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Alok Sharma
Secretary of State for Business, Energy and Industrial Strategy
By email

10 September 2020

Dear Alok

The UK Internal Market Bill

Thank you for our call on Tuesday 8 September in which you set out your thinking behind the UK Internal Market Bill that was introduced in the Commons the following day.

I and the Cabinet Secretary for Constitution, Europe and External Affairs made clear this Government's opposition to the Bill then, and my Cabinet colleague set that out to the Scottish Parliament's Finance and Constitution committee yesterday and in his statement to the Scottish Parliament today.

However, I want to set out again the economic grounds on which we consider the provisions in the Bill to be unnecessary. There is already a system in place governing trade across the UK. This consists of devolved matters (for which there is transparency and accountability through democratic, parliamentary and consultative processes), powers already reserved in relation to the market (such as Competition Policy) and, now, the Common Frameworks that we have been co-developing since October 2017 to manage differences in the exercise of powers returning from the EU. In areas such as agriculture and food, operational frameworks agreed collaboratively already address questions of interoperability between market-related administrative systems across the UK and product rules.

The system of mutual recognition as set out in the bill cuts across this current, established process, which is built around an acceptance of the right of the different nations of the UK to make their own democratic choices. It is also very different from the EU mutual recognition system which is based on agreement, not imposition. Mutual recognition, as set out in the Bill, would ensure that goods and services which comply with the rules in one part of the UK have to be accepted in other parts of the UK without any agreed minimum standards applicable to all. This would include where the Scottish Parliament has legislated to prohibit or restrict the marketing of certain products or services in pursuit of wider policy objectives, including public health and environmental protection.

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If this legislation were already in place, Scotland would not have been able to lead the way on the ban on smoking in public, on introducing minimum unit pricing for alcohol, having rules on the marketing of raw milk consistent with the nature of the dairy sector in Scotland, or taking forward bans on the sale of plastic-stemmed cotton buds and microbeads in cosmetics. These are examples of where our ability and willingness to make decisions on devolved matters that best meet Scotland's needs and interests – and which deliver the policy objectives the Scottish people voted for in recent Scottish elections – would be undermined by mutual recognition as set out in the Bill.

Similarly, the proposed regulator would report on trade friction but is only concerned with business efficiency and not the economic and social costs arising from the very same externalities that regulation exists to price into the market. There is no mechanism, in these proposals, to place this in the wider context of economic and social outcomes we are pursuing as Governments across the UK. There is a risk therefore that it leads to challenges to a range of policy initiatives across the UK in which the market should be only one consideration.

A linked concern is the prospect of the UK entering into future international trade agreements which might result in lower standard products being accepted into UK markets. You are correct that the UK does at present uphold generally high standards, by virtue of regulation inherited from the EU, but we are concerned that your refusal to legislate for this in either the UK Agriculture Bill or the Trade Bill put this status at risk. Moreover, already there are signs that this position may not stand the test of trade negotiations. We were concerned, for example, about Anti-Microbial Resistance being dropped as a UK objective for the Japan FTA, as an indicator of public health matters being traded away in order to reach a deal. My colleagues the Cabinet Secretary for Health and Sport, and the Minister for Trade, Investment and Innovation have written to the Secretary of State for Environment, Food and Rural Affairs and to the Minister of State for Trade Policy on this issue. It is hard to feel reassured that concessions will not continue to be made elsewhere that undermine the standards for goods and services, and which the mutual recognition principle would require to be freely marketed in Scotland.

While you cite businesses supporting the idea that these proposals will bring certainty, there was not, prior to this, a groundswell of discontent from businesses about the existing governance of the internal market. We can also point to stakeholders representing a broader range of economic interests which take a quite different view. Scotland's world-leading food and drink sector, for example, is built on a reputation for the highest quality produce and nothing should be done to put that at risk.

We are keen, of course, to ensure that the market across the UK continues to function effectively, but if you are concerned about safeguards, any additional measures must be formed on the basis of agreement between all four Administrations, not imposed from Westminster.

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On State Aid, our position remains that a clear, enforceable subsidies regime is vital to ensure fair competition, to give certainty to providers and recipients of subsidies and to establish the UK as a credible partner in international agreements. It is unacceptable for the UK Government to attempt to override the devolved competence of the Scottish Ministers by excluding the Scottish Government from the development of a subsidy control regime. Scottish Ministers must be fully consulted in decision making and able to make their own funding decisions. Subsidies regimes are not policy neutral, and indeed help support businesses in key areas of common interest: green technology, research and development and regional aid. The Scottish Government must have an equal role with the UK government and other administrations in setting approved categories of aid which pursue recognised policy objectives.

COVID-19 is clearly currently the biggest challenge for business and the economy. Unnecessary legislation, which undermines devolution, on top of an entirely unnecessary end to the Brexit transition period will do nothing to protect or promote trade across the UK and beyond.

*Kind regards
Fiona Hyslop*

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