Lord Jay of Ewelme  
Acting Chair, European Union Committee  
House of Lords London  
SW1A 0PW  

13th November 2017

Dear Lord Jay,

BREXIT: GIBRALTAR REPORT (‘Report’)

May I, first of all, reiterate my deep gratitude to the Committee for the work it has done, and continues to do, on behalf of Gibraltar in connection with the enormous challenges that Brexit has thrown our way. Such support is vital in order to protect Gibraltar’s vital interests in these complex negotiations. I would in particular wish to record gratitude of Her Majesty’s Government of Gibraltar to Lord Boswell of Aynho, your Chairman, for his very positive and kindly disposition to me personally and to the whole of the Gibraltar Government’s team at the time of the preparation of your Report. Everyone on the Rock will want to join me in wishing him a very full and speedy recovery.

I am grateful for the reply that the Secretary of State for Exiting the European Union has submitted to you in connection with the Committee’s extremely helpful Report “Brexit: Gibraltar”. I would like to set out, for the record and in case it may be of assistance to the Committee, HM Government of Gibraltar’s views on that reply.

As a general comment, we are very satisfied with the reply. It is consistent with the Brexit work that is taking place, almost on a daily basis, between both our governments, be it at the level of the Joint Ministerial Council which is indeed working very well or at the level of the Working Groups that have been established. We do feel “fully involved”, we do feel that the UK Government is acting in accordance with the “moral responsibility” that the Committee so aptly described in
its Report, and we do feel that our priorities are being taken into account. We have no doubt, as stated by the Secretary of State, that the UK Government “takes its responsibilities to Gibraltar very seriously”. We also welcome the Secretary of State’s statement that the UK Government will continue to work closely with the Gibraltar Government “to ensure we get a result that is in the collective interests of the UK and Gibraltar”. We are grateful he has taken the care to reply to each one of the conclusions in the Committee’s Report. In this respect, I would highlight the work of Ministers in the Foreign Office, Rt Hon Sir Alan Duncan MP, in the Department for Exiting the European Union, Hon Robin Walker MP and in HM Treasury, Hon Stephen Barclay MP. All have been a crucial part of the development of the relationship between Her Majesty’s Governments of Gibraltar and the United Kingdom.

As I stated when I gave evidence before the Committee, Gibraltar’s Brexit strategy is based on the maintenance and enhancement of our trading relationship with the United Kingdom, a free-flowing border with Spain and Gibraltar’s inclusion in the future trade agreements that the UK will enter into with countries around the world. Conclusions 2, 3, 5 and 6 of the Committee’s Report highlighted these matters.

With regard to our trading relationship with the United Kingdom, the Committee accurately stated at Conclusion 5 that it is important for Gibraltar to “maintain and enhance” access to UK markets. We note that the reply refers to “maintain and strengthen”. I do not consider that we should read anything into the use of “strengthen” instead of “enhance” but I would like to place on the record that, for us, it is very important that our trading relationship with the UK is enhanced post-Brexit (which is the precise language employed by the Secretary of State for International Trade, Rt Hon Dr Liam Fox MP, and other Ministers when repeatedly stating the UK Government’s policy position in respect of future trade with Gibraltar). This is for the very reason stated in the Committee’s conclusion, namely, to compensate for any potential losses we might suffer in access to the Single Market post-Brexit. That is the commitment we seek.
I am happy to report that the Working Groups on Financial Services (with initial emphasis on insurance) and Online Gaming are now meeting on a regular basis. It is important that these Working Groups now start to deliver final and concrete results.

The reply does not mention the work that has been done with respect to the conclusion of a Double Taxation Agreement ("DTA") between the United Kingdom and Gibraltar. We have now submitted to the UK Government a draft DTA as well as a Business Case setting out the reasons why such a DTA would be of enormous value to Gibraltar post-Brexit. I am confident that progress will be made shortly on this front.

We will also be submitting proposals for the development of trade between the UK and Gibraltar in other sectors of the economy. This will deal with the potential for ‘enhancement’ referred to above. We are currently working on these. Progress on other sectors will also help us to compensate for any potential losses we might suffer in access to the Single Market post-Brexit.

With regard to Gibraltar’s inclusion in the future trade agreements that the UK will enter into with countries around the world, we are grateful for the Secretary of State’s reiteration that the UK Government will “take into account the priorities of Gibraltar as [they] look to establish new trade and investment arrangements with the wider world”. Officials from the Department of International Trade came to Gibraltar for a first visit on 6 and 7 November in order to better understand Gibraltar’s future needs on this front. They met with me, other Government Ministers and officials as well as with members of the private sector. Further visits are envisaged and we are optimistic that Gibraltar’s priorities will indeed be taken into account. I will look forward to welcoming Secretary of State Fox to Gibraltar – he is a long term friend and frequent visitor to the Rock – in his ministerial capacity, to further explore opportunities for the future.

With regard to a free flowing border with Spain, we are confident that the UK Government are fully aware that this is of vital importance to Gibraltar. The Secretary
of State accurately reflects this in his comment under Conclusions 2 and 3: "The UK Government recognises the importance of a well-functioning border to Gibraltar's economy" and in his further comments under Conclusion 6 were he states that a free-flowing border is "crucial" to the Gibraltar economy and that the "economics of the issue are vitally important" and not just for Gibraltar, but for the surrounding Spanish region of the Campo de Gibraltar also. Indeed they are. It is essential that we preserve the free flowing border between Gibraltar and Spain in the Brexit negotiations both in the withdrawal agreement and in the future UK-EU agreement/s.

Although the importance of the border is not limited to the issue of frontier workers (it is also vitally important for other aspects of the economy, for instance, for the tourism sector which is another major sector of our economy, since over 90 % of all tourists who come to Gibraltar do so via the border), we are also glad to note the Secretary of State's emphasis on the particular importance of frontier workers to the Gibraltar economy. Thus, in his comments under Conclusion 6, the Secretary of State acknowledges that these are "vital workers" for Gibraltar and that "frontier workers are so important to Gibraltar's economy". As I stated when I gave evidence before the Committee, almost 50% of the entire workforce in Gibraltar are composed of frontier workers. It is essential to protect their position during both the implementation period and in the future UK-EU agreement/s. It is also very important that the position of the approximately 2,500 British nationals who are frontier workers is not neglected. We have recently expressed a concern to DExEU about the treatment of such British nationals in the negotiations on Citizens' Rights.

The Committee addressed the uncertain future in Conclusions 12 and 13 of its Report, and the fact that there should not be any inferior treatment of Gibraltar in either the withdrawal agreement or the future UK-EU agreement/s. We are reassured with respect to our position in the withdrawal agreement and are confident that the UK Government will stand firm to entirely frustrate any attempts by Spain to try to undermine Gibraltar in the future UK-EU agreement/s, particularly in light of Clause 24 of the European Council's Guidelines for the Withdrawal Negotiations.
which, we know, was introduced at the behest of Spain, and purports to grant Spain a special veto on the application of such agreement/s to Gibraltar. This has to be resisted resolutely. It is relevant to bear in mind that in a judgment delivered this summer, the Grand Chamber of the European Court held that the UK and Gibraltar form part of a “single Member State” for the purposes of EU law, as I stated to be the case when I gave evidence before the Committee. In any event, all of Gibraltar has been greatly reassured by the Secretary of State’s cast iron and categorical commitment that the UK Government will not conclude any agreement or agreements for future trade with the European Union if these purported to exclude Gibraltar.

We are also grateful to the Secretary of State for having positively addressed the other issues set out in the conclusions in the Committee’s Report, in particular, the role that access to the Single Market has played in Gibraltar’s economic development, EU funding, police and judicial cooperation and the European Arrest Warrant.

Finally, it goes without saying, that we welcome the renewed commitment on British sovereignty and the double lock that the Secretary of State has restated in his comments to Conclusions 9-11 of the Committee’s Report. This is in accordance with the UK Government’s consistent iterations on this most fundamental issue. They are, as always, greatly welcomed.

The Secretary of State says that the UK Government is clear “that future EU legislation or wider policies could not weaken or undermine the legal basis in international law for British sovereignty over Gibraltar”. That is certainly the case and particular care will have to be taken in the future to ensure that the UK’s withdrawal from the EU does not give free reign to Spain to include British Gibraltar Territorial Waters in the designation of Spanish sites for the purposes of EU environmental or other maritime matters. They have done so in the past, whilst the UK has been a Member of the EU, and we must all be very vigilant that no further designations

I would like to, once again, thank you and the Committee, for the invaluable work you have done and support that you have given us. No doubt we will continue to cooperate in the months and years ahead. We would very much welcome that.

With best wishes,

Sincerely,

Fabian Picardo QC MP
Chief Minister