Dear Neil

Thank you for your letter of 4 June about the European Directive on Unfair Trading Practices (UTPs), the work of the Groceries Code Adjudicator and the proposed fair dealings obligations in the Agriculture Bill.

Regarding the European Directive on UTPs, there remains a degree of uncertainty about the practical effects of the new regulations for UK businesses. The drafting of the Directive suggests it will fall to the national enforcement authorities in the nation of the complainant to investigate alleged non-compliance and issue sanctions to UK businesses. It is difficult to envisage how this would work in practice. As I wrote in my letter to the European Scrutiny Committee, the expectations which will be placed on third countries will probably not be apparent until individual member states have begun to transpose the Directive into national law, and at this point we will begin to have clarity on the UK’s obligations. Defra officials have begun to engage with colleagues in BEIS and DExEU to explore the various transposition scenarios and provisional planning for third-country requirements.

The UK has reached agreement with the EU on an extension until October 31 at the latest, with the option to leave earlier as soon as a deal has been ratified. From then onwards, as we will no longer be an EU member we will have a different relationship to EU law - first through the Implementation Period, and subsequently through our Future Economic Partnership with the EU. Defra officials therefore continue to engage with EU counterparts working on the Directive to aid our understanding, both of general transposition issues and third-country requirements. At this time, the UK remains a member of the EU and continues to have all the rights and responsibilities of an EU member state. Officials are scheduled to attend a European Council working party on the transposition of the Directive later this month.
With regard to any potential interplay between the Groceries Supply Code of Practice and the Agriculture Bill, I am aware of the Groceries Code Adjudicator’s view and that she wrote to the Committee in November 2018 about this. We will of course take into account views of all stakeholders when developing any secondary legislation in relation to fair dealing obligations of first purchasers of agricultural products and consider how any regulations complement the Code. The supporting documents published alongside the Bill stated our intention to ensure that these powers are not exercised in respect of any commercial arrangements within the GCA’s remit.

DAVID RUTLEY MP