Department for Exiting the European Union

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Lord Boswell of Aynho
Chairman, European Union Committee
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28 February 2018

Dear Lord Boswell,

Thank you for your letter of 6 February in which you asked about international agreements. I have sought to address each of your points in turn.

Before doing so, however, I would like to thank the Committee and its subcommittees for taking on the role of scrutinising our successor international agreements. In doing so, it is performing a valuable service, not only to the House of Lords, but to the wider public, in giving assurance that there is proper parliamentary consideration of these agreements.

You asked about the Government's criteria for including certain agreements and not others in the list provided on 25th January. Our criteria for including agreements on the list was to provide detail on bilateral agreements which we have already signed and which we expect to sign in the near future. The list also included multilateral agreements showing those agreements where we are taking action to become an independent party as we leave the European Union. Since my letter of 25th January, you will have noted that 26 further agreements have begun the scrutiny procedure under the CRaG Act 2010 and are now before Parliament.

We will continue to keep you, and your officials updated on agreements that are close to conclusion and we will provide a further list of agreements shortly.

You wanted to understand the rationale for the sequencing of these agreements. Concluding these agreements has depended on the progress of on-going discussions with partner countries, and the necessary domestic processes in the UK and third countries including legislation where required. This is an evolving picture with many discussions at an advanced stage. Furthermore, as explained in more detail below, not all of our cooperation with third countries in areas covered by international agreements is dependent on a formal treaty being in place.

We have analysed all treaties to which the UK is party by virtue of our EU membership. Through this analysis, we have identified treaties that do need to be transitioned because, for example, they have been superseded, are no longer in force, or are not relied upon by or in the UK. For example, there are agreements which allow a country to use the euro, agreements relating to the accession of a new EU Member State and agreements relating to

former trade arrangements (e.g. previous trade agreements with Canada before the EU-Canada Comprehensive Economic and Trade Agreement was introduced in 2017).

You asked about “mixed” agreements and our approach to these. A “mixed” agreement can be multilateral (eg the Marrakesh Agreement establishing the World Trade Organisation, and climate change agreements) or bilateral (eg some aviation and free trade agreements), and is an agreement to which both the EU and some, or all, of its Member States are party. Whether or not the UK will remain a party to mixed agreements after exit day will depend on the terms and structure of the agreement in question.

In the event of no deal, the UK will remain a party to most “mixed” multilateral agreements after exit day, where it is already a party in its own right. For some of these agreements, the Member States may have acceded to the agreement before the EU gained competence over its subject matter. For others, the Union and its Member States may have acceded together, because the agreement covers areas of both Union and Member State competence. After exit day, in the event of no deal, the UK will regain full competence over such agreements.

The UK will no longer be party to “mixed” bilateral agreements (such as bilateral EU aviation agreements, where certain aviation related rights are in Member State competence) after exit day. These are agreements structured as a bilateral arrangement between the EU and its Member States on the one hand, and third parties on the other. Furthermore, many of these agreements have provisions limiting their application in the EU party to the territories in which the EU Treaties apply. We are therefore delivering successor agreements with third countries in these areas.

You also asked about agreements within the scope of the EU’s area of freedom, security and justice (AFSJ). These agreements are led by the Home Office. Across the Home Office, work is underway to transition a number of existing EU international agreements with third countries affected by EU Exit, and which cover law enforcement and security, data sharing, readmission, asylum frontier controls and free movement. As you would expect, the Home Office has developed ‘No Deal’ contingency plans for all its agreements, to be implemented as required.

Your letter also asks about provisional application. Government is committed to providing Parliament with opportunities to scrutinise such international agreements through the framework of the CRaG Act. However, given there are limited sitting days, there are a number of options as to how we can proceed. For agreements that are signed with fewer than 21 sitting days until exit, we could either accept that there will be a gap in coverage until Parliamentary scrutiny is completed; seek to use Section 22 of the CRaG Act which provides that Section 20 of the Act does not apply to a treaty if a Minister of the Crown is of the opinion that, exceptionally, the treaty should be ratified without the requirements of that section having been met; or we could look to provisionally apply the treaty. This last option would deliver on our principle to ensure that we can deliver continuity and certainty for stakeholders from exit, whilst ensuring Parliamentary scrutiny is not curtailed, Government would continue to lay these international agreements subject to ratification, including those being provisionally applied, in Parliament pursuant to the CRaG Act. You will have seen that

there are provisional application clauses in some of the trade related agreements which have been laid recently. By way of example, we intend to provisionally apply the agreement with Switzerland on citizens' rights which Minister Heaton-Harris signed on 25th February.

In relation to whether the Government expects to apply Section 22 of the CRaG Act, the Government's intention is to lay treaties subject to ratification under the 2010 Act in the normal way, but cannot exclude the possibility of using Section 22 if an exceptional case should arise which justified its use.

You also asked about the legal status of a Memorandum of Understanding (MoU) and our approach to rolling over these agreements. An MoU is a non-binding international instrument. The MoUs to which you refer relate to EU-third country Air Services Agreements (ASAs) which are being transitioned in preparation for exit day. It is standard international practice for new ASAs, or amendments to existing ASAs, to be applied administratively via an MoU pending signature and completion of respective domestic legal requirements. This is with the exception of Switzerland, where domestic Swiss requirements mean that the replacement UK-Swiss ASA must be ratified and enter into force. This is one of the agreements currently before Parliament.

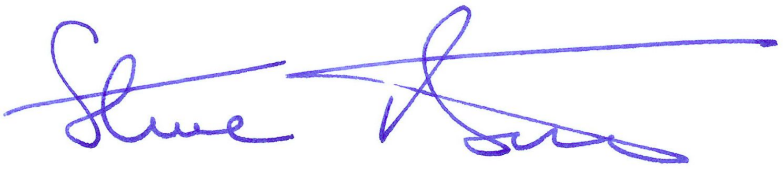
Finally, you asked about EU trade agreements and the trade-offs between successor 'continuity' agreements and new bilateral agreements with other third country partners. There are two distinct programmes, which are progressing work towards continuity and new agreements in parallel: one to ensure continuity for citizens and businesses, and another programme to consider how we maximise the opportunities of an independent trade policy as we leave the EU.

The Secretary of State for International Tradelaid a Written Ministerial Statement *(Existing trade agreements if the UK leaves the EU without a deal)* on 21 February, setting out progress in relation to the delivery of trade agreements. As this sets out, a number of agreements, including South Korea, are at an advanced stage.

This also sets out that trade would not be prevented if we do not complete the transition of any particular agreement prior to our departure from the EU, but would revert to WTO terms. In relation to Japan, the EU-Japan Economic Partnership Agreement only entered into force as of 1st February 2019 so if a successor agreement were not in place on exit day, trading terms would be the same as they were up until that point. The Prime Ministers of Japan and the UK have already agreed to secure an ambitious bilateral agreement, building on the deal already agreed between Japan and the EU.

In addition, our preparations for new agreements are well underway. We have carried out public consultations on Free Trade Agreements (FTAs) with the US, Australia and New Zealand, as well as potentially joining CPTPP. Under the terms of the Withdrawal Agreement with the EU (Article 129 (4)), the UK will be free to negotiate, sign, and ratify international agreements in areas of Union competence (including FTAs) during the Implementation Period, and to bring them into force after the Implementation Period has concluded.

I hope you find this information useful. I would be happy to meet with you to discuss any of the above, particularly any concerns or questions you may have about parliamentary scrutiny of these international agreements.



RT HON STEVE BARCLAY MP
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