergent national rules and regulations governing the production, distribution, marketing and sale of the products which businesses buy as part of international supply chains. These international supply chains are increasingly characterised by global value chains, where parts and components are traded across borders multiple times, and between companies who increasingly operate with lean inventories.

193. Tariff-free access, the elimination of non-tariff barriers and quick and efficient customs procedures are indispensable to the functioning of these supply chains. Any barriers to trade arising from future trading arrangements would increase the administrative and compliance costs of exporting to or importing from the European Single Market.

Carbon pricing

194. Global carbon markets are currently in an embryonic state, with negotiations still ongoing under Article 6 of the UN Paris Agreement on Climate Change³⁹, to establish the 'sustainable development mechanism' by which carbon allowances can be traded and credited between different countries or economic blocs (such as the EU). The lack of a carbon price could in future become a major barrier to trade, if it allowed competitors to undercut Scottish and UK businesses, risking carbon leakage.

195. As set out in our Climate Change Plan⁴⁰, it is a key policy objective of the Scottish Government to ensure that, in future, Scottish businesses and industries are able to trade in a manner that widens access to global carbon markets, which will help to create a more level playing field for sectors exposed to risk of 'carbon leakage'. That will become increasingly important if the UK is no longer able to participate in the EU Emissions Trading System.

Climate Change and Climate Justice

196. Devolution has allowed the Scottish Government to demonstrate its ambition in pursuing ambitious social and environmental goals. For example, the Scottish Government adopts a unique climate justice approach to tackling the effects of climate change that recognises that it is the poor and vulnerable at home and overseas who are the first to be affected by climate change, and will suffer the most, having done little or nothing to cause the problem.

197. Scotland has shown its commitment to international action on climate justice by committing £21 million from 2012-2021 to aid the most vulnerable people across the globe to build resilience to climate change.

198. The Scottish Government is aware that trade and sustainable development commitments could be challenging topics for some of the countries covered by the current consultation exercise. For example, the Trilateral Strategic Dialogue discussions between Japan, Australia and the EU indicated that Australia would be strongly opposed to any efforts to make sustainable development provisions such as the Paris Agreement enforceable in a free trade agreement. The USA has also demonstrated its likely approach on these issues, for example through its opposition to the Paris Agreement, and its desire to retain autonomy in regulation.

199. The Scottish Government's view is that any future trade agreements should seek to enhance, not hinder, our ability to deliver these targets and reap the economic benefits of the low carbon transition, and should allow Scotland to continue to act as a world leader, in its capacity as a good global citizen.

³⁹ United Nations (2015) Paris Agreement on Climate Change
https://unfccc.int/sites/default/files/english_paris_agreement.pdf

⁴⁰ Scottish Government (2018) Climate Change Plan: third report on proposals and policies 2018-2032 <https://www.gov.scot/publications/scottish-governments-climate-change-plan-third-report-proposals-policies-2018/>

Environmental Protection

200. The Scottish Government is committed to maintaining, protecting and where possible enhancing current levels of environmental protection, standards and regulation in order to deliver benefits to our natural environment, communities and economy, whatever the UK's future relationship with the EU. High environmental standards and effective environmental regulations help protect and enhance our stock of natural capital, including our air, land, water, soil and biodiversity and geological resources, which are fundamental to a healthy and resilient economy.

201. The EU has been a significant driver of environmental policy and legislation for the last 40 years, setting the strategic direction for environmental protection and standards which underpin our economy, support sustainable land and marine use, protect the natural environment, protect public health and enable action on climate change.

202. Membership of the EU has created arrangements for trade between member states and beyond, that respect and promote progress in social and environmental protection. The Scottish Government recognises the risks that, outside of this regulatory framework, the maintenance of high standards will be comprised without trading arrangements that support this outcome.

203. In developing and agreeing future trade relationships, the Scottish Government calls on the UK Government to guarantee that there will be no weakening of standards as a condition of future trade agreements. Scottish producers must be protected from third country imports produced to lower standards. If the UK leaves the EU, there is a risk that new external trading arrangements negotiated by the UK Government will fail to maintain high levels of environmental protection, standards and regulation, which would be unacceptable to the Scottish Government. There is a particular concern that differing standards between the parties, and pressure to reach agreement, may result in pressure to lower standards or result in Scottish producers being undercut by competitors not subject to the same standards, both of which would be unacceptable.

204. The Scottish Government welcomes the UK Government's commitment to maintaining high standards of environmental protection in trade agreements⁴¹ and to "assess the potential environmental impacts in more detailed studies before and after negotiations take place with partner countries"⁴². However, no detail has been provided at this stage on the likely contents of future trade deals, and so it is not possible for the Scottish Government to provide a definitive assessment or more detailed analysis of whether any proposed deals would meet our requirements and therefore secure our support.

⁴¹ Department for International Trade Paper "Preparing for our future UK trade policy", 2017, available at <https://www.gov.uk/government/publications/preparing-for-our-future-uk-trade-policy/preparing-for-our-future-uk-trade-policy> accessed 15.10.18

⁴² Department for International Trade, "An information pack for the Consultation relating to a bilateral Free Trade Agreement between the United Kingdom and New Zealand" https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/745961/FTA_brochure_NZ_FINAL.pdf accessed 15.10.18

205. Further detailed analysis will be required once the precise contents of future agreements, and environment impact assessments, have been provided. The need for such analysis and assessment as potential arrangements develop underlines the importance of the Scottish Government playing a full role at all stages of the process towards new trading arrangements, not least to ensure that any issues within the UK can be resolved at an early stage.

206. Similarly we are concerned that the information packs published by the Department for International Trade⁴³ note the potential for free trade agreements “to affect some aspects of the environment” including, for example, greenhouse gas emissions, air pollution, water quality and land use, either as a result of an increased volume of economic activity, shifts between economic sectors, and shifts to new technologies. The consultation documents note that the “*impact of FTAs on the environment will depend upon the design of an agreement and the economies of the countries involved*”. However, no further detail is provided on how potential adverse impacts will be mitigated, and how that is expected to translate through to the proposed design of the agreements in question.

207. The Scottish Government’s position remains that current high levels of environmental protection, standards and regulation must be maintained, protected and where possible enhanced. The Scottish Government will strive to protect our producers from third country imports, produced to lower standards and costs and calls on the UK Government to resolutely resist any pressure to weaken environmental and other standards as a condition of any trade agreement.

208. Future trade arrangements must develop opportunities for trading in environmental goods and services. Scotland is strongly committed to the achievement of the Sustainable Development Goals and to continuing to help lead global change. We are on the cusp of major transformation of the global economy – towards low carbon, resource efficient and circular practice. The UK Government must ensure that these transformations are hardwired into future trading agreements, in order to open up opportunities for trading in environmental goods and services, to ensure our own producers are not left behind and to act as a further driver towards more sustainable production and consumption practices globally.

Marine and coastal environment

209. The Scottish Government has a vision of clean, healthy, safe, productive and biologically diverse marine and coastal environments, and is a world leader in environmental protection. The production, processing and trade of seafood and freshwater products must be carried out in such a way that this goal is achievable within Scotland. We note that the CPTPP only requires parties to encourage flexible and voluntary mechanisms to protect natural resources, including the environment (Article 20.11) and encourage the conservation and sustainable use of biological diversity (Article 20.13)⁴⁴. Considering the link between environmental protections and trade, it is therefore concerning that the current CPTPP agreement doesn’t

⁴³ Department for International Trade (2018) <https://consultations.trade.gov.uk/>

⁴⁴ Comprehensive and Progressive Agreement for Trans-Pacific Partnership text (2018) <https://www.mfat.govt.nz/assets/CPTPP/Comprehensive-and-Progressive-Agreement-for-Trans-Pacific-Partnership-CPTPP-English.pdf>

require contracting parties to undertake meaningful measures which help build a trade relationship in an environmentally sustainable way- for both the importing and exporting parties. The Scottish Government is concerned that the general lack of enforceable, monitored environmental protections, combined with reduced tariffs and non-tariff barriers within the CPTPP agreement, could result in increasing trade to the detriment of the marine environment.

210. To ensure that Scotland's voice is heard and respected – not least so that we can protect and develop those areas where we lead the way - the Scottish Government and Scottish Parliament must therefore have a guaranteed role in all stages of the formulation, negotiation, agreement and implementation of future trade deals and future trade policy.

Social and Employment

211. While trade policy must deliver growth, jobs and innovation, it must also be effective at actually delivering economic opportunities throughout the UK. Ensuring any future trade strategy consciously and proactively promotes export opportunities for SMEs and micro-enterprises is an important criteria for future success.

212. The Scottish Government believes that it is also essential that, in assessing the impact of future trade opportunities, the risks of increased competition on certain sectors and communities are taken into account and appropriate support strategies are in place. This is particularly important in relation to sectors under-going structural change arising from, or at risk of, role displacement through technology or automation. The interests of rural and isolated communities must also be taken into consideration. We therefore call upon the UK Government to share a distributional analysis of sectors which could be displaced or disadvantaged by pursuing particular agreements, and a plan for how it proposes to deal with that.

213. The Scottish Government notes the UK Government commitment that there will be no regression on existing employment and social rights derived from EU law and welcomes this commitment. However, in the context of third party trade deals, it is also important that scrutiny is applied to the entire supply chain, and that any trade deals also ensure that workers' rights are protected, by reference to international standards.

Health

214. The Scottish Parliament's Health and Sport Committee carried out an inquiry in early 2018⁴⁵ into the implications of Brexit for health and social care in Scotland. The inquiry heard from a wide range of Scottish stakeholders, including receiving many detailed written submissions. During the course of the inquiry, Scottish health stakeholders set out a number of concerns in relation to any future trade deals that the UK might enter into post-EU Withdrawal.

⁴⁵ Scottish Parliament (2018) Impact of leaving the European Union on health and social care in Scotland <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/107148.aspx>

215. Many stakeholders set out general concerns that, as currently much trade and purchasing is done within the EU, difficulties around new trade agreements, and the potential for further devaluation of the Pound, would add more financial pressure to health and social care budgets in Scotland.

216. The British Medical Association (BMA) Scotland argued that such trade deals could lead to enforced competition in public services and the NHS. The BMA stated that competition within health systems leads to fragmentation and undermines the NHS's own founding principle of publicly delivered healthcare. On that basis, the BMA made clear that the NHS should be exempted from future international trade deals to preserve the current arrangements and lack of competition in Scotland where, unlike the NHS in England, there is no purchaser/provider split and the role of the market is significantly limited. The Royal College of Nursing Scotland argued that new trade deals must exclude health services, to avoid detrimental impact on patient care and health workers' employment conditions.

217. ASH Scotland, Chest, Heart and Stroke Scotland and Alcohol Focus Scotland all argued that future trade deals could have an impact on public health initiatives. ASH Scotland and Chest, Heart and Stroke Scotland made the point that the inclusion of investor-state dispute settlement mechanisms in other international trade deals has allowed tobacco companies to sue countries which introduce tobacco control measures. Alcohol Focus Scotland argued that it is vital that the Government's capacity to make policies which reduce alcohol harm is not impeded. They stated that in a number of prominent cases, such as minimum unit pricing for alcohol and tobacco plain packaging, public health measures have been delayed and obstructed by corporate interests, at great cost to the taxpayer. They argued that securing robust exemptions in future trade agreements, which allow governments to prioritise human health over trade liberalisation, is critical.

218. The Scottish Government shares the concerns raised by Scottish stakeholders in this area. The UK Government has made a number of commitments that future trade deals will not affect the governance of the health service. The Scottish Government welcomes these commitments but the UK Government must adhere to them throughout the course of prospective negotiations. Any post-Brexit trade deals the UK enters into must not open up our NHS to privatisation or endanger public health initiatives.

Human Rights

219. The Scottish Government is committed to ensuring Scotland is a modern, inclusive nation which protects, respects and realises internationally recognised human rights, and to promoting democracy, the rule of law and human rights across the world. We embed equality, dignity and respect in everything we do, and are taking action to secure the progressive implementation of all human rights. This is reflected in the new National Performance Framework, which has an explicit human rights indicator: "*We respect, protect and fulfil human rights and live free from discrimination.*"⁴⁶

⁴⁶ Scottish Government (2018) National Performance Framework <http://nationalperformance.gov.scot/>

220. The Scottish Government is currently working with a range of partners – including the Scottish Human Rights Commission, Scottish Enterprise and Highlands & Islands Enterprise – to develop a national action plan to implement the UN Guiding Principles on Business and Human Rights in Scotland, building on the UK’s plan. The UN Guiding Principles⁴⁷, which were endorsed by the UN Human Rights Council in 2011, are based on a framework of *state* duty to protect human rights; *business* responsibility to respect human rights; and the requirement for *remedy* for negative human rights impacts.

221. The Guiding Principles require states to set clear expectations of businesses to respect human rights throughout their operations, and provide effective guidance to support them in doing so. Particular attention is required where businesses receive substantial support and services from State agencies, and where businesses operate in conflict-affected areas, where the risk of human rights abuse is higher. In relation to international agreements, for example investment treaties, the Guiding Principles require that states maintain adequate domestic policy space to meet their human rights obligations, and encourage multilateral institutions that they are members of to promote business respect for human rights. Therefore, in considering future trade deals, the Scottish Government would expect the UK Government to ensure that the agreements do not prevent the state from fulfilling its duty to protect human rights or restrain businesses from respecting human rights.

222. One of the suggested benefits of the UK entering free trade agreements with other countries is the potential to increase the number of smaller firms which find it profitable to export. Alongside the increased opportunities there are increased risks that businesses which operate internationally inadvertently become associated with human rights abuses - for example forced or child labour, exploitative working conditions, restrictions on freedom of expression, denial of land usage rights to local communities, or attacks on human rights defenders. The UK Government must ensure that it increases support and guidance for SMEs that begin or expand exporting activities so that they are equipped to undertake effective due diligence throughout their supply chain and across their operations and relationships in order to be able to know, prevent or mitigate any potential risk of human rights abuses. This is particularly important in relation to several countries that are members of the CPTPP.

⁴⁷ United Nations (2011) Guiding Principles for Business and Human Rights
<https://www.unglobalcompact.org/library/2>

INVESTMENT

223. Any future trade deals must:

- Maintain open capital flows for investment;
- Maintain standards around financial, legal and due diligence checks;
- Contain appropriate provision for the resolution of investment disputes that is open and transparent and protects the rights of domestic governments to make public policy as they see fit.

224. On the last of these points, the Scottish Government recognises the need to provide comfort to foreign investors by providing a means of substantive legal protection in a manner free from any perceived political bias and access to speedy redress for any established breach of such protection. Some investment protection provision can play a key role in attracting and encouraging inward foreign investment in our industries. However, it must not impinge on the rights of governments to regulate and make public policy.

225. There has been considerable debate – particularly in relation to discussions around TTIP and CETA – about investment protection arrangements within bilateral trade agreements. In general, the Scottish Government favours an approach where investment disputes are settled through domestic dispute resolution systems, which are founded on the rule of law, and within which there are already well-established structures and highly-regarded expertise in place, capable of managing a range of different types of challenge. However, we would welcome an evidence-based discussion with the UK Government about other possible models of dispute resolution within trade deals.

Taxation

226. While the main tax powers relevant to these proposals for free trade agreements are reserved to the UK Parliament, any fiscal outcomes have the potential to impact on the Scottish Government's budget, and must be considered carefully as part of any negotiation. As with all aspects of the development of future trade arrangements, the Scottish Government expects the UK Government to ensure that there is timely and consistent engagement with the Scottish Government throughout the negotiation.

227. Trade agreements in general do not usually incorporate detailed provisions for the alignment of tax regulations. Their purpose is to remove barriers to trade between the signatory countries, including those created by taxation. For example, a trade agreement may include an undertaking that goods from one country will be treated in exactly the same way as domestic supplies for tax purposes, so the parties agree not to apply taxes to an import that would not apply to an internal transaction (or the parties to that transaction).

228. The Scottish Government is therefore concerned to ensure that the removal or creation of tax barriers does not negatively impact or affect Scottish businesses in any way. The UK Government must consider the potential impact on Scotland's business community, and wider economy, as it contemplates the substance of any

new trade agreements. This includes the conservation of supply chains that rely on the import of raw materials and the export of finished products, as well as protection from the distortive effects of unfair competition.

229. Even if domestic tax policy is not directly addressed in the body of a trade deal, it is clearly a key determining factor in influencing a country's relative attractiveness for inward investment. It is important that steps are taken to address the risk of unfair tax competition and to protect our tax base. International co-operation is an essential component in ensuring the preservation of tax revenues. The UK Government should set out its plans in this regard as soon as possible.

Trade Remedies and Dispute Settlement

230. While it is expected that parties entering into a trade agreement will adhere to and deliver on their commitments, disagreements are inevitable. At present, the European Commission is responsible for investigating and monitoring claims of unfair trade practices, such as dumping and subsidising, and for enforcing remedial measures, in compliance with WTO law. The UK Trade Bill⁴⁸ establishes a Trade Remedies Authority (TRA) to deliver the new UK trade remedies framework following withdrawal from the EU.

231. Although the functions of the TRA will be reserved, it will undertake important trade remedies investigations across the UK, which will inevitably affect devolved interests. The Scottish Government will therefore continue to argue strongly that the devolved administrations should have a role in the TRA. We urge the UK Government to think again about how to ensure that the new TRA reflects and represents the interests of all producers and consumers throughout the UK.

232. More generally, an efficient and effective dispute settlement framework must be built into future trade deals, enabling parties to affirm their respective rights and commitments, and allowing them to counteract the negative effects of unfair trade practice in their domestic industries.

233. Dispute settlement frameworks within trade agreements should be accessible and allow for timely and effective mechanisms through which to enforce terms, where there is perceived breach. They should be conducted in an appropriate forum, and in a manner that adheres to principles of objectivity and fairness, including transparency of decision making and the ability to challenge decisions through effective appeal mechanisms.

234. They must also be sufficiently stable to provide certainty and to mitigate the risks of entrenched conflict, but also flexible enough to support, rather than hinder, the advancement of domestic trade policy objectives.

235. The Scottish Government remains keen to work with the UK Government in the development of a UK operating model for managing WTO and FTA disputes.

⁴⁸ Trade Bill 2017-19 <https://services.parliament.uk/bills/2017-19/trade.html>



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