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The Lord Boswell of Aynho
Chair,
EU Select Committee
House of Lords
London SW1A 0PW

15th March 2019

Dear Lord Boswell of Aynho,

Thank you to your committee and officials for the considered 'Scrutiny of international agreements - Treaties considered on 26 February' report. As I noted in the House during a debate on these three agreements on Wednesday, it was a robust report and it was clear that the noble Lords who contributed to the debate greatly valued its content and findings. I wanted to write to you to offer a response to the points raised.

Progress in continuity programme

You will have seen the Written Ministerial Statement the Government published on 21st February which updated Parliament on the status of our continuity free trade agreements in the event of a No Deal exit from the EU¹. The Government confirmed that it has already secured agreements with countries that account for around a quarter of UK trade covered by these agreements. This includes signing agreements with Switzerland, Israel, the Palestinian Authority, Chile, the Faroe Islands and Eastern and Southern Africa (ESA). We have also signed Mutual Recognition Agreements with Australia, New Zealand and the United States of America. Indeed, yesterday, the Secretary of State signed a further agreement with Fiji and Papua New Guinea (Pacific).

¹ The text of the WMS can be found at this link here:

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-02-21/HCWS1352/>. Government also published a list of existing free trade agreements if the UK leaves the EU without a deal" here:

<https://www.gov.uk/government/publications/existing-trade-agreements-if-the-uk-leaves-the-eu-without-a-deal/existing-trade-agreements-if-the-uk-leaves-the-eu-without-a-deal>

The best way to provide continuity and stability is to ensure that we have a withdrawal deal with the European Union so that the UK can remain covered by all existing EU agreements during an Implementation Period. This will provide the certainty for trading partners which is called for in the Committee's report. Many discussions with other countries are at an advanced stage. As with all such discussions, they tend to go down to the wire, and we would expect nothing less from these agreements. That is the way that countries do business. We will continue to inform the House as soon as further agreements are signed.

'Short form' treaty text

We welcome the report's support for the principle of 'short form' as a pragmatic approach to transitioning EU agreements to bilateral agreements. The full rationale and benefits for using short form has been explained in an information note which is held in both the Commons and Lords libraries.

The Government has taken steps to support the navigation of short form treaty texts. Principally, the government has published detailed parliamentary reports which accompany each of these free trade agreements – a commitment made in the course of the Trade Bill debates. The parliamentary reports set out, in respect to trade-related elements, where the agreements diverge in a significant way from the EU treaty. As EU Free Trade Agreements are subject to amendments at any time, providing a steady state hard copy is not the best way to enable scrutiny. To best support Parliament's role in scrutinising these treaties, my department has provided in the Parliamentary Reports EUR-Lex links to the EU – Third Country agreements. As many EU trade agreements are not kept in a single consolidated text, as they have been repeatedly amended since signature, providing these links is the best way to provide an up-to-date and easily accessible reference point to the long form text.

The department is capturing the EU agreement as it stands at the time it will cease to apply to the UK, so that subsequent EU amendments will lie outside of the UK's bilateral agreement. All EU law, including EU external treaties, at the point of Exit will be copied and held by the National Archives and be made available on a new online portal.

Scrutiny of future changes to agreements

The Government is committed to ensuring the right level of Parliamentary scrutiny for all agreements including any amendments. The previous scrutiny arrangements, via the EU Scrutiny Committees, developed over time to reflect our position in the EU. We now need a process that is right for the UK.

It is important we are able to amend our treaties to keep them up to date and responsive to changes in domestic legislation or wider economic considerations. For example, a treaty may need to be amended if a post-implementation review reveals that the way in which the treaty is drafted is unclear to business or inhibiting utilisation. In this case, small technical or clarification amendments may be required.

Treaties can be amended through the conclusion of new agreements, which in the UK context could engage the process set out in the Constitutional Reform and Governance Act (2010). Some agreements include an amendment clause which sets out the process that applies for clarity, and sometimes there is an additional process to make changes through the Committee established under the Agreement which governs the Agreement. It is in our interest to enable this function, both to ensure continuity and to avoid having to unnecessarily conclude a new treaty between the parties every time a technical or administrative change is required.

Any amendment to a treaty which would require changes to UK law would, before coming into effect, first require those changes to be made domestically. This means that Parliament would have the opportunity to scrutinise and debate such changes to UK law in the normal manner.

Engagement with the Devolved Administrations

Throughout the Trade Agreement Continuity Programme, we have engaged with the Devolved Administrations (DAs). Both ministers and officials speak to counterparts in the DAs on a regular basis, sharing progress and inviting them to highlight agreements of importance or concern.

We have reflected on the process followed with the DAs on continuity agreements following your committee's report, and I can confirm that we now share text of agreements, once stable, with the DAs. We have also offered briefings on the agreements on request and where appropriate. We share draft Parliamentary Reports and Explanatory Memorandums on individual agreements, and we welcome the DAs' views as progress is made.

We also work closely with the Crown Dependencies and Overseas Territories on these agreements. They have been consulted and the Government is working with these territories to ensure any legislation necessary for implementation will have taken place ahead of provisional application or entry into force of the Agreements. In line with the spirit of the committee's recommendations, we will share the text of all agreements after initialling with the Crown Dependencies and Overseas Territories.

Further comments

Your committee's report raised a concern that the explanatory materials for the Faroe Islands and Eastern and Southern Africa Agreements do not provide sufficient detail in relation to the policy objectives and on implementation plans. The objective is continuity, which is clearly set out in the introduction of each agreement's parliamentary report. In relation to implementation of these UK agreements, any changes which require a change to domestic legislation will come back to Parliament to be scrutinised in the usual way through primary or secondary legislation making processes.

I would like to reassure you that the Government values scrutiny of the trade continuity programme and welcomes your committee's report. I look forward to your subsequent reports on our trade continuity agreements.

I am sending copies of this letter to Lord Stevenson of Balmacara, Lord Purvis of Tweed, all other Noble Lords who spoke in Wednesday's debate and placing a copy in the library.

Yours etc,



Baroness Fairhead
Minister of State for Trade and Export Promotion
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