



House of Commons
International Trade Committee

Continuing application of EU trade agreements after Brexit

First Report of Session 2017–19

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 28 February 2018*

International Trade Committee

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Summary

The UK currently benefits from the terms of trade agreements, and other trade-related agreements, that the EU has with countries outside the Union. The Department for International Trade (DIT) has set as its second priority “to see a transition of [each of these] agreements to a UK agreement at the point that we leave the EU”. The exact number of EU trade agreements seems to be a matter of some uncertainty. There appear to be around 40 agreements with about 70 countries. Ten of the UK’s top 50 export markets for goods in 2015 were covered by these agreements. The third-country (non-EU) parties to the agreements account for around 11% of UK trade; and the prospective parties to those agreements which are nearest completion or awaiting ratification account for another 25% of UK trade. Unless action is taken, these trade agreements will cease to apply to the UK, without exception, at the point of Brexit in March 2019. In consequence, barriers to trade will be imposed.

The EU is also a party to a wide range of other trade-related agreements, covering areas such as regulatory cooperation, aviation, customs procedures, the nuclear industry and agriculture. The number of these too is uncertain, but a suggested total figure for all EU trade-related agreements is 759 (with 168 countries). There is an urgent need for clarity over the number, type, scope, extent and importance of the EU’s trade-related agreements. The Government must reassure us that it has a firm grasp of precisely which agreements will cease to have effect in respect of the UK at the point of Brexit if no action is taken, and what the consequences of that would be.

The Government intends to “provide a technical replication of the conditions” that exist under the trade agreements in order to prevent “disruption” at the point of Brexit, and until recently said this would be achieved by March 2019. The Government envisages these agreements potentially being renegotiated only in the longer term. The Government is right to seek to ensure the continuation after Brexit of the effects of the EU’s trade and other trade-related agreements, at least in the short term. There are considerable risks attached to not doing so.

The Government has been speaking to the third countries concerned about the “transitional adoption” of the EU’s trade agreements and says none has so far objected. However, DIT’s Chief Trade Negotiation Adviser cautioned that: “what people say today sometimes changes tomorrow”. DIT is to be commended for identifying this issue swiftly and deserves praise for making contact so quickly, and at ministerial level, with over 70 third-country parties to EU trade agreements. However, DIT, with support from Number 10, the Cabinet Office and the Department for Exiting the EU, still needs to show that it has a legally watertight and practically viable strategy for achieving “transitional adoption” at the point when it will need to take effect.

In February 2018, the Government stated that its preferred approach to ensuring the continued application of trade and other trade-related agreements during the post-Brexit transition / implementation period was: “by agreement of the parties to interpret relevant terms in these international agreements, such as ‘European Union’ or ‘EU Member State’, to include the UK.” We cautiously welcome the Government’s decision to pursue this approach while also continuing to seek to roll over these agreements. However, it is difficult not to see this as an admission that its policy of negotiating new

agreements by March 2019 might not be achieved and may be failing. The Government should write to this Committee setting out why this is, and how it will change its future plans on these and other trade agreements to take account of the lessons learnt. It must also evaluate and set out the potential risks and benefits attached to this approach. If the EU's agreement to the treating of the UK as a de facto EU territory for the purposes of the transition period is not agreed at the March 2018 EU Council meeting, the Government should publish a statement setting out its alternative approach for achieving continuity.

To achieve technical replication of free trade agreements, some substantive amendments will be necessary, requiring the agreement of the third countries involved, and in most cases, the EU. The Government should work with the EU to arrive at a consistent solution to the problem of dividing tariff rate quotas in rolled-over agreements. Regarding rules of origin, the Government will need to negotiate either a reduced threshold for domestic content or "diagonal cumulation" arrangements; in either case the consent of the third country will be necessary, and it is difficult to imagine a scenario in which the third country would not seek concessions in return. The Government should seek UK accession to the Pan Euro-Mediterranean Convention to facilitate diagonal cumulation and investigate the option of seeking full cumulation arrangements with the EU / EEA (at least on a temporary basis). While the trilateral method of negotiating may in many cases be aimed pragmatically at helping the EU and UK cumulate content for the purposes of rules of origin in agreements during a transitional period, it must not be undertaken at the expense of making bilateral agreements in case there ends up being a problem trilaterally. It makes sense for the UK to organise with the third countries to count EU inputs to UK exports to those countries as cumulated, and we would hope that if pursued in the right spirit the third countries and the EU would be amenable to treating UK input content of EU exports to those countries as cumulated also, at least during the implementation period of the UK-EU agreement.

In addition to technical issues, there are some more wide-ranging matters that the Government needs to take into account in rolling over EU trade agreements. It should consider the implications of the prospective UK-EU trade agreement for the rolling over of agreements with the EFTA states and Turkey, which currently entail close adherence to (respectively) the EU's regulatory and customs regimes. Some recent EU agreements feature a "Most Favoured Nation clause" in respect of trade in services, such that, where a party to an agreement subsequently offers better terms to another third country, the existing agreement must be revised to incorporate those same terms. The Government should consider the potential impact of such clauses on provisions regarding services in rolled-over agreements. The Government also needs to consider the implications of rolling over the state-to-state and investor-to-state dispute-resolution provisions in some of the agreements. The Government must show that it has taken into account the need for all aspects of rolled-over agreements to sit coherently within the UK's overall trade-policy architecture in the longer term.

Our evidence strongly suggests that substantive changes will be necessary when EU trade agreements are rolled over. The Government should set out provisions for both more extensive parliamentary scrutiny and enhanced involvement by the devolved administrations in situations where such changes do occur, particularly in the light of the fact that each of the four nations of the UK may differ in their priorities for trade deals.

DIT told us that “the Department for Exiting the European Union is leading cross-Government work to assess and act on the international agreements for which [...] there will need to be arrangements to ensure continuity for business and individuals.” DIT is focusing only “on the transition of trade-related agreements as part of this work”. The rollover of EU trade agreements is closely entwined with UK-EU trade relations and negotiations, touching upon several of DExEU’s areas of responsibility, as well as issues that will affect a number of other government departments. The Government must show what it is doing to foster a cross-departmental approach to the issue of rolling over trade, and other trade-related, agreements and to involve fully the devolved administrations.

1 Introduction

1. The UK currently benefits from the terms of a number of trade agreements, and other trade-related agreements, that the EU has with countries outside the Union. Giving evidence to our predecessor committee in February 2017, the Secretary of State for International Trade said that his department's second priority, after establishing the UK's position at the World Trade Organization (WTO), was "to see a transition of their agreements to a UK agreement at the point that we leave the EU".¹ The purpose of our inquiry has been to scrutinise the Government's performance in pursuing this policy.

2. In this Report, we first consider, in Chapter 2, the trade agreements to which the EU is currently a party, and conduct a brief assessment of the policy of the Government to "roll over" these agreements. In Chapter 3 we consider the Government's approach to roll-over, including the legal options; and in Chapter 4 we consider the Government's policy for applying the agreements during the post-Brexit implementation period. In Chapter 5 we set out the issues the Government will need to resolve before achieving roll-over of these agreements; and in Chapter 6 we address the issues posed by implementing rolled over agreements. Finally, in Chapter 7 we discuss the need for a cross-government approach to roll-over.

3. While our predecessor committee used the term "grandfathering" to refer to this issue, we have avoided using it in this report as, strictly speaking, this term would mean "that the existing treaties just continue to apply to the UK after leaving the Union without there being any need for renegotiation or agreement by the other party to the agreement",² which is neither the Government's policy nor a legal possibility. While there appears to be no term that is both perfectly accurate and concise, we have throughout referred to "roll-over" of the agreements unless discussing an approach described by the Government using a different term.³

4. During the course of our inquiry we took oral evidence from 13 witnesses, including the Minister of State for Trade Policy, Rt Hon Greg Hands MP, at four evidence sessions. In addition, we received 20 submissions of written evidence. We would like to thank all of those who took the trouble to provide us with evidence.

1 International Trade Committee, First Report of Session 2016–17, [UK trade options beyond 2019](#), HC 817, para 172

2 [Q 2](#)

3 "Roll-over" appears to have been coined by the former Minister of State for Trade Policy, Lord Price. The term "transitional adoption" is used (in inverted commas) in accordance with the Government's own usage to refer to its particular approach to rolling over EU trade agreements. It should be noted that the Government has also recently coined a further term: "trade agreements continuity".

2 EU trade-related agreements

EU trade agreements

5. Under WTO rules, member states, or groups of states (such as the EU), are permitted to conclude “preferential” trade agreements, which involve the granting of market access terms which are not available to countries that are not parties to the agreements. Such agreements most frequently take the form of Free Trade Agreements (FTAs). These provide for:

- tariff⁴ reduction or elimination (subject to provisos called rules of origin);⁵ and /or
- regulatory cooperation, which can involve recognising each other’s rules, accepting each other’s processes for testing against rules or adopting identical rules.

In a small number of cases, trade agreements (including certain agreements to which the EU is a party) go further than FTAs, entailing the establishment of: a single market with few-to-no regulatory barriers to trade;⁶ or a common approach to tariffs on goods from “third countries” (meaning countries which are not parties to the agreement). The latter type of agreement is known as a “customs union”.⁷

6. The exact number of EU trade agreements appears to be a matter of some uncertainty. The Secretary of State for International Trade, Rt Hon Dr Liam Fox MP, told us in December 2017 that there are “around 40” EU trade agreements, “covering over 55 countries”. The Government thought that “it would be misleading to attempt to provide a definitive figure”, given various “complexities”. These include: multiple agreements counting as single agreements; and the fact that some agreements “have only been partially or provisionally applied, or are signed but not yet in force”.⁸ The former Minister of State for Trade Policy Lord Price has referred to “36 treaties with 60 countries”.⁹ His successor, Mr Hands, referred in oral evidence to “40-plus agreements”¹⁰ with “70-plus”¹¹ partners. Using the Design of Trade Agreements (DESTA) Database, Professor Andreas Dür of the University of Salzburg arrived at a figure of 41 EU-third country trade agreements. This included agreements that are “provisionally applied at the moment”, as well as those “that are basically concluded and will be implemented very soon”.¹²

7. A list of current EU trade agreements (those that have been initialled, are provisionally applied or are in force) is at Annex 1. As can be seen, EU trade agreements vary significantly in type and scope. A substantial number of EU FTAs have been concluded in the context of the **EU enlargement policy** (as part of the process of states moving towards applying for EU

4 A tariff is a tax, or “duty”, which is paid on imports or exports. It is typically (but not always) paid by importers.

5 On rules of origin, see Chapter 5 below.

6 The EU Single Market is a very highly developed agreement of this type.

7 A customs union is an association of two or more countries that operate a common external tariff, typically while also having no tariff barriers among themselves. The EU is a customs union in its own right (as well as a Single Market).

8 [Letter from Rt Hon Dr Liam Fox MP to Angus Brendan MacNeil MP](#), 19 December 2017

9 Lord Price, Twitter post, [26 October 2017](#)

10 [Qq 248, 268, 273](#)

11 [Qq 228, 234, 236, 241, 247, 248, 250, 258](#)

12 [Q 86](#)

membership) or the **European Neighbourhood Policy** (which seeks to tie countries to the south and east of the EU closer to the Union).¹³ The **Economic Partnership Agreements (EPAs)**, with African, Caribbean and Pacific countries (many of which are members of the Commonwealth), are FTAs which often seek to promote development goals.¹⁴ The EU also grants preferential trade access on a unilateral basis to other developing countries. Arrangements of this type fell outside the scope of this inquiry, but we will be examining them in our investigation of “Trade and the Commonwealth: developing countries”. EU **Association Agreements (AAs)** create a framework for cooperation across a range of areas, including trade; and some of them incorporate an FTA. Those with three eastern-European countries (Georgia, Moldova and Ukraine) include **Deep and Comprehensive Free Trade Areas (DCFTAs)**.¹⁵ The EU’s trade agreements with the countries of the **European Free Trade Association (EFTA)**—Switzerland and the non-EU members of the European Economic Area (EEA)—involve a high level of regulatory convergence, giving access to the EU Single Market on terms similar to those enjoyed by EU members. In addition, a small number of the EU’s trade agreements take the form of a partial **customs union**, namely those with Turkey (as part of an AA) and the European “micro-states” of Andorra and San Marino.¹⁶

8. Ten of the UK’s top 50 export markets for goods in 2015 were covered by EU trade agreements.¹⁷ The Government estimates that the third-country (non-EU) parties to these agreements account for around 11% of UK trade; and that the counter-parties to those prospective EU agreements which are nearest completion or awaiting ratification account for another 25% of UK trade.¹⁸

9. Unless action is taken, these agreements will cease to apply to the UK, without exception, at the point of Brexit in March 2019.¹⁹ In consequence, barriers to trade will be imposed.

Other EU trade-related agreements

10. In addition to trade agreements, the EU is a party to a wide range of other trade-related agreements, covering areas such as regulatory cooperation, fisheries, aviation and other transport, customs procedures, the nuclear industry and agriculture. These include the separate Mutual Recognition Agreements (MRAs), concerning arrangements for conformity assessment in respect of product standards and regulations, which the EU has with several countries.²⁰

11. As with EU trade agreements, the number of agreements falling into this category is not clear. The *Financial Times* estimated in May 2017 that at the point of Brexit the UK would cease to be a party to at least 759 EU trade-related treaties with 168 countries.²¹ Hosuk Lee-Makiyama, the Director of the European Centre for International Political

13 European Commission, [European Neighbourhood Policy And Enlargement Negotiations](#)

14 European Commission, [Economic partnerships](#)

15 European Commission, [Trade - Agreements](#)

16 European Commission, [Customs Unions](#)

17 List of EU trade agreements, Briefing Paper 7792, House of Commons Library, November 2016

18 House of Lords, Brexit: the options for trade, Fifth Report of the Select Committee on the European Union, Session 2016–17, [HL Paper 72](#), para 158

19 [Q 7](#)

20 European Commission, [Mutual Recognition Agreements](#). Many MRAs are incorporated into FTAs, rather than being freestanding agreements in their own right.

21 [“After Brexit, the UK will need to renegotiate at least 759 Treaties”](#), Financial Times, 30 May 2017

Economy, told us that this figure appeared correct—albeit only on the basis that there are “almost 200 countries in the world and we have signed some form of agreement with almost every one of them”.²² Professor Dür told us that “overall the number looks plausible”, although he was unable to “exactly replicate the number of 759” using the DESTA Database.²³ According to a rough calculation made for us by Professor Dür, 759 agreements would amount to somewhere in the order of 36,400 pages of text (including annexes and appendices).²⁴

12. The First Permanent Secretary at the Department for International Trade (DIT), Antonia Romeo, stated that the number of these agreements was in the “multiple hundreds”.²⁵ However, the Department was subsequently unable to provide us with a precise figure. The Secretary of State told us that this was because “some treaties have been superseded by later agreements, as countries have joined the EU over time, and when amendments and new protocols have been added to existing Treaties”.²⁶

13. Dr Joris Larik, of the University of Leiden, reported to us on his work attempting to clarify which treaties are currently in force between the EU and just one third country, the USA. He found a concerning lack of congruence between supposedly definitive databases maintained by the EU and the US Government, as well as between these two and the list used by the *Financial Times*. He recommended that the UK Government “should urgently compare databases and compendia of treaties with its most important trading partners”, with a view to drawing up “joint lists of items of concern”, “consisting of those treaties and other instruments which at least one side deems binding”. He also urged the establishing of “continuity road maps”, to facilitate maintaining the effects of the agreements.²⁷

14. While it does seem that most of these agreements will, like the EU’s trade agreements, cease to apply to the UK at the point of Brexit, this may not be the case for some multilateral treaties. Mr Lee-Makiyama told us that: “in many cases the UK is a signatory on its own accord together with the European Union, because in certain agreements the European Union is not a legal entity”.²⁸

The Government’s policy to roll-over the agreements

Introduction

15. The Government’s policy objective in relation to the EU’s free trade agreements is to “provide a technical replication of the conditions that exist today, so there is no disruption at the point at which we leave the European Union.”²⁹ The Minister of State emphasised that this was a short-term objective, and that replicating agreements “in no way precludes

22 [Q 100](#)

23 [Q 93](#)

24 [Q 123](#)

25 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Qq 157–158

26 [Letter from Rt Hon Dr Liam Fox MP to Angus Brendan MacNeil MP](#), 19 December 2017

27 Dr Joris Larik ([EUT0020](#))

28 [Q 97](#)

29 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Q 160 [Rt Hon Dr Liam Fox MP]

the UK and [a trading partner] from returning in the future to change those trading arrangements and enter into an entirely new independent [...] agreement at some point in the years to come.”³⁰

16. Almost no one who contributed to our inquiry suggested that the Government’s policy objective of seeking continuity was the wrong one. Professor Dür told us that if the 41 EU trade agreements that he had identified were to cease to apply to the UK, “Definitely trade would not vanish”; but there would be an effect on the “15% to 17% of UK trade” covered by the agreements.³¹ In the case of deep trade agreements, the reduction in trade could be as high as 30%—although this description did not apply to all of the agreements concerned.³² Countries varied in their importance for the UK as trade partners; it was most important to ensure continuity of the agreements with Switzerland, Norway, the European countries, South Korea, Japan, Singapore, South Africa, Canada and Turkey.³³

17. Dr Anamaria Nicolae and Michael Nower, of Durham University Business School, calculated that “[n]ot grandfathering any of the EU’s FTAs and any of the other trade-related treaties to which the EU is a party, will reduce GDP long term by 1.1% and short term by 2.7%”.³⁴

18. Regarding other trade-related agreements, Professor Dür was asked to rate these on a “traffic-light” scale regarding the importance of maintaining their continuity. He told us that he would put “[a]viation agreements [...] on the red scale” as “there needs to be certainty that the flights can take place at the moment that the UK drops out of the single market in 2019.”³⁵ Mr Lee-Makiyama added that there were:³⁶

critical agreement[s] in almost every one of the sectors, not just from transport, not just aviation in the transport sector. We have land transport, which is essential for the nitty-gritty of trade, the really granular aspect of frictionless trade, to operate.

Development-related agreements

19. In the case of trade agreements with developing countries, views were more mixed. We did hear the view that EPAs, should not be continued but replaced with “a unilateral trade preference scheme” that better prioritises development goals.³⁷ Dr Peg Murray-Evans told us that “if we grandfather or otherwise replicate [EPAs] in the short term, there is a danger that we just get locked into that model of doing this”.³⁸ The EU’s EPAs with African, Caribbean and Pacific (ACP) states have been controversial for a number of reasons.³⁹ These include:

30 [Q 272](#)

31 [Q 87](#)

32 [Q 88](#)

33 [Q 90](#)

34 Durham University Business School ([EUT0018](#))

35 [Q 95](#)

36 [Q 96](#)

37 Dr Stephen R Hurt ([EUT0003](#)). See also Traidcraft ([EUT0001](#)).

38 [Q 139](#)

39 [Q 134](#)

- Most Favoured Nation (MFN) clauses;⁴⁰
- restrictive rules of origin;⁴¹
- the level of economic “liberalisation” required from the ACP parties;⁴² and
- the failure to address EU sanitary and phytosanitary measures that restrict agricultural imports (such as a ban on “citrus black spot”).⁴³

South Africa, one of the most economically significant ACP states, has already stated it is seeking improved terms in its agreement with the UK.⁴⁴

20. Other critics of EPAs, however, support ensuring their continuity in the short term. Dr Clair Gammage, of the University of Bristol, stressed that:⁴⁵

A transitional agreement has to be in place for these countries. We cannot just go off the cliff-edge on exit day and have nothing in place, because there have been statistics out from the Oxford Group [the Oxford Global Economic Governance Programme] that for say Bangladesh, if we reverted to MFN tariffs,⁴⁶ the cost for Bangladesh to export to us would be phenomenally huge.

21. The Government is right to seek to ensure the continuation after Brexit of the effects of the EU’s trade and other trade-related agreements, at least in the short term. If this continuation does not occur, there is likely to be an economic price to pay.

22. Regarding those agreements which promote development goals, notwithstanding the criticisms that have been made of them as they presently stand, the valuable preferential access to UK markets which they provide for developing countries must not be allowed to lapse at the point of Brexit. The Government should bring forward proposals for a mechanism whereby rolled-over Economic Partnership Agreements will be subject to review in respect of issues such as Most Favoured Nation clauses, rules of origin, requirements for economic liberalisation, and sanitary and phytosanitary measures, with a view to potential renegotiation in due course.

23. With this in mind, there is an urgent need for clarity over the number, type, scope, extent and importance of the EU’s trade-related agreements. The Government must reassure us that it has a firm grasp of precisely which agreements will cease to have effect in respect of the UK at the point of Brexit if no action is taken, and what the consequences of that would be.

40 [Qq 136–137](#). On MFN clauses, see [Chapter 6](#) below.

41 [Q 140](#); Dr Stephen R Hurt ([EUT0003](#)). On rules of origin, see [Chapter 5](#) below.

42 [Traidcraft \(EUT0001\)](#), Dr Stephen R Hurt ([EUT0003](#)), Dr Mark Langan ([EUT0008](#)), Fairtrade Foundation UK ([EUT0017](#))

43 [Qq 140–149](#)

44 [Q 140](#)

45 [Q 139](#). See also Fairtrade Foundation UK ([EUT0017](#)).

46 Under WTO rules, a member country must, in the absence of preferential arrangements (trade agreements and unilateral preference schemes for developing countries), impose the same tariff regime in respect of all countries’ goods. This is often referred to as the MFN tariff.

3 The Government's approach to rolling over EU trade agreements

Negotiating roll-over

24. The Secretary of State told our predecessor committee in February 2017 that the Government was speaking to the third countries concerned about the “transitional adoption” of the EU’s trade agreements following Brexit and that none had so far objected. “Transitional adoption”, he explained, “simply means changes to the current treaty framework” including “disaggregating any quotas that exist within that.”⁴⁷ He affirmed that it was his objective that all the agreements were rolled over.⁴⁸

25. Reporting on progress in November 2017, the Secretary of State told us that the former Minister of State for Trade Policy Lord Price had said:⁴⁹

he had variable agreements with all these Governments that [“transitional adoption”] would be the process that we followed. We have not had any indication from any Government that they wanted to deviate. Some countries have said they would prefer to move directly to a new FTA with the United Kingdom, but we have made very clear that that is an ambition for another day, and that what we want is a technical replication[.]

While the Government had not “finished any agreements yet”, it had agreed with the third countries “on the method that we will use to get to that end point”.⁵⁰

26. At the same evidence session, though, Crawford Falconer, DIT’s Chief Trade Negotiation Adviser and Second Permanent Secretary at the Department, cautioned that: “what people say today sometimes changes tomorrow”.⁵¹ Dr Fox also told us in December 2017 that “we have had positive reactions from partner countries to our approach so far, but it is too early to say what exactly it will mean in a particular case or for any particular country.”⁵²

27. Responding to criticism regarding the Government’s prioritisation of, and sense of urgency regarding, the roll-over of trade agreements, Lord Price insisted that DIT understood “the enormity of what we are trying to do” and had put “all hands on deck”.⁵³ His successor, Mr Hands, expressed confidence that the Government was on track to achieve roll-over of all agreements at the point of Brexit in March 2019.⁵⁴ He added that account had been taken of the time needed for the Trade Bill (see Chapter 7 below) to pass through Parliament, and for third countries to go through any necessary ratification

47 Oral evidence taken before the International Trade Committee on [1 February 2017](#), HC (2016–17) 817-vii, Qq 449, 452, 454

48 Oral evidence taken before the International Trade Committee on [1 February 2017](#), HC (2016–17) 817-vii, Q 453. See also [Q 258](#).

49 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Q 156

50 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Q 152

51 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Q 155

52 [Letter from Rt Hon Dr Liam Fox MP to Angus Brendan MacNeil MP](#), 19 December 2017. See also Department for International Trade, [Trade White Paper: Preparing for our future UK trade policy: Government Response](#), January 2018, p 8.

53 [Q 157](#)

54 [Letter from Rt Hon Greg Hands MP to Angus Brendan MacNeil MP](#), 23 January 2018; [Qq 228, 241, 250](#)

processes.⁵⁵ However, Mr Hands was not able to provide us with any detailed information on “programme management” to reassure us regarding timetabling and planning for the risk of failure.⁵⁶

The legal basis for roll-over

28. We heard in evidence that there appeared to be three legally possible ways in which the UK might continue to benefit from the provisions of an EU trade agreement after Brexit:⁵⁷

- **trilateralisation:** the transformation, by means of an additional protocol, of the existing (EU-third country) bilateral agreement into a new (EU-third country-UK) trilateral agreement;
- **trilateral roll-over:** a new trilateral (UK-third country-EU) agreement which replicates the terms of the EU agreement; or
- **bilateral roll-over:** a new bilateral (UK-third country) agreement which replicates the terms of the EU agreement.

29. Lord Price told us that in the meetings he had had with third-countries’ governments they had:⁵⁸

talked about [...] three options. The first option was taking the existing EU agreement and cutting and pasting it, changing the names of EU institutions to the UK institutions [...] The second was to have a letter of agreement that said, “On this date we will continue on the same basis [...]”. The third would be to go for a brand new FTA.

After it was explained that the UK would not be in a position to negotiate a new agreement until after Brexit, the third countries were all prepared to accept one of the first two options.

30. We subsequently heard from Dr Guillaume Van der Loo, of the Ghent European Law Institute, that cutting and pasting was “not realistic or feasible”, given that elements of the agreements will need to change, for both technical and political reasons. He thought an exchange of letters was “more realistic”, but “it would require close co-operation with the European Union” in ironing out the necessary changes to the agreements (that is a trilateral approach to rolling over the agreements on a bilateral basis). (These issues are further explored in Chapter 5 below.)

31. Regarding how the rolling over of agreements might be “bolted down legally”, Lord Price referred to the possibility of “living in sin” for up to 10 years.⁵⁹ He appeared to be referring to the possibility of an “interim agreement” under Article XXIV of the General Agreement on Tariffs and Trade, whereby prospective parties to an agreement can

55 [Qq 247–248](#)

56 [Letter from Rt Hon Greg Hands MP to Angus Brendan MacNeil MP, 23 January 2018](#)

57 [Qq 2, 12 \[Philippe De Baere\], 211 \[Guillaume Van der Loo\]](#)

58 [Q 163](#)

59 [Q 174](#)

temporarily behave as if it were already in force. However, when we asked his successor, Mr Hands, about this idea he was dismissive of it, saying: “I do not see arising a case where something will be effectively in limbo for 10 years.”⁶⁰

32. DIT is to be commended for identifying this issue quickly and designating it as the Department’s second-highest priority. DIT also deserves praise for making contact so quickly, and at ministerial level, with over 70 third-country parties to EU trade agreements.

33. *However, there is a disturbing lack of precision and clarity about the legal mechanism whereby the Government envisages EU trade agreements with some 70 countries being rolled over. DIT must show, Number 10 and the Cabinet Office must support, and DExEU must allow, that DIT has a legally watertight and practically viable strategy for achieving “transitional adoption” at the point when it will need to take effect, so that UK trade with around 70 countries does not face a “cliff edge”, even if no withdrawal or transition arrangements with the EU should have been agreed or ratified.*

34. *The Government must treat the roll-over of EU trade agreements as an urgent priority. UK businesses, consumers and investors, as well as developing countries benefitting from EU trade agreements, all need certainty about future trade arrangements. DIT should publish a detailed timetable for this work, and this should be explicitly backed by Number 10 and the Cabinet Office.*

35. *The Government should produce a ‘risk register’, identifying clearly the agreements to be rolled over, with an assessment of how important each agreement is to UK trade. If resources allow within the time given, this should be compiled in consultation with Parliament, businesses and civil society. If resources do not allow for this, the Government should reassure us that this register exists internally.*

36. *The Government would risk appearing naïve if it assumed that assent-in-principle to roll over an agreement constitutes a guarantee that roll-over is actually certain to occur at the point of Brexit. It must be realistic about the steps that are necessary to get new agreements in place—and have contingency plans for the eventuality that the third countries concerned change their minds. This must include the pursuit of bilateral arrangements with each party with whom the UK currently has arrangements by virtue of its membership of the EU.*

4 Post-Brexit “implementation” period

The Government’s negotiating position

37. It is the policy of the Government that, after the UK leaves the EU, there should be an “implementation period” lasting “around two years”,⁶¹ while the European Commission’s position is to have a 21 month period lasting until December 2020.⁶² The exact terms of the UK-EU relationship during this period are still a matter for negotiation, but the Government has said that it “could involve a new and time-limited customs union between the UK and the EU Customs Union, based on a shared external tariff and without customs processes and duties between the UK and the EU”.⁶³

38. In the event of a post-Brexit transition period involving a temporary EU-UK customs union, it would seem to follow that without any action being taken to prevent it, the UK would still be bound by the EU’s common external tariff but would no longer be a party to the EU’s trade agreements. This would mean that third countries would be able to benefit from the terms of their trade agreements with the EU when exporting to the UK, but the UK would no longer enjoy the reciprocal benefits. This would leave the UK in a position analogous to that of Turkey in its current “asymmetrical” customs union with the EU.⁶⁴ Government policy has been, as we have noted (see Chapter 3 above), to seek to roll over all agreements at the point of Brexit in March 2019—in which case the possibility of the UK finding itself in an “asymmetrical” position regarding EU trade agreements would not have arisen.

39. It has been suggested that, in the absence of successful roll-over at the point of Brexit, the UK’s current relationship to the EU’s trade agreements could be maintained by treating the UK as *de facto* EU territory for the purposes of international agreements during the transition period. (This has been termed the “Guernsey Model”).⁶⁵

40. As noted above, the Government’s policy was initially to roll over the agreements by March 2019. However, on 8 February 2018, the Government published a “Technical Note” on “International Agreements during the Implementation Period” in which it stated that its preferred approach to ensuring the continued application of trade and other trade-related agreements during the implementation was:

by agreement of the parties to interpret relevant terms in these international agreements, such as “European Union” or “EU Member State”, to include the UK.

[...] This approach is underpinned by international law and practice, including Article 31 of the Vienna Convention on the Law of Treaties (VCLT)
[...] The form of such an agreement under Article 31 VCLT is flexible and

61 Prime Minister’s Office, [“PM’s Florence speech: a new era of cooperation and partnership between the UK and the EU”](#), 22 September 2017

62 European Commission, [“Position paper ‘Transitional Arrangements in the Withdrawal Agreement’”](#), 7 February 2018, p 3

63 H M Government, [Future customs arrangement](#), August 2017, paras 48–50

64 [Q 217](#)

65 George Peretz, [“How to ‘roll over’ EU and third country FTAs during the Brexit transition”](#), UK Trade Forum, 15 December 2017. The term “Guernsey model” stems from an analogy with Guernsey’s position as a UK crown dependency (sitting outside the UK) which is nonetheless treated as part of the UK for the purposes of international law.

would be a matter for discussion. It would not be necessary, for example, to deal individually with each EU treaty. The key requirement would be the clear agreement of the parties that the underlying treaty continued to apply to the UK during the implementation period.

This was said to represent “the simplest way of ensuring the continued application of these agreements during the implementation period” while also “preserv[ing] the integrity of the EU legal order”.⁶⁶ It clearly entails some form of trilateral (UK-EU-third country) agreement in each case, but the precise nature and form of that agreement is as yet unclear.

The EU’s negotiating position

41. The final version of the European Council’s supplementary negotiating directives regarding transitional arrangements was published on 29 January 2018. These stated that:⁶⁷

During the transition period [...] the United Kingdom should remain bound by the obligations stemming from the agreements concluded by the Union, or by Member States acting on its behalf, or by the Union and its Member States acting jointly, while the United Kingdom should however no longer participate in any bodies set up by those agreements.

[...] [A]ny transitional arrangements require the United Kingdom’s continued participation in the Customs Union and the Single Market (with all four freedoms) during the transition. The United Kingdom should take all necessary measures to preserve the integrity of the Single Market and of the Customs Union. The United Kingdom should continue to comply with the Union trade policy [...] During the transition period, the United Kingdom may not become bound by international agreements entered into in its own capacity in the fields of competence of Union law, unless authorised to do so by the Union.

42. We cautiously welcome the Government’s new policy to seek agreement of all parties to interpret relevant terms of EU free trade agreements, such as “European Union” or “EU Member State”, to include the UK during transition, while continuing to seek to roll over those agreements. While we welcome the Government’s willingness in this respect to be pragmatic, it is difficult not to see this as an admission that its policy of negotiating new agreements by March 2019 might not be achieved and may be failing. We seek urgent reassurance that the Government is allocating appropriate resources not only to this objective but to all its policy objectives, including the bilateral strand of negotiating these agreements, and that it is being realistic about how achievable those objectives are. *The Government should write to this Committee setting out why it might not achieve and may be failing to achieve this policy objective in the time it originally set, and how it will change its future plans on these and other trade agreements to take account of the lessons learnt. If the EU’s agreement to the treating of*

66 H M Government, [Technical Note: International Agreements during the Implementation Period](#), February 2018, pp 1–2. See also: Department for Exiting the EU, [“David Davis’ Teesport Speech: Implementation Period – A bridge to the future partnership between the UK & EU”](#), 26 January 2018; Rt Hon Greg Clark MP, Rt Hon Philip Hammond MP, Rt Hon David Davis MP, [Letter to business leaders](#), 26 January 2018; and [Letter from Rt Hon Greg Hands MP to Angus Brendan MacNeil MP](#), 8 February 2018.

67 European Council, [Supplementary Brexit \(Article 50\) directives](#), XT 21004/18, ADD 1 REV 2, 29 January 2018, paras 15–16

the UK as a de facto EU territory for the purposes of the transition period is not agreed at the March 2018 EU Council meeting, the Government should publish a statement setting out its alternative approach for achieving continuity.

43. In addition, it is still far from clear that it will be possible to secure continued application of EU trade agreements during the post-Brexit transition period. *The Government must urgently clarify the nature and form of the trilateral (UK-EU-third country) agreements whereby it is intended that the UK will remain a de facto party to the EU's trade agreements during a transition period. It must also evaluate and set out the potential risks and benefits attached to this approach.*

44. *Meanwhile, the Government must still address the issues that we have raised in respect of its pursuit of "transitional adoption" and act on the assumption that this could still need to be in place at the point of Brexit in March 2019. Even if the new approach does prove successful, it will only buy the Government a limited amount of extra time in which to achieve roll-over and it would still need to redouble its efforts in that respect.*

5 The terms of rolled-over trade agreements

Introduction

45. In order to achieve the Government’s policy objective of a technical replication of what the UK has today in terms of free trade agreements, witnesses told us that some substantive amendments will be necessary. These amendments will need to be agreed with the third countries involved, and in most cases, the EU. The Explanatory Notes to the Trade Bill, which was introduced on 7 November 2017 (see Chapter 7 below), stressed that:⁶⁸

It may [...] be necessary to substantively amend the text of the previous EU agreements, so that the new agreements can work in a UK legal context. For these reasons, the Government has avoided describing new UK-third country agreements as ‘equivalent to’, ‘replications’, or ‘copies’ of EU-third country agreements.

46. In addition, there are some aspects of the EU’s FTAs which may prove politically contentious in the UK and may require amendment. Finally, there are some aspects of the EU’s FTAs that may affect future trade policy, and that we simply draw to the Government’s attention. This chapter addresses each category of amendment in turn.

Technical amendments

Tariff Rate Quotas

47. Some FTAs include arrangements for Tariff Rate Quotas (TRQs). These relate to allowing imports of fixed quantities of a product at a lower tariff; once the quota is filled, a higher tariff is applied on any additional imports. They almost invariably relate to sensitive agricultural products.

48. In the Secretary of State’s evidence to our predecessor committee in February 2017, he acknowledged that disaggregation of quotas might be problematic—but saw this as “a secondary complication [...] which is for the EU 27”, rather than the UK.⁶⁹

49. Philippe De Baere, a trade lawyer at the firm Van Bael & Bellis, told us that the EU might have an “incentive” to renegotiate the quotas in its FTAs with third parties once the UK left the EU to avoid having “to absorb the totality of the quota”, but that this “may well” prompt requests for concessions on other matters from the FTA partner concerned.⁷⁰

50. Dr Fox mentioned the matter again when he appeared before us on 1 November 2017:⁷¹

68 [Explanatory Notes to the Trade Bill](#) [Bill 122 (2017–19) – EN], para 53. See also [Delegated Powers Memorandum to the Trade Bill](#) [Bill 122 (2017–19) – EN], para 46.

69 Oral evidence taken before the International Trade Committee on [1 February 2017](#), HC (2016–17) 817-vii, Q 454

70 [Q 43](#)

71 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Q 145

Of course there are issues. [...] But remember it is a transitional adoption, with an implicit understanding that this agreement is to ensure market stability at the point we leave the European Union, but with a view to being able to develop a more bespoke agreement with those countries in the future.

51. Disaggregating UK TRQs on agricultural products from those of the EU is also an issue in relation to establishing separate UK schedules of concessions and commitments at the WTO.⁷² In that context, the UK and EU have reached an agreement on an approach for sharing out the TRQs—splitting the existing quotas by reference to three years of data on quota consumption. However, several major agricultural exporters (namely Canada, the USA, Argentina, Brazil, New Zealand, Thailand and Uruguay) have objected to this,⁷³ stating in a joint letter to the WTO that they “cannot accept such an agreement”, since it entails a reduction in EU quotas.⁷⁴ Mr De Baere told us that this “precedent is not very encouraging”, as “[c]ountries will try to maximise the benefits”.⁷⁵

52. The National Farmers’ Union told us that they are “particularly concerned about the protection of our sensitive sectors and therefore how full liberalisation and tariff rate quotas (TRQs) are going to be ‘inherited’”⁷⁶ while others expressed concern about maintaining exports or imports under current preferential quotas with third countries.⁷⁷

53. ***The Government should work with the EU to arrive at a consistent solution to the problem of dividing Tariff Rate Quotas in rolled-over agreements, just as it already has in respect of establishing separate UK schedules at the World Trade Organization. The Government should set out its approach to overcoming the objections made to its TRQ proposals at the WTO.***

Rules of origin and cumulation

54. FTAs entail “rules of origin”, whereby the originating status of goods must be proved in order for these to qualify for preferential treatment in respect of customs duties.⁷⁸ For goods that are not “wholly obtained or produced” in a given territory, these may involve requirements specifying a percentage of local / domestic content (or other “substantial transformation/sufficient working or processing” of raw materials or components from elsewhere).⁷⁹

55. The application of originating status can be widened by means of provisions for “cumulation”—so that components (inputs) or working from outside a country can be treated as originating there for the purposes of applying rules of origin. For example,

72 These are lists submitted by each WTO member detailing their market access commitments, including limits to tariff levels and specific TRQs, by which they undertake to be bound in setting their trade policy where the MFN principle applies (in those cases where there is no preferential arrangement).

73 “Trump opposes EU-UK agri-deal in blow to May’s Brexit plans”, Financial Times, 5 October 2017

74 “Trump administration rejects Theresa May’s post-Brexit agriculture deal with EU”, Independent, 6 October 2017

75 Q 36

76 National Farmers’ Union (EUT0007). See also National Pig Association (EUT0013).

77 Dairy UK (EUT0010), Food and Drink Federation (EUT0011)

78 Since an FTA does not entail a common external tariff, parties to it can set differing tariffs in respect of third countries, leading to the risk of trade being deflected for the purposes of avoiding duty. Rules of origin are a means of obviating this risk.

79 World Customs Organization, *Comparative Study on Preferential Rules of Origin*, [Version 2017](#)

if a car were manufactured in the UK using parts from elsewhere in the EU, under cumulation provisions these parts could be counted towards whatever domestic (UK) content threshold might apply in a UK–third country FTA.

56. Mike Hawes, from the Society of Motor Manufacturers and Traders, told us that “most free trade agreements tend to have a minimum [domestic content] threshold of 55% to 60%” for automotive goods. Therefore, merely copying and pasting the EU–South Korea FTA “would not benefit us because we would not qualify for the preferential trading arrangements [...] unless you could agree cumulation with the European content, which is what we currently enjoy”.⁸⁰

Diagonal cumulation

57. One solution to this problem suggested by several witnesses and written submissions in the course of our inquiry was to create “diagonal” (EU–UK–third country) cumulation arrangements. This would allow inputs (materials) from any of the three parties concerned (the EU, the UK or a third country) to count as originating content.⁸¹

58. The UK currently, as an EU member, benefits from cumulation arrangements under the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin (the “PEM Convention”), to which the EU is a Contracting Party. All signatories to the PEM Convention have agreed to replace rules of origin in the trade agreements between each other with the rules of origin laid down in the PEM Convention.

59. These rules allow for diagonal cumulation between all signatories to the agreement (provided there are trade agreements in place between all the Contracting Parties concerned). Originating inputs from each country are thus considered to be originating inputs in the other countries, making it easier for supply chains to be dispersed across the cumulation zone.

60. We heard in evidence from Professor Dür that the advantages of the PEM Convention depend on having “a considerable number of free trade agreements” as it “only then [...] kicks in. That is of course only going to be the case for the UK once it has a considerable number of trade agreements with the other signatories of the PEM Convention”.⁸²

61. The UK Trade Policy Observatory told us “that the EU can be quite difficult in agreeing to diagonal cumulation” and “typically only” does so “if ALL the countries involved [...] have free trade agreements among themselves, and all apply the EU’s rules of origin” as embodied in the PEM Convention. As a result, they also propose an alternative option of the UK and the EU agreeing in their FTA to only apply rules of origin “where external tariffs differ” as well as a “preferential partner” principle where “any preferential partner (e.g. the UK) can use the intermediate inputs of any other preferential partner (e.g. Korea), providing that for each intermediate input the [rule of origin] applicable to the country supplying the intermediate is used”.⁸³

80 Oral evidence taken before the International Trade Committee on [31 January 2018](#), HC (2017–19) 481-v, Qq 273, 281, 282

81 [Qq 40, 67–68, 121, 226](#); British Retail Consortium ([EUT0012](#)), UK Trade Policy Observatory ([EUT0009](#))

82 [Q 121](#)

83 UK Trade Policy Observatory ([EUT0009](#))

62. The EU currently applies “full cumulation” to trade within the EEA; and between the EU and Algeria, Morocco and Tunisia.⁸⁴

Government’s approach

63. Speaking to us on 1 November 2017, Mr Falconer of DIT told us that “we need to make sure that when it comes to a rule of origin, the rule of origin is as close to what would reasonably be expected for a single arrangement between us and the third country as opposed to an EU one”.⁸⁵ This suggests that the UK Government is seeking to amend the origin threshold in rolled-over FTAs rather than seeking to construct UK-EU-third country cumulation zones.

64. Asked to what extent he thought the EU was prepared to enter into a diagonal cumulation agreement in respect of rolled-over FTAs, Lord Price replied: “That would be one for DExEU [the Department for Exiting the EU]. That would be a conversation that they have. I was not involved in that conversation.”⁸⁶

65. The Minister of State for Trade Policy also told us that membership of the PEM Convention “will be a matter for the negotiation with the European Union”.⁸⁷

66. Rules of origin provisions in treaties between the EU and third countries cannot simply be copied and pasted. In order to maintain the status quo, the Government will need to negotiate either a reduced threshold for domestic content or “diagonal cumulation” arrangements. In either case the consent of the third country will be necessary. It is difficult to imagine a scenario in which the third country would not seek concessions from the UK in return.

67. The Government should consider seeking an agreement on “diagonal cumulation” in third-country agreements with the EU and the third country concerned in each case. While the trilateral method of negotiating may in many cases be aimed pragmatically at helping the EU and UK cumulate content for the purposes of rules of origin in agreements during a transitional period, it must not be undertaken at the expense of making bilateral agreements in case there ends up being a problem trilaterally. It makes sense for the UK to organise with the third countries to count EU inputs to UK exports to those countries as cumulated, and we would hope that if pursued in the right spirit the third countries and the EU would be amenable to treating UK input content of EU exports to those countries as cumulated also, at least during the implementation period of the UK-EU agreement.

68. The Government should seek UK accession to the PEM Convention after Brexit, in order to facilitate diagonal cumulation. It should also investigate the option of seeking full cumulation arrangements with the EU / EEA (at least on a temporary basis). DIT must show that it is liaising closely with DExEU on this matter. The Government should

84 Under full cumulation, operations conferring origin on non-originating materials can take place across the entire cumulation zone—they do not need to occur within the territory of a single country, as they do in the case of diagonal cumulation. On this basis, the EEA is considered as a single territory, with the option to claim common “EEA originating status” for goods produced in the EEA. European Commission, [“The pan-Euro-Mediterranean cumulation and the PEM Convention”](#)

85 Oral evidence taken before the International Trade Committee on [1 November 2017](#), HC (2017–19) 436-ii, Qq 163–164. See also [Q 191](#).

86 [Q 197](#)

87 [Q 280](#)

publish as a matter of urgency those sectors where it expects rules of origin issues could most significantly harm UK exporters and prevent industries benefitting from tariff-free trade.

Roll-over and the Northern Ireland-Republic of Ireland border

69. In December 2017 the UK and the EU signed a joint report on “progress during phase 1 of negotiations under Article 50 TEU [Treaty on European Union] on the United Kingdom’s orderly withdrawal from the European Union”. In respect of the island of Ireland, the UK gave a commitment to:⁸⁸

[i]n the absence of agreed solutions [...] maintain full alignment with those rules of the Internal Market and Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 [Good Friday] Agreement.

70. Professor Jim Rollo and Dr Peter Holmes of the UK Trade Policy Observatory at the University of Sussex have argued that:⁸⁹

Art 49 of the joint statement [on Phase 1 of the Brexit talks] says the UK is committed to having no “hard border” [on the island of Ireland] [...] To have no customs duties to collect would seem to imply a fully comprehensive customs union (as now) with the EU covering all products including agriculture, and with a totally comprehensive common commercial policy for all partners so that all EU FTAs are replicated for the UK and adjusted to include provisions for diagonal cumulation with the UK.

71. Dr Guillaume van der Loo told us of the situation of Turkey, which faced “trade deflection via the European Union” as a result of its customs arrangement with the EU. Third countries were sometimes “a bit reluctant” to sign matching FTAs with Turkey after they had done so with the EU, as they could simply route their exports to Turkey via the EU and still benefit from preferential treatment.⁹⁰ To deal with such “trade deflection”, Turkey has introduced some origin controls to govern certain trade with the EU.⁹¹

72. It may be more difficult for the UK to keep the commitments that it has made in Phase 1 of the Brexit talks with regard to what will be the EU-UK border on the island of Ireland if it does not roll over third-party agreements as they currently apply to the UK. The Government should, therefore, take account of the implications of these Phase 1 Brexit commitments for the roll-over of third-party trade agreements. The UK’s continued participation in a customs union and the single market with the EU would be the approach least likely to risk a return to a hard border between Northern Ireland and the Republic of Ireland.

88 [“Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union”](#), 8 December 2017, para 49

89 Jim Rollo and Peter Holmes, [“Softer Brexit, Softer Irish Border?”](#), 8 December 2017

90 [Q 217](#)

91 World Bank, *Evaluation of the EU–Turkey Customs Union*, [Report No. 85830](#), March 2014, p 25

Agreements with Turkey and the EFTA States

73. In evidence to a House of Lords committee in February 2017, Lord Price indicated that rolling over EU FTAs was not necessarily a simple matter, since “[i]t is about the extent to which they are bound into EU legislation and regulation.”⁹² In the case of the EU’s agreements with Turkey, the EFTA states and European “micro-states”, these are predicated to a large extent upon acceptance of the Union’s regulatory and customs regimes. Ranked in diminishing order of the regulatory convergence involved, they are:

- The **EEA** (involving the EU and three EFTA states—Norway, Iceland and Liechtenstein), which provides access to the EU Single Market for industrial goods and services on terms close to those of EU members (as well as preferential access for agricultural goods). In exchange, the non-EU EEA members adhere to a large proportion of the *acquis communautaire* (the body of EU law), including to the free movement of people.⁹³
- The bilateral agreements with **Switzerland**, which grant that country access to the EU Single Market for industrial goods on terms comparable to those of EU members. There is only comparatively limited access in services and some preferential access for agricultural goods. In exchange, Switzerland accepts the free movement of people and approximates significant proportions of the *acquis*.⁹⁴
- The AA with **Turkey**, which features a partial customs union, enabling industrial goods to circulate freely between the EU and Turkey, and offering preferential treatment for unprocessed agricultural products.⁹⁵ In exchange, Turkey approximates the EU Single Market *acquis* in certain respects.
- The partial customs unions with the European “**micro-states**” of Andorra and San Marino. These cover all goods bar coal and steel (San Marino) and agriculture (Andorra, although such goods are exempt from duties when imported into the EU) and feature additional provisions / agreements that mandate the adoption of the EU’s food, plant and animal health *acquis*.⁹⁶

74. The Minister of State for Trade Policy, Mr Hands, was unable to comment on roll-over in respect of this group of agreements, since UK “agreements with the EEA, Switzerland, Turkey and the European microstates [...] are the responsibility of DExEU”.⁹⁷ As we have noted (see Chapter 3 above), Dr Fox had seemed to indicate to us that rolling over the EU-Switzerland agreements was a priority for his own Department.⁹⁸

92 House of Lords, Brexit: trade in goods, Sixteenth Report of the Select Committee on the European Union, Session 2016–17, [HL Paper 129](#), para 249

93 House of Lords, [Brexit: the options for trade](#), Fifth Report of the Select Committee on the European Union, Session 2016–17, [HL Paper 72](#), Box 1 (pp 19–20), paras 60, 74–75

94 Institute for Government, [Trade After Brexit: Options for the UK’s Relationship with the EU](#), December 2017, pp 21–22

95 House of Lords, [Brexit: the options for trade](#), Fifth Report of the Select Committee on the European Union, Session 2016–17, [HL Paper 72](#), Box 4 (p 29); [Q 217](#)

96 European Commission, [Obstacles to Access by Andorra, Monaco and San Marino to the EU’s Internal Market and Cooperation in Other Areas](#), [Staff Working Paper SWD\(2012\) 388 final](#), November 2012, “[San Marino: Customs Unions and preferential arrangements](#)”, European Commission

97 [Q 228](#)

98 Oral evidence taken before the International Trade Committee on [1 February 2017](#), HC (2016–17) 817-vii, Q 453

75. *The Government should consider the implications of the prospective UK-EU trade agreement for the rolling over of agreements with the EFTA states and Turkey, which currently entail close adherence to the EU's regulatory and customs regime. It should also consider the degree to which the rolled-over agreements might also entail negotiations and commitments on the free movement of people in respect of the EFTA states.*

Other implications of rolled-over agreements

76. The terms of rolled-over agreements have a range of potential implications that go well beyond considerations relating simply to ensuring the continuity of market access terms in the short term.

Most Favoured Nation clauses and trade in services

77. The EU's trade agreements largely deal with services on a relatively limited basis, only tackling specific market access restrictions. However, recent ones (such as those with Canada and South Korea) feature an "MFN clause" regarding these commitments. We heard and received evidence that such a clause provides that, where a party to an agreement subsequently offers better terms to another third country, the existing agreement must be revised to incorporate those same terms.⁹⁹ This is subject to certain exceptions. Consequently, were the agreements concerned to be rolled over with these clauses intact, the UK would be likewise bound.

78. *Given the importance attributed by the Government in its overall trade policy to trade-in-services liberalisation, it should consider the potential impact of Most Favoured Nation clauses on services in rolled-over agreements.*

Dispute resolution arrangements

The Court of Justice of the European Union

79. The Government gave a commitment in its Brexit White Paper in February 2017 to "bring an end to the jurisdiction of the CJEU [Court of Justice of the European Union] in the UK".¹⁰⁰ A small number of the EU's trade agreements contain dispute resolution provisions which involve the CJEU. We heard from trade lawyer Mr De Baere that the relevant provisions state:

that in case there is a dispute relating to the imputation of a provision of EU law, then the dispute settlement body [...], which is a state to state panel, [...] should ask a question to the European Court of Justice on the correct interpretation of European law.¹⁰¹

Investor-to-State Dispute Settlement

80. One of the most controversial elements to come out of the incomplete EU-US Transatlantic Trade and Investment Partnership (TTIP) and the completed EU-Canada

99 [Q 78](#); Sheila Page ([EUT0005](#)), British Retail Consortium ([EUT0012](#))

100 H M Government, The United Kingdom's exit from and new partnership with the European Union, [Cm 9417](#), February 2017, para 2.3

101 [Q 47](#)

CETA negotiations have been proposed provisions on investor-to-state dispute settlement (ISDS). ISDS involves independent tribunals adjudicating whether investors have been treated unfairly by host states and accordingly awarding compensation.¹⁰² An amended model of investor protection, the “Investment Court System” has been included in CETA and the EU-Vietnam FTA¹⁰³ (and the EU is also seeking similar provisions in a standalone investment agreement with Japan¹⁰⁴). The Minister of State, Mr Hands told this Committee that the UK’s position “on any sort of investment court system” was “a matter for future trade policy”.¹⁰⁵

81. *Investor-state dispute settlement or Investment Court System provisions in existing Free Trade Agreements have been controversial in the past. The Government should fully consider and explain the implications of rolling over these provisions in the agreements concerned. The appropriate time to do this may be when the Government lays a new agreement before the House under the provisions for treaty ratification in the Constitutional Reform and Governance Act 2010.*

82. *The Government must show that it has taken into account the need for all aspects of rolled-over agreements to sit coherently within the UK’s overall trade-policy architecture in the longer term.*

102 Oral evidence taken before the International Trade Committee on [25 October 2017](#), HC (2017–19) 481-i, Q 69

103 [EU-Vietnam Free Trade Agreement](#), Chapter 8, Section 3

104 European Commission, [“The EU-Japan agreement explained”](#)

105 [Q 282](#)

6 The implementation of rolled-over agreements

Powers under the Trade Bill

83. Like all treaties, trade agreements need to be separately incorporated into UK law. The UK currently implements legislation to give effect to EU trade agreements through the European Communities Act 1972. The EU (Withdrawal) Bill repeals that Act and converts EU law into UK domestic law on “exit day” as “retained EU law”. While most of the legislation implementing rolled-over EU trade agreements will be covered in this way,¹⁰⁶ the Trade Bill has been introduced to provide for implementation of non-tariff aspects of rolled-over trade agreements which do not fall within the scope of the Withdrawal Bill. The tariff-related aspects of the agreements will be covered by the Taxation (Cross-border Trade) Bill.

84. Clause 2(1) of the Trade Bill makes provision for delegated powers—meaning that Parliament, through legislation, gives the Government and devolved administrations the authority to make law, including amendments to primary legislation by means other than the passing of a new Act of Parliament. These powers are subject to a “sunset clause”, whereby they lapse five years after exit, unless Parliament agrees to extend their application.¹⁰⁷ The Trade Bill covers the implementation of trade agreements and other trade-related agreements,¹⁰⁸ which could encompass some 750 agreements.

Parliamentary scrutiny

85. The power in the Bill to make regulations uses the so-called “negative procedure”, meaning that any statutory instrument passed under this provision will automatically become law without debate, unless there is an objection raised in either House of Parliament (and then only if time is given to debate that objection),¹⁰⁹ and cannot be amended, only annulled in its entirety.¹¹⁰

86. The Government argues that use of the negative procedure is warranted because this is “uncharted territory” and it is seeking “flexibility, transparency and efficiency”.¹¹¹ In addition, it notes that the number and complexity of the EU’s trade agreements requires the scope of the powers to be drawn widely.¹¹²

87. We heard from Professor Derrick Wyatt, QC from Brick Court Chambers how Clause 2(1) of the Trade Bill does not limit the extent to which any new UK-third country

106 [Explanatory Notes to the Trade Bill](#) [Bill 122 (2017–19) – EN], para 41

107 [The Trade Bill](#), Briefing Paper 8073, House of Commons Library, January 2018, pp 26–28, 37–38

108 Trade Bill Committee, 23 January 2018, [col 43](#)

109 Parliamentary Glossary, [“Negative procedure”](#)

110 This can be compared to the “affirmative procedure”, in which an instrument is subject to a yes/no vote in the House of Commons Chamber.

111 [Delegated Powers Memorandum to the Trade Bill](#) [Bill 122 (2017–19) – EN], para 53

112 [Delegated Powers Memorandum to the Trade Bill](#) [Bill 122 (2017–19) – EN], para 54

agreements can depart from existing EU trade agreements signed prior to exit day in the roll-over process.¹¹³ He therefore suggested limiting the powers contained in the Bill to “18 months from Brexit, and thereafter to require an affirmative resolution”.¹¹⁴

88. The Minister of State for Trade Policy, Mr Hands, told us that that the process contained in the Trade Bill “would not apply to a brand new trade deal or a deal that revises, in a substantive way, what we have at the moment”, for which there would be “ratification processes that we will be bringing forward in due course”.¹¹⁵

Role of devolved administrations

89. Schedule 1 of the Trade Bill places certain restrictions on the powers of devolved authorities to exercise the delegated powers granted in Clause 2 (1) outside of their devolved competences and in areas where they would normally seek UK Government consent or legislate jointly. It also restricts their “power to modify retained direct EU legislation” and requires them to seek consent from the UK Government where powers are executed before exit day and involve negotiations over “quota arrangements” (see Chapter 5 above on Tariff Rate Quotas).¹¹⁶

90. Mr Dearden told us that, under the Trade Bill, the devolved administrations would have “no power to stop” trade deals that dealt with issues falling within devolved competence.¹¹⁷ Prof Wyatt, meanwhile, argued that, when it came to UK trade policy-making, the “appropriate avenue for the devolved Administrations would be direct consultations with central Government”, including “close participation in the negotiation process”.¹¹⁸

91. ***Our evidence strongly suggests that substantive changes will be necessary when EU trade agreements are rolled over. The Government should set out provisions for both more extensive parliamentary scrutiny and enhanced involvement by the devolved administrations in situations where such changes do occur, particularly in the light of the fact that each of the four nations of the UK may differ in their priorities for trade deals. We look forward to reading the proposals for a new ratification process for trade agreements to which the Minister of State for Trade Policy referred in his evidence, and expect to be consulted formally on those proposals while they are in draft.***

113 Oral evidence taken before the International Trade Committee on [29 November 2017](#), HC (2017–19) 603-i, Q 67

114 Oral evidence taken before the International Trade Committee on [29 November 2017](#), HC (2017–19) 603-i, Q 74

115 [Q 285](#)

116 [Explanatory Notes to the Trade Bill](#) [Bill 122 (2017–19) – EN], paras 84–91

117 Oral evidence taken before the International Trade Committee on [29 November 2017](#), HC (2017–19) 603-i, Q 68

118 Oral evidence taken before the International Trade Committee on [29 November 2017](#), HC (2017–19) 603-i, Q 70

7 A cross-government approach

Other trade-related agreements

92. As noted in Chapter 2 above, there are reported to be some 750 trade-related agreements to which the EU is a party, of which only a small proportion are actual trade agreements. In November 2017, Dr Fox told us:¹¹⁹

the Department for Exiting the European Union is leading cross-Government work to assess and act on the international agreements for which, as a result of the UK's exit from the EU, there will need to be arrangements to ensure continuity for business and individuals.

DIT was:

focusing on the transition of trade-related agreements as part of this work, ranging from Free Trade Agreements, to Economic Partnership Agreements with developing countries, and sector-specific agreements such as Mutual Recognition Agreements.

93. When we asked Lord Price about rolling over trade-related agreements that are not trade agreements, he told us:¹²⁰

DExEU needs to answer that principally. Within the Department for International Trade, we were aware of the things that applied to that Department and needed to be addressed, so I am afraid I would not know.

Roll-over and UK-EU relations

94. **The roll-over of EU trade agreements is closely entwined with UK-EU trade relations and negotiations, touching upon several of DExEU's areas of responsibility. Relevant cross-departmental issues in this respect include:**

- possible “trilateral” negotiations between the UK, EU and relevant third parties on both the splitting of TRQs in existing agreements and crafting rules of origin that allow for “diagonal cumulation” (see Chapter 5 above);
- the future UK-EU trade agreement and its provisions on regulation (including the freedom of movement of people) and customs, which have implications for the agreements with Turkey and the EFTA states (see Chapter 5 above);
- future UK-EU trade-in-services negotiations, which may be affected by MFN clauses in rolled-over agreements¹²¹ (see Chapter 6 above);
- ensuring the UK continues to benefit from EU agreements during the post-Brexit transition / implementation period, which may require negotiations with the EU on the so-called “Guernsey model” (see Chapter 4 above);
- the need as part of planning for any eventuality to seek bilateral exchange of letters with the EU's FTA partners to extend the rights and obligations of the EU as under those agreements to the UK until they can be revisited;

119 [Letter from Rt Hon Dr Liam Fox MP to Angus Brendan MacNeil MP, 22 November 2017](#)

120 [Q 204](#)

121 [Q 78](#)

- **UK Government commitments during Phase 1 of the Brexit talks regarding the border on the island of Ireland** (see Chapter 5 above); and
- **the role, if any, of the jurisdiction of the CJEU in rolled over agreements** (see Chapter 6 above).

95. In addition to DExEU, roll-over may also affect competences of the Ministry of Justice (on the jurisdiction of the CJEU) and the Home Office (regarding freedom of movement of people).

Other departments and devolved administrations

96. The rolling over of trade agreements with broad effects across policy areas also has implications for cross-departmental coordination. The National Farmers' Union argued in written evidence that "an agricultural policy that promotes high levels of animal health and welfare can only deliver if the trade policy ensures that imported products reach equivalent standards and promotes our produce abroad".¹²² Given the relative importance of agriculture in the devolved nations, this also raises the question of involving their administrations in the roll over process. Submissions to the inquiry from the Agriculture and Horticulture Development Board and Wine and Spirit Association respectively argued that the UK Government should "examine exactly how each of these treaties affects the devolved administrations"¹²³ and "consult with" them.¹²⁴ This is likely to be particularly significant in respect of TRQs (see Chapter 5), where the Trade Bill requires devolved administrations to seek consent from the UK Government when it comes to legislating the implementation of rolled over agreements (see Chapter 7).

97. In the case of Economic Partnership Agreements, we heard from Dr Gammage, of Bristol University, that these are "trade and development co-operation agreements" with a "financial package that goes with the trade concession".¹²⁵ The Minister of State for Trade Policy told us that "the lead on economic partnership is taken jointly by DIT and [the Department for International Development]".¹²⁶ The Minister also told us that "Association agreements have a political element and are led on by the FCO".¹²⁷

98. *The Government must show what it is doing to foster a cross-departmental approach to the issue of rolling over trade, and other trade-related, agreements and to involve fully the devolved administrations. In particular, it must show how DIT and DExEU are working together in this regard and, in particular, clarify their respective roles as regards rolling over trade-related agreements other than trade agreements. In particular also, it must demonstrate how the trade negotiating expertise in DIT is actually and actively being used by the negotiating teams in Number 10, DExEU and the UK Permanent Representation to the EU.*

99. *In respect of these agreements, just as with trade agreements, a comprehensive "risk register" is urgently needed.*

122 National Farmers' Union ([EUT007](#))

123 Agriculture and Horticulture Development Board ([EUT0004](#))

124 Wine and Spirit Association ([EUT0002](#))

125 [Q 133](#)

126 [Q 228](#)

127 [Q 228](#)

Conclusions and recommendations

EU trade-related agreements

1. The Government is right to seek to ensure the continuation after Brexit of the effects of the EU's trade and other trade-related agreements, at least in the short term. If this continuation does not occur, there is likely to be an economic price to pay. (Paragraph 21)
2. *Regarding those agreements which promote development goals, notwithstanding the criticisms that have been made of them as they presently stand, the valuable preferential access to UK markets which they provide for developing countries must not be allowed to lapse at the point of Brexit. The Government should bring forward proposals for a mechanism whereby rolled-over Economic Partnership Agreements will be subject to review in respect of issues such as Most Favoured Nation clauses, rules of origin, requirements for economic liberalisation, and sanitary and phytosanitary measures, with a view to potential renegotiation in due course.* (Paragraph 22)
3. *With this in mind, there is an urgent need for clarity over the number, type, scope, extent and importance of the EU's trade-related agreements. The Government must reassure us that it has a firm grasp of precisely which agreements will cease to have effect in respect of the UK at the point of Brexit if no action is taken, and what the consequences of that would be.* (Paragraph 23)

The Government's approach to rolling over EU trade agreements

4. DIT is to be commended for identifying this issue quickly and designating it as the Department's second-highest priority. DIT also deserves praise for making contact so quickly, and at ministerial level, with over 70 third-country parties to EU trade agreements. (Paragraph 32)
5. *However, there is a disturbing lack of precision and clarity about the legal mechanism whereby the Government envisages EU trade agreements with some 70 countries being rolled over. DIT must show, Number 10 and the Cabinet Office must support, and DExEU must allow, that DIT has a legally watertight and practically viable strategy for achieving "transitional adoption" at the point when it will need to take effect, so that UK trade with around 70 countries does not face a "cliff edge", even if no withdrawal or transition arrangements with the EU should have been agreed or ratified.* (Paragraph 33)
6. *The Government must treat the roll-over of EU trade agreements as an urgent priority. UK businesses, consumers and investors, as well as developing countries benefitting from EU trade agreements, all need certainty about future trade arrangements. DIT should publish a detailed timetable for this work, and this should be explicitly backed by Number 10 and the Cabinet Office.* (Paragraph 34)
7. *The Government should produce a 'risk register', identifying clearly the agreements to be rolled over, with an assessment of how important each agreement is to UK*

trade. If resources allow within the time given, this should be compiled in consultation with Parliament, businesses and civil society. If resources do not allow for this, the Government should reassure us that this register exists internally. (Paragraph 35)

8. *The Government would risk appearing naïve if it assumed that assent-in-principle to roll over an agreement constitutes a guarantee that roll-over is actually certain to occur at the point of Brexit. It must be realistic about the steps that are necessary to get new agreements in place—and have contingency plans for the eventuality that the third countries concerned change their minds. This must include the pursuit of bilateral arrangements with each party with whom the UK currently has arrangements by virtue of its membership of the EU. (Paragraph 36)*

Post-Brexit “implementation” period

9. *We cautiously welcome the Government’s new policy to seek agreement of all parties to interpret relevant terms of EU free trade agreements, such as “European Union” or “EU Member State”, to include the UK during transition, while continuing to seek to roll over those agreements. While we welcome the Government’s willingness in this respect to be pragmatic, it is difficult not to see this as an admission that its policy of negotiating new agreements by March 2019 might not be achieved and may be failing. We seek urgent reassurance that the Government is allocating appropriate resources not only to this objective but to all its policy objectives, including the bilateral strand of negotiating these agreements, and that it is being realistic about how achievable those objectives are. The Government should write to this Committee setting out why it might not achieve and may be failing to achieve this policy objective in the time it originally set, and how it will change its future plans on these and other trade agreements to take account of the lessons learnt. If the EU’s agreement to the treating of the UK as a de facto EU territory for the purposes of the transition period is not agreed at the March 2018 EU Council meeting, the Government should publish a statement setting out its alternative approach for achieving continuity. (Paragraph 42)*
10. *In addition, it is still far from clear that it will be possible to secure continued application of EU trade agreements during the post-Brexit transition period. The Government must urgently clarify the nature and form of the trilateral (UK-EU-third country) agreements whereby it is intended that the UK will remain a de facto party to the EU’s trade agreements during a transition period. It must also evaluate and set out the potential risks and benefits attached to this approach. (Paragraph 43)*
11. *Meanwhile, the Government must still address the issues that we have raised in respect of its pursuit of “transitional adoption” and act on the assumption that this could still need to be in place at the point of Brexit in March 2019. Even if the new approach does prove successful, it will only buy the Government a limited amount of extra time in which to achieve roll-over and it would still need to redouble its efforts in that respect. (Paragraph 44)*

The terms of rolled-over trade agreements

12. *The Government should work with the EU to arrive at a consistent solution to the problem of dividing Tariff Rate Quotas in rolled-over agreements, just as it already*

has in respect of establishing separate UK schedules at the World Trade Organization. The Government should set out its approach to overcoming the objections made to its TRQ proposals at the WTO. (Paragraph 53)

13. Rules of origin provisions in treaties between the EU and third countries cannot simply be copied and pasted. In order to maintain the status quo, the Government will need to negotiate either a reduced threshold for domestic content or “diagonal cumulation” arrangements. In either case the consent of the third country will be necessary. It is difficult to imagine a scenario in which the third country would not seek concessions from the UK in return. (Paragraph 66)
14. *The Government should consider seeking an agreement on “diagonal cumulation” in third-country agreements with the EU and the third country concerned in each case. While the trilateral method of negotiating may in many cases be aimed pragmatically at helping the EU and UK cumulate content for the purposes of rules of origin in agreements during a transitional period, it must not be undertaken at the expense of making bilateral agreements in case there ends up being a problem trilaterally. It makes sense for the UK to organise with the third countries to count EU inputs to UK exports to those countries as cumulated, and we would hope that if pursued in the right spirit the third countries and the EU would be amenable to treating UK input content of EU exports to those countries as cumulated also, at least during the implementation period of the UK-EU agreement. (Paragraph 67)*
15. *The Government should seek UK accession to the PEM Convention after Brexit, in order to facilitate diagonal cumulation. It should also investigate the option of seeking full cumulation arrangements with the EU / EEA (at least on a temporary basis). DIT must show that it is liaising closely with DExEU on this matter. The Government should publish as a matter of urgency those sectors where it expects rules of origin issues could most significantly harm UK exporters and prevent industries benefitting from tariff-free trade. (Paragraph 68)*
16. It may be more difficult for the UK to keep the commitments that it has made in Phase 1 of the Brexit talks with regard to what will be the EU-UK border on the island of Ireland if it does not roll over third-party agreements as they currently apply to the UK. *The Government should, therefore, take account of the implications of these Phase 1 Brexit commitments for the roll-over of third-party trade agreements. The UK’s continued participation in a customs union and the single market with the EU would be the approach least likely to risk a return to a hard border between Northern Ireland and the Republic of Ireland. (Paragraph 72)*
17. *The Government should consider the implications of the prospective UK-EU trade agreement for the rolling over of agreements with the EFTA states and Turkey, which currently entail close adherence to the EU’s regulatory and customs regime. It should also consider the degree to which the rolled-over agreements might also entail negotiations and commitments on the free movement of people in respect of the EFTA states. (Paragraph 75)*
18. *Given the importance attributed by the Government in its overall trade policy to trade-in-services liberalisation, it should consider the potential impact of Most Favoured Nation clauses on services in rolled-over agreements. (Paragraph 78)*

19. *Investor-state dispute settlement or Investment Court System provisions in existing Free Trade Agreements have been controversial in the past. The Government should fully consider and explain the implications of rolling over these provisions in the agreements concerned. The appropriate time to do this may be when the Government lays a new agreement before the House under the provisions for treaty ratification in the Constitutional Reform and Governance Act 2010. (Paragraph 81)*
20. *The Government must show that it has taken into account the need for all aspects of rolled-over agreements to sit coherently within the UK's overall trade-policy architecture in the longer term. (Paragraph 82)*

The implementation of rolled-over agreements

21. *Our evidence strongly suggests that substantive changes will be necessary when EU trade agreements are rolled over. The Government should set out provisions for both more extensive parliamentary scrutiny and enhanced involvement by the devolved administrations in situations where such changes do occur, particularly in the light of the fact that each of the four nations of the UK may differ in their priorities for trade deals. We look forward to reading the proposals for a new ratification process for trade agreements to which the Minister of State for Trade Policy referred in his evidence, and expect to be consulted formally on those proposals while they are in draft. (Paragraph 92)*

A cross-government approach

22. The roll-over of EU trade agreements is closely entwined with UK-EU trade relations and negotiations, touching upon several of DExEU's areas of responsibility. Relevant cross-departmental issues in this respect include:
 - possible "trilateral" negotiations between the UK, EU and relevant third parties on both the splitting of TRQs in existing agreements and crafting rules of origin that allow for "diagonal cumulation";
 - the future UK-EU trade agreement and its provisions on regulation (including the freedom of movement of people) and customs, which have implications for the agreements with Turkey and the EFTA states
 - future UK-EU trade-in-services negotiations, which may be affected by MFN clauses in rolled-over agreements
 - ensuring the UK continues to benefit from EU agreements during the post-Brexit transition / implementation period, which may require negotiations with the EU on the so-called "Guernsey model"
 - the need as part of planning for any eventuality to seek bilateral exchange of letters with the EU's FTA partners to extend the rights and obligations of the EU as under those agreements to the UK until they can be revisited;
 - UK Government commitments during Phase 1 of the Brexit talks regarding the border on the island of Ireland; and

- the role, if any, of the jurisdiction of the CJEU in rolled over agreements. (Paragraph 94)
23. *The Government must show what it is doing to foster a cross-departmental approach to the issue of rolling over trade, and other trade-related, agreements and to involve fully the devolved administrations. In particular, it must show how DIT and DExEU are working together in this regard and, in particular, clarify their respective roles as regards rolling over trade-related agreements other than trade agreements. In particular also, it must demonstrate how the trade negotiating expertise in DIT is actually and actively being used by the negotiating teams in Number 10, DExEU and the UK Permanent Representation to the EU. (Paragraph 98)*
 24. *In respect of these agreements, just as with trade agreements, a comprehensive “risk register” is urgently needed. (Paragraph 99)*

Annex 1: Current EU Trade Agreements

Partner(s)	Type of agreement(s)	Status (and date of latest change)	Percentage of UK exports	Coverage					
				Industrial goods		Agricultural goods*		Services	
				Customs duties	Conformity assessment	Customs duties	Alignment on veterinary matters	Market access	Regulatory alignment
Albania	Stabilisation and Association Agreement	In force (2009)	Goods: <0.01% Services: <0.01%	✓	✓ (conditional on approximation with EU acquis)	✓	✓ (conditional on approximation with EU acquis)	✓	
Algeria	Association Agreement	In force (2002)	N/A	✓	✓ (conditional on approximation with EU acquis)	✓		✓	
Andorra	Customs union agreement	In force (1991)	N/A	✓		✓ (not in customs union— unilateral exemption for Andorran goods)	✓		
Bosnia and Herzegovina	Stabilisation and Association Agreement	In force (2015)	N/A	✓	✓ (conditional on approximation with EU acquis)	✓	✓ (conditional on approximation with EU acquis)	✓	
Cameroon	(Interim) Economic Partnership Agreement	Provisionally applied (2014)	N/A	✓		✓			
Canada	Comprehensive Economic and Trade Agreement (CETA)	Provisionally applied (2017)	Goods: 1.41% Services: 1.46%	✓	✓	✓		✓	

Partner(s)	Type of agreement(s)	Status (and date of latest change)	Percentage of UK exports	Coverage					
				Industrial goods		Agricultural goods*		Services	
				Customs duties	Conformity assessment	Customs duties	Alignment on veterinary matters	Market access	Regulatory alignment
Caribbean Forum (CARIFORUM – the members of the Caribbean Community and the Dominican Republic)	Economic Partnership Agreement	Provisionally applied (2009)	N/A	✓		✓		✓	
Central America	Association Agreement	Provisionally applied (2013)	Goods: 0.34% Services: 1.28%	✓		✓		✓	
Chile	Association Agreement	In force (2013)	Goods: 0.16% Services: 0.27%	✓		✓		✓	
Colombia, Peru and Ecuador	Free Trade Agreement	Provisionally applied (2013, Colombia and Peru) Protocol of accession signed with Ecuador (2016)	Goods (just Colombia): 0.23% Services (just Colombia): 0.11%	✓		✓		✓	

Partner(s)	Type of agreement(s)	Status (and date of latest change)	Percentage of UK exports	Coverage					
				Industrial goods		Agricultural goods*		Services	
				Customs duties	Conformity assessment	Customs duties	Alignment on veterinary matters	Market access	Regulatory alignment
Côte d'Ivoire	(Stepping Stone) Economic Partnership Agreement	Provisionally applied (2016) To be superseded by West Africa EPA	N/A	✓		✓			
East African Community	Economic Partnership Agreement	Initialled (2014)	N/A	✓		✓			
Egypt	Association Agreement	In force (2004)	Goods: 0.37% Services: 0.30%	✓	✓ (conditional on approximation with EU acquis)	✓			
Faroe Islands	Free Trade Agreement	In force (1997)	N/A	✓		✓ (largely fisheries products)	✓		
Former Yugoslav Republic of Macedonia	Stabilisation and Association Agreement	In force (2016)	N/A	✓	✓ (conditional on approximation with EU acquis)	✓	✓ (conditional on approximation with EU acquis)	✓	

Partner(s)	Type of agreement(s)	Status (and date of latest change)	Percentage of UK exports	Coverage					
				Industrial goods		Agricultural goods*		Services	
				Customs duties	Conformity assessment	Customs duties	Alignment on veterinary matters	Market access	Regulatory alignment
Georgia	Deep and Comprehensive Free Trade Agreement (part of an Association Agreement)	In force (2016)	N/A	✓	✓ (conditional on approximation with EU acquis)	✓	✓ (conditional on approximation with EU acquis)	✓	✓ (some sectors, conditional on approximation with EU acquis)
Ghana	(Stepping Stone) Economic Partnership Agreement	Provisionally applied (2016) To be superseded by West Africa EPA	N/A	✓		✓			
Israel	Association Agreement	In force (2000)	Goods: 0.40% Services: 0.42%	✓	✓ (covering pharmaceuticals)	✓			
Japan	Free Trade Agreement (but referred to as an Economic Partnership Agreement)	Initialled (2017)	Goods: 1.60% Services: 2.62%	✓	✓ (trade agreement covers some limited harmonisation) ‡	✓		✓	
Jordan	Association Agreement	In force (2002)	N/A	✓	✓ (conditional on approximation with EU acquis)	✓		✓	

Partner(s)	Type of agreement(s)	Status (and date of latest change)	Percentage of UK exports	Coverage					
				Industrial goods		Agricultural goods*		Services	
				Customs duties	Conformity assessment	Customs duties	Alignment on veterinary matters	Market access	Regulatory alignment
Kosovo	Stabilisation and Association Agreement	In force (2016)	N/A	✓	✓ (conditional on approximation with EU acquis)	✓	✓ (conditional on approximation with EU acquis)	✓	
Lebanon	Association Agreement	In force (2003)	N/A	✓	✓ (conditional on approximation with EU acquis)	✓			
Madagascar, Mauritius, the Seychelles and Zimbabwe	Economic Partnership Agreement	Provisionally applied (2012)	N/A	✓		✓			
Mexico	Free Trade Agreement	In force (2000)	Goods: 0.47% Services: 0.27%	✓		✓		✓	
Moldova	Deep and Comprehensive Trade Agreement (part of an Association Agreement)	In force (2016)	N/A	✓	✓ (conditional on approximation with EU acquis)	✓	✓ (conditional on approximation with EU acquis)	✓	✓ (some sectors, conditional on approximation with EU acquis) on approximation with EU acquis) on approximation with EU acquis)
Montenegro	Stabilisation and Association Agreement	In force (2010)	Goods: <0.01% Services: 0.01%	✓	✓ (conditional on approximation with EU acquis)	✓	✓ (conditional on approximation with EU acquis)	✓	

Partner(s)	Type of agreement(s)	Status (and date of latest change)	Percentage of UK exports	Coverage					
				Industrial goods		Agricultural goods*		Services	
				Customs duties	Conformity assessment	Customs duties	Alignment on veterinary matters	Market access	Regulatory alignment
Morocco	Association Agreement	In force (2000)	Goods: 0.18% Services: 0.15%	✓	✓ (conditional on approximation with EU acquis)	✓			
Norway, Iceland, Liechtenstein	European Economic Area Agreement	In force (1994)	Goods: 1.31% Services: 1.16% (excluding Liechtenstein)	✓	✓ (full alignment with EU Single Market acquis)	Largely processed agriculture	✓	✓	✓
Palestinian Authority	Association Agreement	In force (1997)	N/A	✓	✓ (conditional on approximation with EU acquis)	✓			
Papua New Guinea and Fiji	(Interim) Economic Partnership Agreement	Provisionally applied (2014)	N/A	✓		✓			
Republic of Korea	Free Trade Agreement	In force (2015)	Goods: 1.74% Services: 0.28%	✓	(but limited harmonisation)	✓		✓	
San Marino	Customs union agreement	In force (1992)	N/A	✓		✓	✓		
Serbia	Stabilisation and Association Agreement	In force (2013)	Goods: 0.05% Services: 0.04%	✓	✓ (conditional on approximation with EU acquis)	✓	✓ (conditional on approximation with EU acquis)	✓	
Singapore	Free Trade Agreement	Initialled (2014)	Goods: 1.38% Services: 1.73%	✓	✓ (includes also limited harmonisation)	✓		✓	

Partner(s)	Type of agreement(s)	Status (and date of latest change)	Percentage of UK exports	Coverage					
				Industrial goods		Agricultural goods*		Services	
				Customs duties	Conformity assessment	Customs duties	Alignment on veterinary matters	Market access	Regulatory alignment
Southern African Development Community	Economic Partnership Agreement	Provisionally applied (2016)	Goods (just South Africa): 0.81% Services (just South Africa): 0.78%	✓		✓			
Switzerland	Free Trade Agreement and Bilateral Agreements†	In force (1973)	Goods: 2.85% Services: 5.15%	✓	✓	✓ (largely processed agriculture)	✓	✓ (only insurance)	✓ (only air and overland transport)
Tunisia	Association Agreement	In force (1998)	N/A	✓	✓ (conditional on approximation with EU acquis)	✓			
Turkey	Association and Customs Union Agreement (with separate agreements also covering coal and steel and agricultural products)	In force (1995)	Goods: 1.26% Services: 0.55%	✓	✓ (full alignment with EU acquis in Technical BT, competition policy and intellectual property rights)	✓ (unprocessed agricultural products not part of the customs union agreement)			
Ukraine	Deep and Comprehensive Free Trade Agreement (part of an Association Agreement)	Provisionally applied (2016)	Goods: 0.10% Services: 0.04%	✓	✓ (conditional on approximation with EU acquis)	✓	✓ (conditional on approximation with EU acquis)	✓	✓ (some sectors, conditional on approximation with EU acquis)

Partner(s)	Type of agreement(s)	Status (and date of latest change)	Percentage of UK exports	Coverage					
				Industrial goods		Agricultural goods*		Services	
				Customs duties	Conformity assessment	Customs duties	Alignment on veterinary matters	Market access	Regulatory alignment
Vietnam	Free Trade Agreement	Initialled (2016)	N/A	✓	✓ (includes also some limited harmonisation)	✓		✓	
West Africa (members of the Economic Community of West African States)	Economic Partnership Agreement	Initialled (2014)	N/A	✓		✓			

Sources: Notes: [European Commission](#), the texts of various agreements, [Office for National Statistics](#)

* With the exception of the Economic Partnership Agreements with African, Caribbean and Pacific countries, and the partial customs union with San Marino, no trade agreement offers duty – and quota-free access to the EU market for agricultural products.

† Switzerland's trade relationship with the EU is governed by a Free Trade Agreement and numerous other sectoral- or issue-specific bilateral agreements. This table reflects these as well.

‡ Mutual recognition of conformity assessment is already covered by another EU-Japan agreement.

Annex 2: UK Trade Working Groups

Trade partner	Type of working group set up by DIT with third country	Current status of EU trade relationship with third country
Andean Community (Peru, Colombia, Ecuador)	Informal Trade Dialogue	EU FTA provisionally applied with Peru from 1 March 2013, Colombia from 1 August 2013 and Ecuador from 1 January 2017
Australia	Trade Working Group	EU Commission proposed negotiating directives finalised in September 2017; actual negotiations will be launched once Council adopts negotiating directives
Canada	Trade Working Group	CETA provisionally applied from 21 September 2017
China	Trade Working Group	EU Investment Agreement negotiations ongoing
Cooperation Council for the Arab States of the Gulf (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates)	Trade and Investment Working Group	EU FTA negotiations suspended
India	Joint Working Group on Trade and Investment	EU FTA negotiations ongoing
Israel	Trade Working Group	EU-Israel Association Agreement in force since June 2000
Japan	Trade and Investment Working Group	Conclusion of final EU EPA discussions announced by EU Trade Commissioner and Japanese Foreign Minister on 8 December 2017; agreement being prepared for final Council Decisions on signature and conclusion
Mexico	Informal Working Group	EU Global Agreement in force since 2000; negotiations with the EU underway to modernise the agreement
New Zealand	Trade Policy Dialogue	EU Commission proposed negotiating directives finalised in September 2017; actual negotiations will be launched once Council adopts negotiating directives
Norway	Trade Policy Dialogue	EEA member
South Korea	Trade Working Group	EU FTA in force since December 2015
Turkey	Trade Working Group	Customs Union Agreement with EU in force since 31 December 1995; Commission proposal to modernise agreement is currently being discussed in Council
USA	Trade Working Group	EU FTA negotiations, regarding Transatlantic Trade and Investment Partnership, in abeyance

Source: Department for International Trade

Formal Minutes

Wednesday 28 February 2018

Members present

Angus Brendan MacNeil, in the Chair

Mr Marcus Fysh	Catherine West
Mr Chris Leslie	Matt Western
Stephanie Peacock	

Draft Report (*Continuing application of EU trade agreements after Brexit*) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 71 read and agreed to.

Paragraph 72 read.

Amendment proposed, to add at end “The UK’s continued participation in a customs union and the single market with the EU would be the approach least likely to risk a return to a hard border between Northern Ireland and the Republic of Ireland.”– (Mr Chris Leslie)

Question put, That the amendment be made.

The Committee divided.

Ayes	Noes
Mr Chris Leslie	Mr Marcus Fysh
Stephanie Peacock	
Catherine West	
Matt Western	

Question accordingly agreed to. Paragraph 72 agreed to. Paragraphs 73 to 99 read and agreed to.

Summary agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 13.

[Adjourned till Wednesday 7 March at 9.45 a.m]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 15 November 2017

Philippe De Baere, International Trade Lawyer, Van Bael & Bellis, and **Andrew Hood**, Barrister and EU Law Expert, Dechert [Q1–52](#)

Dr Michael Gasiorek, Economist, UK Trade Policy Observatory, University of Sussex [Q53–84](#)

Wednesday 6 December 2017

Professor Andreas Dür, Professor of International Politics, University of Salzburg, and **Hosuk Lee-Makiyama**, Director, European Centre for International Political Economy, Brussels [Q85–123](#)

Dr Peg Murray-Evans, Lecturer in Politics, University of York, and **Dr Clair Gammage**, Lecturer in Law, University of Bristol [Q124–149](#)

Wednesday 10 January 2018

Lord Hannay of Chiswick GCMG, former UK Ambassador to the EEC and UN, and **Lord Price CVO**, former Minister of State for Trade Policy [Q150–206](#)

Wednesday 24 January 2018

Guillaume Van der Loo, researcher at the Ghent European Law Institute (GELI), **Steven Blockmans**, senior research fellow and head of EU Foreign Policy Unit, Centre for European Policy Studies, and **Silvia Merler**, affiliate fellow at Bruegel. Brussels [Q207–226](#)

Rt Hon. Greg Hands MP, Minister of State for Trade Policy, Department for International Trade [Q227–286](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

EUT numbers are generated by the evidence processing system and so may not be complete.

- 1 Agriculture and Horticulture Development Board ([EUT0004](#))
- 2 American Chamber of Commerce to the EU (AmCham EU) ([EUT0008](#))
- 3 British Retail Consortium ([EUT0012](#))
- 4 DAIRY UK ([EUT0010](#))
- 5 Dr Joris Larik ([EUT0020](#))
- 6 Dr Stephen Hurt ([EUT0003](#))
- 7 Durham University ([EUT0018](#))
- 8 Fairtrade Foundation ([EUT0017](#))
- 9 Food and Drink Federation ([EUT0011](#))
- 10 Investment Association ([EUT0014](#))
- 11 National Farmers' Union ([EUT0007](#))
- 12 National Pig Association ([EUT0013](#))
- 13 Newcastle University ([EUT0006](#))
- 14 Pact - Producers Alliance for Cinema and TV ([EUT0016](#))
- 15 Sheila Page ([EUT0005](#))
- 16 Tate & Lyle Sugars ([EUT0015](#))
- 17 The Law Society ([EUT0019](#))
- 18 Traidcraft ([EUT0001](#))
- 19 UK Trade Policy Observatory ([EUT0009](#))
- 20 Wine & Spirit Trade Association ([EUT0002](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

Session 2017–19

First Special Report	UK trade options beyond 2019: Government Response to the Committee's First Report of Session 2016–17	HC 585
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