



HOUSE OF LORDS

European Union Committee

31st Report of Session 2017–19

Scrutiny of international agreements

Treaties considered on 26 February 2019

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The European Union Committee

The European Union Committee is appointed each session “to scrutinise documents deposited in the House by a Minister, and other matters relating to the European Union”.

In practice this means that the Select Committee, along with its Sub-Committees, scrutinises the UK Government’s policies and actions in respect of the EU; considers and seeks to influence the development of policies and draft laws proposed by the EU institutions; and more generally represents the House of Lords in its dealings with the EU institutions and other Member States.

On 14 January 2019 the Procedure Committee decided that the European Union Committee should, until the end of the 2017–19 session of Parliament, be responsible for scrutinising Brexit-related treaties or international agreements.

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SUMMARY

This is the European Union Committee's fourth report on Brexit-related treaties, or international agreements, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (the CRAG Act).

This report addresses twelve agreements, which we considered at our meeting on 26 February. Three of these agreements are trade agreements, and in Chapter 1 we raise four issues of concern that have arisen in respect of all three agreements: the economic scale of the agreements, and its implications for the Government's wider programme of rolling over existing EU trade agreements; the Government's use of 'short form' agreements; the arrangements for scrutinising future modifications of these agreements; and the adequacy of the Government's consultation on these agreements, in particular with the devolved administrations.

We draw special attention to the three trade agreements, on the grounds that in each case they are politically and legally important, giving rise to issues of public policy that the House may wish to debate prior to ratification; and that further consultation, including with the devolved administrations, would be appropriate. The agreements are as follows:

- Agreement establishing an Economic Partnership Agreement between the Eastern and Southern Africa States and the United Kingdom of Great Britain and Northern Ireland [CP 31]
- Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark in respect of the Faroe Islands [CP 32]
- Agreement establishing an Association between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile [CP 35]

We also draw special attention to the agreements reached with the Eastern and Southern Africa States and with the Faroe Islands on the grounds that the supporting explanatory material provides insufficient information on their policy objectives and on how they will be implemented.

We report the following nine agreements for information:

- Agreement between the United Kingdom of Great Britain and Northern Ireland and the United States of America on the Mutual Recognition of certain distilled Spirits/Spirit Drinks [CP 34]
- Agreement between the United Kingdom of Great Britain and Northern Ireland and the United States of America on Trade in Wine [CP 36]
- Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing [CP 41]
- Agreement for the Establishment of the Indian Ocean Tuna Commission [CP 42]
- Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries [CP 43]
- Convention for the Conservation of Salmon in the North Atlantic Ocean [CP 44]

- Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas [CP 45]
- International Convention for the Conservation of Atlantic Tunas [CP 46]
- Convention on Cooperation in the Northwest Atlantic Fisheries [CP 47]

Scrutiny of international agreements: treaties considered on 26 February 2019

CHAPTER 1: INTRODUCTION

1. This report considers twelve international agreements, including three ‘rolled over’ trade agreements.¹ These are the first Brexit-related trade agreements to be laid before Parliament, and in this chapter we make some general comments on the Government’s programme of roll-over trade agreements, and the issues it has thrown up.

The scale and sequencing of the agreements under consideration

2. In a letter to the Secretary of State for Exiting the EU, dated 6 February,² we asked for an explanation of the sequencing of the agreements signed by the UK Government and other parties, noting that there could be trade-offs in rolling over specific agreements ahead of the commencement of wider, bilateral, negotiations with third parties post-Brexit.
3. The three trade agreements considered in this report cover UK trade with Chile, the Faroe Islands, and the Eastern and Southern Africa States. According to the reports prepared by the Department for International Trade, which accompany the agreements, they account for less than 0.3% of total UK trade.³ While agreements with Switzerland, Israel and the Palestinian Authority have been laid before Parliament, there is little sign that the Government will be able to ‘roll over’ the majority of EU trade agreements, including those with major economies such as Japan and South Korea, in time for a potential ‘no deal’ exit on 29 March 2019.⁴ This begs the question of whether these larger economies are reluctant to replicate in their agreements with the UK the terms that they have previously agreed with the EU.
4. While the UK trades extensively with countries with which the EU has not concluded free trade agreements (including the United States), we emphasise the importance of providing for continuity of the terms of trade where such agreements are currently in force. Moreover, in the absence of a Withdrawal

1 Of the three agreements considered in this report, one (the agreement with the Faroe Islands) is described as a ‘free trade agreement’; the ESA and Chile agreements are described as an ‘economic partnership agreement’ and an ‘association agreement’ respectively. The term ‘trade agreement’ is nonetheless used for convenience, to describe those agreements with a substantial trade component that the Government has judged to engage the reporting requirement contained in clause 3 of the Trade Bill.

2 Letter from Lord Boswell of Aynho to Stephan Barclay MP, 6 February 2019: <https://www.parliament.uk/documents/lords-committees/eu-select/scrutiny-brexit-related-treaties/treaty-scrutiny-letter-6Feb.pdf>

3 Chile is the UK’s 65th largest trading partner, accounting for 0.1% of total UK trade; trade with the Eastern and Southern African Region also accounts for approximately 0.1% of total UK trade, trade with the Faroe Islands accounts for less than 0.1% of total UK trade.

4 The Department for International Trade published an updated list of existing trade agreements if the UK leaves the EU without a deal on 21 February 2019. See Department for International Trade, ‘An update on existing trade agreements if the UK leaves the EU without a deal’, 21 February 2019: <https://www.gov.uk/government/news/trade-agreement-continuity> [accessed 25 February 2019].

Agreement we note that there would be no satisfactory arrangements for continuing frictionless trade with the UK's biggest trading partner, the EU itself.

5. **We welcome the fact that the Government has concluded roll-over trade agreements with Chile, the Eastern and Southern Africa states, the Faroe Islands, Switzerland, Israel and the Palestinian Authority. But we note with concern that some of the EU's largest trading partners have not yet concluded agreements with the UK, and that in most cases there is no prospect that they will do so ahead of the UK's scheduled exit from the EU. The risk of disruption to the terms of UK trade with many of its most important trading partners is now imminent and acute.**

The use of 'short form' agreements and the *mutatis mutandis* principle

6. Two of the three trade agreements considered in this report have been published as 'short form' agreements. The Government explains that these incorporate "by reference the relevant provisions of the underlying EU-third country agreement with relatively few necessary modifications".⁵ This is done by recognising the underlying agreement in the text of the rolled over agreement.⁶ The Government argues that the short form agreement has several advantages:
- Short form agreements are more easily adapted to accommodate different scenarios, such as the various possible outcomes of the UK's ongoing negotiations;
 - They send "a clear message to businesses, consumers and investors in both the UK and third countries that the aim is simply to secure continuity in existing trade arrangements"; and,
 - They provide a "clear legal text, making rights and obligations unambiguous where they had by necessity changed, yet reducing the burden on both countries of legal scrubbing, translation, domestic procedures and, potentially, ratification".⁷
7. The use of short-form agreements can also simplify scrutiny. Changes to existing agreements are readily apparent and it is easy to focus on those changes. Furthermore, they should also avoid the risk of errors as a result of oversight: because the short-form agreements contain a *mutatis mutandis* clause (see Box 1), any original clause still referring to EU-specific concepts will automatically be read to apply to the UK equivalent.

5 See for example Department for International Trade, *Continuing the UK's Trade Relationship with The Faroe Islands*, February 2019, para 8: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777022/continuing-the-uks-trade-relationship-with-the-faroe-islands.pdf [accessed 21 February 2019]

6 For example, Article 4 of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark in respect of the Faroe Islands [CP 32] provides that "The EU-Faroe Islands Agreement, in effect immediately before it ceases to apply to the United Kingdom, is incorporated into and made part of this Agreement, *mutatis mutandis*, subject to the provisions of this agreement": <https://www.gov.uk/government/publications/cs-denmark-no12019-ukdenmark-free-trade-agreement-in-respect-of-the-faroe-islands> [accessed 19 February 2019]

7 Department for International Trade, *Continuing the UK's Trade Relationship with The Faroe Islands*, February 2019, para 8: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777022/continuing-the-uks-trade-relationship-with-the-faroe-islands.pdf [accessed 21 February 2019]

Box 1: *Mutatis mutandis* clauses

The Latin term *mutatis mutandis*, literally “with those things changed that have to be changed”, is not uncommon in legal texts. The Cambridge Dictionary states that the term is “used when comparing two or more things to say that although changes will be necessary in order to take account of different situations, the basic point remains the same”.

While the term is more commonly used in contract law to allow parties to integrate obligations from one instrument in another one in slightly different circumstances without having to rewrite these obligations, it is not uncommon in international law. Thus Article 19 of the Kyoto Protocol states: “The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Protocol.”⁸ Article 30(1) of the UN Convention on Straddling Fish Stocks and Highly Migratory Fish Stocks integrates the provisions relating to the settlement of disputes in Part XV of the United Nations Convention on the Law of the Sea *mutatis mutandis*.⁹

Resorting to a *mutatis mutandis* clause has the advantage that it is unnecessary to rewrite the whole agreement. It can, however, result in disputes about the precise changes to the original text that the clause requires.¹⁰

8. Although the use of short form agreements may bring advantages, there are some trade-offs. First, those concluding as well as those scrutinising such agreements have to be sure that reliance on the *mutatis mutandis* clause will result in a well-defined outcome that will not lead to future disputes. We highlight some examples of potential issues in Chapter 2.
9. Second, readers of the new ‘rolled-over’ trade agreements will have to read the short-form agreement together with the original agreement in order to understand its legal effect. Accordingly, access to the original documentation and clear referencing will be essential, particularly where rolled over agreements include by reference decisions of bodies of the State parties, which are not otherwise accessible. At the time of writing the Government had provided a link to the preceding EU-Faroe Islands agreement on its website, but not to the EU-Chile agreement.
10. **We recommend that, when the Government makes use of ‘short form’ agreements, which only highlight amendments to the original underlying agreements with the European Union, it should ensure transparency by consistently publishing the original EU agreement, along with decisions by the Joint Committee pertaining to the agreement, and other documents included by reference, online alongside the new agreement.**

8 Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997, 2303 UNTS 162: https://treaties.un.org/doc/Treaties/1998/09/19980921%2004-41%20PM/Ch_XXVII_07_ap.pdf [accessed 22 February 2019]

9 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 4 August 1995, 2167 UNTS 3 https://treaties.un.org/doc/Treaties/1995/08/19950804%2008-25%20AM/Ch_XXI_07p.pdf [accessed 22 February 2019]

10 See e.g. US–Corrosion-Resistant Steel Sunset Review, in which Japan and the United States did not agree about the changes the *mutatis mutandis* clause in Art. 12.3 of the Anti-Dumping Agreement required. Barbosa, ‘Untangling the Mutatis Mutandis Principle in Free Trade Agreements’, SIEL Online Proceedings Working Paper No. 2012/28

Modification of free trade agreements

11. As we noted in our report, *Scrutiny of international agreements: Treaties considered on 12 February 2019*,¹¹ agreements are likely to make provision for amendment and modification. This is particularly important in respect of trade agreements, where significant changes to the annexes, appendices, and protocols could bring new goods and services into their scope, or change applicable standards, diverging from the underlying agreement with the EU. Such amendments could be agreed by mutual consent, by a Joint Committee established under the agreements, subject to any domestic legal requirements and procedures that the parties may agree. We highlight some examples of these sorts of clauses in Chapter 2.
12. Informal communications between Committee staff and the Government Departments involved in negotiating these agreements suggest that references to “domestic legal requirements” in these agreements relate only to the fact that changes will have to be made via domestic legislation (usually secondary legislation). Thus it appears likely that significant amendments could be made to agreements without engaging the scrutiny procedures required by the Constitutional Reform and Governance Act 2010.
13. **We call on the Government to state clearly, in respect of all international agreements, the circumstances in which, where significant amendments are made, they should be subject to the scrutiny procedures required by the Constitutional Reform and Governance Act 2010. While there may be a case for some minor and proportionate divergence to be agreed between the parties, subject only to the passage of any necessary domestic legislation, in other cases Parliament may wish to ensure that any changes are made in a more transparent fashion, and subject to appropriate scrutiny.**

Consultation

14. We highlighted the question of consultation in our report *Scrutiny of international agreements: Treaties considered on 12 February 2019*.¹² While international relations and trade are reserved matters, it is evident that free trade agreements also have an impact on many devolved matters. For example, the UK-Faroe Islands free trade agreement relates in large part to the trade in fish products, which has significant implications for the Scottish fishing and fish processing industries. For example, the UK-Faroe Islands free trade agreement relates in large part to trade in fish products, which has significant implications for the Scottish fishing and fish processing industries. Yet the Explanatory Memorandum makes no reference to formal consultation of the Scottish Government, stating merely that “DIT is ... in close contact with the Devolved Administrations. The Devolved Administrations have been regularly updated on progress.”
15. We also understand that the Government’s current policy is that it will not automatically share draft texts of agreements with the devolved administrations before signature. Given that the general purpose of ‘roll over’ agreements is as far as possible to carry over pre-existing arrangements, we find this lack of transparency puzzling. It could also fuel tensions within

11 European Union Committee, *Scrutiny of international agreements: Treaties considered on 12 February 2019* (29th Report, Session 2017–19, HL Paper 287)

12 European Union Committee, *Scrutiny of international agreements: Treaties considered on 12 February 2019* (29th Report, Session 2017–19, HL Paper 287), paras 5 and 6

the United Kingdom, at a time when, as we noted in our report on *Brexit: devolution*, “close cooperation between the UK and Scottish Governments is paramount”.¹³

16. On 25 February we received a letter from the Minister for Trade, Investment and Innovation in the Scottish Government, Ivan McKee MSP, in which he welcomed the Department for International Trade’s efforts to engage with the Scottish Government, and the progress towards formalising the future working relationship between the DIT and the devolved administrations on trade matters. At the same time, he expressed concern that the Scottish Government had had neither a role in negotiating the agreements, nor sight of draft texts. He concluded: “It is necessary to record that the level of involvement that the Scottish Government has had in the process to date is, in our view, insufficient; we certainly would not wish to see this process as precedent-setting for the handling of new agreements in the future.”¹⁴
17. **We were concerned to discover that the Government had not shared draft texts of roll-over trade agreements with the devolved administrations prior to signature. This is a puzzling and potentially damaging approach. As we said in 2017, close cooperation between central and devolved Governments is paramount: this is not the moment for the Government to be insisting rigidly on the formal distinction between reserved and devolved matters. We therefore recommend that the Government share at least the relevant extracts of proposed agreements it is consulting on, prior to signature, to ensure that the devolved administrations have an opportunity raise concerns, and that those concerns can be properly considered.**

Terminology common to trade agreements

18. Some common issues arise in respect of the three trade agreements currently under consideration, which are likely to arise in respect of future agreements. These include the Government’s approach to the calculation of tariff-rate quotas, to geographical indications, and to rules of origin. These terms are explained in Box 2.

Box 2: Common terminology in trade agreements

Tariffs and Tariff Rate Quotas

Tariffs or customs duties are a state levy imposed on goods crossing from one customs territory to another. Tariffs impose a charge on the import of a product, usually expressed as a percentage of its value, with the percentage varying from product to product.

By applying Tariff Rate Quotas (TRQs) a customs territory can allow a certain quota of a product to enter the market at a zero, or reduced, tariff rate. A higher tariff applies after that limit has been reached.¹⁵ TRQs were introduced to provide some market access, in the context of very high tariffs on some agricultural products. The rolled over trade agreements include TRQs for dairy, beef, lamb, poultry meat, sugar, fruit and vegetables.

13 European Union Committee, *Brexit: devolution* (4th Report, Session 2017–19, HL Paper 9), para 210

14 Letter from Ivan McKee MSP to the Principal Clerk of the European Union Committee, 25 February 2019: <https://www.parliament.uk/documents/lords-committees/eu-select/scrutiny-brexit-related-treaties/scotland-international-agreements-letter.pdf>

15 Holger P. Hestermeyer & Edith Brown Weiss, ‘Article XIII GATT’ in *WTO—Trade in Goods*, by Rüdiger Wolfrum, Peter-Tobias Stoll & Holger P. Hestermeyer (eds), para 52 (Leiden: Brill, 2011)

Geographical indications

A geographical indication (GI) is a sign used on (agricultural) products that have a specific geographical origin and possess qualities, characteristics or a reputation that are essentially due to that place of origin. Since the qualities of the produce depend on the geographical place of production, there is a clear link between the product and its place of production.¹⁶ In the European Union, many items of food and drink are protected by GIs. In the UK these include certain varieties of cheese, ham, pork pies, and Scotch whisky.¹⁷

The legal protection of GIs is a controversial issue in international trade, as many countries (such as the United States) reject their protection beyond standards contained in the WTO's TRIPS Agreement.¹⁸

Rules of origin and cumulation

'Rules of origin' are used to determine the economic nationality of goods. To qualify for the preferential tariff rates (below the WTO Most Favoured Nation (MFN) rate) fixed by a free trade agreement, goods must originate in one of the parties to the agreement, which legally means they must comply with the preferential rules of origin laid down in the agreement. If they consist of materials from more than one country, these rules will determine whether the product nevertheless counts as a product from one of the parties thus benefiting from preferential terms. Factors include the origins of the materials, the value added in the process, and where the final substantial production phase took place.

'Cumulation' allows a contracting party to a free trade agreement to source raw materials or components from specified other countries and still benefit from the terms of the free trade agreement. In its Rules of Origin handbook the World Customs Organization distinguishes three types of cumulation: bilateral cumulation, where components and raw materials from the other party to the free trade agreement can be counted that way; diagonal cumulation, where additionally components and raw materials from a list of other designated countries to which the same rules of origin apply can be counted; and full cumulation, where components from all countries to which the same rules of origin apply can be counted.¹⁹

16 World Intellectual Property Organization, 'What is a geographical indication': https://www.wipo.int/geo_indications/en/ [accessed 21 February 2019]

17 See Department for Environment Food & Rural Affairs, 'Protected food name scheme: UK registered products' 19 February 2018: <https://www.gov.uk/government/collections/protected-food-name-scheme-uk-registered-products> [accessed 21 February 2019]

18 The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. See https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm [accessed 26 February 2019]

19 See World Customs Organization, 'Rules of Origin Handbook': <http://www.wcoomd.org/~media/wco/public/global/pdf/topics/origin/overview/origin-handbook/rules-of-origin-handbook.pdf> [accessed 25 February 2019]

CHAPTER 2: AGREEMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Agreement establishing an Economic Partnership Agreement between the Eastern and Southern Africa States and the United Kingdom of Great Britain and Northern Ireland (CP 31, 2019)²⁰

19. The UK-Eastern and Southern Africa States Economic Partnership Agreement was laid on 6 February 2019, and the scrutiny period is scheduled to end on 14 March. It was considered by the EU External Affairs Sub-Committee at its meeting on 21 February.
20. In 2009 Madagascar, Mauritius, Seychelles and Zimbabwe signed an Economic Partnership Agreement with the EU, which has been provisionally applied since 2012.²¹ The EU-ESA Economic Partnership Agreement is development-focused and, as such, is asymmetrical—in other words, it opens the developed market more than the developing one. The UK-ESA Economic Partnership Agreement seeks to ensure continuity of effect with the EU Agreement and, consequently, largely replicates it. It provides duty-free and quota-free access to the UK market for goods originating from ESA states and provides for a gradual reduction of duties in ESA states for goods imported from the UK. The Agreement replicates the provision contained in the Cotonou Agreement²² that allows for appropriate measures to be taken if human rights, democratic principles, the rule of law and good governance are violated. In doing so, the UK-ESA Agreement replicates the effect of the EU-ESA Agreement. It is envisaged that suspension of the Agreement would only be a last resort.
21. The Agreement—like all the other agreements with free trade provisions covered in this report—introduces an extended cumulation of origin (see Box 2). This requires both parties to recognise materials from the EU, or processed in the EU, as originating in the UK or an ESA state in exports to one another. The Government sets out that, without these provisions, products from the UK or an ESA state using EU content would no longer meet the origin requirements for preferential treatment by the other party.
22. We note that this approach represents an attempt to ensure continuity of effect with the existing EU-ESA Agreement. While there is uncertainty over whether the inclusion of a third party in cumulation arrangements (in this case, the EU) is fully compatible with the World Trade Organization (WTO) MFN rule, the extension of cumulation arrangements to third parties is not without precedent. For example, the EU-Vietnam Agreement provides for

20 Agreement establishing an Economic Partnership Agreement between the Eastern and Southern Africa States and the United Kingdom of Great Britain and Northern Ireland CP 31, 2019: <https://www.gov.uk/government/publications/ms-no42019-agreement-establishing-an-economic-partnership-agreement-between-the-eastern-and-southern-africa-states-and-the-uk> [accessed 19 February 2019]

21 Council Decision of 13 July 2009 on the signing and provisional application of the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, [OJ L 111](#) (24 April 2012), p 1

22 The EU-ESA Agreement was established within the framework of the Cotonou Agreement, which contains a human rights clause. This clause was replicated in the EU-ESA Agreement. The Cotonou Partnership Agreement was signed in 2000 and is a legally binding agreement between the EU and 78 African, Caribbean and Pacific countries. It was designed to establish a comprehensive partnership with three pillars: development cooperation, political cooperation, and economic and trade cooperation. It is set to expire in February 2020. Subject to an implementation period, the Cotonou Agreement would cease to apply to the UK on exiting the EU.

extended cumulation of cuttlefish and squid from ASEAN²³ countries, as well as fabrics from South Korea. Free trade agreements between Canada-Colombia and Canada-Peru allow the use of some US parts for passenger vehicles, as well as yarn from the US and Mexico.²⁴

23. The use of extended cumulation in these cases is narrow in scope—in other words, limited to specific sectors. So while the fact that there has hitherto been no challenge to the extension of cumulation suggests that the risk of challenge to the UK-ESA Agreement is low, that risk still exists. Nonetheless, the extension of cumulation arrangements seems to us a reasonable and pragmatic approach for the UK Government to take to seek to deliver continuity.
24. We observe that the report accompanying the Agreement states that it covers the UK and ESA states Madagascar, Mauritius, the Seychelles and Zimbabwe. However, the Agreement itself also lists Comoros and Zambia as parties to the Agreement.
25. These countries are not mentioned in the Government's Explanatory Memorandum (EM) or accompanying report, which raises the question of what the UK Government's next steps are for Comoros and Zambia signing the UK-ESA Agreement. Department of International Trade officials have confirmed the Government's intention to approach Comoros in due course, given that Comoros only ratified the EU-ESA Agreement in February 2019, after the UK-ESA Agreement had been finalised. Zambia is in a different position in that it has not signed the precursor EU-ESA Agreement. It is not clear from the EM or report whether the Government intends to approach Zambia to sign the UK-ESA Agreement. It would be helpful if, in future, similar instances of a mis-match were explicitly covered in the explanatory materials.
26. Moreover, the EU has in place Economic Partnership Agreements with other Southern African Development Community (SADC) countries under the umbrella of the Cotonou Agreement. Several ESA countries are part of the SADC. It is unclear what the Government's intentions are towards the continuity of the Agreements with other SADC states, and whether this would lead to overlap between the different Agreements.
27. We also note that while the EM explains that the UK-ESA Economic Partnership Agreement will apply to those territories for whose international relations the UK is responsible to the same extent as the precursor EU-ESA Agreement, it is not immediately obvious which territories these are. Provisions relating to the territorial application of EU agreements often involve several cross-references to other treaties, which may only apply in part or in certain circumstances to the Crown Dependencies and the British Overseas Territories. Department of International Trade officials have confirmed that the Agreement will only apply selectively in relation to the Crown Dependencies and the British Overseas Territories. It would be helpful if, in future, the explanatory material accompanying trade agreements included a list of those territories to which the agreements will apply.

23 The Association of Southeast Asian Nations

24 Anna Jerzewska, 'Brexit and Origin: A Case for the Wider Use of Cross-Cumulation', RTA Exchange (2018): <http://e15initiative.org/wp-content/uploads/2015/09/RTA-Exchange-Rules-of-Origin-Jerzewska-Final-3.pdf> [accessed 21 February 2019]

28. Finally, the EM indicates that the Government is engaging with and has consulted those territories for whose international relations the UK is responsible and to which the Agreement will apply, even if it does not provide a list of these. The EM does not, however, confirm if specific consultations on the Agreement have taken place, including with the devolved administrations. In relation to the devolved administrations, the EM simply states that “DIT is also in close contact with the Devolved Administrations”. We have received information from the Welsh and Scottish Governments suggesting that they regard the level of consultation as inadequate. We are disappointed by this, and the lack of detail provided in the explanatory materials on consultations. We highlight the importance of consultation, particularly with the devolved administrations, on matters where they have an interest.
29. **We draw special attention to the UK-ESA Economic Partnership Agreement, on the grounds that:**
- **It is politically and legally important, and gives rise to issues of public policy that the House may wish to debate prior to ratification;**
 - **The explanatory material laid in support provides insufficient information on the agreement’s policy objective and on how it will be implemented; and**
 - **Further consultation would be appropriate, including with the devolved administrations.**

Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark in respect of the Faroe Islands (CP 32, 2019)²⁵

30. The UK-Denmark Free Trade Agreement between the United Kingdom and the Kingdom of Denmark in respect of the Faroe Islands (see Box 3) was laid on 6 February 2019, and the scrutiny period is scheduled to end on 14 March. It was considered by the EU Energy and Environment Sub-Committee at its meeting on 20 February.

Box 3: The Faroe Islands

The Faroe Islands is an autonomous nation within the Danish Kingdom. While the Danish Government remains responsible for specific areas of competence, including the constitution, citizenship, foreign, security and defence policy, and monetary and currency matters, the Government of the Faroe Islands has full legislative and administrative responsibility for external trade relations. The UK-Faroe Islands FTA is signed “for the Kingdom of Denmark in Respect of the Faroe Islands” by Poul Michelsen, Minister of Foreign Affairs and Trade in the Faroese Government.

Unlike Denmark, the Faroe Islands is not part of the European Union, and its citizens do not hold EU citizenship.

Source: Government of the Faroe Islands, ‘The constitutional status of the Faroe Islands’, <https://www.government.fo/en/foreign-relations/constitutional-status/> [accessed 21 February 2019]

25 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark in respect of the Faroe Islands, CP 32, 2019: <https://www.gov.uk/government/publications/cs-denmark-no12019-ukdenmark-free-trade-agreement-in-respect-of-the-faroe-islands> [accessed 19 February 2019]

31. This Free Trade Agreement (FTA) seeks to maintain the effect of the existing FTA between the EU and the Faroe Islands.²⁶ The Faroe Islands is the UK's 114th-largest trading partner. In 2017 UK exports to the Faroe Islands (mostly machinery and waste) totalled £6m, while imports (mostly fish and crustaceans) totalled £23m. The Government calculates that maintaining tariff-free trade with the Faroe Islands will avoid approximately £11m of additional duties each year.
32. The amendments made to the terms of the existing EU-Faroe Islands FTA are minimal and in general do not change the effect of the Agreement.
33. One potential exception is the removal of a paragraph from the preamble of the EU-Faroes FTA, which stated that the FTA did not affect the Fisheries Agreement in place between the EU and the Faroe Islands, and consequently "mutual fisheries possibilities ... should continue to be maintained at a satisfactory level". The paragraph was removed on the grounds that the UK will no longer be party to the EU-Faroes Fisheries Agreement, but it is notable that it was not replaced by alternative text. Even though preambular text does not normally create legal obligations, but only serves as context for the interpretation of the rest of the agreement, this is significant, given the disputes between the Scottish and Faroese fishing sectors regarding extensive catches of mackerel in Scottish waters by Faroese fishers,²⁷ and the contentiousness, in Brexit debate, of the question of whether fishing opportunities and the trade in fish products should be linked.²⁸ The Government does not comment on this change in either its EM or the accompanying parliamentary report, so it is not clear whether it intends it to alter the link between fishing access and trade.
34. As we noted in Chapter 1, the Government's engagement with the Scottish Government while negotiating these rollover agreements has been limited, and it did not share draft text with the Scottish Government prior to signature. It is unclear how far it has consulted other stakeholders about the impact of this agreement, including the Scottish fishing industry or the fish processing sectors: although the EM refers to 'town-hall' type meetings, and to "a series of regional roundtables in collaboration with the British Chambers of Commerce", there is no indication that these events included relevant industries or addressed this particular agreement.
35. This is a short-form agreement, and Article 2 states that the *mutatis mutandis* principle applies, thereby making "the technical changes necessary to apply the EU-Faroe Islands Agreement as if it had been concluded between the United Kingdom and the Faroe Islands". The accompanying parliamentary report provides a generalised example of changing "EU" to "UK", but it is disappointing that specific examples are not written into the Agreement itself, which would increase its clarity.

26 Council Decision (EC) of 6 December 1996 concerning the conclusion of an agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part, [OJ L 53](#) (22 February 1997), p 1

27 For example, this disagreement regarding fishing for mackerel near Shetland, 'Scottish anger as EU, Faroese agree 2019 fishing deal', *Undercurrent News* (13 December 2018) : <https://www.undercurrentnews.com/2018/12/13/scottish-anger-as-eu-faroese-agree-2019-fishing-deal/> [accessed 20 February 2019]

28 The European Union Committee addressed this issue its report [Brexit: fisheries](#) (8th Report, Session 2016–17, HL Paper 78), paras 165–170.

36. The Agreement establishes a Joint Committee to oversee its implementation, and states that decisions adopted by the EU-Faroe Islands Joint Committee “before the EU-Faroe Islands Agreement cease[s] to apply to the United Kingdom” will also be deemed to have been adopted under the Agreement.²⁹ The exception to this is a decision which requires the Faroe Islands to comply with EU veterinary standards in relation to import inspection and notification. It is not yet clear whether the UK will apply those standards, so instead of applying this decision, a sub-group is established under the Joint Committee to “cooperate on veterinary matters and ... make recommendations to the Joint Committee on resolving any issues between the parties on veterinary matters”.³⁰ This alteration explicitly allows for the possibility of the UK diverging from the EU’s veterinary standards post-Brexit.
37. Rules regarding how a product’s origin is defined are largely maintained in the new FTA. There is, however, a new feature that allows for EU materials to be recognised in the UK and Faroe Islands’ exports to one another, and for EU processing to be recognised in UK exports to the Faroe Islands: this is known as ‘cumulation’ (see Box 2). This feature would be applied only if the UK, Faroe Islands and the EU have “arrangements on administrative cooperation”. The Government explains that cumulation is being applied with respect to product origin to “provide maximum continuity for businesses”, as without the measure, exporters in the UK and Faroe Islands who rely on EU content or processing might be subject to higher tariff rates. As noted above, the cumulation provisions in the trade agreements are not unproblematic under WTO rules. Even though the prospect of “arrangements on administrative cooperation” may mitigate such problems, we note that the Government has not explained what “arrangements” would be required between the UK, Faroe Islands and EU for this measure to take effect.
38. It is also unclear whether the continued use of EU movement certificates will be compatible with the new import notification system that the Government intends to develop to take the place of TRACES, the EU trade control and notification system, before the UK leaves the EU.³¹
39. **We draw special attention to the Free Trade Agreement between the United Kingdom and the Faroe Islands, on the grounds that:**
- **It is politically important, and gives rise to issues of public policy that the House may wish to debate prior to ratification;**
 - **The explanatory material laid in support provides insufficient information on the agreement’s policy objective and on how it will be implemented; and**
 - **Further consultation would be appropriate, including with the devolved administrations.**

29 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark in respect of the Faroe Islands, CP 32, 2019, Article 8(2): <https://www.gov.uk/government/publications/cs-denmark-no12019-ukdenmark-free-trade-agreement-in-respect-of-the-faroe-islands> [accessed 22 February 2019]

30 *Ibid.*, p 22

31 Animal and Plant Health Agency, ‘Guidance, Importing animals, animal products and high-risk food and feed not of animal origin after EU Exit’, 20 February 2019: <https://www.gov.uk/guidance/importing-animals-animal-products-and-high-risk-food-and-feed-not-of-animal-origin-after-eu-exit> [accessed 26 February 2019]

Agreement establishing an Association between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile (CP 35, 2019)³²

40. The UK-Chile Association Agreement was laid on 6 February 2019, and the scrutiny period is scheduled to end on 14 March. It was considered by the EU External Affairs Sub-Committee at its meeting on 21 February.
41. In 2002 the EU and Chile signed an Association Agreement to foster closer relations between the parties.³³ The Agreement contains high-level provisions on political dialogue and provides for cooperation on economic, scientific, institutional and social matters, as well as on specific areas such as the fight against illegal migration, drugs and organised crime. It also includes a Free Trade Agreement (FTA) covering goods and services.
42. The UK-Chile Association Agreement is a short form treaty, based on the EU-Chile one. This means that it contains an overarching provision under which any references to the “European Union”, “European Community”, “EU”, “EU Party” and “Member States” in the EU-Chile Association Agreement are replaced by references to the UK. In the report accompanying the Agreement, the Government argues that this approach ensures legal clarity and continuity. Further modifications are listed in the Annex to the Agreement and explained in more detail in the Government’s report.
43. The Agreement—like all the other agreements with free trade provisions covered by this report—introduces an extended cumulation of origin (see Box 2). This requires both parties to recognise materials from the EU as originating in the UK or Chile in exports to one another. Moreover, working or processing carried out in the EU is recognised in UK exports to Chile. The Government states that, without these provisions, products from the UK or Chile using EU content would no longer meet the origin requirements for preferential treatment by the other party.
44. This approach represents an attempt to ensure continuity of effect with the existing EU-Chile Agreement. While there is uncertainty over whether the inclusion of a third party in cumulation arrangements (in this case, the EU) is fully compatible with the WTO’s MFN rule, the extension of cumulation arrangements to third parties is, as we noted above (paragraph 21) not without precedent. As mentioned in paragraph 23, this reduces the risk of challenge, without fully eliminating it. Nonetheless, this seems to us a reasonable and pragmatic approach in the interests of ensuring continuity.
45. In the context of the ongoing debate over the future role of Parliament in the scrutiny of international agreements, it is notable that, while many institutional provisions are retained ‘*mutatis mutandis*’, the Agreement does not automatically establish a UK-Chile successor to the Association

32 Agreement establishing an Association between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile, CP 35, 2019: <https://www.gov.uk/government/publications/cs-chile-no22019-ukchile-agreement-establishing-an-association> [accessed 19 February 2019]

33 Council Decision (EC) of 18 November 2002 on the signature and provisional application of certain provisions of an Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, [OJ L 352](#) (30 December 2002), pp 1–1440

Parliamentary Committee and Joint Consultative Committee,³⁴ which is provided for by the EU-Chile Association Agreement. In its report, the Government argues that these committees would not be “immediately operable in a bilateral context”. While this may hold true for the Joint Consultative Committee, the impediments to an Association Parliamentary Committee between the UK Parliament and the Chilean Congress are not explained in the explanatory material.

46. Department of International Trade officials have since confirmed that the reason for not automatically re-establishing the Association Parliamentary Committee was that it was deemed inappropriate to bind the UK Parliament in the same way as the EU Parliament had been without prior consultation. The effect, however, could be to reduce the role of Parliament with regard to the Agreement.
47. Article 8 of the Agreement provides that an Association Council will ensure that the Agreement operates properly. We note that this Association Council may decide to amend the Annexes, Appendices, Protocols and Notes to the Agreement. The Government’s Explanatory Memorandum (EM) states that these decisions must be adopted by the Parties “except where otherwise provided in the Agreement”, but it is unclear what those exceptions are. It also appears unclear whether the decisions of the Association Council to amend the Agreement would be subject to parliamentary scrutiny under the Constitutional Reform and Governance Act 2010. We call on the Government to state clearly the circumstances in which, where significant amendments are made, they will be subject to the scrutiny procedures required by the Constitutional Reform and Governance Act 2010.
48. The Agreement differs from its precursor in relation to tariff rate quotas (TRQs)—the maximum amounts of products that may benefit from preferential duty rates in a given period (see Box 2). TRQs have been resized to account for differences between the UK and the EU as an import/export market for Chile.
49. Finally, the EM indicates that the Government is engaging with and has consulted those territories for whose international relations the UK is responsible and to which the Agreement will apply. It does not, however, confirm if specific consultations on the Agreement have taken place, including with the devolved administrations. In relation to the devolved administrations, the EM simply states that “the Government is also in close contact with the Devolved Administrations” and that they “have been regularly updated on progress”. We have received information from the Welsh and Scottish Governments suggesting that they regard the level of consultation as inadequate. We are disappointed by this and the lack of detail provided in the explanatory materials on consultations. We highlight the importance of consultation, particularly with the devolved administrations, on matters where they have an interest.

34 The Association Parliamentary Committee comprises representatives of the European Parliament and the Chilean Congress. It has visibility over the decisions made by the Association Council, which is responsible for addressing major issues in relation to the EU-Chile Association Agreement. The Joint Consultative Committee brings together the EU’s Economic and Social Committee and the equivalent Chilean institution, with a view to promoting cooperation on social and economic matters.

50. **We draw special attention to the UK-Chile Association Agreement, on the grounds that:**

- **It is politically and legally important, and gives rise to issues of public policy that the House may wish to debate prior to ratification; and**
- **Further consultation would be appropriate, including with the devolved administrations.**

CHAPTER 3: AGREEMENTS REPORTED FOR INFORMATION

Agreement between the United Kingdom of Great Britain and Northern Ireland and the United States of America on the Mutual Recognition of certain distilled Spirits/Spirit Drinks (CP 34, 2019)³⁵

51. The UK-US Mutual Recognition Agreement in relation to certain distilled spirits and spirit drinks was laid on 7 February 2019, and the scrutiny period is scheduled to end on 15 March. It was considered by the EU Energy and Environment Sub-Committee at its meeting on 20 February.
52. In 1994, in an exchange of letters, agreement was reached between the then European Community and the United States of America on the mutual recognition of certain distilled spirits and 'spirit drinks'. This Agreement replicates the 1994 Agreement,³⁶ with the USA agreeing to restrict the use of the terms 'Scotch whisky' and 'Irish whisky/ey' to products of Scotland and the island of Ireland respectively, and the UK agreeing to restrict the use of 'Tennessee whisky/ey', 'Bourbon' and 'Bourbon whisky/ey' to products of the USA.
53. The Agreement will come into force once both Parties have written to confirm they have completed the necessary internal procedures, which the UK Government intends to be either at the end of any transition period agreed with the EU or on the date that the UK leaves the EU without a deal.
54. **We report the UK-US Agreement on Mutual Recognition of certain distilled Spirits/Spirit Drinks for information.**

Agreement between the United Kingdom of Great Britain and Northern Ireland and the United States of America on Trade in Wine (CP 36, 2019)³⁷

55. The UK-US Agreement on Trade in Wine was laid on 7 February 2019, and the scrutiny period is scheduled to end on 15 March. It was considered by the EU Energy and Environment Sub-Committee at its meeting on 20 February.
56. In 2006 the then European Community and the United States of America reached an agreement on trade in wine.³⁸ The Agreement recognises each other's wine-making practices, agrees 'names of origin' that can only be used to describe wine from specific regions, and sets rules on labelling and certification.
57. This new Agreement between the UK and the USA replicates the existing provisions: no material changes have been made. Providing both Parties can

35 Agreement between the United Kingdom of Great Britain and Northern Ireland and the United States of America on the Mutual Recognition of certain distilled Spirits/Spirit Drinks, CP 34, 2019: <https://www.gov.uk/government/publications/cs-usa-no22019-ukusa-agreement-on-the-mutual-recognition-of-certain-distilled-spiritsspirit-drinks> [accessed 19 February 2019]

36 Council Decision (EC) of 21 February 1994 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the United States of America on the mutual recognition of certain distilled spirits/spirit drinks, *OJ L 157*, (24 June 1994), p 36

37 Agreement between the United Kingdom of Great Britain and Northern Ireland and the United States of America on Trade in Wine, CP 36, 2019: <https://www.gov.uk/government/publications/cs-usa-no32019-ukusa-agreement-on-trade-in-wine> [accessed 19 February 2019]

38 Council Decision (EC) of 14 November 2005 concerning the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the United States of America on matters related to Trade in Wine *OJ L 301* (18 November 2005), pp 14–15

complete their internal processes in time, therefore, this Agreement would allow the existing UK-US wine trade to continue without disruption.

58. **We report the UK-US Agreement on Trade in Wine for information.**

Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (CP 41, 2019)³⁹

59. The Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing was laid on 8 February 2019, and the scrutiny period is scheduled to end on 15 March. It was considered by the EU Energy and Environment Sub-Committee at its meeting on 20 February.

60. The Agreement on Port State Measures (PSMA) aims to eliminate Illegal, Unreported and Unregulated (IUU) fishing by preventing vessels engaged in such practices from using ports and landing their catches. Like the other six fisheries agreements considered in this report, it is a multilateral agreement. It was approved at a conference of the Food and Agriculture Organisation of the United Nations (FAO) in 2009, and came into force in June 2016.

61. There are currently 57 Parties to the PSMA, including the European Union;⁴⁰ the UK is seeking to become a Party in its own right (either, in the case of a ‘no deal’ Brexit, immediately upon its withdrawal from the EU, or at the end of any transition period).

62. Parties to the PSMA agree to obtain information from vessels, and to conduct inspections, with the aim of detecting IUU fishing and barring vessels engaged in IUU fishing from using their ports. Parties also agree to undertake enforcement action against any vessels from their State who are found to have undertaken IUU.

63. Acceding to the PSMA would maintain the status quo after Brexit. Entry into force can take place 30 days after depositing an ‘instrument of accession’ with the FAO, and as the PSMA allows for ‘provisional application’ (where the PSMA is applied by a State from the date it notifies the FAO) there should not be any gap in coverage.

64. **We report the Agreement on Port State Measures for information.**

Agreement for the Establishment of the Indian Ocean Tuna Commission (CP 42, 2019)⁴¹

65. The Agreement for the Establishment of the Indian Ocean Tuna Commission was laid on 8 February 2019, and the scrutiny period is scheduled to end on 15 March. It was considered by the EU Energy and Environment Sub-Committee at its meeting on 20 February.

39 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, CP 41, 2019: <https://www.gov.uk/government/publications/ms-no102019-agreement-on-port-state-measures-to-prevent-deter-and-eliminate-illegal-unreported-and-unregulated-fishing> [accessed 19 February 2019]

40 Council Decision (EU) of 20 June 2011 on the approval, on behalf of the European Union, of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing *OJ L 191*, (22 July 2011), pp 1–18

41 Agreement for the Establishment of the Indian Ocean Tuna Commission, CP 42, 2019: <https://www.gov.uk/government/publications/ms-no62019-agreement-for-the-establishment-of-the-indian-ocean-tuna-commission> [accessed 19 February 2019]

66. This Agreement establishes the Indian Ocean Tuna Commission (IOTC), and sets out its objectives, functions and terms of membership. There are currently 31 Contracting Parties to the IOTC Agreement, including the European Union;⁴² the UK is seeking to join in its own right.
67. The IOTC seeks to ensure the conservation of tuna and tuna-like species by collecting data on fish stocks and adopting conservation and management measures accordingly. The Government's EM states that continuing UK membership of the IOTC is necessary for UK vessels to maintain current fishing opportunities. As the Agreement can enter into force as soon as the UK deposits an instrument of acceptance, it will be possible to have that membership in place from the point that the UK leaves the EU. The IOTC is funded by contributions from Contracting Parties, so while the UK's payments thus far have been subsumed within the EU's contribution, future UK membership will come at a cost of £150,000–£200,000 annually. It is not yet clear whether the domestic legislation (or conditions on fishing vessels licences) needed to implement all IOTC measures will be in place in time for a possible 'no deal' Brexit.
68. **We report the Agreement for the Establishment of the Indian Ocean Tuna Commission for information.**
- Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries (CP 43, 2019)⁴³**
69. The Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries was laid on 8 February 2019, and the scrutiny period is scheduled to end on 15 March. It was considered by the EU Energy and Environment Sub-Committee at its meeting on 20 February.
70. This Convention establishes the North-East Atlantic Fisheries Commission (NEAFC), and sets out its objectives, functions and governance. There are currently five Contracting Parties to the Convention, including the European Union;⁴⁴ the UK is seeking to join in its own right.
71. The NEAFC's aim is to "ensure the long-term conservation and optimum utilisation of the fisheries resources in the Convention Area", which it seeks to achieve by recommending fisheries control measures based on scientific evidence. Contracting Parties then implement these measures, helping to ensure consistent practices among those fishing in the area. The NEAFC is funded by contributions from contracting parties, so while the UK's payments thus far have been subsumed within the EU's contribution, the Government estimates that the UK would be likely to contribute £400,000–£600,000 annually to the NEAFC budget.
72. The Government's EM states that continuing to be a party to the Convention is necessary for UK vessels to maintain current fishing opportunities. Accession is not guaranteed, as an application is only approved if within 90 days from the date of notification three-fourths of all existing parties notify

42 Council Decision (EC) of 18 September 1995 on the accession of the Community to the Agreement for the establishment of the Indian Ocean Tuna Commission, [OJ L 236](#) (5 October 1995) pp 24–33

43 Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries, CP 43, 2019: <https://www.gov.uk/government/publications/ms-no52019-convention-on-future-multilateral-cooperation-in-north-east-atlantic-fisheries> [accessed 19 February 2019]

44 Council Decision (EEC) of 13 July 1981 concerning the conclusion of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries, [OJ L 227](#) (12 August 1981), pp 21–28

their approval. It seems unlikely, however, that the UK's participation would be opposed. A more likely scenario is that, in the case of a 'no deal' Brexit, there may be a short gap in coverage while the UK's application is finalised. As part of its contingency planning, the UK Government submitted its application on 8 January. We note that if it had submitted the application ten days earlier the risk of a gap in coverage could have been avoided.

73. It is not yet clear whether the domestic legislation (or conditions on fishing vessels licences) needed to implement all IOTC measures will be in place in time for a possible 'no deal' Brexit.
74. It is disappointing that the EM did not contain important information, including the date on which the Government submitted its application for accession. The EM also failed to mention that the NEAFC has its headquarters in London and that the UK Government acts as the depositary for the organisation (compare paragraph 80). Defra officials have clarified separately that they expect this arrangement to continue after Brexit.
75. **We report the Convention on Future Multilateral Cooperation in North East Atlantic Fisheries for information.**

Convention for the Conservation of Salmon in the North Atlantic Ocean (CP 44, 2019)⁴⁵

76. The Convention for the Conservation of Salmon in the North Atlantic Ocean was laid on 8 February 2019, and the scrutiny period is scheduled to end on 15 March. It was considered by the EU Energy and Environment Sub-Committee at its meeting on 20 February.
77. This Convention establishes the North Atlantic Salmon Conservation Organisation (NASCO), and sets out its objectives, functions and governance. There are currently six Contracting Parties to the Convention, including, since 1982, the European Union;⁴⁶ the UK is seeking to join in its own right.
78. The NASCO's aim is to "contribute through consultation and co-operation to the conservation, restoration, enhancement and rational management of salmon stocks subject to this Convention, taking into account the best scientific evidence available to it". Its functions include coordinating information sharing and research and making recommendations (including for regulatory measures) to Contracting Parties to the Convention. It is funded by the contracting parties, and the Government estimates that UK contributions to the NASCO budget would amount to around £95,000–£105,000 annually.
79. The EM states that continuing to be a party to the Convention is important to allow the UK to continue to influence conservation measures. Accession will require a three-quarters majority in a Council vote. It seems unlikely, however, that the UK's accession would be opposed. Perhaps a more likely scenario is that, in the case of a 'no deal' Brexit, there may be a gap in UK membership—the EM gives no indication of how quickly the process could take place. Any gap in membership is, however, unlikely to have serious

45 Convention for the Conservation of Salmon in the North Atlantic Ocean, CP 44, 2019: <https://www.gov.uk/government/publications/ms-no72019-convention-for-the-conservation-of-salmon-in-the-north-atlantic-ocean> [accessed 19 February 2019]

46 Council Decision (EEC) of 13 December 1982 concerning the conclusion of the Convention for the Conservation of Salmon in the North Atlantic Ocean, *OJ L 378* (31 December 1982), pp 24–31

consequences. The Government may also find it difficult to put in place the domestic legislation (or conditions on fishing vessels licences) needed to implement all NASCO recommendations in time for a ‘no deal’ Brexit.

80. It is disappointing that the EM failed to mention that the NASCO currently has its headquarters in Edinburgh (compare paragraph 74). The Convention allows the headquarters to be moved, though it is not known whether this possibility is under consideration or, if it is, what the impact might be.
81. We sought the views of the Scottish Government about the level of consultation on this agreement, but at the time of writing had not received a response. In the absence of a response, we are not able to form a view on whether further consultation, on this agreement or on the other agreements considered in this report, would have been appropriate.
82. **We report the Convention for the Conservation of Salmon in the North Atlantic Ocean for information.**

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (CP 45, 2019)⁴⁷

83. The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas was laid on 8 February 2019, and the scrutiny period is scheduled to end on 15 March. It was considered by the EU Energy and Environment Sub-Committee at its meeting on 20 February.
84. The Agreement was approved by a Food and Agriculture Organization of the United Nations (FAO) conference in 1993, and entered into force in 2003. There are currently 42 Parties to the Agreement, including, since 1996, the European Union.⁴⁸ The UK is now seeking to join in its own right.
85. Parties to the Agreement commit to ensuring that fishing vessels entitled to fly their flag (in other words, to be registered or licensed with them) “do not engage in any activity that undermines the effectiveness of international conservation and management measures”.⁴⁹ They are required to keep a record of all fishing vessels entitled to fly their flag, and to provide information on their vessels to the FAO as required. They also agree to monitor and enforce the Agreement, including by obtaining information from vessels about their catches and landings and by introducing sanctions for non-compliance with the Agreement.
86. The Agreement is open to acceptance by any Member of the FAO and is “effected by the deposit of an instrument of acceptance with the Director-General of FAO”, so it should be possible for the UK to become a Contracting

47 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, CP 45, 2019: <https://www.gov.uk/government/publications/ms-no82019-agreement-to-promote-compliance-with-international-conservation-and-management-measures-by-fishing-vessels-on-the-high-seas> [accessed 19 February 2019]

48 Council Decision (EC) of 25 June 1996 on acceptance by the Community of the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas, *OJ L 177* (16 July 1996), pp 24–32

49 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, Article III(1)(a): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777311/MS_8.2019_High_Seas.pdf [accessed 21 February 2019]

Party in its own right as soon as it leaves the EU. This would maintain the status quo, which the Government says is important to demonstrate its ongoing commitment to sustainable fishing.

87. We report the Agreement to Promote Compliance with International Conversation and Management Measures by Fishing Vessels on the High Seas for information.

International Convention for the Conservation of Atlantic Tunas (CP 46, 2019)⁵⁰

88. The International Convention for the Conservation of Atlantic Tunas was laid on 8 February 2019, and the scrutiny period is scheduled to end on 15 March. It was considered by the EU Energy and Environment Sub-Committee at its meeting on 20 February.

89. This Convention was adopted in Rio de Janeiro in 1966. It establishes the International Commission for the Conservation of Atlantic Tunas (ICCAT), and sets out its objectives, functions and governance arrangements. There are currently 52 Contracting Parties to the Convention, including, since 1986, the European Union.⁵¹ The UK, which is already a state signatory with respect to some of the Overseas Territories, is now seeking to join in its own right.

90. The ICCAT's functions include collecting and analysing data on fish stocks and making recommendations, on the basis of that data, aimed at maintaining fish populations at levels that permit the maximum sustainable catch.

91. The Government's EM states that membership of the ICCAT is necessary for UK vessels to maintain current fishing opportunities. As the Convention can enter into force as soon as the UK completes its internal ratification and approval processes, it will be possible to have that membership in place from the point that the UK leaves the EU. It is funded by the contracting parties, so while the UK's payments thus far have been subsumed within the EU's contribution, the Government estimates that UK contributions to the ICCAT budget would amount to £100,000–£150,000 annually. It is not yet clear whether the domestic legislation (or conditions on fishing vessels licences) needed to implement all ICCAT recommendations will be in place in time for a possible 'no deal' Brexit.

92. We report the International Convention for the Conservation of Atlantic Tunas for information.

Convention on Cooperation in the Northwest Atlantic Fisheries (CP 47, 2019)⁵²

93. The Convention on Cooperation in the Northwest Atlantic Fisheries was laid on 8 February 2019, and the scrutiny period is scheduled to end on

50 International Convention for the Conservation of Atlantic Tunas, CP 46, 2019: <https://www.gov.uk/government/publications/ms-no92019-convention-for-the-conservation-of-atlantic-tunas> [accessed 19 February 2019]

51 Council Decision (EC) of 9 June 1986 on the accession of the Community to the International Convention for the Conservation of Atlantic Tunas, as amended, [OJ L 162](#) (18 June 1986), pp 33–38

52 Convention on Cooperation in the Northwest Atlantic Fisheries, CP 47, 2019: <https://www.gov.uk/government/publications/ms-no112019-convention-on-cooperation-in-the-northwest-atlantic-fisheries> [accessed 19 February 2019]

15 March. It was considered by the EU Energy and Environment Sub-Committee at its meeting on 20 February.

94. This Convention, agreed in Ottawa in 1978, establishes the Northwest Atlantic Fisheries Organization (NAFO), and sets out its objectives, functions and governance arrangements. There are currently 12 Contracting Parties to the Convention, including the European Union.⁵³ The UK is seeking to join in its own right.
95. The NAFO's functions include collecting and analysing data on fish stocks and adopting conservation and management measures on the basis of that data. Contracting Parties agree to follow scientific advice, prevent overfishing, collect accurate data and minimise discards and pollution, as well as implementing the measures put forward by the NAFO.
96. The Government's EM states that membership of the NAFO is necessary for UK vessels to maintain current fishing opportunities. As the Convention can enter into force as soon as the UK submits a notification, it will be possible to have that membership in place from the point that the UK leaves the EU. It is funded by the contracting parties, so while the UK's payments thus far have been subsumed within the EU's contribution, the Government estimates that UK contributions to the NAFO budget would amount to £45,000–£80,000 annually. It is not yet clear whether the domestic legislation (or conditions on fishing vessels licences) needed to implement all NAFO recommendations will be in place in time for a possible 'no deal' Brexit.
97. **We report the Convention on Cooperation in the Northwest Atlantic Fisheries for information.**

⁵³ Council Regulation (EEC) No 3179/78 of 28 December 1978 concerning the conclusion by the European Economic Community of the Convention on Future Multilateral Cooperation in the Northwest Atlantic fisheries, [OJ L 378](#) (30 December 1978), pp 1–29

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members of European Union Select Committee

Baroness Armstrong of Hill Top
Lord Boswell of Aynho (Chair)
Baroness Brown of Cambridge
Lord Cromwell
Baroness Falkner of Margravine
Lord Jay of Ewelme
Baroness Kennedy of The Shaws
The Earl of Kinnoull
Lord Liddle
The Earl of Lindsay
Baroness Neville-Rolfe
Baroness Noakes
Lord Polak
Lord Ricketts
Lord Soley
Baroness Suttie
Lord Teverson
Baroness Verma
Lord Whitty

Declarations of interest

Baroness Armstrong of Hill Top
Joint owner of a property in Spain

Lord Boswell of Aynho (Chair)
In receipt of salary as Principal Deputy Chairman of Committees, House of Lords
Shareholdings as set out in the Register of Lords' Interests
Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho Grounds, Banbury, with separate rentals from cottage and grazing
Land at Great Leighs, Essex (one-eighth holding, with balance held by family interests), from which rental income is received
House in Banbury owned jointly with wife, from which rental income is received
Lower Aynho Grounds Farm, Northants/Oxon; this property is owned personally by the Member and not the Partnership

Baroness Brown of Cambridge
Vice Chair of the Committee on Climate Change
Chair of the Adaptation Sub-Committee of the Committee on Climate Change
Chair of the Henry Royce Institute for Advanced Materials
Chair of STEM Learning Ltd
Non-Executive Director of the Offshore Renewable Energy Catapult
Chair of The Carbon Trust
Council member of Innovate UK

Lord Cromwell

Employment, partnership, business interests and shareholdings as set out in the Register of Lords' interests

Patron of Wildlife Vets International

Baroness Falkner of Margravine

Member, British Steering Committee: Koenigswinter, The British-German Conference

Member, Advisory Board, Demos

Lord Jay of Ewelme

Trustee (Non-Executive Director), Thomson Reuters Founders Share Company

Vice Chairman, European Policy Forum Advisory Council

Member, Senior European Experts Group

Chairman, Positive Planet (UK)

Trustee, Magdalen College, Oxford Development Trust

Baroness Kennedy of The Shaws

President, Justice, UK arm of International Commission of Jurists

Chancellor, Sheffield Hallam University

The Earl of Kinnoull

Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy

Chairman, Culture Perth and Kinross, in receipt of governmental subsidy

Chairman, United Kingdom Squirrel Accord, in receipt of governmental monies

Director, Horsecross Arts, in receipt of governmental subsidy

Shareholdings as set out in the register

Organic farming interests as set out in the register

Lord Liddle

Member, Cumbria Country Council

Pro-Chancellor (Chair of Board), Lancaster University

Co-Chair, Policy Network

The Earl of Lindsay

Chairman, United Kingdom Accreditation Service (UKAS)

Chairman, BPI Pension Trustees Limited

Farmer, in receipt of CAP support

Baroness Neville-Rolfe

Former Commercial Secretary, HM Treasury

Former Minister of State for Energy and Intellectual Property

Chair, Assured Food Standards Ltd

Non-Executive Director, Capita Plc

Non-Executive Director, Secure Trust Bank

Governor, London Business School

Shareholdings as set out in the register

Trustee (Non-Executive Director), Thomson Reuters Founders Share Company

Baroness Noakes

Director, Royal Bank of Scotland Group plc

Interests in a wide range of listed companies as disclosed in the Register of Interests

Lord Polak

Employment and business as set out in the Register of Lords' interests

Lord Ricketts

Non-Executive Director, Group Engie, France
Strategic Adviser, Lockheed Martin UK
Charitable activities as set out in the Register of Interests

Lord Soley

Member: International Institute for Strategic Studies, Royal College of Defence Studies, Chatham House

Baroness Suttie

Associate with Global Partners Governance Limited
Trustee, Institute for Public Policy Research (IPPR)

Lord Teverson

Trustee, Regen SW
In receipt of a pension from the European Parliament

Baroness Verma

No relevant interests declared

Lord Whitty

Vice President, Chartered Trading Standards Institute
Chair, Road Safety Foundation
Vice President, Local Government Association
President, Environmental Protection UK
Member, GMB
Vice President, British Airline Pilots Association

Dr Holger Hestermeyer, Shell Reader in International Dispute Resolution at King's College London, is acting as Specialist Adviser supporting the Committee's scrutiny of international agreements, and has declared no relevant interests.

Sub-Committee Members

EU Energy and Environment Sub-Committee

Lord Teverson (Chair)
Lord Cameron of Dillington
Viscount Hanworth
Lord Krebs
The Duke of Montrose
Lord Rooker
Lord Selkirk of Douglas
Baroness Sheehan
The Earl of Stair
Viscount Ullswater
Baroness Wilcox
Lord Young of Norwood Green

For relevant interests see: https://www.parliament.uk/documents/lords-committees/eu-energy-environment-subcommittee/scrutiny-2017-19/DoI_Scrutiny_2017-19.pdf

EU External Affairs Sub-Committee

Baroness Verma (Chair)
 Baroness Armstrong of Hill Top
 Baroness Brown of Cambridge
 Baroness Chalker of Wallasey
 Lord Dubs
 Lord Horam
 The Earl of Oxford and Asquith
 Lord Risby
 Lord Stirrup
 Baroness Suttie
 Baroness Symons of Vernham Dean
 Lord Triesman

For relevant interests see: <https://www.parliament.uk/documents/lords-committees/eu-external-affairs-subcommittee/members-interests-2019.pdf>

EU Financial Affairs Sub-Committee

Baroness Falkner of Margravine (Chair)
 Lord Bruce of Bennachie
 Lord Butler of Brockwell
 Lord Cavendish of Furness
 Lord Desai
 Lord Giddens
 Baroness Liddell of Coatdyke
 The Earl of Lindsay
 Baroness Neville-Rolfe
 Lord Thomas of Cwmgiedd
 Viscount Trenchard
 Lord Vaux of Harrowden

For relevant interests see: <https://www.parliament.uk/documents/lords-committees/eu-financial-affairs-subcommittee/declarations-of-interests-session-2017-19/Interests-2017-19.pdf>

EU Home Affairs Sub-Committee

Lord Jay of Ewelme (Chair)
 Lord Best
 Lord Haselhurst
 Baroness Janke
 Lord Kirkhope of Harrogate
 Baroness Massey of Darwen
 Lord O'Neill of Clackmannan
 Baroness Pinnock
 Lord Ribeiro
 Lord Ricketts
 Lord Soley
 Lord Watts

For relevant interests see: <https://www.parliament.uk/documents/lords-committees/eu-home-affairs-subcommittee/scrutiny-work/Scrutiny-interests.pdf>

EU Internal Market Sub-Committee

Lord Whitty (Chair)
Lord Aberdare
Baroness Donaghy
Lord German
Lord Lansley
Lord Liddle
Baroness McGregor-Smith
Baroness Noakes
Baroness Randerson
Lord Rees of Ludlow
Lord Robathan
Lord Russell of Liverpool
Lord Wigley

For relevant interests see: <https://www.parliament.uk/documents/lords-committees/eu-internal-market-subcommittee/Declarations-of-Interests-for-Scrutiny-work-2017-19.pdf>

EU Justice Sub-Committee

Baroness Kennedy of The Shaws (Chair)
Lord Anderson of Swansea
Lord Cashman
Lord Cromwell
Lord Dholakia
Lord Judd
The Earl of Kinnoull
Baroness Ludford
Baroness Neuberger
Lord Polak
Baroness Shackleton of Belgravia
Lord Wasserman

For relevant interests see: <https://www.parliament.uk/documents/lords-committees/eu-justice-subcommittee/Scrutiny-Interests/declarations-of-interest-for-scrutiny-work-2017-19.pdf>

A full list of Members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/register-of-lords-interests/>