

Explanatory Memorandum on the Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation

Treaty title: Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation

Command Paper No. 55

Subject Matter

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 markets they previously weren't able to.

The UK participates in a number of international agreements as a result of, or relevant to, its membership of the EU and 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 withdraws from the EU.

The UK has agreed with Switzerland that the most appropriate and proportionate legal vehicle to continue the effect of the current arrangements is a short form treaty which incorporates by reference relevant provisions of the trade-related EU-Switzerland agreements, with modifications made, where necessary, to ensure the content of the relevant EU-Switzerland agreements works in a bilateral UK-Switzerland context. The advantages of this form are set out in the Parliamentary Report which accompanies this Explanatory Memorandum (the "Report").

Our current trading arrangements with Switzerland are complex. There is no single comprehensive trade agreement between the EU and Switzerland but a series of smaller agreements that have been built up over 45 years. These agreements focus mainly on trade in goods, whilst also addressing some other areas such as government procurement. Given the lack of a single EU-Switzerland trade agreement, the UK and Switzerland identified the agreements relating to trade and are transitioning these agreements under a single umbrella UK-Switzerland Trade Agreement. The list of agreements being transitioned is listed in the Annex. There is no comprehensive agreement on trade in services to replicate,

Some of the existing agreements contain provisions that are predicated on the recognition of legislative equivalence in certain areas between the EU and Switzerland or Switzerland having access to specific EU systems. Where this is the case, the UK sought alternative arrangements to deliver continuity of effect in its bilateral relationship with Switzerland. In some instances, it has been possible to find solutions, in others not yet. We have therefore agreed with Switzerland that these are areas we will have to return to when the detail of our future relationship with the EU is clear. Where the current arrangements cannot be continued, the relevant provisions of these agreements have been disapplied, with the possibility of reinstatement or replacement should a future UK-EU relationship make this possible. The Report sets out in detail the specific provisions this applies to, any alternative arrangements that have been agreed, and an indication of the potential impact of these changes.

The UK-Switzerland Trade Agreement is intended to take effect when the EU-Switzerland agreements cease to apply to and in the UK. The UK 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 Parties, it will enter into force on 30 March 2019. The Withdrawal Agreement includes provisions for a transition period to start on 30 March 2019 and end on 31 December 2020, or 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 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-Switzerland agreements during the Implementation Period.

The purpose of this UK-Switzerland Trade Agreement is to maintain the effects and continuity of the relevant EU-Switzerland agreements in a bilateral context. To ensure continuity of the EU-Switzerland agreements as far as possible, this UK-Switzerland Trade Agreement will take effect when the EU-Switzerland agreements cease to apply to the UK. This is expected to be either at the end of the Implementation Period or, in the event that no withdrawal agreement is reached between the UK and the EU, on 29 March 2019.

In the event that the Withdrawal Agreement is not approved and ratified, the EU-Switzerland agreements will cease to apply to the UK on the date that the UK withdraws from the EU.

Any material changes from the original agreements are set out in the Report. In line with commitments provided for in the Trade Bill 2017-19, the Report gives details of, and explains the reasons for, any significant differences between the UK-Switzerland Trade Agreement and the trade-related provisions of the EU-Switzerland agreements listed in the Annex. The report describes what the relevant EU-Switzerland agreements covered and what the UK Switzerland Trade Agreement will cover.

The Report sets out the legal approach used, as well as the general drafting changes which are consistent across all the continuity trade agreements and which have no significant impact on the effect of the UK's current trade relationships. The Report focuses solely on the changes made to the relationship between the UK and Switzerland as a result of moving from the current arrangements to a new agreement. 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 Switzerland.

The Secretary of State for the Foreign and Commonwealth Office has overall responsibility for UK policy relating to the UK's relations with Switzerland.

Policy considerations:

(i) General

Switzerland is one of the UK's most important trading partners and is a crucial market for UK goods and services. Switzerland is the 3rd largest non-EU market and 7th largest export

market for the UK to trade with. Bilateral trade between the UK and Switzerland is worth over £30.3 billion a year. UK exports to Switzerland amount to £18.6 billion, and UK imports from Switzerland account for £11.6 billion. It is, therefore, important that we transition the main trade-related agreements into a bilateral UK-Switzerland agreement in order to provide continuity for businesses, consumers and investors in both our countries. The overriding objective of the UK-Switzerland Trade Agreement is to preserve the existing trading relationship between the Parties under the EU-Switzerland agreements and to provide a platform for further trade liberalisation and development of the trade relations between them.

Not being able to rely upon this Agreement would risk UK businesses losing the preferences negotiated in the EU-Switzerland agreements. This would include the re-imposition of tariffs, with the UK returning to WTO Most Favoured Nation (MFN) treatment. The benefits derived from trading under preferences within the FTA, such as increases in trade flows, may then be reversed,

However, it is unlikely that the entire effect of the agreement would disappear. Even if tariffs revert to MFN rates, discussed in further detail below, it could take longer for some of the other benefits to be lost. Some gains might endure even in the long-run and business connections formed because of the agreement might be maintained

In the long run if a deal is not reached, the UK would forgo the longer-term benefits that this relationship would have brought to the UK. This could result in a marginal impact on the long term UK GDP. This would be due to the UK losing market share in Switzerland relative to other EU competitors who keep preferential access.

(ii) Financial

There will be some implementation costs for the Government as a result of this Agreement. This Agreement provides for continuity as far as possible of the UK's obligations under the existing EU-Switzerland agreements incorporated into this Agreement. This would entail the establishment and maintenance of a UK-Switzerland bilateral equivalent of the EU Switzerland joint committees and sub-committees. This would entail a minimal cost from the logistics of travel, subsistence and officials' time.

(iii) Reservations and Declarations

No reservations have been made in relation to this Agreement.

Joint Declarations have been made on signature concerning rules of origin. These include a political declaration that a trilateral approach involving the EU is the preferred outcome on rules of origin and two further declarations, integral to the UK-Switzerland Trade Agreement, that oblige the UK and Switzerland to accept goods originating in San Marino and Andorra as goods originating in the EU, where they meet certain conditions set out in the rules of origin under this Agreement.

Implementation (including, if relevant, provisional application)

The Government is working to implement the tariffs and tariff quotas in regulations to be made under the Taxation (Cross-border Trade) Act 2018.

Non-tariff measures in the EU-Switzerland agreements are currently implemented in EU law. Where those non-tariff measures are incorporated into the UK-Switzerland Trade Agreement,

they will generally be implemented in the UK by virtue of the European Union (Withdrawal) Act 2018, to extent that the relevant EU law will, on or after exit day, continue to be, or form part of, domestic law as added to or otherwise modified under that Act or by other UK legislation.

In relation to procurement, in particular, 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 is making statutory instruments under the European Union (Withdrawal) Act 2018 to amend the procurement regulations that arise as a result of the UK's withdrawal from the EU. If further provision is needed in the future, the Government anticipates that the Trade Bill, once it receives Royal Assent, will confer suitable powers to make such provision.

Article 9 of the main text of the UK-Switzerland Trade Agreement provides that the UK Switzerland Trade Agreement will enter into force when the EU-Switzerland agreements cease to apply to the UK, provided that the UK and Switzerland have notified each other that they have completed their domestic procedures by that date. Otherwise, the UK-Switzerland Trade Agreement will enter into force on the first day of the second month following the later of the notifications that the UK and Switzerland have completed their domestic procedures.

However, States may agree to include in a treaty provisions which allow the treaty to be applied provisionally, pending its entry into force, provided any necessary domestic implementation is in place. Provisional application is recognised by Article 25 of the Vienna Convention on the Law of Treaties 1969.

In accordance with paragraph 4 of Article 9 the UK and Switzerland will provisionally apply this Agreement, pending its entry into force, once the agreements listed in the Annex cease to apply to the UK.

This Agreement applies to the UK and the territories for whose international relations the UK is responsible to the same extent and under the same conditions as the EU-Switzerland agreements apply. 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 UK-Switzerland Trade Agreement

Article 7 of this agreement provides that amendment to the UK-Switzerland Trade Agreement may be made by further agreement between the UK and Switzerland. Parties to a treaty can always mutually agree to amend the text. As such, this provision merely clarifies the process for making amendments.

Article 7 also ensures continuity in the ability of the relevant joint committees to amend Annexes, Appendices, Protocols and Notes to the underlying Incorporated Agreements, subject to procedures provided for in the relevant agreement itself. The provision for the joint committees to amend parts of the UK-Switzerland Trade Agreement is included to provide consistency across all EU-Switzerland agreements that have been incorporated.

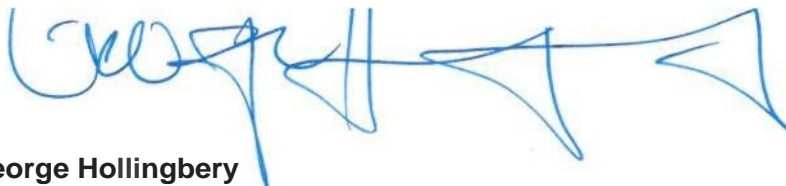
Consultations

The Department for International Trade ("DIT") engages extensively with a variety of stakeholders. 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 has run a series of regional roundtables in collaboration with the British Chambers of Commerce to ensure that this dialogue extends across the UK.

The Government is also in close contact with the Devolved Administrations and continues to engage the Governments of the territories for those international relations the UK is responsible.

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.



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Department for International Trade
Minister of State for Trade Policy

Annex

List of EU-Switzerland Agreements being transitioned through the single UK Switzerland Trade Agreement

The EU-Switzerland agreements listed below have been incorporated into, and will be transitioned through, the bilateral UK-Switzerland Trade Agreement:

- a. **Agreement in the form of an Exchange of Letters of 21 July 1972 between the Swiss Confederation and the European Community concerning certain agricultural and fishery products as subsequently adapted by further Agreements of 5 February 1981, 14 July 1986 and 18 January 1996.**

This agreement commenced a process of trade liberalisation between the parties by making reciprocal concessions on agricultural and fishery products. These were then extended to the enlarged Community.

- b. **Agreement between the European Economic Community and the Swiss Confederation done at Brussels on 22 July 1972.**

This agreement progressively eliminated the obstacles to substantially all trade in goods between the parties, creating a free trade zone for industrial products, free of customs and quotas. It progressively liberalised tariffs (mostly to 0%) systematically across most goods sectors. Those remaining are predominantly in sectors that do not have high levels of UK exports. The agreement also provides fair conditions of competition for trade between the Contracting Parties by the removal of barriers to trade. The agreement includes the Additional Protocol on Mutual Administrative Assistance.

- c. **Agreement between the European Community and the Swiss Confederation on trade in agricultural products done at Luxembourg on 21 June 1999.**

This agreement improves mutual market access through the reduction of tariffs on selected agricultural products and through trade facilitation. The Agreement also simplifies trade in the agricultural sector by reducing non-tariff barriers to trade. The agreement impacts trade in cheese, wine and spirits, fruit and vegetables, plant health, animal feed, seeds and organic farming.

- d. **Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment done at Luxembourg on 21 June 1999.**

This bilateral agreement eliminates technical barriers to trade on industrial goods and provides for mutual acceptance of reports, certificates, authorisations and conformity marks issued by recognised conformity assessment bodies. The agreement enables the avoidance of duplication of procedures when Swiss and Community requirements are deemed equivalent.

- e. **Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement done at Luxembourg on 21 June 1999.**

This agreement liberalises the respective public procurement markets by broadening the scope of market access offered under the World Trade Organisation's (WTO) 1994

Government Procurement Agreement (GPA) and also provides EU economic operators with market access additional to markets covered under the GPA. The agreement provides additional market access to sub-central districts and municipalities, as well as procurement by telecommunications operators, railway operators, entities active in the field of energy (excluding electricity), and private utility providers.

- f. **Cooperation Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests done at Luxembourg on 26 October 2004.**

This main purpose of this agreement is to extend administrative and judicial assistance in criminal matters between the parties in order to combat the illegal activities detrimental to the parties' financial interests. Through the agreement, both sides undertake to grant each other full judicial cooperation and administrative assistance on fraud and all other illegal activities, including customs and indirect tax offences in connection with the trade of goods and services. The agreement also provides for improvements in cooperation against money laundering, covering in particular serious cases of fraud and smuggling.

- g. **Agreement between the European Community and the Swiss Confederation on the simplification of inspections and formalities in respect of the carriage of goods and on customs security measures done at Brussels on 25 June 2009.**

This agreement covers inspections and formalities concerning the carriage of goods which cross a frontier between Switzerland and the EU. The agreement also applies to customs security measures in relation to the carriage of goods to or from third countries. This agreement shall not apply unless otherwise decided by the relevant Joint Committee.

- h. **Agreement in the form of an Exchange of Letters between the Community and each of the EFTA countries that grants tariff preferences under the GSP (Norway and Switzerland), providing that goods originating in Norway or Switzerland shall be treated on their arrival on the customs territory of the, Community as goods with content of Community origin (reciprocal agreement), done at Brussels on 14 December 2000 ("the GSP Exchange of Letters"):**

This agreement ensures that the European Community, Switzerland and Norway's customs authorities are able to issue replacement form A certificates of origin. This facilitates the movement of goods originating in developing countries which benefit from the generalised preferences granted by the Community, Switzerland and Norway.

In practice, the EU will grant preferences to goods originating in beneficiary countries where some of the components originate in Switzerland and/or Norway and those two countries will treat goods containing Community components in the same way. Under this agreement in the form of exchange of letters the Community, Switzerland and Norway mutually recognise their components as originating in the developing countries concerned under the bilateral cumulation of origin rules.

