



Department for International Trade

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To: All MPs

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Dear Colleague,

Thank you again for what proved to be an interesting debate on the Second Reading of the Trade Bill on 20 May, during which Members across all parties made several points. I was unable to respond to all of these directly, but as I outlined in my closing speech, I am writing to address the main points, and specific individual points, raised in the debate.

As the Secretary of State and I highlighted at Second Reading, as with the 2017-19 Trade Bill, this Bill contains key measures that will deliver for UK businesses and consumers across the UK, providing continuity and certainty as we take action to build a country that is more outward looking than ever before. The provisions in the legislation cover:

- Government Procurement Agreement – ensuring the UK is able to implement its obligations as an independent member of the Government Procurement Agreement. Opportunities covered by the market are estimated to be worth £1.3 trillion per year across the 20 parties to the agreement;
- Continuity Agreements – Clause 2 of the Trade Bill provides powers for the implementation of obligations arising from agreements which the UK enters into with countries that the EU had a trade agreement with before 31 January 2020. Consequently, the powers in the Bill cannot be used to implement any future Free Trade Agreement with countries such as USA or Australia;
- Trade Remedies – establishing a new independent UK body, the Trade Remedies Authority, to protect UK businesses from injury caused by unfair trade practices or unforeseen surges in imports; and
- Data collection and sharing – ensuring the UK government has the legal abilities for gathering and sharing certain trade information.

A number of issues were raised on these four core elements of the legislation, and I will address these in turn.

Government Procurement Agreement

The level of parliamentary scrutiny of the UK's independent participation in the Government Procurement Agreement was raised. We intend to accede to the Agreement on the basis of the same market access schedules that were shared with the International Trade Committee in 2018 and laid before Parliament in line with the Constitutional Reform and Governance Act 2010. This scrutiny process concluded without objection in 2019. Any changes to the GPA, including any changes to the UK's schedules, prior to our accession will again be scrutinised in line with the Act.

The Trade Bill powers will allow Government to implement the UK's independent accession to the Agreement in domestic procurement regulations and respond to a limited set of scenarios within it thereafter. This does not include any power to implement a wholesale renegotiation of the Agreement, or the UK's offer under the Agreement. Given the limited way in which powers have been defined, it is appropriate to apply the negative procedure to regulations made under Clause 1.

I would also like to reassure Parliament that the UK's schedule to the Agreement does not, and will not, cover healthcare services. If any future government sought to open up healthcare services to overseas competition under the GPA, this could not be implemented using provisions in the Trade Bill.

Continuity Trade Agreements

Clause 2 of the Trade Bill assists with the Government's trade continuity programme. Following the transition period, EU trade agreements will no longer apply to the UK and trade continuity agreements will enter into effect. Thus far, we have signed trade continuity agreements with 48 countries, accounting for £110bn of trade in 2018, representing 74% of the trade with countries with whom we were seeking continuity before the Withdrawal Agreement was signed.

Some Members expressed concerns about standards in continuity agreements. As the Prime Minister outlined in his Greenwich speech, we have no intention of lowering standards through trade agreements. The UK has led the world in the development of environmental, labour and animal welfare standards, which are often based on British law, not international agreements.

The purpose of the continuity programme is to replicate the effects of existing commitments in EU agreements. None of the 20 agreements signed have resulted in a lowering of standards. Changes are sometimes required to make agreements operable in a UK context; these are captured in Parliamentary Reports published alongside signed agreements, and I can confirm that we will continue to publish such reports for all remaining agreements.

During the debate, the Government was asked whether we will transition clauses to terminate agreements if third countries commit human rights transgressions – specifically Cameroon, Egypt, Turkey, Singapore and South Sudan were referenced. For Cameroon and Egypt, I can confirm that we are seeking to transition such provisions in the underlying EU agreements.

In relation to Turkey and Singapore, as mentioned above, the Government's intention is to replicate the effects of existing EU agreements. I would also like to confirm that South Sudan is outside the scope of the continuity programme as they do not have a trade agreement signed with the EU before 31 January 2020.

Members also raised concerns about the role of the NHS in trade agreements. Our position is definitive: the NHS is not, and never will be, for sale to the private sector, whether overseas or domestic. We will ensure no trade agreements will ever be able to alter these fundamental facts.

The delivery of public services is safeguarded in the trade in services aspects of all free trade agreements the UK is party to. In the EU's free trade agreements, the UK's public services are safeguarded by specific exceptions and reservations. Having left the EU, the UK will continue to ensure that public services – including the NHS – are safeguarded in all trade agreements it is party to, whether transitioned from an EU context or as a result of new negotiations.

Members also raised concerns about the role of Parliament in scrutinising continuity agreements. The government wishes to work collaboratively and constructively with Parliament; however, we do not wish to depart from the current system, which we believe is proportionate. As we are discussing trade continuity, all agreements in question have already been subject to scrutiny as underlying EU agreements, through the European Scrutiny Committee process or equivalent.

Additionally, the Constitutional Reform and Governance Act provides for a period of 21 sitting days for Parliament to scrutinise agreements, a report on the agreement from the relevant Select Committee, an option for debates on the agreements in Parliament and the power for the Commons to restart this 21 day period if it is not satisfied. Of the 20 agreements that we have signed, only 9 were recommended for special attention of Parliament by the Lords EU Select Committee. Not one of the subsequent debates resulted in a motion of regret.

We have offered further opportunities for scrutiny, including the voluntary commitment to publish Parliamentary Reports detailing any significant changes between a continuity agreement and the underlying EU agreement. Additionally, any regulations made under the Clause 2 power will be subject to the draft affirmative procedure. We have also included a 5-year sunset clause, which can only be extended with active approval from both Houses.

The Member for Brent North questioned why we need the Clause 2 if we have already signed agreements with 48 countries. There is an important distinction between signature and implementation. Government does not need Clause 2 power to sign continuity agreements, but rather to implement in domestic law the obligations which flow from them, including procurement and mutual recognition.

A number of Members enquired about the progress of negotiations with remaining continuity partners. I can confirm that negotiations continue with all remaining continuity partners, ahead of the end of the Transition Period. Members can find up to date information on our continuity agreements at our website: <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries>.

The Member for Huntingdon rightly identified that we are seeking to negotiate an enhanced Free Trade Agreement with Japan, using the Economic Partnership Agreement as a base. In recognition of this enhanced status we are providing extra scrutiny, including publication of our negotiating objectives, a response to a public call for input and an initial scoping assessment for the agreement. We will provide updates to Parliament as negotiations progress and a Parliamentary Report when they are concluded, outlining areas of difference with the EPA.

I would also like to confirm that all our continuity agreements will apply to Northern Ireland. I can confirm our top priority is to preserve Northern Ireland's place in our United Kingdom and protect the Belfast/Good Friday Agreement.

The Bill confers concurrent powers on the devolved administrations and the UK Government to implement the trade agreements we are transitioning in devolved areas. Concurrent powers provide greater flexibility in how these transitioned agreements are implemented, allowing each devolved administration to implement the agreements independently in some cases, but also allowing the UK Government to legislate on a UK-wide basis where it makes practical sense to do so. Since the introduction of the Trade Bill during the 2017-19 session we have substantially amended these powers at the request of the devolved administrations and I am happy to re-state the commitment that the UK Government will not normally use the Bill's powers in devolved areas without the consent of the devolved administrations, and never without consulting them first. These commitments and amendments have already led the Welsh Government to recommended consent to the relevant clauses of this Bill. I hope this reassures Parliament that this Bill is drafted in a proportionate manner that respects the devolution settlements.

Trade Remedies Authority

Turning to the Trade Remedies Authority (TRA), we are committed to ensuring the Authority's Board will have a wide range of backgrounds and experience. However, it is essential that members are appointed on merit to ensure that the Board has the right blend of skills and expertise, rather than due to affiliations with any specific interest group or geography.

While this may mean that some of its senior leadership has experience in a particular area, that must not be why they were chosen. We must focus on their skills, above all. For these reasons, requiring the board to include specific manufacturing industry or trade union representation would not be appropriate. It would also put at risk the core principles which underpin our new trade remedies framework of impartiality and objectivity, potentially undermining the Authority's independence by having Board members who are beholden – or perceived to be beholden – to a particular interest group. It is worth noting that the Board will assure the Authority's decision making process, and will not make recommendations itself.

We are committed to setting up the Authority with the right level of Parliamentary scrutiny. As the Secretary of State is the final decision maker, not the Authority, it is appropriate to set it up as an arm's length body. That is why the Authority will be required to prepare both an annual report on the performance of its functions and an annual statement of accounts. Both documents will then be laid before the House of Commons, as is usual practice. This will ensure that Parliament is able to scrutinise the TRA's functions and financial activity. The Authority will also be accountable to Parliament through investigation by Parliamentary bodies (the Parliamentary Ombudsman, NAO) and Committees.

The Secretary of State has requested and secured agreement for the Commissioner for Public Appointments to regulate all public appointments to the Authority, as is usual for equivalent non-departmental public bodies. This means that all public appointments made to the Authority will be required to follow the Governance Code for Public Appointments.

To this end, the Secretary of State has asked the Office for the Commissioner for Public Appointments to add the Authority, at the first opportunity once legally established by Statute, to the list of public bodies regulated by the Commissioner, set out in the Schedule to the Public Appointments Order in Council which is updated annually.

Members also questioned how the devolved administrations will be represented on the Authority. The Authority will be an independent body responsible for applying the trade remedies system across the whole of the UK. As with industry representation, allowing the devolved administrations to appoint members of the Authority could jeopardise this independence.

We recognise that the devolved administrations will have an interest in the Authority's work. As a result, during the passage of the 2017-19 Trade Bill the Government made non-legislative commitments to the devolved administrations regarding the Authority. These commitments allow us to strike the proper balance between maintaining the independence of the Authority and ensuring the Authority delivers for all parts of the UK. For example, the Government committed that the Secretary of State will seek the devolved administrations' suggestions on the optimal way of recruiting non-executive members with regional knowledge skills and experience. I can confirm that we have already fulfilled this commitment and will fulfil all others regarding the Authority.

Data Sharing and Collection

On the issue of data sharing and collection, having better information on which businesses trade is vital. Clause 7 of the Bill gives data collection powers to the Government on exporters, which will provide the Government with an accurate view of exporting activity across the UK and assist in providing targeted support to businesses, such as those services offered by UK Export Finance, in accessing export opportunities. Clause 8 of the Trade Bill enables the sharing of data with organisations with public functions relating to trade. The data, such as export data, can be shared with UK Export Finance to better target business support and trade finance.

As mentioned during Second Reading, the Trade Bill is a continuity Bill and only has powers to implement those trade agreements the EU had with a third country before 31 January 2020. It has no powers to implement any future Free Trade Agreement with the EU or the USA.

Future Free Trade Agreements

In the debate, a number of Members were concerned that the legislation did not include any provisions for the parliamentary scrutiny of future Free Trade Agreements. I would like to reassure all Parliamentarians that the Government is committed to the principle of effective parliamentary scrutiny.

The statutory framework for the scrutiny of treaties is the Constitutional Reform and Governance Act, which was passed in 2010 after considerable consultation. In line with our commitment to transparency, this Government has gone beyond the statutory requirements of the Act. We have provided extensive information to Parliament and the public on our approach to trade negotiations, including publishing our objectives, economic scoping assessments and responses to public consultations for the negotiations of a new Free Trade Agreement with the US and an enhanced agreement with Japan. We also provided a progress report to Parliament at the conclusion of the first round of talks with the US, the first round to have been completed. At the end of the negotiations we will publish a final impact assessment and treaties will be scrutinised under the Act's provisions before they can be ratified. Finally, international treaties cannot themselves amend domestic legislation and any changes to UK law will need to be scrutinised and passed by Parliament in the usual way.

This approach strikes the right balance between respecting the UK constitution, ensuring that Government can negotiate in the best interests of the UK, and ensuring that Parliament has appropriate information in order to effectively scrutinise our trade policy.

In reaching our approach we have of course considered the parliamentary scrutiny systems of international comparators, including the United States and Commonwealth countries such as New Zealand and Canada. Whilst these have provided useful information and enabled us to rigorously test our approach, no other system can be replicated for the UK. The scrutiny systems of each country reflect their own specific constitutional and democratic systems; likewise, the UK's approach must reflect our unique and specific constitutional framework.

During the debate, the issue of how the views of the devolved administrations will be represented in Free Trade Agreements was raised. The UK Government is committed to working closely with the devolved administrations to deliver an independent trade policy that works for the whole of the UK, but it is important that we do this whilst respecting our current constitutional arrangements.

Under the UK constitution and devolution settlements, the negotiation of international agreements is both a reserved matter and a prerogative power of the UK Government. This ensures the UK Government can speak with a single voice under international law, providing certainty and the strongest possible negotiating position. As a reserved matter, it is the responsibility of the UK Government to represent the interests of the whole of the UK when negotiating international trade agreements.

However, the UK Government recognises that modern trade deals cover an increasingly wide range of areas, including some areas of devolved competence. Therefore, my department works closely with the devolved administrations to ensure that the UK Government can deliver agreements that reflect the interests of all parts of the UK. In recognition of the importance of this relationship we have established the Ministerial Forum for Trade with the devolved administrations. The forum meets regularly to discuss our approach to trade negotiations. In addition, I have also held bilateral calls with devolved administration Ministers to update them on our negotiations programme. This Ministerial engagement is matched at the official level by substantive engagement on the policy detail of our negotiation positions.

I also understand that some Members are concerned that future Free Trade Agreements will impact food and farming standards. The position of this government is very clear – we will not compromise on our high standards of food safety and animal welfare in trade negotiations, including in ongoing talks with the US. Government will work hard to ensure the high standards of British farmers are maintained, and in all trade agreements we negotiate we will stand up for British farming and aim to secure new opportunities for the industry.

The 2018 Withdrawal Act will transfer all existing food safety provisions, including existing import requirements, onto the UK statute book. This includes a ban on using artificial growth hormones in domestic and imported products, and a ban on using anything other than potable water to decontaminate poultry carcasses.

The Food Standards Agency and Food Standards Scotland will continue to ensure that all food imports comply with the UK's high safety standards and that consumers are protected from unsafe food which does not meet our high standards. Decisions on these standards are a matter for the UK and will be made separately from any trade agreements.

We will ensure that any deal we strike will deliver for British farmers, and for the whole food, drink and agriculture industry, and protect their interests. We have actively engaged the agriculture industry and encouraged it to help shape UK trade policy, including through representation on the Government's Strategic Trade Advisory Group and dedicated agri-food Expert Trade Advisory Group.


More trade is essential if the UK is to overcome the unprecedented economic challenge posed by coronavirus and succeed in the longer-term. New Free Trade Agreements are a powerful way to deliver greater prosperity, better jobs, higher wages, more choice and lower prices. Government analysis shows that ambitious trade agreements, such as with the US, could positively impact every part of the UK, with the economic benefits greatest for Scotland, the Midlands, the North East and Wales. There are gains to be had for almost every industry, from agriculture to businesses services.

I hope this letter gives Members the necessary reassurances on this Bill and clarifies what this Bill can, and more importantly what it cannot do. I look forward to continuing our collaborative approach as the Bill progresses through this House.

I am copying this letter to all Members who took part in the debate and placing a copy of this letter in the libraries of both Houses.

Best Wishes,

Yours ever,

A handwritten signature in blue ink, appearing to read 'G Hands', with a long horizontal flourish extending to the right.

THE RT HON GREG HANDS MP
Minister of State
Department for International Trade