



Department for International Trade

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

12th June 2019

Dear Tim,

Thank you to your Committee and officials for the considered 'Scrutiny of international agreements - Treaties considered on 14th May 2019' report. I wanted to write to you and offer a response to some of the points raised concerning the UK-Iceland-Norway Agreement on Trade in Goods.

Scope of the UK-Iceland-Norway Agreement on Trade in Goods

Through the Agreement on Trade in Goods between the UK, Iceland and Norway ("this Agreement") we have sought to deliver certainty to businesses and consumers by ensuring continuity in the UK's existing trade relationships with Norway and Iceland, to the extent possible, in a scenario where the UK leaves the EU without a deal. As you have noted in your report, the specific features of the Agreement on the European Economic Area ("EEA Agreement"), designed to achieve economic integration with the EU through regulatory alignment, have limited the Government's ability to transition existing arrangements with Norway and Iceland.

Together with Norway and Iceland, we have agreed on the elements of our trade relationship which could be transitioned in a 'no deal' scenario, covering the areas where Norway and Iceland are not constrained by their EEA obligations and where the UK's continued alignment with EU/EEA rules is not required. As your report notes, this is mainly trade in goods arrangements, in particular the preservation of tariff preferences.

Scrutiny of future changes to this Agreement

We are aware that the scrutiny of future amendments to trade continuity agreements is of interest to your Committee, as raised most recently during the debate on the UK-Switzerland Trade Agreement.

In your report you have stated that “amendments made by the Joint Committee could have a significant bearing on the way provisions incorporated from the EEA Agreement and rules of origin provisions operate—without this being subject to parliamentary scrutiny under the Constitutional Reform and Governance Act 2010”.

With regard to appropriate Parliamentary scrutiny, Article 14(1) of this Agreement provides that an amendment made to this Agreement by the Parties shall enter into force once the Parties have provided notification of completion of their internal procedures, thus engaging in the UK the Constitutional Reform and Governance Act (2010) (CRaG) where changes are made using the power under this paragraph.

Notwithstanding this, Article 14(2) of this Agreement allows for amendments to be made by a Joint Committee decision to Annexes I (Modifications to the EEA Agreement) and IV (Rules of Origin) to this Agreement. The Joint Committee powers to amend these Annexes are reflective of and mirror the corresponding Joint Committee powers in the current EEA Agreement, thus ensuring continuity. It is in our interest for the Joint Committee to have this function, both to ensure continuity as far as possible, and to streamline the process of making amendments for technical or administrative changes to Annexes I and IV, if required. The wording used in Article 14(2) is intended to indicate a simpler procedure than for Article 14(1) and that, in the UK, the CRaG procedure would not apply to amendments under Article 14(2).

The Government remains 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 and we are keen to continue to engage with the Committee on this.

Monitoring and Enforcement Structure

In your report you state that the “monitoring and enforcement structure of the EEA Agreement is not replicated, except for high-level arbitration provisions”. It is important to clarify that this Agreement replicates the monitoring and enforcement structures of the EEA Agreement to the extent possible, except where modifications have been necessary to maintain the operability of the Agreement in a bilateral UK-Norway and UK-Iceland context.

With regards to monitoring, due to the unique nature of the EEA Agreement, it was not deemed possible to transition the monitoring provisions involving the EFTA Surveillance Authority and the EFTA Court, and it was instead determined that a new Joint Committee provision should be inserted in the Agreement that would include only the relevant Committee powers as provided for in the EEA Agreement and the relevant bilateral agreements. This means that the provisions of the EEA Agreement that were fundamentally linked to the EU-EEA ‘two pillar’ structure, such as those establishing the EFTA Surveillance Authority and the EFTA Court, were not transitioned as they would not be appropriate in the new context.

With regards to enforcement, the dispute settlement provisions from the EEA Agreement, except for Article 111(3), have been replicated. Under this Agreement, the Joint Committee will have the power to settle disputes between the Parties. Disputes that concern the scope and duration of safeguard measures may also be settled through arbitration under this Agreement, in the event that the Joint Committee fails to reach a resolution.

Article 111(3) has not been transitioned as it provides for the Parties to request the European Court of Justice to give a ruling on the interpretation of relevant EU Treaties. It is important to note that this only applies to disputes that concern the interpretation of provisions of the EEA Agreement that are identical in substance to EU Treaties. It is not appropriate to attempt to replicate this provision in a bilateral UK-Norway and UK-Iceland agreement.

Zero-usage Tariff Rate Quotas

Your report requests a fuller explanation on our approach to TRQs where usage is zero. Across all agreements the UK has sought to agree volumes that provide for continuity of existing trade under the TRQs. We have achieved this with Norway and Iceland as we have with all other partners with which we have signed agreements.

We have actively engaged with each partner about the most appropriate treatment for TRQs that were not used for trade during the three-year reference period used to re-size TRQs in line with historical customs usage data.

After discussions with Norway and Iceland we came to a joint decision to create TRQs only where these have been used for trade during the reference period, given that our objective was to protect existing trade in line with historical customs usage data. When making this joint decision we took into account in particular that (i) such an approach is consistent with the Government's key objective to uphold continuity of trade under this Agreement; and (ii) the approach is applied on a reciprocal basis.

Sanitary and Phytosanitary Measures

With regard to imports of animals and animal products, you have stated that in a 'no deal' scenario, "Norway and Iceland will only be able to accept imports of animals and animal products from the UK once the UK is 'listed' by the European Commission as a third country for animal health purposes". It is important to clarify that on the 9th April 2019 the UK's listed status application was accepted by the EU to assure animal and animal product movements in a no-deal EU Exit. However, it should be noted this decision by the EU applied only to a no deal Brexit on 12th April 2019. The EU would need to vote again to take account of any new date if the UK were to leave the EU in a no deal scenario in future.

With UK's listed status confirmed, exporters would need to follow the EU rules for exports from third countries to the EU and UK businesses should expect checks. For example, UK exports of animals and their products to the EU would need to go through an EU Border Inspection Post and businesses would still require an Export Health Certificate (EHC) and meet its requirements. As they are harmonised with the EU on animal health, Norway should continue to treat UK exports of animals and animal products in the same way that the EU would if the UK's listed status is reconfirmed for a no deal exit day. For Iceland, only trade in aquatic animals is harmonised with EU veterinary rules, and so UK exports of these products would need to meet the conditions required by the EU for these products. For exports of non-aquatic animals and animal products, Iceland currently treats the EU as a third country and vice versa, and this position would continue in a no deal Brexit scenario. Further guidance is available for importers and exporters on gov.uk:

- [Exporting animals, animal products, fish and fishery products if the UK leaves the EU with no deal](#)

- [Importing animals, animal products and high-risk food and feed not of animal origin if the UK leaves the EU with no deal](#)

The nature of the UK's trade relationship with Iceland and Norway

Your report suggests that this Trade Agreement will “significantly change the nature of the UK's trade relationship with Iceland and Norway”. We recognise that this Agreement differs from the precursor agreements, in that it does not transition the areas where Norway and Iceland are constrained by their EEA obligations and where the UK would need to align with EU/EEA law for there to be continuity. However, we have sought to deliver certainty to businesses and consumers in a ‘no deal’ scenario, to the extent possible, by preserving tariff arrangements with Norway and Iceland, alongside institutional provisions and horizontal policies to ensure the operability of this Agreement. Moreover, the preambular language of this Agreement recognises that there is a need for Iceland, Norway and the UK to take all necessary steps to begin as soon as possible the formal negotiations of agreement(s) governing the future trade relationships which would replace this Agreement.

Corrections to the report

In addition to these points and to ensure full transparency and accuracy, we have provided corrections to specific minor inaccuracies in the scrutiny report in **Annex A** to this letter.

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 placing a copy of this letter in the library.

Yours sincerely,



GEORGE HOLLINGBERY MP

Minister of State for Trade Policy

Department for International Trade

Annex A

Corrections to the report

- Paragraph 9: “*Instead, it incorporates specific provisions of the EEA Agreement (Article 5).*” To be noted that Article 5 is only one of the Articles of the Agreement that incorporates specific provisions of the EEA Agreement (the other Articles being 6, 8, 11, 15).
- Paragraph 9: “*Specific modifications are set out in the Annexes to the Agreement.*” To be precise, specific modifications to the provisions of the EEA Agreement are set out only in “Annex I” to the Agreement, not “the Annexes”. Annexes II and III set out modifications to the bilateral agreements.
- Paragraph 20, first bullet point: “*Subsidies and countervailing measures—provided the Parties first seek a “mutually acceptable solution” within the Joint Committee*”. According to Article 9 of this Agreement, the Party considering initiation of an investigation must only allow for consultations if requested by the other Party. If the other Party does not request consultation, the Joint Committee will not discuss the matter with a view to finding a mutually acceptable solution.

Paragraph 24: “*UK businesses would no longer be able to bid for contracts in Norway and Iceland above and beyond the commitments of these countries under the Government Procurement Agreement*”. To clarify, it is correct that the EEA’s procurement provisions have not been transitioned, however this does not mean that UK businesses will not be able to bid for non-GPA contracts in Norway and Iceland. UK businesses may still be able to bid for non-GPA covered contracts in Norway and Iceland as both countries currently operate similarly open procurement markets to the UK.