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The Lord Boswell of Aynho
Chair
EU Select Committee
House of Lords
London SW1A 0PW

29th April 2019

Dear Lord Boswell of Aynho,

Thank you to your committee and officials for the report entitled 'Scrutiny of international agreements – Treaties considered on 9 April 2019'. I wanted to write to you as soon as possible to offer a response to the points raised on the Pacific Agreement.

Cumulation

You asked for an explanation of the legal basis for why the extension of cumulation happens in the way envisaged by the agreement and referenced the fact that Annex VIII(a) to Protocol II, which lists neighbouring developing countries eligible for cumulation, is currently blank.

Article 4 of Protocol II provides for Pacific States to request cumulation with neighbouring developing countries which, once agreed, are then listed in Annex VIII(a) to Protocol II. The legal basis is the Protocol text, which permits Pacific States to make a request for the UK to consider. If in the future Pacific States were to make such a request, the UK would inter alia consider the legal basis for cumulation according to the specific country in question.

The list under Annex VIII(a) to Protocol II is blank because it is also blank under the EU-Pacific States Economic Partnership Agreement (EPA). As the Annex VIII(a) is blank, this means that the Pacific States are unable to cumulate with neighbouring developing countries until a request is made by a Pacific State to amend this list and subsequently granted by the UK. In accordance with technical replication we have carried this over.

Accession of other Pacific States

In the report you highlighted that it would have been helpful if details of the status of other Pacific States' accession to the EU-Pacific EPA had been provided and the implication of this for the UK-Pacific EPA.

Following Samoa's recent accession to the EU-Pacific EPA, the UK formally wrote to Samoa on 8th March 2019 regarding accession to the UK EPA. We are currently awaiting Samoa's response before taking next steps in terms of Samoa's possible accession to the UK-Pacific States EPA.

With regard to the accession progress of the Solomon Islands and Tonga to the EU-Pacific EPA, we can confirm that on 23rd October 2018, the EU concluded negotiations on the market access offer for the accession of Solomon Islands to the EU-Pacific States EPA, and on 19th July 2018, Tonga informed the EU of its intention to accede to the EPA. The accession processes for each are underway.

The UK is a long-standing supporter of the EU EPAs and continues, whilst an EU Member State, to support this agenda. This includes the accession process of both Tonga and the Solomon Islands. The EPAs are an important way to support economic growth and sustainable development and can put our trading relationship with African, Caribbean and Pacific (ACP) partners on a more equitable, mature and business-like footing. As the UK exits the EU, the Department for International Trade (DIT) and the Department for International Development (DFID) are committed to transitioning the EU's EPAs to avoid trade disruption for developing countries. Should Tonga and the Solomon Islands accede to the EU-Pacific EPA and where we have, as part of our aim to transition existing EU EPAs, an agreement that replicates the EU-Pacific EPA, we will invite Tonga and Solomon Islands to have formal discussions to join the UK-Pacific EPA.

We will endeavour to set this out more clearly if relevant in future explanatory materials.

Amendments to the Agreement

You asked the Government to state clearly the circumstances when changes made to the Agreement will be subject to the scrutiny processes set out in the Constitutional Reform and Governance Act (CRaG) 2010. As we noted in our last letter to your Committee regarding the Israel and Palestinian Authority agreements of 28th March, it is important we can amend our trade treaties to keep them up to date and responsive to changes in domestic legislation or wider economic considerations. For example, a treaty may need to be amended if a post-implementation review reveals that the way in which the treaty is drafted is unclear to business or inhibiting utilisation. In this case, small technical or clarificatory amendments may be required.

Treaties can be amended through the conclusion of new agreements, which in the UK context could engage the process set out under the CRaG Act 2010. Some agreements include an amendment clause which sets out the process that applies, for clarity, and sometimes there is an additional process to make changes through a Committee or Committees established under the Agreement.

Where a treaty does not expressly provide for decisions that amend the treaty to be subject to completion of domestic procedures and notification between the parties, as is generally used to modify, amend or constitute an agreement on a matter of no substantial importance, the CRaG procedure will not apply.

The UK-Pacific States EPA, in line with technical replication principles, replicate the existing Trade Committee provisions of the EU-Pacific EPA. Therefore, as under the EU-Pacific EPA, the Trade Committee may review the EPA, its implementation, operation and performance where necessary but is only able to make appropriate suggestions to the Parties regarding amendment of the agreement.

The UK-Pacific EPA does not specifically call for amendments to the EPA to be subject to completion of domestic procedures and notification between the Parties. However, any amendment which would require changes to UK law would, before coming into effect, would first require those changes to be made domestically. This means that, where legislation is required, Parliament would have the opportunity to scrutinise and debate such changes to UK law in the normal manner.

It is in our interest to enable the functions of the Trade Committee to make recommendations and review, examine and amend the EPA, both to ensure continuity – a key policy consideration for the Government – and to ensure the treaty is responsive to any implementation issues requiring technical or administrative changes and remain up to date, e.g. allowing parties to make changes to treaties in light of domestic changes in regulation or legislation.

Consultation

Finally, you indicated that you would like clearer information on the extent of consultation in relation to the Agreement.

I can reassure you that the treaty text was shared with the devolved administrations (DAs) on 5th March 2019 shortly after initialling. Since the Pacific Agreement, we have updated our practise of sharing text, and now do so at the point of 'initialling' or agreeing in principle with partner countries. This happened for the first time with the Cariforum agreement text which we shared with them on 20th March. Since January, DIT has engaged with the DAs weekly with an email update and held update telephone calls with the programme director at a frequency of up to fortnightly. We continue to share progress continue at a Ministerial level and invite the DAs to highlight particular agreements of importance or concern. We believe the DAs are broadly content with the engagement they receive on Trade Agreements Continuity (TAC) and we will continue to welcome their views as progress is made.

On territories for whose international relations the UK is responsible for, the UK has been clear from the start that relevant territories should be engaged in the process. We shared the Pacific text with the Crown Dependencies and Gibraltar on 18th March. We have also updated our practise of sharing text with the Crown Dependencies and Gibraltar. As with the DAs, we now share text with them both at the point of 'initialling' or agreeing in principle with partner countries. This also happened for the first time with the Cariforum agreement text on 20th March.

DFID has regularly engaged business and civil society members of the Trade for Development Expert Advisory Group on the progress of the UK-Pacific States EPA, updating stakeholders on the approach and status of replicating the EU-Pacific States EPA to ensure continuity of effect.

DIT has held meetings on continuity of existing trade agreements with businesses from a range of sectors and across the country. We have issued advice to business to help them prepare for both a deal and 'no deal' Brexit scenario, including publishing the status of agreements on the GOV.UK website.

We will aim to ensure that the explanatory materials in future provide more information regarding the consultation process.

I welcome this report's conclusion not to draw this agreement to the special attention of the House, and would like to state again how much the Government values the scrutiny your committee continues to offer on the trade continuity programme.

I am placing a copy of this letter in the library of the House.

Yours ever


Baroness Fairhead
Minister of State for Trade and Export Promotion
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