

**FROM THE PERMANENT SECRETARY**  
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Mr Crawford Falconer  
Second Permanent Secretary  
Department for International Trade  
King Charles Street  
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London SW1A 2AH

20 November 2017

Dear Crawford

## **TRADE BILL**

Further to my letter dated 9 November 2017 we have given further and more detailed consideration to the Trade Bill. As you are aware I have already sought clarification on points relating to the areas of devolved competence and engagement with the devolved administrations, specifically:

- the circumstances in which it is considered that the UK Government might consider departing from convention by taking steps in the absence of relevant devolved administration agreement; and
- what contingency plans are in place should the Northern Ireland Executive and Assembly not be restored.

In addition to these important points I would welcome your response on the following matters:

### **Implementation of the Agreement on Government Procurement**

Access to international government procurement is clearly important for many sectors of the economy and ensuring continuity of access after the UK leaves the EU will be vitally important for business. Indeed you have referenced the £1.3 trillion public contract opportunities which UK companies can access annually. Whilst the Trade Bill provides a power for the UK to implement GPA obligations as an independent member we observe that in the Explanatory Notes accompanying the Bill, reference is made in respect of Clause 27 to future uncertainty (“if the UK decided to become an independent member of the GPA”).

1. *Given the important access the GPA gives to government procurement, we would be grateful for an understanding of the circumstances in which the UK may not join the GPA.*

Under the terms of the GPA we understand that members cannot commit to any level of liberalisation in the procurement of services unless the same services are formally opened under the General Agreement of Trade in Services.

2. *In this regard, will the UK have to first negotiate its WTO Services Schedule before committing to the GPA in relation to services? If so, what are the implications for the period immediately after the UK leaves the EU and what form will engagement take with the devolved administrations during any negotiation process?*

### **Implementation of International Trade Agreements**

The “transitional adoption” of existing EU trade agreements (including free trade agreements) in place immediately before exit day is to be welcomed. However the practicalities of this adoption raises a number of issues of concern. Whilst any new UK transitional agreement will mirror as closely as possible the previous EU agreement, the process for negotiating and ratifying any changes to agreements is unclear.

3. *Clarification on the process for negotiating and ratifying changes to any agreement would be welcome, particularly regarding the role of the devolved administrations.*
4. *Is it the intention that these transitional agreements will be followed by more substantive negotiations to produce new, more bespoke agreements after the UK has left the EU? If so, what is the process for devolved administration engagement?*
5. *What is the position with regard to agreements partly in place at the time of exit?*

Whilst I understand that any transitional trade agreement will mirror as closely as possible the current EU agreement, many important questions arise including regulatory harmonisation and rules of origin. You will be aware that many manufacturing processes in Northern Ireland involve multiple border crossings with the Republic of Ireland which, after leaving the EU, may impact on rules of origin. For the agri-food sector there will be clear issues around SPS measures.

6. *Clarification on how Northern Ireland border issues are being considered within the scoping and negotiating of transitional agreements would be welcome.*
7. *What role do you see the Northern Ireland Executive playing in this process, particularly around SPS matters which are unique within the UK context?*

The Bill, at clause 2(2), defines an international trade agreement as either a free trade agreement or an international agreement that mainly relates to trade.

8. *The interpretation of what constitutes an international trade agreement has potentially a very wide scope and greater clarity as to the intent behind this approach would be helpful.*

It is noted from the White Paper, *Preparing for Our Future UK Trade Policy*, that the UK intends to pursue new trade negotiations with others during the implementation period.

9. *The Trade Bill deals only with transitional trade agreements and seems to make no reference to new trade agreements. What will be the process for negotiating new trade agreements; at what stage in this process will the devolved administrations be involved; what modelling and impact assessments will be undertaken (to include regional variations); and how will any new trade agreements be ratified?*

Paragraph 20 of Schedule 3 to the Northern Ireland Act 1998 provides that import and export controls and trade with any place outside the United Kingdom are reserved matters but this does not include:

- (a) the furtherance of the trade of Northern Ireland or the protection of traders in Northern Ireland against fraud;
- (b) services in connection with, or the regulation of, the quality, insurance, transport, marketing or identification of agricultural or food products, including livestock;
- (c) the prevention of disease or the control of weeds and pests;
- (d) aerodromes and harbours; and
- (e) any matter within paragraph 4 of Schedule 2 [which lists excepted matters].

10. *What thought has been given to ensuring that provisions flowing from the Trade Bill are able to work harmoniously alongside decision-making at the devolved level in those areas of trade policy that are not reserved or excepted?*

## **Trade Remedies Authority (TRA)**

The TRA appears to have primarily investigative functions on anti-dumping, subsidies and countervailing duties in addition to general support functions in the context of trade disputes.

11. *Will the TRA take the actual decisions to set and impose anti-dumping duties etc. and, if not, what authority will undertake these duties?*
12. *Will the decisions of the TRA or other authority be appealable in the High Court/Court of Appeal?*

The investigative functions of the TRA will cover both the determination of injury to UK producers and exporters due to unfair dumping and subsidy practices from third country exporters as well as the analysis of the trade measures imposed by third countries. In this context it will be important to consider the unique economic circumstances of the Northern Ireland economy which is, in many respects, structurally different to the rest of the UK.

13. *Schedule 4 of the Trade Bill sets out the membership of the TRA. Given Northern Ireland's unique economic and social characteristics, it will be important that membership of this body has representation drawn from this region.*

In your letter of 9 November you referenced a future call for evidence in relation to existing EU trade remedy measures that are important to the UK. We will encourage Northern Ireland businesses to input to this exercise through, for example, our EU Exit stakeholder group and Invest Northern Ireland.

14. *Can you advise on the timing of the call to evidence?*

## **Trade Information**

The collection of exporter information continues to be a vital source of knowledge on international trade flows.

15. *Will the disclosure of information by HMRC extend to devolved administrations in order that they may fully perform their functions relating to international trade?*

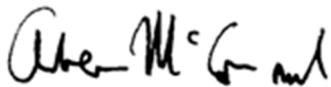
Within the context of DIT's White Paper, *Preparing for Our Future UK Trade Policy*, there is reference to future trade policy benefiting individuals and communities and making sure the value of trade is more widely shared. The White Paper goes on to specify that the devolved administrations (amongst others) will have the opportunity to engage with and contribute to the UK's trade policy going forward.

In that regard we welcomed the recent visit to Northern Ireland by John Alty and this is being followed by subsequent visits by our officials to DIT. It is important we continue to build these relationships and to establish formal mechanisms of engagement for the longer term.

Given the ongoing work, not just in terms of both transitional and future agreements, it is clear that there is scope for immediate and enhanced engagement between DIT and NIE officials. We are particularly keen to engage on the development of a model free trade agreement and on trade modelling.

I know that my officials and I look forward to working with you constructively over the coming months and years.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew McCormick', written in a cursive style.

**ANDREW McCORMICK**  
Permanent Secretary

cc: Alex Chisholm  
Claire Moriarty  
Jonathan Stephens  
David Sterling