

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.

To date the Government has laid agreements with Chile, Eastern and Southern Africa, the Faroe Islands, Switzerland and Liechtenstein, Israel and the Pacific states in Parliament for scrutiny under the terms of the Constitutional Reform and Governance Act 2010 (CRaG). Although it is not a treaty subject to the CRaG scrutiny procedure, the Government has also laid the agreement with the Palestinian Authority. We anticipate that other trade agreements will follow in the weeks to come. These agreements were accompanied by parliamentary reports published alongside the text and Explanatory Memoranda.

On 26 February the Government added an information note to both Libraries on the use of short form in some agreements and the use of provisional application to bring some into effect.

To facilitate parliamentary scrutiny of trade agreements, this note provides information on the Government's approach to using other temporary arrangements such as Memoranda of Understanding to bring certain trade agreements into effect should the UK leave the EU without an agreement.

Temporary arrangements to bring agreements into effect

1. To begin to apply the terms of a trade agreement, parties to the agreement, in accordance with their domestic procedures, either provisionally apply the agreement or ratify to indicate their consent to be bound so that the agreement may enter into force. If the UK leaves the EU without an agreement on 12 April, there may not be sufficient time for either the UK or some partner countries to complete their domestic procedures to provisionally apply or ratify an agreement to enable it to enter into force by day one of exit. However, where agreements have been concluded in time, both the UK and partner countries wish to minimise any gap in trade preferences.
2. One way to achieve this, where systems on both sides allow it, is to conclude a 'Memorandum of Understanding' (MoU) with partner countries to ensure continuity of trade. A prerequisite of this is a concluded agreement upon which the MoU would be based. This approach has been developed to help avoid any cliff-edge created in existing UK trade relationships explicitly by ratification timelines or an inability to provisionally apply the concluded agreement.¹
3. MoUs are a common method by which countries enter into arrangements with each other across a range of policy areas. An MoU is not legally binding but creates a strong political commitment, in this context, to continue the effects of the trading arrangements for the time needed to complete domestic procedures. Such a commitment could alternatively be made through other political vehicles with the same effect, for example an exchange of diplomatic notes.

¹ Other forms of political commitment, such as use of exchanges of diplomatic notes, are also being considered alongside MoUs.

4. The period that an MoU would need to last for will vary by country, but we envisage only rare circumstances where this could be longer than six months. An MoU would include an automatic sunset clause to ensure that the UK and partner countries seek to complete domestic procedures as quickly as possible.
5. The UK considers an MoU to be a means by which the participants express their commitment to apply the provisions of a WTO-compliant free trade agreement for the period before those provisions can be brought into effect. We will notify the WTO as needed about such free trade agreements.
6. This is not a replacement for the usual domestic scrutiny requirements under CRaG and does not mean that these will be circumvented for the UK's replacement trade agreements. Nor is this intended to set a precedent for the treatment of future international agreements.
7. The Government remains committed to ensuring that Parliament plays the appropriate role in scrutiny of its trade agreements. Should a continuity trade agreement require use of an MoU to deliver continuity for businesses and consumers at the point the UK leaves the EU, the Government is committed, in parallel, to ensuring that agreements are brought fully into force as soon as possible.