

## CONTINUING THE UK'S EXISTING TRADE RELATIONSHIPS AS WE LEAVE THE EU

### Information note

The UK participates in around 40 'European Union (EU)-third country' trade agreements covering more than 70 countries as a result of, or relevant to, its membership of the EU. The UK Government is seeking, as far as possible, to continue the effects of these current trade arrangements as the UK leaves the EU.

In pursuance of this objective, the Government laid the text of three trade agreements – with Chile, the Faroe Islands and Eastern and Southern Africa in Parliament on the 6<sup>th</sup> February, for scrutiny under the terms of the Constitutional Reform and Governance Act 2010 (CRaG). Other trade agreements will follow in the weeks to come.

To facilitate parliamentary scrutiny, this note provides information on two aspects of the agreements. These are further discussed in the parliamentary reports published alongside the text and Explanatory Memoranda.

### Short Form

1. The UK has agreed with certain third countries that the most appropriate legal instrument to ensure continuity in the current circumstances is through a 'short form' agreement. Short form is an approach that incorporates by reference the relevant provisions of the underlying EU-third country agreement with necessary modifications, rather than reproducing and amending the entire text of that underlying agreement.
2. In a short form treaty, many general changes are made by applying the principle of *mutatis mutandis* to our continuity trade agreements (such as replacing "EU" with "UK"). This means that the text of the original EU-third country treaty must be read with the technical changes necessary to enable operation of the Agreement as if it had been concluded as a self-standing agreement between the UK and a partner country.
3. Where more substantive amendments have been required to ensure operability in a UK bilateral context, or where the UK and a partner country have jointly agreed that *mutatis mutandis* would not deliver adequate certainty over rights and obligations, amendments have been included in the Annexes of the relevant agreements.
4. There are a number of advantages to this approach:
  - a. It significantly reduces the volume of text that needs to be set out in the agreement;
  - b. The format itself clearly demonstrates that the aim of the replacement agreement is to secure continuity in existing trading arrangements, with the only changes being those specified on the face of the successor agreement;

- c. The approach provides legal clarity as to each party's rights and obligations while facilitating compliance with requisite treaty formalities and associated domestic procedures within tight timeframes. For example, use of the short form significantly reduces the volume of text that the parties to the treaty need to subject to legal review and translation; and
  - d. The approach provides an up-front and clear summation of what the changes in the current trade arrangements – which derive from the EU's trade agreements, which have already been scrutinised by member state legislatures - between the UK and the third country are.
  - e. By emphasising the changes made to the precursor agreement, the short form can make it easier for businesses to understand what, if anything, has changed for them.
5. The approach is similar to that used in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), where Article 1 of the CPTPP incorporates by reference the provisions of the Trans-Pacific Partnership Agreement into, and makes them part of, *mutatis mutandis*, the CPTPP.

### **Provisional application**

1. As recognised in Article 25 of the Vienna Convention on the Law of Treaties (VCLT)<sup>1</sup>, if the agreement so provides, or the negotiating States have in some other manner so agreed, an international agreement may be provisionally applied, in whole or in part, pending its entry into force.
2. Provisional application of treaties reflects a longstanding international treaty practice. It enables countries to apply agreed treaty commitments on a provisional basis, prior to entry into force of the treaty, while they complete their necessary domestic procedures and relevant international treaty formalities. This is an option provided they have in place all implementing legislation necessary to comply with the obligations that will be provisionally applied.
3. Many of the EU's existing free trade agreements (FTAs) provide for provisional application and were provisionally applied prior to formal entry into force e.g. the EU-Canada Comprehensive Economic and Trade Agreement (CETA) is currently being provisionally applied in part. It is a mechanism commonly used in international trade and there are also UK precedents in relation to both bilateral and multilateral agreements.

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<sup>1</sup> The VCLT is known as "the treaty on treaties". It sets out the default body of international law rules that define treaties and govern how they operate.

4. Where the negotiating States have agreed that a continuity FTA may be provisionally applied from the date the underlying EU FTA ceases to apply to the UK, whether when the UK leaves the EU or at the end of an Implementation Period or otherwise, the treaty may be applied provisionally from that date, provided any necessary domestic implementing measures are in place.
5. In a scenario where the UK reaches a withdrawal agreement with the EU and enters an Implementation Period our intention is to avoid needing to use provisional application for continuity FTAs with the rest of the world where at all possible. Provided the negotiating States have so agreed, it will be used, by the UK, if such an agreed continuity FTA has not yet been ratified or completed the procedures set out in CRAg under a no deal scenario. The UK's scrutiny and ratification processes will continue so that each agreement that has been provisionally applied will still undergo scrutiny as set out in CRAg.
6. The process for provisional application varies agreement-by-agreement but usually is set out in the final provisions of the agreement itself, typically in an article addressing the entry into force of the treaty. The factors that influence its availability or use include third countries' constitutional arrangements, which may impact their ability to provisionally apply international agreements in whole or in part.