



Department for International Trade

Rt Hon Greg Hands MP

Department for International Trade
King Charles Street
Whitehall
London
SW1A 2AH

T +44 (0) 20 7215 5000
E enquiries@trade.gsi.gov.uk
W www.gov.uk

Ken Skates AM
Cabinet Secretary for Economy and Transport
Welsh Government
Cardiff Bay
CF99 1NA

7 November 2017

Dear Ken,

I am writing to provide you with an update on the UK Government's progress in bringing forward legislation to establish a standalone UK trade framework once we leave the EU.

Today the Government introduced the Trade Bill and tabled resolutions for the Taxation (Cross-Border Trade) Bill. This legislation will put in place the necessary legal powers and structures to enable us to operate a fully functioning trade policy. This will ensure the UK is ready for exit, providing continuity for individuals, businesses, and international trading partners.

As the Secretary of State wrote in his letter of 9 October alongside the publication of our White Paper, we are seeking to deliver the best international trading framework across the whole of the UK, and will continue to engage closely with the Welsh Government as we develop our future trade policy.

The legislation that we are introducing today will:

- Create the powers needed for the UK to implement the obligations created by becoming an independent member of the Agreement on Government Procurement (GPA), ensuring the best deal for taxpayers and creating opportunities for UK businesses. It also allows the UK to reflect in legislation where parties join or leave the GPA;
- Create powers to help the UK to adopt trade agreements that currently exist between the EU and other countries, and which we are party to through our EU membership;
- Establish an independent body (the Trade Remedies Authority) to conduct trade remedies investigations, providing a safety net for domestic industries against unfair and injurious trade practices, or unexpected surges in imports, consistent with our legal obligations at the World Trade Organization (WTO);

- Enable HM Revenue and Customs to share data on trade so the Secretary of State for International Trade can carry out other functions currently fulfilled by the European Commission, and share data with other bodies carrying out public functions, such as the Trade Remedies Authority and the WTO.

In the letter of 9 October the Secretary of State outlined the areas of this legislation that would be of particular interest to the Welsh Government, and my officials have since shared a draft of the Trade Bill with you.

As we are now introducing this legislation I would like to provide you with a further update to explain its importance to the whole of the UK, and to address some of the issues that have been raised in discussions.

Transitional adoption

Without action, the UK's existing trading arrangements through its membership of the EU will cease to have legal effect. These agreements facilitate easier movement of goods and services with some of the UK's major markets outside the EU, help promote investment, and bring direct benefits to UK businesses and consumers.

The UK Government has begun to discuss with our trading partners how we might achieve continuity in the effects of these agreements, and therefore provide certainty for businesses, through agreeing post-exit arrangements with partner countries before the UK leaves the EU.

Currently, many provisions of EU agreements take effect in the UK by virtue of the European Communities Act 1972 (ECA). This will be repealed by the EU (Withdrawal) Bill, and the UK will need to implement relevant individual obligations itself. We therefore need to build a new legislative framework to ensure that our existing trade agreements are fully implemented within UK law and remain operable over time. Importantly, the powers that we are taking to do this can only be used to implement trade agreements where the EU and the relevant third country have already signed a trade agreement before exit day.

The power in the Trade Bill is intended to provide for non-tariff provisions of trade agreements. Powers in the Taxation (Cross-Border Trade) Bill provide for the tariff provisions. Implementation of some of the non-tariff aspects of these agreements may touch on devolved competence. As set out previously, the powers provided by the Bill will be held concurrently by the UK Government and the devolved administrations. This means that in areas of devolved competence either the devolved administrations or the UK Government will be able to use these powers to ensure that trade obligations are fully implemented. I want to assure you that the UK Government will not normally use these powers within areas of devolved competence without the agreement of the relevant devolved administrations, and not without first consulting the relevant devolved administrations. The ability to use these powers concurrently, after consultation, will ensure that where it makes practical sense for regulations to be made once for the whole UK, it is possible for this to happen.

This power cannot be used by the devolved administrations to amend retained direct applicable EU law, such as retained EU regulations. This law currently applies automatically and uniformly in all EU member states. As the Government's guiding principle is that no new barriers to living and doing business in our own union should be created on exiting the EU, it is right that there should be a coordinated set of changes made to this type of law in order to maximise continuity and certainty. Under the Trade Bill, every decision that the devolved administrations can make before exit, they will be able to make after exit. The UK Government is committed to consulting the devolved administrations on the most appropriate way to implement in areas of retained direct EU law that have effect in otherwise devolved areas.

Government Procurement Agreement

The GPA is a plurilateral agreement between 19 WTO Members, including many of the major economies such as the United States, Canada, the EU and Japan. It aims to mutually open government procurement markets among its parties, and seeks to address trade barriers, such as preferential treatment of domestic goods and services, in the government procurement sector.

It provides businesses across the UK with access to public contract opportunities collectively estimated as worth some £1.3 trillion annually. It also benefits public services due to increased choice, competition and value for money where the Government has chosen to open procurement opportunities up to international competition.

The UK currently participates in the GPA via our EU membership. However, without action we will exit the GPA once we leave the EU. This would be to the detriment of businesses across the UK who depend upon guaranteed access to overseas public contract opportunities, as well as to public sector contractors seeking the best value for money for the taxpayer. The power will ensure that the UK can make the changes to existing domestic procurement regulations required to join the GPA, and to reflect new accessions to or withdrawals from the agreement.

This GPA clauses will establish concurrent powers for the UK Government and the devolved administrations, who will be able to use the power to legislate. This means that in areas of devolved competence, either the devolved administrations or the UK Government will be able to use these powers to implement GPA obligations arising from the UK becoming an independent GPA member. As with the transitional adoption power, I want to assure you that the UK Government will not normally use these powers within devolved competence without the agreement of the relevant devolved administrations, and not without first consulting the relevant devolved administrations. As with the transitional adoption power, this approach is essential to provide continuity for UK businesses and contracting authorities.

As with the transitional adoption power, this power cannot be used by the devolved administrations to amend directly applicable EU law. I want to assure you we are committed to consulting the devolved administrations on the most appropriate way to implement in areas of retained direct EU law that have effect in otherwise devolved areas.

Trade remedies

Under WTO rules, Members can put in place trade remedies, through imposition of tariffs, to correct the injury suffered by domestic industry as a result of unfairly traded imports; or any serious injury through unforeseen surges in imports. Currently the European Commission undertakes trade remedies investigations, and imposes any remedies, on behalf of Member States, including the UK. Once we leave the EU, we will no longer be part of this process. To ensure that we can continue to provide a safety net to domestic industries, the Trade Bill will create a new, independent UK trade remedies body – the Trade Remedies Authority - to undertake trade remedies investigations.

After we leave the EU, businesses across the UK will be able to make an application to the Trade Remedies Authority where they believe that injurious imports arriving in the UK are being dumped or subsidised, or there is a surge in imports, and this is causing serious injury to their sector. The Trade Remedies Authority will investigate applications and make recommendations for the imposition of duties based on the evidence obtained. As part of that process, the Authority will consider the impact of measures on different groups across the UK, including any regional or distributional considerations.

There is more work to be done on developing the detail of the regime, and officials will work with interested parties, including those in the devolved administrations, as this work progresses.

In preparation for our exit from the EU, we need to consider which of the existing EU trade remedies measures are important to the UK, and which we will therefore maintain following our departure. We will be issuing a call for evidence, asking UK businesses which produce goods covered by measures to apply to have these measures carried forward where they meet certain requirements. I would welcome you encouraging Welsh businesses to input into this exercise.

Legislative Consent Motions

It is our view that Part 1 and Schedules 1 to 3 of the Trade Bill may touch on devolved competence and are likely to engage the legislative consent procedure in the Welsh Assembly. I recognise though that we will need to work closely on this issue and my officials will continue to engage with yours to address any concerns.

I would be grateful if you could indicate whether you agree with this legislative consent analysis and confirm whether you are content to bring forward an LCM for these measures.

Future trade policy

As you will be aware, the legislation introduced today does not include powers relating to trade agreements with countries other than the EU's existing trade agreement partners. As set out in the Trade White Paper, the UK government will seek the input of all interested parties and the devolved administrations to ensure they influence the UK's future trade policy. We look forward to taking forward more detailed discussions with you on the important role that you will play in future trade agreements and their implementation in due course.

I look forward to continuing to work with you on this important legislation that will provide continuity to the whole of the UK, ensuring that businesses, workers and consumers can continue to enjoy the benefits of free trade. My officials will maintain a close dialogue with yours as the Bill progresses through parliament so that we can work together on securing a standalone trade framework for all of the UK.

I have copied this letter to the First Secretary of State, the Secretary of State for Wales, the Secretary for Finance and Local Government, and the Secretary for Environment and Rural Affairs.

A handwritten signature in blue ink, appearing to read 'G Hands', with a long horizontal stroke extending to the right.

RT HON GREG HANDS MP

Minister of State for Trade Policy and Minister for London

Department for International Trade