

Explanatory Memorandum on the Trade Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Colombia, the Republic of Ecuador, and the Republic of Peru, of the other part

Title of the Agreement: Trade Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Colombia, the Republic of Ecuador, and the Republic of Peru, of the other part

Command Paper No: 122

Subject Matter

The United Kingdom of Great Britain and Northern Ireland (the "UK") participates in a number of international agreements as a result of, or relevant to, its membership of the European Union (the "EU") which help underpin the UK's relationships with third countries and international organisations. The Government is seeking, as far as possible, to continue the effect of its current arrangements as the UK leaves the EU.

Trade agreements aim to reduce barriers to trade and investment between countries. Barriers can be taxes charged on goods as they cross borders (tariffs), or different rules and regulations that can add to trade costs (non-tariff measures). Barriers make it more difficult and costly to trade or invest overseas. Reducing these barriers can improve the flow of trade between countries and help businesses to access new markets.

In order to transition the trade agreements that the EU has concluded with third countries, the UK has agreed with many third countries that the most appropriate and proportionate form of legal instrument to ensure continuity in the current circumstances is a short form agreement which incorporates by reference the relevant provisions of the underlying EU-third country agreement with relatively few necessary modifications; the advantages of this form are set out in the Parliamentary Report which accompanies this Explanatory Memorandum (the "Report"). However, the UK has simply chosen the form that the relevant States agree is the most pragmatic and sensible in the circumstances, taking into account the wishes of partner countries.

The UK's current trading relationship with Colombia, Ecuador and Peru is governed by the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part (the "EU-Andean Countries Trade Agreement"). The EU-Andean Countries Trade Agreement was applied provisionally in 2013 with Colombia and Peru and in 2017 with Ecuador. The Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Colombia, the Republic of Ecuador, and the Republic of Peru (the "UK-Andean Countries Trade Agreement") is based on the EU-Andean Countries Trade Agreement.

As with the EU-Andean Countries Trade Agreement, the UK-Andean

Countries Trade Agreement is a comprehensive agreement between the UK and Colombia, Ecuador and Peru (“the Signatory Andean Countries”). The Agreement covers both trade in goods, including provisions on rules of origin, preferential tariffs and quotas, and trade in services. It also contains commitments on intellectual property, notably geographical indications, and government procurement. Finally, the Agreement replicates the institutional framework of the EU-Andean Countries Trade Agreement.

The UK-Andean Countries Trade Agreement is intended to take effect at the earliest when the EU-Andean Countries Trade Agreement ceases to apply to the UK; the mechanism by which the UK-Andean Countries Trade Agreement is anticipated to enter into force is discussed in the Report. The Government and the EU have negotiated the text of a treaty (“the Withdrawal Agreement”) on the withdrawal of the UK from the EU and the European Atomic Energy Community. Subject to the Withdrawal Agreement being approved and ratified by the UK and the EU, there will be a transition period which will end on 31 December 2020, or at the end of an additional period of up to one or two years as extended by decision of the Joint Committee established under the Withdrawal Agreement (“Implementation Period”). In accordance with arrangements under the proposed Withdrawal Agreement, the EU will notify third countries that, during the Implementation Period, the UK is treated as a Member State for the purposes of international agreements concluded by the EU. On this basis, the UK would continue to be covered by the EU-Andean Countries Trade Agreement during the Implementation Period.

In the event that the Withdrawal Agreement does not enter into force, the EU-Andean Countries Trade Agreement will cease to apply to the UK on the date that it withdraws from the EU.

The purpose of the UK-Andean Countries Trade Agreement is to maintain the effects and ensure continuity of the EU-Andean Countries Trade Agreement in a new context. To do this, amongst other things, the UK-Andean Countries Trade Agreement uses an overarching provision that incorporates the text of the EU-Andean Countries Trade Agreement into this Agreement “*mutatis mutandis*”, subject to the provisions of this Agreement and the modifications set out in its Annex. The application of this interpretive principle is explained in further detail in the Report.

In line with commitments provided for in the Trade Bill 2017-19 (the “Trade Bill”), the Report that accompanies this Explanatory Memorandum gives details of, and explains the reasons for, any significant differences between the trade-related provisions of the UK-Andean Countries Trade Agreement and the EU-Andean Countries Trade Agreement.

The Report first sets out the legal approach used, as well as the general drafting changes which are consistent across the UK’s continuity trade agreements and which have no significant impact on the effect of the UK’s current trade relationships. The Report focuses on the changes made as a result of moving from the current arrangements to a new agreement between the UK and the Signatory Andean Countries. Any impacts resulting from the UK’s exit from the EU or the nature of the future economic partnership have been excluded from the Report.

Ministerial Responsibility

The Secretary of State for International Trade has overall responsibility for UK policy relating to the UK’s trade relations with Colombia, Ecuador, and

Peru.

The Secretary of State for Foreign and Commonwealth Affairs is responsible for the overall relationship between the UK and the Overseas Territories and has overall responsibility for UK policy relating to the UK's relations with the Republic of Colombia, the Republic of Ecuador, and the Republic of Peru.

The Secretary of State for Justice has overall responsibility for the Crown Dependencies.

The Minister for the Cabinet Office is responsible for the implementation of international procurement obligations.

Policy considerations:

(I) General

Through its membership of the EU, the UK participates in around 40 free trade agreements, covering more than 70 countries. Ahead of the UK's withdrawal from the EU, the Government has committed to seeking to put in place all the necessary arrangements to ensure there is no disruption to the UK's global trading relationships. Given that Colombia, Ecuador, and Peru are countries with an existing agreement with the EU, the Government has concluded that transitioning the EU-Andean Countries Trade Agreement is the best way to ensure continuity of trade.

Colombia is the UK's 70th largest trading partner, accounting for 0.1% of total UK trade. Total trade in goods and services between the UK and Colombia was £1.5 billion in 2017. UK exports to Colombia were £0.9 billion, making it the UK's 62nd largest export market (accounting for 0.1% of all UK exports). UK imports from Colombia were £0.6 billion, making it the UK's 72nd largest import source (accounting for 0.1% of all UK imports).

Ecuador is the UK's 108th largest trading partner, accounting for less than 0.1% of total UK trade. Total trade in goods and services between the UK and Ecuador was £0.3 billion in 2017. UK exports to Ecuador were £0.1 billion, making it the UK's 115th largest export market (accounting for less than 0.1% of all UK exports). UK imports from Ecuador were £0.2 billion, making it the UK's 95th largest import source (accounting for less than 0.1% of all UK imports).

Peru is the UK's 83rd largest trading partner, accounting for 0.1% of total UK trade. Total trade in goods and services between the UK and Peru was £0.7 billion in 2017. UK exports to Peru were £0.2 billion, making it the UK's 98th largest export market (accounting for less than 0.1% of all UK exports). UK imports from Peru were £0.5 billion, making it the UK's 76th largest import source (accounting for 0.1% of all UK imports).

The UK-Andean Countries Trade Agreement provides that unless the Parties agree otherwise, the Trade Committee established under this Agreement is deemed to have adopted the decisions of the Trade Committee established under the EU-Andean Countries Trade Agreement and made before that Agreement ceased to apply, *mutatis mutandis*. This approach provides for continuity of effect as it ensures that the decisions in force when the EU-Andean Countries Trade Agreement ceases to apply to the UK continue to apply under the UK-Andean Countries Trade Agreement.

(II) Financial

There will be some implementation costs for the Government as a result of the UK-Andean Countries Trade Agreement. UK businesses are not expected to incur additional costs if they utilise the preferences provided for in the Agreement.

The Report provides further analysis of the financial impacts of the UK-Andean Countries Trade Agreement and the impacts of not ratifying the Agreement.

(III) Human Rights

The provisions of the EU-Andean Countries Trade Agreement concerning human rights are incorporated into the UK-Andean Countries Trade Agreement, *mutatis mutandis*, without modification. Accordingly, the UK-Andean Countries Trade Agreement provides that respect for democratic principles, fundamental human rights and the rule of law constitutes an essential element of the Agreement.

(IV) Reservations and Declarations

The UK and the Signatory Andean Countries have made a political declaration on the future trading relationship between the UK and the Signatory Andean Countries. They have also made joint declarations to aid the operation and interpretation of the UK-Andean Countries Trade Agreement.

(V) Implementation (including, if relevant, use of Provisional Application)

Entry into force

As with the EU-Andean Countries Trade Agreement, the UK-Andean Countries Trade Agreement can enter into force bilaterally between the UK and each Signatory Andean Country individually. Article 8 of the UK-Andean Countries Trade Agreement states that the Agreement will enter into force between the UK and each Signatory Andean Country on the later of: (a) the date on which the EU-Andean Countries Trade Agreement ceases to apply to the UK; or (b) the first day of the month following the date of the later of the UK and Signatory Andean Country's notifications that they have completed their respective domestic legal requirements and procedures. Alternatively, another date for entry into force may be agreed between the UK and each Signatory Andean Country.

Provisional Application

States may agree to include in a treaty provisions which allow the treaty to be applied provisionally pending its entry into force. A treaty may be provisionally applied pending completion of the procedures required by the domestic law of the respective negotiating States, provided any necessary domestic implementation is in place. Provisional application is recognised by Article 25 of the Vienna Convention on the Law of Treaties.

Article 8 of the UK-Andean Countries Trade Agreement provides that pending entry into force of this Agreement, each of the Parties may, in accordance with their own internal procedures, provisionally apply the Agreement, fully or partially. If the UK and a Signatory Andean Country have agreed the provisional application of the UK-Andean Countries Trade Agreement, it shall begin on: the later of: (a) the first day of the month following the date of the later of the UK and the Signatory Andean Country's notifications that they have completed their internal procedures required for provisional application; or (b) the date on which the EU-Andean Countries Trade Agreement ceases to apply to the UK. Alternatively, another date for provisional application may be agreed between the UK and each Signatory Andean Country. Only those provisions in the Agreement where necessary domestic implementation is in place, including in the relevant territories for whose international relations the UK is responsible, may be provisionally applied.

This Agreement will apply to the territories of Colombia, Ecuador and Peru, and to the UK, Gibraltar, the Channel Islands and the Isle of Man to the same extent and under the same conditions as the EU-Andean Countries Trade Agreement applies.

The relevant Secretaries of State have been informed of the application of this Agreement to the territories for which they are responsible.

These territories have been consulted and the Government is working with these territories to ensure any necessary implementation will have taken place ahead of provisional application or entry into force of the Agreement.

Tariffs

The Government is working to implement the UK's independent tariff policy in accordance with the provisions contained within the Taxation (Cross-border Trade) Act. With respect to the UK-Andean Countries Trade Agreement, the Government intends to specify the customs tariffs applicable under the Agreement in the Customs Tariff (Preferential Trade Arrangements) (EU Exit) Regulations 2019, which will be made under section 9 of the TCBT Act.

Procurement

In relation to procurement, the UK's current procurement obligations to suppliers from third countries with whom the EU has an agreement are contained in various provisions of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016, as well as the predecessor legislation (collectively, "the procurement regulations"). Equivalent provisions for Scotland are included in the Public Contracts (Scotland) Regulations 2016, the Utilities (Scotland) Regulations 2016 and the Concession (Scotland) Regulations 2016.

The Government has made statutory instruments under the European Union (Withdrawal) Act 2018 to amend deficiencies in the procurement regulations that arise as a result of the UK's withdrawal from the EU. One effect of these statutory instruments is to keep alive the EU-derived procurement obligations to suppliers from third countries for a period of 18 months after exit. Doing so will allow the UK to demonstrate compliance with the procurement provisions of any transitioned free trade agreements, pending the enactment of bespoke implementing powers in the Trade Bill, currently before Parliament.

The similarities between procurement provisions of the EU-Andean

Countries Trade Agreement and the UK-Andean Countries Trade Agreement are such that the Government considers that this approach will allow it to fully implement the procurement obligations under the UK-Andean Countries Trade Agreement. Once it receives Royal Assent, the Trade Bill will confer suitable powers to fully implement the procurement obligations arising from transitioned agreements with third countries.

Amendments

The UK Government is committed to ensuring the right level of parliamentary scrutiny for all amendments to international agreements. Previous scrutiny of agreements, via the EU Scrutiny Committees, developed over time to reflect the UK's position in the EU. We now need a process that is right for the UK whilst ensuring we can keep agreements up to date and respond to changes in domestic legislation or wider economic considerations.

Article 334 of the EU-Andean Countries Trade Agreement, as incorporated by the UK-Andean Countries Trade Agreement provides that the Parties may mutually agree in writing to amend the text of the Agreement. This provision sets out how such amendments may be made. In this regard, the parties may agree in writing to any amendment to the Agreement. Amendments will enter into force on the first day of the month following the date of the later of the Parties' notifications to the Depositary confirming that they have completed their internal procedures or on such date as the Parties otherwise agree. In the UK context, amendments made via this Article would engage the process of parliamentary scrutiny set out in the Constitutional Reform and Governance Act (2010).

The Trade Committee may also make modifications, within the scope of Article 13(2)(g) of the EU-Andean Countries Trade Agreement, as incorporated by the UK-Andean Countries Trade Agreement, to help achieve the objectives of the Agreement, such as accelerating tariff reductions. Any such decisions must be adopted subject to the respective applicable legal procedures, in order to have effect. It is in our interest for the Committees to have this function, both to ensure continuity as far as possible and to streamline the process of making amendments to the treaty for technical or administrative changes, if required.

(VI) Consultations

The Department for International Trade ("DIT") engages extensively with a variety of stakeholders. This includes civil society members of the Trade for Development Expert Advisory Group. This programme of engagement has included regular progress updates on transitioning existing EU free trade agreements. As part of the Government's commitment to a transparent and inclusive trade policy, DIT is holding regular 'town hall' style meetings to update business organisations and have run a series of regional roundtables in collaboration with the British Chambers of Commerce to ensure that this dialogue extends across the UK. DIT has issued advice to business to help them prepare for both a deal and a 'no deal' Brexit scenario, including publishing the status of agreements on the GOV.UK website.

International relations including the making of treaties is not devolved. However, as there is likely to be significant impact on Scotland, Wales and Northern Ireland, the Government has regularly updated the Devolved Administrations and has shared the texts of parliamentary reports and explanatory memorandums with them.

Throughout the Trade Agreement Continuity Programme, DIT has 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.

DIT can confirm that the text of agreements, once stable, are shared with DAs; DIT has also offered briefings on the agreements, where appropriate, on request to DAs, Crown Dependencies and Gibraltar. DIT shares draft Parliamentary Reports and Explanatory Memoranda on individual agreements, and DIT welcomes DAs' views as progress is made.

DIT also works closely with the Crown Dependencies and Gibraltar 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. DIT will share the text of all agreements, once stable, with the Crown Dependencies and Gibraltar.

A handwritten signature in blue ink, reading "George Hollingbery". The signature is written in a cursive style with a prominent initial "G".

George Hollingbery
Minister of State for Trade Policy
Department for International Trade