

Explanatory Memorandum on the Agreement establishing an Economic Partnership between the Eastern and Southern Africa States and the United Kingdom of Great Britain and Northern Ireland

Title of the Agreement: Economic Partnership between the Eastern and Southern Africa States, on the one Part, and the United Kingdom of Great Britain and Northern Ireland, on the other Part

Command Paper No 31

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.

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.

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. Accordingly, some agreements have been drafted in long form to reflect these wishes. The UK-ESA EPA is a long form agreement.

The UK's current trading relationship with the Eastern and Southern Africa States (Madagascar, Mauritius, Seychelles and Zimbabwe) ("ESA countries") is governed by the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part (the "ESA-EU EPA"). The Agreement establishing an Economic Partnership between the Eastern and Southern Africa States, on the one part, and the United Kingdom of Great Britain and Northern Ireland, on the other part, ("the Agreement") is based on the ESA-EU EPA.

The Agreement creates an Economic Partnership Agreement ("EPA") between the UK and the ESA countries. It provides duty free and quota free access into the UK for goods originating from ESA countries. It also provides for a gradual reduction of duties in ESA countries for goods originating in the UK. It is intended to provide continuity of the UK's and the ESA countries' rights and obligations under the ESA-EU EPA.

The Agreement is intended to take effect when the ESA-EU EPA ceases to apply to and in the UK. It is expected that this date will be at the end of the Implementation Period if the

Withdrawal Agreement is ratified or on Exit Day if no agreement between the UK and the EU is concluded. The purpose of the Agreement is to maintain the effects of the ESA-EU EPA.

In line with the commitments provided for in the Trade Bill 2017-19, 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 Agreement and those of the ESA-EU EPA.

The Report first 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 the ESA countries 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 the ESA countries.

The Secretary of State for International Development is responsible for UK policy supporting poverty reduction through economic development in developing countries.

The Secretary of State for Foreign and Commonwealth Affairs:

- has overall responsibility for the conclusion and implementation of treaty obligations;
- is responsible for the overall relationship between the UK and the Overseas Territories;
- has overall responsibility for UK policy relating to the UK's relations with ESA countries.

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

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 put in place the necessary arrangements to ensure there is no disruption to the UK's global trading relationships. Given that ESA countries have an existing trade agreement with the EU, the Government has concluded that replicating this agreement is the best way to ensure continuity of trade.

The UK is a long-standing supporter of the EU's EPAs. The EPAs are an important way for the partner countries to support economic growth and sustainable development. They also support a significant number of jobs and livelihoods in ESA countries.

Additionally, preferential access to ESA countries' markets represents increased trade opportunities and additional markets for UK exporters.

The Parties may amend the text of the UK-ESA EPA through a decision of the EPA Committee. Such amendments will enter into force subject to ratification by the Parties (Article 64). This would trigger scrutiny procedures required by the Constitutional Reform and Governance Act 2010. In addition, the EPA Committee is entitled to adopt any transitional measures that may be required in respect of the amended provisions until they enter into force.

(ii) Financial

The UK-ESA EPA provides for continuity of the UK's obligations under the ESA-EU EPA. There will be no direct financial implications beyond those needed to cover the process of signing this Agreement.

Further economic analysis on the impacts on key sectors can be found in the supporting Report.

(iii) Human Rights

The UK-ESA EPA provides that respect for human rights, democratic principles and the rule of law constitute essential and fundamental elements of the Agreement. The UK-ESA EPA may be suspended as a measure of last resort where a Party is considered to be failing to fulfil an obligation stemming from the essential and fundamental elements of the Agreement.

(iv) Reservations and Declarations

No reservations have been made in relation to this Agreement.

This Agreement includes a Joint Declaration on the trilateral approach to Rules of Origin.

It is also supplemented by Joint Declarations on the Principality of Andorra and the Republic of San Marino. These Declarations provide that products originating in those countries will be considered as originating from the EU where they fulfil certain criteria.

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 59 of the UK-ESA EPA states that the Agreement will enter into force between the UK and an ESA State either on the first day of the first month following the deposit of the instruments of ratification, acceptance or approval, or on such other date as the UK and that State agree. All ESA States do not have to sign or ratify the UK-ESA EPA before it can enter into force as between the signatory states. The UK-ESA EPA also allows for provisional application between the UK and an ESA State.

Provisional application is a process by which States intending to become parties to a treaty agree to apply the terms of that treaty pending the treaty's entry into force. Provisional application is recognised by Article 25 of the Vienna Convention on the Law of Treaties. Provisional application does not bring a treaty into force early.

The UK-ESA EPA applies to the UK and those territories for whose international relations the UK is responsible to the same extent and under the same conditions as did the ESA-EU EPA.

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 this agreement.

Consultation

The Department for International Trade ("DIT") engages extensively with a variety of stakeholders. As part of its commitment to a transparent and inclusive trade agenda, DIT holds 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 that it is having this dialogue right across the UK.

DIT is also in close contact with the Devolved Administrations.



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