Explanatory Memorandum on the Agreement on Trade in Goods between the United Kingdom of Great Britain and Northern Ireland, Iceland and the Kingdom of Norway

Title of the Agreement: Agreement on Trade in Goods between the United Kingdom of Great Britain and Northern Ireland, Iceland and the Kingdom of Norway

Command Paper No 89

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 new markets.

Through 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 put in place the necessary arrangements to ensure there is no disruption to our global trading relationships.

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") 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 leaves the EU.

The Agreement on Trade in Goods between the United Kingdom of Great Britain and Northern Ireland, Iceland and Norway (the "UK-Iceland-Norway Trade Agreement"), provides continuity for trade in goods and is to come into force in the event that the United Kingdom withdraws from the European Union without any agreement between the United Kingdom and the European Union on the terms of the United Kingdom's withdrawal or if any such agreement does not provide for the continued application towards the United Kingdom of the Trade-Related Agreements between the European Union and one or both of Iceland and Norway in respect of trade in goods. It is part of a wider suite of agreements that the Government are finalising with Iceland and Norway to be deployed in this scenario, including the Agreement on arrangements regarding citizens' rights between Iceland, the Principality of Lichtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union and the EEA Agreement.

In order to transition the trade agreements that the EU has concluded with Iceland and Norway, the UK has agreed with Iceland and Norway 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 Agreement on the European Economic Area (the "EEA Agreement"), the EU-Iceland bilateral agreements and protocols on trade in agricultural and fishery products as well as on the protection of geographical indications for agricultural products and foodstuffs, and the EU-Norway bilateral agreements and protocols on trade in agricultural and fisher products, 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. Accordingly, some agreements have been drafted in long form to reflect these wishes.

The UK's current trading relationship with Iceland and Norway is governed mainly by the EEA Agreement entered into force in 1994. In addition, Iceland and Norway also have concluded bilateral agreements with the European Union and its Member States. Iceland have 21 such agreements, the first being from 1972, and the latest from 2017. Norway have 22 such agreements, the first being from 1973 and the latest from 2016. The UK-Iceland-Norway Trade Agreement is based on the provisions which provide for continuity of trade in goods from:

(i). the EEA Agreement

(ii). the following EU-Iceland bilateral agreements on trade in agricultural and fishery products as well as on the protection of geographical indications for agricultural products and foodstuffs:

   (i). Protocol No 6 concerning the special provisions applicable to imports of certain fish products into the Community, signed in Brussels on 22 July 1972.

   (ii). Additional Protocol to the Agreement between the European Economic Community and the Republic of Iceland consequent on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, signed in Brussels on 26 January 1996;

   (iii). Additional Protocol to the Agreement between the European Economic Community and the Republic of Iceland consequent on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, signed in Luxembourg on 14 October 2003;

   (iv). Additional Protocol to the Agreement between the European Economic Community and the Republic of Iceland, signed in Brussels on the 3 May 2016;

   (v). Agreement in the form of an Exchange of Letters amending Protocol 6 to the Agreement between the European Economic Community and the Republic of Iceland – Amendments to be made to Protocol 6 to the Agreement between the European Economic Community and the Republic of Iceland, signed in Brussels on 29 June 1976;

   (vi). Agreement in the form of an Exchange of Letters between the European Union and the Iceland concerning additional trade preferences in agricultural products, signed in Brussels on 23 March 2017;

   (vii). Agreement between the European Union and Iceland on the protection of geographical indications for agricultural products and foodstuffs, done at Brussels on 23 March 2017.

(iii) The following EU-Norway bilateral agreements on trade in agricultural and fishery products:

   (i). 1973 April 16, Brussels, Letter from the Commission of the European Communities concerning autonomous concessions in the fishery sector ("the 1973 Exchange of Letters on Certain Fishery Products");

(ii). 1986 July 14, Brussels, Agreements in the form of exchange of letters between the European Economic Community and the Kingdom of Norway concerning agriculture and fisheries, Exchange of Letters No 3 (“the 1986 Exchange of Letters No 3 on Fishing”);

(iii). 1995 July 25, Brussels, Additional Protocol to the Agreement between the European Economic Community and the Kingdom of Norway consequent on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union (“the 1995 Additional Protocol”);

(iv). 2003 October 14, Luxembourg, Additional Protocol to the Agreement between the European Economic Community and the Kingdom of Norway consequent on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union (“the 2003 Additional Protocol”);

(v). 2016 May 3, Brussels, Additional Protocol to the Agreement between the European Economic Community and Kingdom of Norway (“the 2016 Additional Protocol”)

(vi). 1973 April 16, Brussels, Letter from the Norwegian Delegation concerning autonomous Norwegian agricultural concessions (“the 1973 Exchange of Letters on Agriculture”);

(vii). 1973 April 16, Brussels, Letter from the Norwegian Delegation concerning the wine trade (“the 1973 Exchange of Letters on Wines”);

(viii). 1986 July 14, Brussels, Agreements in the form of an Exchange of Letters between the European Economic Community and the Kingdom of Norway concerning agriculture and fisheries, Exchange of Letters No 1 (“the 1986 Exchange of Letters No 1 on Agriculture”);

(ix). 1992 May 2, Oporto, Agreement in the form of an exchange of letters between the European Economic Community and the Kingdom of Norway concerning certain arrangements in agriculture (“the 1992 Exchange of Letters”);

(x). 1995 December 20, Brussels, Agreement in the form of exchanges of letters between the European Community and the Kingdom of Norway concerning certain agricultural products (“the 1995 Exchange of Letters”);

(xi). 2003 June 20, Brussels, Agreement in the form of an exchange of letters between the European Community and the Kingdom of Norway concerning additional trade preferences in agricultural products undertaken on the basis of Article 19 of the Agreement on the European Economic Area (“the June 2003 Exchange of Letters”)

(xii). 2004 December 13, Brussels, Agreement in the form of an exchange of letters between the European Community and the Kingdom of Norway concerning Protocol 2 to the bilateral Free Trade Agreement between the European Economic Community and the Kingdom of Norway (“the 2004 Exchange of Letters”)

(xiii). 2011 April 15, Brussels, Agreement in the form of an exchange of letters between the European Union and the Kingdom of Norway concerning additional trade preferences in agricultural products reached on the basis of

Article 19 of the Agreement on the European Economic Area ("the 2011 Exchange of Letters"); and

(xiv). 2017 December 4, Brussels, Agreement in the form of an exchange of letters between the European Union and the Kingdom of Norway concerning additional trade preferences in agricultural products ("the 2017 Exchange of Letters").

The EEA Agreement effectively extends the EU's Single Market to its EEA EFTA signatory States: Iceland, Norway and the Principality of Liechtenstein ("Liechtenstein"). Hence, the European Economic Area covers 31 countries - the 28 EU Member States, plus Iceland, Liechtenstein, and Norway. Currently, as a member of the European Union, the UK is a party to the EEA Agreement.

The aim of the EEA Agreement is to establish a dynamic and homogenous European Economic Area between the 31 States. The EEA Agreement primarily puts in place equal rights and obligations within the Internal Market for individuals and economic operators working and trading in the EEA. The EEA Agreement also extends the EU's four freedoms to its EEA EFTA signatory States: the free movement of goods, services, persons and capital. The EEA Agreement further encompasses other policy areas known as 'Flanking and Horizontal Policies'. These include: education, social policy, research and development, tourism, the environment, consumer protection. The EEA Agreement is adapted by continuously incorporating EEA-relevant EU acts into the EEA Agreement. The bilateral agreements between the UK and Iceland and the UK and Norway cover trading arrangements on agricultural and fishery products. These have been agreed over time.

Given that Iceland and Norway have existing agreements with the EU, the Government has concluded that transitioning the relevant provisions from the EEA Agreement and the relevant EU-Iceland and EU-Norway bilateral agreements is the best way to ensure continuity of trade.

The closely intertwined relationship between Iceland, Norway and the EU limits what trading arrangements can be continued bilaterally between the UK, Iceland and Norway. The UK, Iceland and Norway can only continue current trading arrangements where Iceland and Norway are not bound by their EEA Agreement obligations, and where the UK would not be required to align itself to EU legislation. The only area where this is currently fully possible is tariff elements of trade in goods. This UK-Iceland-Norway Trade Agreement incorporates the relevant provisions of the EEA Agreement and the bilateral agreements in order to achieve continuity of trade in goods as far as possible, alongside additional provisions which will ensure the trade agreement is operational, namely institutional provisions, trade remedies, settlement of disputes, customs cooperation and rules of origin.

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. As explained earlier, the UK-Iceland-Norway Trade Agreement is not intended to take effect in the event that the UK and the EU ratify the Withdrawal Agreement and enter into an agreed 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 EEA Agreement and the bilateral agreements.

The UK-Iceland-Norway Trade Agreement is only intended to take effect if the UK withdraws from the EU without the Withdrawal Agreement being approved and ratified by the UK and the EU (a "no deal" scenario), or in a scenario where any agreed terms of the UK's withdrawal from the EU under an alternative arrangement would not secure the continuation of trade in goods between the UK, Iceland and Norway. In such a scenario, the EEA Agreement and the relevant EU-Iceland and EU-Norway bilateral agreements would have ceased to apply to the UK from the date it withdraws from the EU.

The purpose of the UK-Iceland-Norway Trade Agreement is to maintain the effects and continuity of the EEA Agreement and the EU-Iceland and EU-Norway bilateral agreements on trade in goods as far as possible in a bilateral context. To do this, amongst other things, the UK-Iceland-Norway Trade Agreement relies on an overarching principle that applies the incorporated provisions of the EEA Agreement and the EU-Iceland and EU-Norway bilateral agreements in this Agreement "*mutatis mutandis*". The application of the interpretive principle is explained in further detail in the Parliamentary Report, which has been laid before Parliament ("the Report").

In line with the commitments provided for in the Trade Bill 2017-19 (the "Trade Bill"), the Report gives details of, and explains the reasons for, any significant differences between the UK-Iceland-Norway Agreement and the EEA Agreement and the relevant EU-Iceland and EU-Norway bilateral agreements. The report describes which provisions of the EEA Agreement and the relevant EU-Iceland and EU-Norway bilateral agreements are covered and what the UK-Iceland-Norway Trade Agreement will cover.

The Report first sets out the legal approach used, as well as the general drafting changes which are consistent across all 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 to the relationship between the UK, Iceland and Norway 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 Iceland and Norway.

Policy considerations:

(i) General

The UK-Iceland-Norway Trade Agreement provides for continuity of trade in goods, maintaining the existing tariffs and tariff rate quotas so that imports and exports from all Parties maintain existing market access. Alongside trade in goods, in order for the Agreement to be operational, the Agreement provides for the required institutional provisions, trade remedies, settlement of disputes, customs cooperation and rules of origin.

To achieve continuity in these policy areas, the Agreement incorporates the relevant provisions of the EEA Agreement and the relevant EU-Iceland and EU-Norway bilateral agreements, and brings them together into one short form text.

The UK--Iceland-Norway Trade Agreement also provides that the Parties may mutually agree in writing to amend the text of the Agreement. While there is no overarching amendment clause in the EEA Agreement, parties to a treaty can always mutually agree to amend the text. As such, this provision merely clarifies the process for making amendments. Such amendments will enter into force on the first day of the second month following the date of the later of the Parties' notifications confirming that they have completed any necessary legal requirements and procedures or on such date as the Parties otherwise agree. The Joint Committee may also decide to amend the Annexes I and IV to the Agreement.

(ii) Financial

The UK-Iceland-Norway Trade Agreement provides for continuity of the UK's existing trade in goods arrangements under the EEA Agreement and the relevant EU-Iceland and EU-Norway bilateral agreements with Iceland and Norway*.* There will be no direct financial implications beyond those needed to cover the process of signing this Agreement.

UK businesses are not expected to incur costs if they utilise the preferences set out in the UK-Iceland-Norway Trade Agreement. Further economic analysis on the impacts on key sectors can be found in the Report.

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

(iv) Reservations and Declarations

No reservations have been made in relation to this UK-Iceland-Norway Trade Agreement.

This Agreement includes a Joint Declaration concerning future arrangements on Rules of Origin.

The UK has exchanged letters with Iceland and Norway to provide further certainty to business that it is the United Kingdom's intention to treat imports from Norway and Iceland no less favourably than imports from the European Union, for a time-limited period. This is to ensure as much continuity of arrangements for trade in goods as possible between the United Kingdom and Iceland and the United Kingdom and Norway. The letter also states the United Kingdom's recognition of the close relationship between Iceland, Norway and the European Union through the EEA Agreement, and that the UK will, as far as possible, work towards future trading arrangements with Norway and Iceland that take this into account.

Implementation

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

Article 17 of the UK-Iceland-Norway Trade Agreement states that it will enter into force in the event that the United Kingdom withdraws from the European Union without any agreement between the United Kingdom and the European Union on the terms of the United Kingdom's withdrawal or if any such agreement does not provide for the continued application to the United Kingdom of the Trade-Related Agreements between the European Union and one or both of Iceland and Norway in respect of trade in goods.

Any party may agree to provisionally apply the Agreement pending its entry into force. If a party does provisionally apply, the Agreement will take effect when the United Kingdom ceases to be a Member State of the European Union and the Trade-Related Agreements between the European Union and one or both of Iceland and Norway cease to apply to the United Kingdom, provided that the United Kingdom and at least one other Party have deposited such notification; or when the UK and at least one other Party have deposited their notifications, which ever is latest. The UK, Iceland and Norway have agreed to allow the UK-Iceland-Norway Agreement on Trade in Goods to be provisionally applied, in the event that this is necessary.

The UK-Iceland-Norway Trade Agreement applies to the UK and the territories for whose international relations it is responsible in the same way as the EEA Agreement did. The territories that this Agreement therefore applies to are:

(a) The Crown Dependencies (the Isle of Man, Jersey and Guernsey), to which, broadly, provisions relating to tariffs and trade in goods apply; and
(b) Gibraltar, to which the provisions on the protection of geographical indications apply.

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

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.

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 (DAs) and has shared the texts of parliamentary reports and explanatory memoranda with them.

Throughout the Trade Agreement Continuity Programme, we have engaged with the Devolved Administrations. 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 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 DAs' views as progress is made.

We also work 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. 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 Gibraltar