



BRIEFING PAPER

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UK adoption of the EU's external agreements after Brexit

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Contents:

1. How many international agreements does the EU have?
2. Mixed and exclusive competence agreements
3. Replacement of EU trade agreements
4. Replacement of non-trade international agreements
5. Parliamentary scrutiny of replacement treaties
6. EU multilateral agreements
7. EU bilateral agreements



Contents

Summary	4
1. How many international agreements does the EU have?	8
1.1 The EU Treaties database	8
1.2 UK Treaties database	8
1.3 Financial Times analysis	9
1.4 Redundant and outdated agreements	10
1.5 Government position on the number of EU international agreements	10
1.6 Recently signed agreements	12
2. Mixed and exclusive competence agreements	13
2.1 The EU's competences	13
2.2 Application of mixed agreements after Brexit	14
2.3 EU position on mixed agreements	16
2.4 House of Lords EU Committee seeks clarification	16
3. Replacement of EU trade agreements	18
3.1 The International Trade White Paper	18
3.2 The Trade Bill	18
3.3 Initial Government progress on rolling over agreements	19
3.4 International Trade Select Committee report on Continuing Application of EU trade agreements	20
Transitioning tariff rate quotas, rules of origin and cumulation	21
3.5 Trade with EFTA countries and Turkey	22
3.6 Application of agreements in the post-Brexit Transition/Implementation period	22
Draft Withdrawal Agreement, March 2018	23
3.7 Possible continuation of EU trade agreements under temporary customs arrangement (Northern Ireland backstop)	24
3.8 Arrangements after the transition/ implementation period	25
3.9 Government states that agreements in principles reached, July 2018	25
3.10 Proposed UK-SADC agreement	26
3.11 Replacement of trade agreements if there is no deal with the EU	27
3.12 Government notice: free trade agreements if there is no Brexit deal	27
3.13 UK-EU Withdrawal Agreement, November 2018	29
3.14 UK-Swiss trade agreement	30
3.15 Will replacement deals be in place by 29 March 2019?	31
3.16 Government update on international agreements signed	31
Rules of Origin	33
3.17 Replacement agreements off track or not deliverable by 29 March	34
Department of International Trade update, 21 February 2019	35
3.18 No Deal contingency planning	36
4. Replacement of non-trade international agreements	38
4.1 Agreements with EFTA countries	38

3 Commons Library Briefing, 5 March 2019

4.2	Aviation and nuclear co-operation agreements	38
4.3	Government update on international agreements signed and nearly ready	39
4.4	Agreements under EU's area of freedom, security and justice	41
4.5	Agreements where Foreign and Commonwealth Office is taking lead	41
4.6	Government Procurement Agreement	42
5.	Parliamentary scrutiny of replacement treaties	43
6.	EU multilateral agreements	44
7.	EU bilateral agreements	46

Summary

How many international agreements does the EU have?

The UK is currently party to numerous international agreements with third countries as a member of the EU. The EU's Europa online Treaties database lists 1,261 international agreements that the EU is party to. How many of these are pertinent to the UK remains unclear.

A report in the *Financial Times* in May 2017 suggested that there were 759 separate EU international agreements with potential relevance to Britain. This included 295 agreements related to trade, as well as agreements related to regulatory co-operation, fisheries, agriculture, nuclear co-operation and transport co-operation (including aviation). The agreements cover 168 countries, with multiple accords with certain countries.

The International Trade Secretary Liam Fox has indicated that such high figures are misleading, and that not all of the treaties would require action to maintain continuity following Brexit. Some of these treaties have been superseded, are redundant or no longer relevant to the UK, and there are also multiple agreements that could be understood as one agreement.

In January 2019, Brexit Secretary Stephen Barclay said that some of these agreements are not relevant to the UK and in some cases the UK has signed agreements in its own right and therefore does not need new agreements. He also said that in the event of the UK leaving the EU with no deal, the Government's assessment was that about 1,000 EU treaties were relevant, but this slipped down to under 400 with a direct impact, and a much lower number "in the tens" of more material issue from exit day.

Mixed agreements

Around a quarter of the EU's international agreements have been classified as mixed agreements because they cover competences shared by the EU and Member States. This means that they have been ratified separately by EU Member States as well as approved at EU level. While EU-only agreements will cease to apply to the UK once it leaves the EU, some legal experts have suggested that aspects of mixed agreements could continue to apply. However, the EU has stated that all agreements will cease to apply.

Replacement of the EU's international trade agreements

The Government has indicated that it is seeking the transitional adoption or "rollover" of all the EU's trade agreements and other preferential trade arrangements with third countries. This will enable current arrangements with third countries that the UK is currently party to as an EU Member state to be replicated in UK-third country agreements when the UK leaves. This would not preclude a fuller revision of these agreements in the longer term to create a more bespoke arrangement.

The Government introduced the Trade Bill in November 2017 to enable the domestic implementation of these replacement agreements, and also implement other measures necessary for an independent UK trade policy after Brexit. The Government's Impact Assessment for the Trade Bill

published in November 2017 referred to 88 third countries covered by EU trade agreements, accounting for 13% of UK trade. This figure did not take into account newly signed agreements such as the EU-Japan partnership.

The Government said in January 2018 that it had engaged with 70 countries covered by over 40 EU international trade agreements and had received a positive reaction in relation to its objective of ensuring continuity in these trading relationships.

A report from the International Trade Select Committee published in February 2018 however warned of trade with 70 nations “falling off a cliff edge” if the Government did not act quickly to roll over the EU’s trade deals. It also said there was an urgent need for clarity “over the number, type, scope, extent and importance of the EU’s trade-related agreements.” It also warned that substantive amendments to the rolled-over agreements were almost certain to be required.

International agreements during the transition phase

After previous indications from the EU that its agreements with third countries would not apply to the UK during the envisaged post-Brexit transition period the UK Government published a Technical Note in February 2018 proposing continuing application of EU international agreements to the UK during the transition phase by agreement of all the parties concerned. At the March 2018 European Council, the EU agreed to notify other parties to international agreements that the UK is to be treated as a Member State during the transition period for the purposes of these agreements. However, this would be a request and it is possible that the third countries concerned may not agree.

In July 2018, Liam Fox said that agreements in principle had been reached with third countries in terms of continuing trading arrangements but that countries were waiting to see if there would be a transition period first, with a view to using the extra time to negotiate a more bespoke agreement rather than simply rolling over the existing arrangements.

UK-EU Withdrawal Agreement

The UK-EU Withdrawal Agreement (WA) agreed in November 2018, provides for a transition period during which the UK will continue to apply the EU’s customs and trade arrangements with third countries and the EU would notify the other parties to its international agreements that the UK should be treated as a Member State for the purposes of these agreements.

The WA also includes a Protocol on Ireland/Northern Ireland providing for a ‘backstop’ keeping the UK in a ‘Single Customs Territory’ with the EU at the end of the transition period unless or until a new agreement on a future UK-EU relationship has entered into force which guarantees the absence of checks on the Northern Ireland-Ireland border. This is based in part on the temporary UK-EU customs arrangement the Government proposed in a Technical Note in June 2018. The June proposal suggested that further technical discussions would be required with the EU to explore a shared solution to ensure the UK is able to apply the EU’s common external tariffs in full, and so that the UK continues to benefit from existing EU free trade agreements or any new ones signed during the period.

Replacement Agreements if the UK leaves EU with no deal

In November 2018, Trade Minister George Hollingbery said the Government was still optimistic that most EU trade agreements would be replaced in time for Brexit day. He indicated that discussions had become more complex given that they had previously been predicated on there being a transition period but that the emphasis had now changed “to emphasising to key partners . . . that no deal was a real possibility”. He said it would be difficult to transition deals with some countries closely aligned with the EU if there was no agreement with the EU. He also said that a previously announced agreement with the Southern African Development Community (SADC) had yet to be finalised.

The Government released a technical notice on existing trade agreements if there is no deal in October 2018. It explained that should replacement agreements not be in place by exit date then World Trade Organization (WTO) Most Favoured Nation (MFN) terms would apply, whereby the same tariff rates would need to be charged to all WTO members in the absence of a free trade agreement.

In December 2018, the Government announced that agreement had been reached with Switzerland to transition UK-Swiss trade arrangements during the planned WA transition period, replicating existing arrangements “as far as possible”. This would also enable the replication of the majority of arrangements if the UK leaves the EU without a deal.

Replacement Trade Agreements delivered and off track

On 20 January 2019, Liam Fox said he was confident that the UK could replicate the five most important trade deals by 29 March. He said there were 34 free trade deals requiring replication. He said however that a number of countries were “unwilling to put in preparations for a no deal”.

On 25 January, the Government released a list of bilateral agreements signed, nearly ready to sign or close to being finalised. Trade-related agreements already signed related to mutual recognition of conformity assessment with Australia and New Zealand, trade in wine with Australia, and trade in live animals and animal products with New Zealand.

Replacement free trade agreements (FTAs) were close to being signed with Eastern and Southern African States, Chile, the Faroe Islands, Switzerland, Caribbean States, and the Palestinian Authority. Texts on FTAs were being finalised with Israel, Canada, Pacific States, the SADC, and Norway and Iceland. Mutual recognition agreements with the USA were also being finalised.

Signature of FTAs with Chile, the Eastern and South African States, the Faroe Islands, Switzerland, Israel and the Palestinian Authority were announced in late January and February.

A leaked Government document published in *The Sun* on 12 February indicated that eight agreements (including with Canada, South Korea and the EEA countries) were “off track” to be delivered by 29 March. Other agreements, including with the Andean Community, Mexico, Ukraine, North African and Western Balkan states were “significantly off track”, while it

said that agreement would not be possible by 29 March with Algeria, Turkey, Japan and Moldova.

The Department for International Trade published a list on 21 February showing the status of negotiations on replacement agreements. It confirmed that the Japan and Turkey agreements would not be transitioned for exit day, but said that engagement was ongoing for other agreements.

The Government no deal impact assessment published on 26 February said it was “looking urgently” at contingency options where discussions are off track, including provisional application and bridging mechanisms (e.g. Memoranda of Understanding) to bring agreements into force on exit day.

Replacement of non-trade international agreements

There has been less information available on the Government’s preparations to replace or address arrangements covered by the numerous EU international agreements on non-trade issues.

In November 2018, the Government announced aviation agreements with the USA, Canada and eight other countries, safeguarding flights post-Brexit. Also in November, agreements with Australia, Canada and the USA on co-operation on peaceful uses of nuclear energy, and an agreement with the International Atomic Energy Agency on safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons were presented to Parliament.

The list of signed agreements issued by the Brexit Secretary on 25 January 2019 referred to these agreements, as well as agreements relating to insurance with the USA and Switzerland, and a road transport agreement with Switzerland. Various multilateral agreements for which the UK is taking action to become an independent party were also listed. These include international conventions relating to civil justice, various fisheries conventions and agreements, the Common Transit Convention, the Interbus agreement and the WTO Government Procurement Agreement (GPA).

Confirmation that the UK would become an independent party to the GPA in the event of a no deal Brexit was announced on 27 February. The various fisheries agreements and an agreement with Ireland on social security co-operation were also laid before Parliament in February.

The Government announced agreements with the three EFTA EEA countries in December 2018 to address separation issues similar to those covered by the WA. It also announced an agreement with Switzerland covering citizens’ rights post-Brexit. An agreement with the three EFTA EEA countries covering citizens’ rights in a no deal scenario was announced in February 2019.

1. How many international agreements does the EU have?

Leaving the EU in 2019 could mean that the UK will no longer be party to numerous international agreements that the EU has signed with non-EU countries.

The UK Government has indicated that it wishes to replicate the terms of the EU's agreements with non-EU countries in new or 'rolled-over' agreements, so that there is continuity following Brexit. This would require an agreement with the countries concerned.

It remains unclear how many of the EU's current international agreements the UK Government's approach would apply to.

This briefing paper provides an overview of the progress the Government has made in replacing these EU agreements, although it does not provide an analysis of the substance of EU or replacement agreements.

1.1 The EU Treaties database

The EU's Europa Treaties [database](#) lists 1,261 international agreements that the EU is party to as of 28 February 2019. This comprises 977 bilateral agreements (where the EU has negotiated an agreement with just one country) and 284 multilateral agreements (agreements with more than one country).

Of these agreements, a total of 1,092 agreements (851 bilateral and 241 multilateral) had entered into force as of 17 July 2018. 169 agreements had yet to enter into force.

House of Commons Library [Briefing Paper CBP-7850](#) published in January 2017 listed multilateral international treaties on the EU Treaty database up until June 2015 and bilateral international treaties up until December 2015.

Sections 6 and 7 of this paper lists treaties signed since these dates (* denoting that the agreement has not yet come into force).

It remains unclear how many of these agreements are of current relevance to the UK, and would therefore require replacement with a new agreement in order to ensure continuity in the UK's post-Brexit relationships with third countries.

1.2 UK Treaties database

The UK Treaties Online (UKTO) service on the Foreign and Commonwealth Office (FCO) website provides a searchable [database](#) of treaties that the UK is party to, covering over 14,000 treaties involving the UK. This also includes treaties the UK is party to as a member of the EU. However, it does not provide a list of these treaties or enumerate them.

Bilateral international treaties laid before Parliament in the form of a Command Paper are also listed on the FCO website [here](#). Several Brexit-related replacement treaties have been listed since late 2018.

The EU Treaties database lists 1,261 international agreements

Treaties published since 2002 can also be found on the [archived version of the website](#) (updated to 31 December 2012). Although it provides lists of certain types of treaties, it does not provide a list of treaties which the UK is party to as a member of the EU.

1.3 Financial Times analysis

In an article in May 2017, based on an analysis of the EU Treaty database, the [Financial Times](#) said it had found 759 separate EU agreements with potential relevance to Britain. 295 of these agreements related to trade with non-EU countries. Aside from trade, the article said that the 759 agreements covered critical matters such as air services, allowing UK aeroplanes to land in third countries, and nuclear accords permitting trade in spare parts and fuel for Britain's power stations.

There were 202 agreements relating to regulatory co-operation, as well as agreements on customs, fisheries, agriculture, nuclear co-operation and transport co-operation (mainly airline services). See the table below drawn from the *Financial Times* analysis.

The article also referred to agreements that appeared less material to UK interests, giving examples of agreements on swordfish conservation in Chile, and one relating to the "rules of procedure of the International Rubber Study Group".

Type of Agreement*	Number of agreements
Trade	295
Regulatory Co-operation	202
Fisheries	69
Transport	65
Customs	49
Nuclear	45
Agriculture	34

*Source: Financial Times analysis

According to the *Financial Times*, the agreements cover 168 countries and involve multiple accords with certain countries, for example 49 with Switzerland, 44 with the USA and 38 with Norway. The article contains a number of useful [graphics](#) which break down the number and type of agreement by continent and highlight some of the difficulties the UK may encounter in renegotiating them.

The article also said that around 110 separate opt-in accords at the United Nations and World Trade Organisation were excluded from the estimates, as were narrow agreements on the environment, health, research and science. It said that some additional UK bilateral deals outside of the EU

The Financial Times analysis found 759 EU agreements of relevance to the UK

framework might also need to be revised because they make reference to EU law.

1.4 Redundant and outdated agreements

Several Treaties on the EU database may no longer be relevant to the UK once it has left the EU, or be viewed as not of great importance or fairly straightforward to replace. For example, among recent bilateral agreements signed are agreements with Morocco, Lebanon, Jordan, Egypt and Algeria on these countries' participation in the joint EU-Mediterranean research and innovation programme, protocols to EU agreements with Chile, Egypt, Mongolia, Bosnia-Herzegovina, Uzbekistan and the Kyrgyz Republic to take account of Croatian accession to the EU, an amending protocol to the EU agreement with Andorra relating to taxation of savings, and an EU fishing partnership agreement with Mauritius. Several treaties relate to visa arrangements for third countries, for example with China, Peru, the Marshall Islands, Kiribati and Tuvalu.

The EU Treaties database also refers to agreements that relate to specific time periods that have now passed, and may contain errors. For example, the multilateral treaties database includes the 'Agreement between the European Union, Iceland, the Principality of Liechtenstein and the Kingdom of Norway on an EEA Financial Mechanism 2009-2014.' Although this agreement relates to a time period which has now passed, it is rather confusingly denoted as not yet in force.

1.5 Government position on the number of EU international agreements

Commenting on the numerous treaties in the EU Treaties database, International Trade Secretary Liam Fox said in a [letter](#) to the Chair of the International Trade Select Committee in December 2017 that:

Not all of these Treaties require action on exit, as a number are superseded, redundant or no longer relevant for the UK. A precise meaningful figure cannot be provided for a number of reasons. For example, some countries have been superseded by later agreements, as countries have joined the EU over time, and when amendments and new protocols have been added to existing Treaties.

Dr Fox said that work was "ongoing" to "identify the full range of agreements that are affected by exit and to take action to ensure continuity for businesses and individuals on exit." He said that the Department for Exiting the EU (DExEU) was leading the work across the Government on this.

Dr Fox also pointed out that there are instances on the EU Treaties Office database of multiple treaties which "may be referred to in some contexts as a single agreement (for example, the EU's 1972 trade agreement with Switzerland has since been enhanced by a number of further agreements which add to the 1972 original").

Additionally, Dr Fox said that "the EU is a party to a number of agreements which have only been partially or provisionally applied, or are signed but not yet entered into force."

The Governments says some agreements have been superseded, are redundant or no longer relevant

Dr Fox said that for these reasons the Government referred to “around 40 trade agreements covering over 55 countries “and we believe it would be misleading to attempt to provide a definitive figure which disregards the complexities involved.” In relation to these agreements, Dr Fox said:

The Government is seeking to replicate the effects and benefits of our existing trading agreements, though not necessarily their number. We are discussing with our trading partners how continuity can best be achieved. We have had positive reactions from partner countries to our approach so far, but it is too early to say what exactly it will mean in a particular case or for any particular country.

A [Financial Times](#) article on 29 October 2018 reported that the UK had so far managed to rollover only 14 of 236 relevant EU international treaties, referring to figures discussed at an internal meeting of Government officials. It said the 236 treaties covered trade, aviation and financial services, fisheries and the nuclear industry.

In [evidence](#) to the House of Lords Select Committee on the European Union on 23 January 2019, Brexit Secretary Stephen Barclay referred to calculations the Government had made of agreements requiring replacement should the UK leave the EU without an agreement:

In the event of no deal, the assessment we made was that about 1,000 treaties had a relevance to exit, which slipped down to just under 400 with a direct impact, and a very low number—in the tens—of more material issue from exit day. [Trade Minister] George Hollingbery and the DIT have been getting those ready.

In a [letter](#) sent to the chairs of the Commons Exiting the EU Committee, the Lords EU Committee and other committee chairs on 25 January 2019, Mr Barclay said:

As you will be aware, we have been working with third countries to identify which of the EU’s existing international agreements are relevant, important and need action as a result of our exit from the EU. Not all of these agreements need action. This is for various reasons; some of these agreements have been superseded because they have been amended over time as the terms have changed or new countries have joined the EU; some are not applicable to the UK, and in some instances, we signed the agreement as a member in our own right and so our membership will therefore continue. As a consequence, the number of replacement treaties is much lower than the full list on the EU Treaties database.

The Department for Exiting the EU oversees the International Agreements programme across the Government, with the Foreign and Commonwealth Office (FCO), the Department for International Development (DFID) and the Department for International Trade (DIT) having responsibility for agreements.¹

The Government assessment is that there are 400 agreements of direct impact for a no deal exit, and a much lower number of more material issue from exit day

¹ See Letter from Dr Liam Fox, Secretary of State for International Trade, to the Chair of the International Trade Committee, 4 February 2019.

1.6 Recently signed agreements

The Government's [Impact Assessment](#) for the Trade Bill published in November 2017 identified 40 EU free trade or preferential trade agreements with 88 third countries.

Neither the EU Treaties database nor the Government's Trade Bill Impact Assessment list include recently signed EU international trade agreements, including the [EU-Japan Economic Partnership Agreement](#) (EPA) which was signed on 17 July 2018 and came into force on 1 February 2019. The EU Treaties database does include the EU-Japan Strategic Partnership Agreement signed on the same day as the EPA.

Also not included on either the EU database or the Government's Impact Assessment are the free trade agreements the EU has agreed with [Singapore](#) (signed in October 2018) and with Vietnam (awaiting signature)².

² The EU-Singapore deal was finalised in 2014, and the EU-Vietnam deal in 2015, but there have been legal delays since (see section 2.1). See also European Commission, [Overview of FTA and other trade negotiations](#), July 2018

2. Mixed and exclusive competence agreements

2.1 The EU's competences

Close to three-quarters of the agreements on the EU Treaties database have been negotiated and approved by the EU on the basis of an EU exclusive competence (where the EU Treaties give the EU alone the power to negotiate and conclude the agreement).

This includes customs matters, competition rules, monetary policy for eurozone countries, the conservation of marine biological resources and common commercial policy (covering international trade relations with non-EU countries).

Where competence is shared between the EU and its Member States, the agreement is concluded both by the EU and by the EU Member States. These are known as [mixed agreements](#)³, to which EU Member States must give their consent, meaning that Member States will need to approve the agreement according to their own constitutional procedures.⁴

This includes a number of recent EU trade agreements which cover services and intellectual property as well as trade in goods. The Court of Justice of the EU (CJEU) ruled in 1994 in relation to the World Trade Organization (WTO) Agreement that while trade in goods is an exclusive competence of the EU, certain aspects of services and intellectual property rights are shared with Member States.

In 2017, the CJEU ruled that the inclusion of investment provisions in the recently negotiated EU-Singapore Agreement rendered it a mixed agreement requiring Member State ratification. Both the EU-Singapore agreement and the similar EU-Vietnam agreement have subsequently been split up into Free Trade Agreements requiring approval at the EU level only, and Investment Protection Agreements requiring Member State ratification.⁵

The European Commission is now taking this approach for other trade agreements in order to avoid the ratification problems that have beset the recent EU-Canada Comprehensive Economic and Trade Agreement (CETA).⁶ For example, the recently signed EU-Japan agreement is also an EU exclusive competence agreement, while a separate agreement covering investment provisions is also being negotiated.

³ See the explainer of the EU's external competences on the EU's eur-lex website [here](#) and the explainer of mixed agreements on the UK in Changing Europe website [here](#).

⁴ For further information on the UK approval process for international treaties, see House of Commons Library Briefing Paper, [Parliament's Role in ratifying treaties](#), CBP-5855, 17 February 2017. See also House of Commons Library Briefing Paper, [EU external agreements: EU and UK procedures](#), CPB-7192, 29 March 2016, which examines how the EU negotiates these agreements and how the UK scrutinises and ratifies them.

⁵ See European Commission, [Overview of FTA and other trade negotiations](#), updated July 2018

⁶ See House of Commons Library Briefing Paper, [CETA: the EU-Canada agreement](#), CBP-7492, June 2018

House of Commons Library [Briefing Paper CBP-7850](#) on the EU's external agreements, published in January 2017, explored in more detail the different types of agreement, UK approval processes for mixed agreements, and discussions at the time as to whether or not mixed agreements would continue to apply to the UK when it leaves the EU. It identified 230 mixed agreements at the time of writing (with the status of some Treaties unclear).

2.2 Application of mixed agreements after Brexit

The consensus among most analysts is that both exclusive and mixed agreements will fall on Brexit day, and will have to be renegotiated after Brexit, or possibly in parallel with negotiations on the withdrawal agreement. However, there is also a view that where the UK has ratified a mixed agreement in its own right, aspects of the mixed agreement might remain in force, depending on the wording of the agreement

In the case of the EU exclusive competence agreements, Brexit will mean that the UK will no longer be bound by the agreement. Most of these agreements also have a 'territorial application' clause restricting the application of the agreement to the territories in which the EU Treaties applies, meaning they will no longer cover the UK post-Brexit.

There has been greater uncertainty over mixed agreements. Prior to the referendum on leaving the EU in 2016, the Treasury Select Committee concluded as follows:

Were the UK to leave the EU, it is very uncertain whether it would be able to continue to participate in these agreements. The extent to which the UK would have to enter into negotiations to ensure its continued participation would probably depend on the attitude of the contracting parties, about which little is known.

In evidence to the House of Lords European Union Committee's inquiry into options for trade after Brexit at the end of 2016, international trade experts indicated that the EU's mixed agreements would also cease to apply to the UK following Brexit.

The inquiry report, [Brexit: the options for trade](#), cited evidence from Dr Markus Gehring, Lecturer in Law at Cambridge University who said it would not be possible for the UK to continue to enjoy the benefits of the EU's free trade agreements (FTAs) post-Brexit, including mixed agreements which tended to "specify that the application of the agreement is really restricted to EU Member States".

It also cited Luis González García, Associate Member of Matrix Chambers, who noted that the "language of the FTAs does not leave room to differentiate which commitments belong to the EU and which ones [are] for individual Member States". It followed that: "If a country ceased to be part of the Union the FTA is no longer applicable."

The report also referred to correspondence from the Government in relation to the recently negotiated EU-Canada CETA agreement. In an appendix to a letter to Lord Boswell, Chair of the Lords EU Committee, received in October 2016, former International Trade Minister Lord Price wrote that the Government's assessment was that:

On leaving the EU, the UK will no longer retain access to the trade preferences contained within CETA unless arrangements to do so are put in place as part of our negotiations with the EU. This outcome will not be impacted by whether or not the existing trade deal was signed as a mixed agreement.

An alternative view was taken in an Oxford University law [blog](#) in May 2017, by Robert Volterra, a leading international public lawyer and Visiting Professor of Law at University College London. He suggested that the UK would continue to qualify as a 'party' to most mixed EU free trade agreements (FTAs) after Brexit.

Volterra pointed out that as mixed EU FTAs are international agreements concluded in writing between States, they are governed by the provisions of the Vienna Convention on the Law of Treaties (VCLT). Under the VCLT, a State constitutes a 'party' to an international treaty so long as it has consented to be bound by the provisions of that treaty, which continues to be in force with respect to it and which has not been terminated in conformity with its own terms, or the VCLT rules on the termination of treaties. Volterra wrote that:

Whilst most mixed EU FTAs contain specific provisions for the termination of their operation, they do not provide for a special termination clause in case of withdrawal of a State from the EU. Accordingly, since the UK has signed and ratified these FTAs together with the EU and has not (yet) formally terminated them, it has consented to be bound by the provisions of these FTAs. Those provisions will continue to be in force with respect to it, as the UK will continue to be a 'party' to them under public international law.

However, Volterra explained that this did not automatically mean that mixed EU agreements will continue to apply to the UK post-Brexit.

Each is a separate agreement interpreted in accordance with its own wording, taking into account its specific context, its object and purpose, as well as any special meaning that the parties might have intended, pursuant to Article 31 of the VCLT.

Each mixed EU agreement would therefore need to be considered on a case-by-case basis. Volterra pointed to different wordings with regards to the "*ratione personae*" (the parties to the treaty) in different treaties, which might have a bearing on this interpretation:

Some FTAs enumerate each Member State separately from the EU (of the one part), and the third country (of the other part), collectively referring to them as 'the parties'. Other FTAs define the EU and its Member States together as 'the EU, of the one part'.

Volterra noted that interestingly, in the recently agreed EU-Canada Comprehensive Economic and Trade Agreement (CETA), the parties are defined as "the European Union or its Member States or the European Union and its Member States, within their respective areas of competence as derived from the [EU Treaties] (hereinafter referred to as the 'EU Party')".

Both the definition of the parties and the existence or not of a 'territorial clause' limiting the application of the mixed agreement may have a bearing on whether the agreement would continue to apply to the UK post-Brexit,

though these points would all be open to legal interpretation, Volterra suggested.

An [article](#) by Ramses A. Wessel, Professor of International and European Law at the University of Twente, published in the *Common Market Law Review* in May 2018, makes similar observations. Professor Wessel suggests that theoretically “it would not be impossible” for the UK to remain a party to mixed agreement “as long as all parties agree.”

This would seem to require a legal instrument (e.g. a protocol) “stating that the withdrawing Member State takes over the rights and obligations it previously had under the agreement as an EU Member State and that it joins the agreement as third party” Wessel wrote. This would most likely also trigger negotiations “to accommodate unforeseen practical problems.”

2.3 EU position on mixed agreements

Statements from the EU have nevertheless been categorical that its international agreements (including mixed agreements) will not apply to the UK after Brexit.

The European Council [guidelines](#) for the Brexit negotiations published in April 2017 stated:

Following the withdrawal, the United Kingdom will no longer be covered by agreements concluded by the Union or by Member States acting on its behalf or by the Union and its Member States acting jointly.

[Slides](#) on international agreements and trade policy published by the European Commission’s Brexit negotiations task force in February 2018 provided further details of the EU’s position.

The slides confirmed that both the EU’s “EU only” and bilateral “mixed” international agreements would no longer apply to the UK from the day of withdrawal from the EU. The Commission stated:

The UK will no longer be covered by:

“EU only” agreements: agreements concluded by the EU (and/or Euratom); or by the Member States on its behalf

Bilateral “mixed” agreements: concluded on the one hand by the Union and its Member States, and on the other hand by the third country partner (e.g. Association agreements; Cooperation and partnership agreements; Aviation agreements; European Economic Area).

EU-only and bilateral mixed agreements will no longer apply to UK after Brexit

However, the slides stated that the UK will remain party to multilateral agreements to which the EU is also a party “to the extent that UK is party in its own right”, for example WTO agreements and the Paris Climate Change agreement, in relation to which the UK will recover full competence.

2.4 House of Lords EU Committee seeks clarification

In his [letter](#) sent to the chairs of the Commons Exiting the EU Committee, the Lords EU Committee and other committee chairs on 25 January 2019,

Brexit Secretary Stephen Barclay said that some of the EU's existing international agreements did not need action as "in some instances, we signed the agreement as a member in our own right and so our membership will therefore continue".

The Chair of the Lords EU Committee, Lord Boswell of Aynho, [wrote back](#) to Mr Barclay on 6 February seeking clarification on this point. He wrote:

Your letter states that some EU international agreements will not be rolled over, because "we signed the agreement as a member in our own right and so our membership will therefore continue". Does this category include 'mixed agreements', namely those where the responsibility to implement the agreement's obligations are shared between the EU and the individual Member States? If so, could you set out your reasons for concluding that such agreements will continue to apply to the UK post-Brexit? We note that some agreements included in your lists (such as the EU-Canada Comprehensive Economic and Trade Agreement) are mixed: on what basis have you decided that some mixed agreements need to be rolled over, while others do not?

3. Replacement of EU trade agreements

3.1 The International Trade White Paper

The Department of International Trade White Paper, [Preparing for our future UK trade policy](#), published in October 2017, stated that the Government intended to “seek to transition all existing EU trade agreements and other EU preferential arrangements,” in order to “ensure that the UK maintains the greatest amount of certainty, continuity and stability in our trade and investment relationships.”

It said the Government would also prepare for a new position in the World Trade Organization outside the EU. This would involve establishing UK-specific commitments in UK-only “schedules” on trade in goods and services, as far as possible replicating its existing commitments as set out in the EU’s schedules of commitments. These would be submitted for certification at the WTO ahead of leaving the EU.⁷ The Government would also take specific steps to ensure that the UK remained part of the WTO Government Procurement Agreement (GPA).⁸

In November 2017, in [oral evidence](#) to the International Trade Select Committee, the International Trade Secretary Liam Fox said that the Government was seeking transitional adoption of existing EU trade agreements to provide “a technical replication of the conditions that exist today, so that there is no disruption at the point at which we leave the European Union.” This would not preclude a revision to these trading terms at a later date in order to develop “a more bespoke agreement” with these countries.

The UK is seeking to replicate EU trade agreements as far as possible

3.2 The Trade Bill

The Trade Bill was introduced in the House of Commons in November 2017. The Bill seeks to provide a legal basis for the implementation in UK law of any new trade deals with non-EU countries which replicate or ‘rollover’ the trade agreement that the UK is currently party to as a Member State of the EU. It also includes legislative measures to enable implementation of the GPA and the establishment of a new UK trade remedies framework for when the UK leaves the EU.⁹ The Bill completed its Commons stages on 17

⁷ The UK and EU sent a joint letter to the WTO in October 2017 informing it of their agreed plans to apportion existing agricultural quotas, as well maintain existing levels of farm subsidies. However, it was [reported](#) in April 2018 that following opposition to these plans from Australia, New Zealand, the USA and others the EU was now proposing a full renegotiation of WTO schedules but this was being opposed by the UK Government. The UK formally submitted its proposed schedules in July 2018. It was [reported](#) in November 2018 that Russia had officially objected to these, and 19 other countries had informally raised concerns. However, any failure to reach agreement on these schedules [does not](#) prevent the UK retaining its status as independent WTO member.

⁸ The Agreement on Government Procurement (GPA) is a voluntary (plurilateral) agreement between the EU and 18 countries to open up their public procurement markets to each other, under the World Trade Organization (WTO).

⁹ See House of Commons Library Briefing Paper, [The Trade Bill](#), CPB 8073, Updated 2 July 2018.

July 2018. It completed its Committee stage in the House of Lords in February 2019 and its Report stage was scheduled for March 2019.

In its [Impact Assessment](#) for the Trade Bill, the Government identified the countries or blocs with which the EU currently has free trade or preferential trade agreements. These cover 88 third countries (several agreements are multilateral, covering more than one country), accounting for nearly £140 billion of UK trade (13% of the total) in 2015.¹⁰

The Government said its aim was to transition the EU's existing Free Trade Agreements and other preferential trade agreements, including Mutual Recognition Agreements to ensure "maximum continuity" from the day of EU exit.

The Impact Assessment divided the trade agreements into three categories:

- i) Traditional Free Trade Agreements (FTAs) – these tend to be the broadest and most detailed agreements in trade terms;
- ii) Economic Partnership Agreements (EPAs) – these are development focused FTAs that aim to provide long-term, predictable frameworks to help increase trade and investment, and support sustainable growth and poverty reduction. EPAs are asymmetric in their degree and pace of market liberalisation; and
- iii) Association Agreements - these are usually much broader agreements in general terms (e.g. covering political cooperation, energy, etc.) but with a notable trade component.

3.3 Initial Government progress on rolling over agreements

In his [oral evidence](#) to the International Trade Select Committee in November 2017, Liam Fox said that the Government was at "a fairly advanced stage" with some of the countries covered by EU trade agreements with regard to rolling over the agreements post-Brexit. Dr Fox said:

We are at a fairly advanced stage with some of those, and we have not had any indication from any of them that they did not want to get bilateral market access and continue where we are. Of course there are issues. It is not quite as simple as rolling them over, because we have disaggregation of quotas, for example, in some of those, and we have been involved in discussions about the methodology by which we will do those. But remember it is a transitional adoption, with an implicit understanding that this agreement is to ensure market stability at the point we leave the European Union, but with a view to being able to develop a more bespoke agreement with those countries in the future.

¹⁰ If newly signed agreements, such as the EU-Japan Economic Partnership, were taken into account this figure would be more than 15% (2.3% of UK exports go to Japan). See House of Commons Library Briefing Paper CBP 8340, [The EU-Japan Economic Partnership Agreement](#), 15 June 2018.

In a [letter](#) to the Chair of the International Trade Select Committee in January 2018, the then International Trade Minister Greg Hands updated on progress. He wrote:

We are currently engaging with the countries with whom the UK has existing free trade agreements via our membership of the EU, to agree how continuity is best achieved as we leave the EU. Since the creation of the department in July 2016, we have engaged with over 70 countries in relation to around 40 international agreements and the reactions have been positive. Both we and our partner countries maintain a clear focus on avoiding any disruption to trading arrangements at the point at which existing agreements cease to apply to the UK, and are keenly aware of the timelines involved.

Without wishing to be seen to pre-empt the outcome of the discussions, I remain confident that the necessary progress is being made to provide businesses, consumers and investors with the certainty and stability they require as we leave the EU.

The UK has engaged with 70 countries in relation to 40 EU trade agreements

3.4 International Trade Select Committee report on Continuing Application of EU trade agreements

The International Trade Select Committee (ITC) report on [Continuing Application of EU trade agreements after Brexit](#) published on 28 February 2018 provided an overview of the trade agreements to which the EU is currently a party, together with an assessment of the Government's rollover plans and how these would be implemented.

The Committee said that the Government "still needs to show that it has a legally watertight and practically viable strategy for achieving 'transitional adoption' at the point when it will need to take effect."

The Committee warned of trade with 70 nations "falling off a cliff edge" if the Government did not act quickly to rollover EU trade deals, and said that the Government still needed to work out a number of important details before continuity could be achieved. These included the exact number of EU trade and trade-related agreements which appeared "to be a matter of some uncertainty." It referred to the figure of 759 agreements (with 168 countries) and said there was an urgent need for clarity "over the number, type, scope, extent and importance of the EU's trade-related agreements."

International Trade Committee warns of trade with 70 countries falling off a cliff edge

The Committee also warned that substantive amendments to rolled-over trade agreements will almost certainly be required.

Similar concerns were cited in the report of the Exiting the EU Select Committee on [The future UK-EU relationship](#) published in April 2018. It cited evidence from David Henig, Director of the UK Trade Policy Project, who said that it was likely that third parties may wish to reopen parts of their trade agreements. For example, he suggested that South Africa would want access for a citrus fruit currently not allowed into the EU, while South Korea may want to reduce UK access to its legal services market.

Transitioning tariff rate quotas, rules of origin and cumulation

The ITC report also highlighted the difficulty of replicating the terms of some of the EU's trade agreements, as they include arrangements for tariff rate quotas (TRQs) and Rules of Origins (RoO) requirements which would need amending to make them more specific to the UK.

Box 1: Tariff rate quota and Rules of Origin

"Tariff-rate quotas" or TRQs are restrictions on the volume or quantity of goods which may be imported. Quantities of goods inside a quota are charged lower tariff rates, than those outside the quota. TRQs are usually applied to sensitive goods like food and agricultural products and allow a certain volume of goods to be imported at lower or zero tariffs.

Rules of Origin (RoO) determine how the 'economic nationality' of traded goods and their components can be proven for them to qualify for preferential treatment in respect of customs duties. This is based on the origins of the materials, the value added in the production process, and where the final substantial production phase took place. The application of origination status can be widened by provisions for 'cumulation', whereby components or inputs from outside a country can be treated as originating from there for the purpose of RoO.

A UK-specific free trade agreement may require a new TRQ calculation, although the UK's exit would also create problems for the EU, as it might need to recalculate its TRQs with third countries to take into account the UK no longer being part of the calculations. TRQs are also an issue in establishing separate UK and EU27 schedules at the WTO post-Brexit, with a number of third countries objecting to the proposals made by the UK and the EU (see section 3.1).

The ITC report cited evidence from Mike Hawes of the Society of Motor Manufacturers and Traders, who explained that "most free trade agreements tend to have a minimum [domestic content] threshold of 55% to 60%" for automotive goods. Therefore, he said, merely copying and pasting the EU-South Korea free trade agreement, for example, would not benefit the UK "because we would not qualify for the preferential trading arrangements... unless you could agree cumulation with the European context, which is what we currently enjoy".

The ITC report refers to the suggestion made by several witnesses and submissions to its inquiry that "diagonal" cumulation arrangements should be established allowing inputs from any of the three parties concerned (the UK, the EU and the third country in a trade agreement) to count as originating content.

One route to this would be for the UK separately to join the Regional Convention on Pan-Euro-Mediterranean Rules of Origin (the PEM Convention), to which it is currently party as a member of the EU. This allows for diagonal cumulation between all signatories, provided there are trade agreements in place between all the contracting parties concerned. However, as the UK Trade Policy Observatory pointed out in its [evidence](#) to the inquiry, "the EU can be quite difficult in agreeing to diagonal cumulation" and typically only does so if all countries involved have free trade agreements among themselves".

3.5 Trade with EFTA countries and Turkey

The countries listed in the Trade Bill Impact Assessment included the four European Free Trade Association (EFTA) states: Iceland, Liechtenstein and Norway, which participate in the EU's single market through the European Economic Area agreement, and Switzerland which participates in aspects of the single market through a series of bilateral agreements. The list also includes Turkey, San Marino and Andorra, which have partial customs union with the EU. Rolling over current trade arrangements with these countries would be difficult given that the UK Government has ruled out both membership of the single market and a future customs union with the EU, and the relationship of these countries with the EU is based on extensive acceptance of the EU's regulatory and/or customs regimes.

Replacing current trade arrangements with EFTA EEA countries and Turkey would be difficult

The ITC report referred to the difficulties of rolling over agreements with the EFTA states and Turkey and said that the Government needed to consider the implications of this in its negotiations on the future UK-EU partnership. It referred to the [oral evidence](#) to the Committee from then International Trade Minister Greg Hands in January 2018, in which he said that the agreements with the EEA, Switzerland, Turkey and the European microstates were the responsibility of the Department for Exiting the EU, rather than the Department for International Trade. In [evidence](#) to the ITC in January 2018, Dr Holger Hestermeyer (Shell Reader in International Dispute Resolution at King's College London) said the UK would need to negotiate new agreements with these countries which would "differ substantially from the current arrangements".

3.6 Application of agreements in the post-Brexit Transition/Implementation period

Although a transition period was envisaged until the end of 2020, during which the UK will remain bound by the rules of the single market and customs union, the EU's chief Brexit negotiator Michel Barnier [indicated](#) in December 2017 that the EU's trade deals with third countries will no longer apply to the UK during this period.

In a press conference on 20 December, Barnier said: "Legally speaking, the day after the UK has left the EU institutions, the UK will no longer be covered by our international agreements. They will be leaving approximately 750 agreements which we have signed as the European Union which cover today the UK." He said that the UK would need to "prepare as of now to be able to replicate those agreements."

At a press conference on 29 January 2018, Barnier [said](#) that "we cannot ensure in Article 50 that the UK keeps the benefits for these international agreements. Our partners around the world may have their own views on this."

On 8 February 2018, the Government published a [Technical Note](#) stating that it would seek continued application of EU international agreements during the transition/ implementation period by agreement of all the parties concerned.

The note referred to EU agreements covering a wide range of key policy areas including, trade, nuclear cooperation and aviation with over 100 third countries “that will have an interest in their continued proper functioning during the implementation period.” It said action was required “to clarify the application of these agreements to the UK during the implementation period.”

It proposed that these third country agreements “should continue to apply to the UK in the same way for the duration of the implementation period.” However, it said that multilateral agreements to which the EU is a party “raise different considerations and are not covered by this note.”

The Government note also referred to the European Council’s negotiating directives in which it said the EU had “adopted the same position” i.e. that “the Union acquis should apply to and in the United Kingdom [during the implementation period] as if it were a Member State”, pointing out that third country agreements “are an important part of the EU acquis”.

The note said that the UK Government view was that:

the UK view is that the best approach would be for the parties to confirm that, for the duration of the implementation period, these agreements continue to apply to the UK and that the UK is to be treated in the same way as EU Member States for the purposes of these agreements. This would be achieved by agreement of the parties to interpret relevant terms in these international agreements, such as “European Union” or “EU Member State”, to include the UK.

The note said that this should be used “both to ensure the UK’s continued participation in mixed EU third country agreements to which the UK is already a listed party, as well as the continued application to the UK of EU-only third country agreements for the duration of the implementation period.”

The ITC [report](#) on 28 February 2018 welcomed this new approach from the Government but said it was “difficult not to see this as an admission that its policy of negotiating new agreements by March 2019 might not be achieved and may be failing.”

The Committee said however that it was still far from clear that it would be possible to secure continued application of EU trade agreements during the post-Brexit transition period.

Draft Withdrawal Agreement, March 2018

The draft Withdrawal Agreement text agreed at the March 2018 European Council indicated that the EU had agreed to assist the UK in achieving the approach set out in the Government’s Technical Note on 8 February. The Withdrawal Agreement text included a [footnote](#) to Article 124 relating to the EU’s international agreements in the section on transition arrangements. This stated that:

The Union will notify the other parties to these agreements that during the transition period, the United Kingdom is to be treated as a Member State for the purposes of these agreements.

In a [letter](#) accompanying the Government response to the International Trade Committee’s February report sent in May, Liam Fox cited the Draft

The EU agrees that its international agreements should continue to apply to UK during transition period

Withdrawal Agreement text agreed in March referring to the “major steps” that “had been taken towards securing continuity for EU trade agreements.”

However, the Draft Withdrawal Agreement wording remains a request to third parties on the part of the EU, and it is possible that the third country trading partners concerned may not agree to maintaining continuity in these agreements during the transition.

The [slides](#) on international agreements and trade policy published by the European Commission’s Brexit negotiations task force in February 2018 emphasised that “the Withdrawal Agreement cannot guarantee the extension of the benefits from those international agreements to the UK.”

The Government’s response to the International Trade Committee also stated:

The Government is not making assumptions, but basing its judgement on the evidence of continuous engagement with partner countries. It remains the case that all partner countries are committed to ensuring there is no disruption to our trading relationship. We have a mature relationship with our partner countries, and in discussions cover a range of scenarios to ensure continuity.

3.7 Possible continuation of EU trade agreements under temporary customs arrangement (Northern Ireland backstop)

The Government issued a [Technical Note](#) on a Temporary Customs Arrangement on 7 June 2018. This would apply as the ‘backstop’ solution to prevent a hard border appearing between Northern Ireland and the Republic of Ireland in accordance with the UK-EU [Joint Report](#) on the first phase of Brexit negotiations in December 2017.

This would involve the UK and the EU forming a single customs territory following the end of the transition/implementation period if no other agreement on UK-EU relations could be reached preventing the emergence of a hard border.

The note makes clear that the arrangement is not the UK Government’s preferred option and “would only come into force following the Implementation Period, in specific and narrow circumstances, such as delay in the implementation of the end state customs arrangement, and would be time-limited.”

The note explains that the arrangement would ensure that tariffs, quotas, rules of origin and customs processes would remain absent for all UK-EU trade (given that the UK had ruled out a specific solution for Northern Ireland which would see similar barriers emerging between Northern Ireland and the rest of the UK).

Should the temporary arrangement be applied, the UK would be outside the scope of the EU common commercial policy but would continue to

apply the EU's Common External Tariff (CET). The UK would also be able to negotiate, sign and ratify free trade agreements and implement those elements that do not affect the functioning of the temporary customs arrangement.

The note also includes a section on securing continuity in EU free trade agreements. It states:

To operate the CET during a temporary customs arrangement, the UK will need to apply the preferential tariff rates to rest of world trade as set out in the EU's existing FTAs. Further technical discussions would be required with the EU to explore a shared solution to ensure the UK is able to apply the CET in full, and so that the UK continues to benefit from existing EU FTAs or any new ones signed during the period, and ensure that we remain WTO compliant.

Shared solutions need to be explored for continued application of EU trade agreements under the backstop

3.8 Arrangements after the transition/ implementation period

The Government's response to the International Trade Committee also stated:

In parallel to arrangements for the Implementation Period, the Government continues the important work with partner countries to ensure continuity of effect of our international agreements beyond the Implementation Period, to avoid any disruption in trade from January 2021 onwards.

In an interview with [The Times](#) published on 23 June 2018, Dr Fox referred to "technical reasons" which might prevent some third countries from rolling over their agreements with the UK. Dr Fox said:

Our ambition is that they all do. We've not actually had any resistance from countries saying they don't want to. After all, they're talking about market access with the fifth biggest economy in the world. Who wouldn't want that? So there's a strong element of self-interest involved.

He also said:

As with anything, including the EU itself, the question is getting it right, not getting it quickly. I don't recall any of my patients saying 'I don't care what treatment you give me, just give it to me quickly.' Not sure that would have been a very smart approach.

3.9 Government states that agreements in principle reached, July 2018

In [oral evidence](#) to the International Trade Select Committee (ITC) on 11 July 2018, International Trade Secretary Liam Fox said that the UK Government had "an agreement in principle with all those we have had discussions with" in terms of continuing trade with third countries on the same basis as in their existing agreements with the EU.

He also highlighted "extensive discussions" with South Korea and Switzerland on their wish to continue with existing trade arrangements.

Agreements in principle reached with "all those we have had discussions with"

With regard to continuing of trade agreements during the transition/ implementation period, Dr Fox said “we still await the EU’s notification formally of these countries on that.”

Dr Fox said that agreements in principle had not been put to paper, as third countries were waiting to see if there would be an implementation period first, with a view to using the extra time to negotiate a more bespoke agreement rather than simply rolling over the existing arrangements:

We will want to come to a bespoke agreement, because we have agreements in place, and we have had discussions about what happens if we have to have an agreement that gives us just a bilateral rollover, but most of the countries are waiting to see now whether we have a longer period where we can then come to a bespoke agreement once we have the implementation period in place.

Nevertheless, Dr Fox said it was still the Government’s intention to meet his previous promise that there would be 40 agreements in place “the second after midnight in March 2019” and that the Government hoped to have the texts of agreements ready “as soon as possible.”

3.10 Proposed UK-SADC agreement

On 28 August 2018, coinciding with a visit to South Africa, the Prime Minister [announced](#) that a new UK-Southern African Economic Partnership would be ready as soon as the current EU-Southern African Development economic partnership (covering the same six countries: Botswana, Lesotho, Namibia, South Africa, Eswatini/Swaziland and Mozambique)¹¹ ceases to apply to the UK.

UK Trade Minister George Hollingbery and Botswanan trade minister (representing the five Southern African Customs Union countries and Mozambique) issued a [joint statement](#) on 29 August, which referred to the importance of a UK-EU agreement on a post-Brexit transition period and continued cumulation between the UK, EU and all parties to the agreement in ensuring continuity to trade. It referred to “intention for the UK to be treated, for the purposes of EU international agreements, as an EU Member State for the duration of the implementation period between the EU and UK” and said that the Southern African Customs Union and Mozambique Trade Ministers indicated “that they look forward to receiving formal confirmation of the same via the proposed notification”. It also said that:

SACU and Mozambique emphasise the importance of continued cumulation between all the parties in promoting continuity and to avoid disruption in trade, and urge both the UK and the EU to recognise the importance of cumulation in the discussions on a post-Brexit EU-UK arrangement.

¹¹ The first five countries making up the Southern African Customs Union.

3.11 Replacement of trade agreements if there is no deal with the EU

On the [Marr programme](#) on 2 September 2018, Liam Fox was asked whether the new trade deals replicating the trading arrangements with third countries would be in place for Brexit day. He responded:

That remains our aim. Of course a lot of countries are waiting to see exactly what [the UK] relationship will be with the European Union. But not one of those countries have said to us that they don't want to get a trade agreement with the UK.

Responding to Andrew Marr's follow up question as to whether it would still be possible to get all these deals ready for the minute after the UK leaves the EU, Fox said: "It's possible but it's ultimately dependent on both parties agreeing".

In oral evidence to the ITC on 28 November 2018, George Hollingbery said that the Government was "still extremely optimistic" that we will transition most of these agreements in time if there was no deal with the EU in place for Brexit day although he could "not pretend" that "we have one on the books yet" and could "not guarantee that all of them will be absolutely on time". He said there were "lots that are reasonably well progressed", and some where "very substantial progress" had been made or which were "very close to final initialling or even signature in some cases". There were also some "where we have not made very much progress for all sorts of reasons".

He also referred to complexities in the discussions with third countries, given that some had been negotiating on the basis of there being a transition period, rather than needing a deal in place from March 2019 in the event of there being no UK-EU deal. But the focus had changed "some months ago . . . to emphasising to key partners in our discussions that no deal was a real possibility". However, Mr Hollingbery said there were some countries for which "it is difficult to imagine how you could enter into an agreement to transition a deal if you did not have agreement with the EU"

The focus of trade negotiations has changed to emphasising the possibility of no deal

Mr Hollingbery also referred to ratification issues in some countries (for example South Korea) that could prevent agreements coming into force in time, although the Government was working on the "ability to provisionally ratify in these agreements as we write them up, so that, if provisional application is possible in a partner country, that will be written into the agreement".

Mr Hollingbery also stated that he was "disappointed to say" that the previously flagged UK-SADC agreement had not been signed. A deal was "just a little bit away" and the focus of discussions were at that moment "nothing to do with trade". There had been nine rounds of discussions and negotiations, with agreement on the vast majority of issues.

3.12 Government notice: free trade agreements if there is no Brexit deal

The Government published a technical notice covering trade agreement continuity in the event of a no deal Brexit on 12 October, "[Existing free](#)

[trade agreements if there's no Brexit deal](#)". It refers to "around 40 free trade agreements with over 70 countries" that the UK participates in as a member of the EU, accounting for around 12% of the UK's total trade, according to 2017 ONS data. It states that the Government is "currently working with partner countries to prepare for a range of possible scenarios to maintain existing trading relationships" and that in the event of a 'no deal', there will be no implementation period, and in this scenario "the government will seek to bring into force bilateral UK-third country agreements from exit day, or as soon as possible thereafter". It states that new agreements will replicate existing EU agreements and the same preferential effects with third countries as far as possible, whilst making the technical changes needed to ensure the agreements operate in a bilateral context. Reaching agreements with partner countries "will depend on our ongoing discussions with them".

The notice states that should the necessary arrangements not be in place by exit day to maintain particular preferences, then in a no deal scenario trade would take place on a 'Most Favoured Nation' (MFN) basis otherwise known as 'World Trade Organization (WTO) Terms', until such a new arrangement has been implemented.

If an agreement is not transitioned, trade will continue on MFN terms

Box 2: Most Favoured Nation treatment

The principle of MFN treatment under WTO rules means that a WTO member has to extend any market access concession, such as a rate of duty on the same good, immediately and unconditionally to every other WTO member. There are exceptions for free trade areas, customs unions and developing countries. For services, WTO members are required to grant treatment that is no less favourable to that granted to services and service suppliers of any other WTO member.

The notice also refers to the process of regularising the terms of UK membership at the WTO, including establishment of independent UK schedules, currently contained within the EU schedules.¹²

In addition to seeking continuity for existing free trade agreements, the notice refers to powers in the Taxation (Cross-border Trade) Act 2018 which enable the UK to put in place a UK unilateral trade preference scheme for developing countries as the UK leaves the EU. It states that in the first instance, it is intended that this will provide the same level of access as provided by the current EU trade preference scheme. This will maintain tariff free access for Least Developed Countries and continue to offer tariff reductions to around 25 other developing countries.

The UK intends to maintain low or zero tariffs for developing countries

In terms of the implications for users of current EU free trade agreements, the notice warns that while the Government's intention is that the effects of new bilateral agreements will be identical to, or substantially the same as, the EU agreements they replace, "there may be practical changes to how they make use of preferences under these new agreements." For example, UK and EU content will be considered distinct, and each new agreement will individually specify what origin designations may be used to qualify for preferences. The notice states that the Government "will aim to

¹² See House of Commons Library Briefing Paper CBP8397, [What if there's no Brexit deal?](#), 8 February 2019, Section 6.4, pp78-79

limit these changes as far as possible, but the final form of new agreements and any resulting changes will depend on ongoing discussions with our trading partners". In this regard, it refers to a requirement in the Trade Bill that the government will publish a report before these new free trade agreements are ratified on any significant changes to the new trade-related provisions.

3.13 UK-EU Withdrawal Agreement, November 2018

The text of the Withdrawal Agreement (WA) agreed by the UK and EU negotiators and endorsed by the European Council on 25 November 2018, largely followed the wording on the transition period previously agreed for the draft agreement published in March 2018. The only substantial change was the provision enabling the UK and EU to agree to extend the transition period for an additional one or two years after December 2020. The UK will therefore continue to apply the EU's trade arrangements with third countries during the transition period and the EU will notify the other parties to its international agreements that during the transition period, the UK should be treated as a Member State for the purposes of these agreements (now a footnote to Article 129).

The WA also included a Protocol on Ireland/Northern Ireland providing for a 'backstop' keeping the UK in a 'Single Customs Territory' with the EU at the end of the transition period unless or until a new agreement on a future UK-EU relationship has entered into force which guarantees the absence of checks on the Northern Ireland-Ireland border.¹³

The UK-EU customs territory model is based in part on the Temporary Customs Arrangement the Government proposed in the [Technical Note](#) in June 2018, which provided for a UK-wide temporary single customs territory with the EU. The Government rejected the EU's proposal for a Northern Ireland-specific customs union with the EU which would have created a customs border with the rest of the UK.

The WA Protocol on Ireland/Northern Ireland states that the UK will "align the tariffs and rules applicable in its customs territory" with that of the EU's Common Customs Tariff, and will harmonise its commercial policy with that of the EU's Common Commercial Policy.

As with the provisions for the transition period, if the UK finds itself in these backstop arrangements it will therefore be required to continue to apply the same tariffs with third countries as those applied by the EU. The Protocol applies differently to Northern Ireland and the rest of the UK. Northern Ireland will be treated as part of the EU as regards international agreements under the Protocol, as the definition of EU customs legislation applicable to Northern Ireland includes "international agreements containing customs provisions, insofar as they are applicable in the Union".¹⁴ However, the rest of the UK (Great Britain) is not covered in the same way by these provisions. As with the transition period there would be

Under the Backstop, Northern Ireland covered by EU agreements. No such provision for the rest of the EU

¹³ See Section 8 in House of Commons Library Briefing Paper CBP8453, [The UK's EU Withdrawal Agreement](#), 1 December 2018.

¹⁴ See Section 8.9 in House of Commons Library Briefing Paper CBP8453.

no guarantee that third countries with which the EU has trade agreements would give the whole of the UK the same levels of market access as they would if the UK was party to these trade agreements as a Member State.

Unlike the WA provisions for the transition period, there is no corresponding provision whereby the EU would notify the other parties to its international agreements that during the backstop period, the UK would be treated as a Member State for the purposes of these agreements.

The Government's [Technical Note](#) on the Temporary Customs Arrangement in June 2018 suggested that further technical discussions would be required with the EU

to explore a shared solution to ensure the UK is able to apply the CET in full, and so that the UK continues to benefit from existing EU FTAs or any new ones signed during the period, and ensure that we remain WTO compliant.

On 11 January 2019 the Council of EU adopted a [decision](#) on the signing of the WA which provides for the signing of the WA subject to the conclusion of the agreement. It referred to the envisaged transition period and stated that immediately after the signature of the WA "the Commission shall notify the other parties to the international agreements . . . that, subject to the entry into force of the Agreement, the United Kingdom is to be treated as a Member State for the purposes of those international agreements during the transition period".

3.14 UK-Swiss trade agreement

On 14 December 2018, the Government [announced](#) that the UK and Swiss Governments (Swiss Federal Council) had approved the transition of UK-Swiss trade arrangements to apply when the transition period provided for in the Withdrawal Agreement with the EU comes to an end or on 29 March 2019 if the UK leaves the EU without a deal. The Government said that this was the first existing agreement transition to have been agreed as part of its preparations to ensure trade continuity for when the UK leaves the EU.

It said the agreement would replicate the existing EU-Switzerland arrangements "as far as possible" and had now been initialled by both countries, and that once the agreement is signed, both the UK and Switzerland will seek parliamentary approval for the agreement.

A [statement](#) on the Swiss Federal Council website said that it had "approved the text of a trade agreement with the UK which could serve as a basis for future economic and trade relations" guaranteeing, "as far as possible, the continuation of the economic and commercial rights and obligations arising from the agreements between Switzerland and the EU", and providing for exploratory discussions aimed at developing these bilateral relations in the future.

It said that if the transition period comes into effect between the UK and EU on 29 March 2019, the text of the agreement between Switzerland and the UK would serve "as a basis for economic and trade relations between Switzerland and the UK after the transition period expires on 31 December 2020 (or at a later date agreed between the UK and the EU), until such time as new trade agreements can be concluded between the parties".

UK-Swiss agreement replicates current terms "as far as possible", until a new agreement can be concluded

However, it said that if the UK leaves the EU “in a disorderly manner” on 29 March without a transition period then the text of the agreement would make it possible to replicate in substance the vast majority of trade agreements that currently regulate relations between Switzerland and the UK. It said the agreement could be signed and ready to be applied from the date the UK leaves the EU, provided the relevant parliamentary committees in Switzerland approve the agreement.

3.15 Will replacement deals be in place by 29 March 2019?

On 18 January 2019, the Financial Times [reported](#) on a leaked Department of International Trade memo that said that most of the EU’s international trade deals would lapse without a transition period after 29 March, as rollover deals would not be ready in time. A government official was reported as saying: “Almost none of them are ready to go now and none will be ready to go by March.”

Speaking to the *Marr* programme on 20 January 2019, Liam Fox [said](#) he was confident that the UK could replicate the five most important trade deals with non-EU countries in time for 29 March 2019. He said that there were 34 EU trade deals in operation and requiring replication. Adding mutual recognition deals with Australia and New Zealand mutual recognition would bring the figure up to 36. Overall Dr Fox said that these agreements “represent about 11.6% of our total trade” but “the bottom 21 of them represent about point eight of 1%”. Dr Fox said:

The top five of those represent about three quarters of that total and we’re confident that we will be able to get those agreements over the line.

Dr Fox [said](#) that a number of countries were “unwilling to put the preparations in for no deal”, while a couple of others were in the process of elections or had “no effective government” making it difficult to negotiate replacement deals.

In [reply](#) to an urgent oral question on 24 January 2019, George Hollingbery told the House of Commons that “that there was a wide range of reasons why some of these agreements had been challenging in many instances”. This included “changing incentives” as if “this House cannot make up its mind on what Brexit looks like, it will obviously be difficult for some of our interlocutors to decide whether we will be leaving the EU on 29 March.”

Nevertheless, Mr Hollingbery said that he “believed the majority of these agreements would be in place by 29 March” but “it would not be appropriate to go into further details on an individual country basis, because these conversations are necessarily confidential, and our partners wish them to be confidential”.

3.16 Government update on international agreements signed

On 25 January 2019, Brexit Secretary Stephen Barclay [wrote](#) to the Chair of the Exiting the EU Committee and other Committee chairs attaching a [list](#) of

Government confident that top five EU trade deals can be replaced by exit day

bilateral agreements the Government has so far signed with third countries to replace existing EU international agreements, and those that it expects to sign in the near future. In terms of trade-related agreements actually signed, these were:

- Agreement with Australia on trade in wine
- Agreement with New Zealand on trade in live animals and animal products
- Mutual recognition agreement on conformity assessment with New Zealand
- Mutual recognition agreement on conformity assessment with Australia

Trade agreements that the UK expects to sign shortly were listed as follows:

- Economic Partnership Agreement with the Eastern and Southern African States¹⁵
- Free Trade Agreement with Denmark in respect of the Faroe Islands
- Association Agreement with Chile
- Economic Partnership with Cariforum States¹⁶
- Trade Agreement with Switzerland
- Trade and Partnership Agreement with Palestinian Liberation Organisation on behalf of the Palestinian Authority.

The document also listed agreements where the text is expected to be finalised shortly. These were as follows:

- Agreement with the USA on the mutual recognition of certain distilled spirits/spirit drinks
- Agreement with USA on trade in wine
- Agreement with USA on mutual recognition (conformity assessment)
- Agreement with USA on mutual recognition of certificates of conformity for marine equipment
- Agreement with Mexico on the mutual recognition of certain distilled spirits/spirit drinks
- Agreement with Chile on trade in organic products
- Voluntary partnership agreement with Indonesia on ethical trade in timber products
- Trade and Partnership Agreement with Israel

¹⁵ Madagascar, Mauritius, the Seychelles and Zimbabwe. Comoros and Zambia also concluded the agreement with the EU in 2007, but Comoros only signed it in 2017 and is currently in the process of ratification. Zambia is yet to sign the agreement. See the Government's Parliamentary Report, [Continuing the UK's trade relationship with the Eastern and Southern African region](#), 6 February 2019.

¹⁶ Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, St Vincent and the Grenadines, St Kitts and Nevis, Suriname and Trinidad and Tobago.

- Comprehensive Economic and Trade Agreement with Canada
- Economic and Partnership Agreement with Pacific States¹⁷
- Economic Partnership Agreement with South African Customs Union and Mozambique.
- Trade Agreement with Norway and Iceland.

Regarding the Norway and Iceland trade agreement, the document said that the agreement would seek to preserve elements of the current trading relationship with Norway and Iceland “where possible”, and that as the UK would be leaving the Single Market, the aim would be “to ensure replacement arrangements on trade with the EEA EFTA States that do not impact upon their EEA obligations”.

Signature of the agreement with [Chile](#) was announced by the Government on 30 January 2019. The signature of the agreement with the [Eastern and Southern African](#) States was announced on 31 January, and the one with the [Faroe Islands](#) the next day.

The signature of more agreements was announced in February. These were with [Switzerland](#) on 11 February, with [Israel](#) on 14 February, and the [Palestinian Authority](#) on 18 February.

In addition the [Mutual Recognition Agreement on Conformity Assessment](#) was signed with the USA on 14 February. Other agreements were laid before Parliament in February, including the [Agreement with the USA on Trade in Wine](#), [Agreement with the USA on the mutual recognition of certain distilled spirits/spirit drinks](#), [Agreement with the USA on Mutual Recognition of Certificates of Conformity for Marine Equipment](#), and [Agreement with Chile on trade in organic products](#).

On 28 February, the Government laid an additional agreement before Parliament extending certain provisions of the UK-Swiss trade agreement to [Liechtenstein](#)¹⁸.

Rules of Origin

There have been concerns that no deal could also make it difficult to apply diagonal cumulation arrangements in relation to rules of origin (RoO), creating difficulties for the UK in meeting the current RoO requirements in EU trade agreements with third countries if it attempted to replicate these in UK-specific trade agreements. Given the complex supply chains with components coming from across the EU in sectors such as the car industry, this could require the threshold for domestic content in RoO to be revised significantly downwards (see section 3.4).

However, the Government has indicated that it will seek agreement with third countries for EU content to count as UK content in replacement agreements with third countries. This approach has been agreed in relation to the initial six replacement free trade agreements signed with EU content to count as domestic content for both the UK and the other party.¹⁹

Six replacement trade deals signed

Rules of Origin: EU content in goods counted as UK domestic content under the initial six replacement agreements

¹⁷ Papua New Guinea and Fiji.

¹⁸ Liechtenstein has a customs union with Switzerland.

¹⁹ Paragraph 76 of the Department for International Trade’s Parliamentary Report, [Continuing the UK’s trade relationship with the Swiss Confederation](#) explains that “to

3.17 Replacement agreements off track or not deliverable by 29 March

On 12 February 2019, *The Sun* published a [leaked Department for International Trade document](#) listing the countries with which the EU has free trade agreements and indicating progress in delivering a replacement deals by 29 March.²⁰ Six agreements were indicated as on track to enter force by March (the six agreements already announced as signed by 18 February).

A further eight agreements were identified as “off-track” to be delivered by 29 March. There were with: Canada; Central America²¹; Cariforum; East African Community (EAC)²²; EEA countries; Pacific; SACU and Mozambique; and South Korea.

Several agreements were indicated as “significantly off-track”. These included agreements with the Andean Community (Ecuador, Colombia and Peru), Egypt, Mexico, Morocco, Tunisia, Ukraine and the Western Balkans²³.

Four agreements were indicated as “not possible to be completed by March 2019”. These were with Algeria, Turkey, Moldova and Japan.

In a letter to the Chair of the Commons International Trade Committee on 4 February 2019, Liam Fox said that achieving continuity for some agreements “will be challenging in a no deal scenario”, giving the example of Turkey which has a high degree of alignment with the EU.²⁴

On 8 February, the *Financial Times* reported that [little progress had been made in UK-Japan discussions](#) on a replacement trade agreement. It reported that the Japanese Government was confident that it could secure better terms from the UK than it did in negotiations with the EU and was not willing to duplicate the existing treaty terms. It was also too late for the Japanese Diet to ratify any agreement before 29 March.

In [response to an urgent oral question](#) in the House of Commons on 13 February 2019, Dr Fox referred to the already signed replacement trade agreements and said that the one with Switzerland was “the largest in terms of our trade flows, representing more than 20% of the value of all our roll-over agreements”. He referred to a number of negotiations being “at an advanced stage”. He said:

provide maximum continuity for business, it has been agreed in the UK-Switzerland Trade Agreement that EU materials can be recognised (i.e. cumulated) in The UK’s and Switzerland’s exports to one another”.

²⁰ See the full list of countries covered by EU trade agreements, colour-coded in a similar way to the leaked Government document, in the House of Commons Library Briefing Paper CBP7792, [List of EU trade agreements](#), 28 February 2019.

²¹ The EU-Central America Association Agreement is provisionally in force and covers Honduras, Nicaragua and Panama, Costa Rica, El Salvador and Guatemala.

²² Burundi, Kenya, Rwanda, Tanzania, and Uganda. The EU’s Economic Partnership with the EAC is still pending ratification in some of these countries and is not yet in force.

²³ Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia, Kosovo.

²⁴ Letter from Dr Liam Fox, Secretary of State for International Trade, to the Chair of the International Trade Committee, 4 February 2019.

It will not be possible to complete replacement deals with Japan and Turkey by 29 March. Other deals “off track”

Japan seeking better trade terms from the UK

All international negotiations—indeed, any negotiations—tend to go down to the wire, and I would expect nothing different from these agreements. That is the way that countries do business.

Dr Fox added that to “put the economic value of the agreements in perspective, the countries covered by 20 of the smallest agreements account for less than 0.8% of the UK’s total trade”.

However, in the case of Turkey and given its customs union with the EU, Dr Fox said that:

unless we get an agreement with the European Union, we will not be able to maintain the current pattern of trade with Turkey, although we would look to see where we could mitigate any problems that came up.

Where it is not possible to sign a full agreement by exit day, Dr Fox said the Department for International Trade, alongside the FCO and DFID would be ensuring “that we have contingencies in place should we end up, unfortunately, in a no-deal scenario”.

Dr Fox also said that an agreement on the UK-Pacific Economic Partnership Agreement had been reached that day.

But he indicated that the desire of some countries to drop human rights clauses was holding up some negotiations:

Some countries have said that they did not like some of the human rights elements that were incorporated by the EU and they would like us to drop those in order to roll the agreements over. I am not inclined to do so, because the value we attach to human rights is an important part of who we are as a country

Some countries want to drop human rights elements that were incorporated in their treaties with the EU

Department of International Trade update, 21 February 2019

On 21 February 2019, the Department for International Trade published an [update on trade agreement continuity](#), together with new guidance on [Existing trade agreements if the UK leaves the EU without a deal](#) which included tables showing the value of UK trade with the countries covered by the EU agreements and the status of negotiations with them where an agreement had not already been signed.

UK-Swiss agreement worth 20% in terms of value of EU external trade agreements for UK trade

The update referred to the agreements already signed and reiterated the point that the agreement with Switzerland is worth over 20% in terms of value of these agreements, while among the existing EU trade agreements the 20 smallest account for 0.8% of UK trade²⁵. The guidance stated:

In the event of a no deal, EU trade agreements will cease to apply to the UK when we leave the EU. Without arrangements to maintain preferences, trade will take place on World Trade Organisation (WTO) terms.

We are working with partner countries to bring into force bilateral agreements that will ensure continuity for the effects of existing EU

²⁵ House of Commons Library Briefing Paper CBP7792, [List of EU trade agreements](#) provides figures on the proportion of UK goods imports and exports covered by trade with these countries.

trade agreements. But all of these replacement agreements may not be ready in time for 29 March 2019 if we leave the EU without a deal.

Of the countries covered by an EU trade agreement where a replacement had not already been signed, the guidance listed the status of negotiations to replace the agreement as “engagement ongoing” for all but Turkey, Andorra and San Marino (the three countries with which the EU has a customs union). For these countries, it stated: “We will not transition this agreement for exit day”.

For two of the others, Algeria and Japan, there was additional information indicating that while engagement was ongoing agreements would not be ready for exit day. In the case of Japan, this read: “We will not transition this agreement for exit day”. In the case of Algeria, it was “unlikely that we will reach an agreement prior to exit day”.

On the [Marr programme](#) on 3 March 2019, Dr Fox said that the information published by *The Sun* on 12 February was “out of date” and that a number of agreements were “very close” including a number of those previously identified as “significantly off track”.

He said that “a lot of countries are waiting to see what we do in the next couple of weeks” and if there is no deal with the EU “a lot of those countries will be willing to sign what we have agreed with them now” but that “if they want to have flexibility in an implementation period they will play their cards close to their chests”. He said this would be “something that runs right up to the wire.”

Asked how many agreements were on track to be ready for 29 March, Dr Fox said:

What we are doing is completely, commercially very sensitive, and we will keep on the case of every one of those until the last minute. A lot of countries will not make up their minds to get a final agreement until we get to those last days before Brexit

Referring to the EU-Japan Economic Partnership Agreement (EPA), Dr Fox pointed out that this “only came into place on the 1 February, and the impact of that doesn’t come in until January 2020” and that most UK-Japan trade had never been done under the Japan EPA, but under “under WTO terms”. Dr Fox said that in the event of no deal on 29 March Japan had said that “they would prefer to have a new bilateral agreement with the UK” and talks on this had yet to start.

3.18 No Deal contingency planning

The Government [impact assessment](#) of implications for business and trade of a no deal exit published on 26 February 2019 referred to around forty EU international trade agreements and to the six replacement trade agreements so far signed. It said that discussions with other partners were continuing “with the aim of replicating the effects of existing EU agreements as far as possible” and in order to conclude agreements in time for exit day. It referred to intensive discussions taking place with SACU plus Mozambique, EEA EFTA countries, Canada and South Korea, but said that

Contingency planning for provisional application of agreements and bridging mechanisms

agreements would clearly not be in place in time for exit day with Andorra, Japan, Turkey and San Marino.

It said that where discussions are off track “the Government is looking urgently at contingency options, such as provisional application and bridging mechanisms (e.g. Memoranda of Understanding) to bring agreements into force on exit”.

4. Replacement of non-trade international agreements

4.1 Agreements with EFTA countries

On 20 December 2018, the Government [announced](#) it had reached agreement with the three EFTA EEA countries (Norway, Iceland and Liechtenstein) to address separation issues following Brexit, including protecting the rights of UK citizens living in these countries and citizens of these countries living in the UK, as well as an agreement with Switzerland covering citizens' rights. Although these agreements do not replace the arrangements the UK currently has with these countries they seek to address the impact on these arrangements of the UK's withdrawal from the EU while also providing legal certainty for citizens previously covered by these arrangements²⁶.

The Government [explainer](#) for the EFTA EEA agreement said that it would be implemented in domestic legislation through the planned EU (Withdrawal Agreement) Bill. The agreement is predicated on the approval of the UK-EU Withdrawal Agreement (WA), with most provisions applying following the envisaged implementation or transition period in the WA.

On 8 February 2019, the Government [announced](#) that it had reached a separate agreement with Norway, Iceland and Liechtenstein to protect citizens' rights in a no deal scenario. It is also discussing a replacement agreement to cover trade relations with Norway and Iceland in the event of a no deal Brexit and has agreed new trade arrangements with Liechtenstein (see section 3.16).

4.2 Aviation and nuclear co-operation agreements

On 28 November 2018 the Government [announced](#) that it had concluded a new 'open skies' air services arrangement with the USA ahead of EU exit. This would replace the existing EU aviation agreement with the USA (as it applies to the UK) and would safeguard flights between the UK and the USA after Brexit.

The Government said that this was one of nine new bilateral aviation arrangements the government has already concluded with countries guaranteeing the continuation of vital air routes. The others are with Albania, Georgia, Iceland, Israel, Kosovo, Montenegro, Morocco and Switzerland. This was followed by an [announcement](#) on 30 November that a similar air services agreement had been concluded with Canada.

On 12 November, the Government published agreements for co-operation on peaceful uses of nuclear energy with [Australia](#), [Canada](#) and the [USA](#), and

Open Skies
agreement
safeguards flights to
the USA

²⁶ The Government statement announcing both agreements said that EEA EFTA and Swiss nationals currently resident in the UK who want to stay in the UK beyond the end of the implementation period will be able to apply to the UK's Settlement Scheme in the same way as EU citizens, and would need to do so by June 2021.

an [agreement with the International Atomic Energy Agency](#) on safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons.

4.3 Government update on international agreements signed and nearly ready

On 25 January 2019, Brexit Secretary Stephen Barclay [wrote](#) to the chairs of the Commons' Exiting the EU Committee, the Lords' EU Committee and other Committee chairs attaching a [list](#) of bilateral agreements the Government has so far signed with third countries to replace existing EU international agreements, those that it expects to sign in the near future and those where the text is nearly finalised. The trade-related agreements signed/nearly ready to be signed or close to being finalised are discussed in section 3.16. The other agreements on the list were as follows:

Signed agreements

Financial Services

- Bilateral Agreement with USA on prudential measures regarding insurance and reinsurance
- Agreement with Switzerland on direct insurance other than life assurance

Nuclear Co-operation

- Agreements with Australia, Canada, and the USA for co-operation in peaceful uses of nuclear energy
- Agreement and Additional Protocol with the International Atomic Energy Agency for the application of safeguards in the UK in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons

Transport

- Air services agreements with USA, Canada, Switzerland, Israel, Georgia, Morocco, Kosovo, Albania and Iceland
- Agreement with Switzerland on the International Carriage of Passengers and Goods by Road

Agreements that the UK intended to sign shortly

Transport

- Air services agreements with Montenegro, Jordan, Moldova, Bosnia and Herzegovina, Macedonia, Norway, Serbia

Agreements where intention was to finalise text shortly

- UK-EEA EFTA Citizens Rights' Agreement

The Government said this agreement “largely seeks to preserve the terms of the EEA EFTA citizens’ rights element of the separation agreement, in a no deal scenario”. The Government announced that agreement had been reached on this on 8 February 2019 (see section 4.1).

Nuclear co-operation
and air services
agreements signed

Multilateral Agreements

The Government also listed multilateral agreements for which the UK is taking action to become an independent party. These were as follows:

Civil Justice

- Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance
- Hague Convention of 30 June 2005 on Choice of Court Agreements

The UK deposited its instrument of accession for both of these agreements on 28 December 2018

Fisheries

- Convention on future multilateral cooperation in North-East Atlantic fisheries
- International Convention for the Conservation of Atlantic Tuna (ICCAT)
- Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO)
- Convention for the Conservation of Salmon in the North Atlantic Ocean (NASCO)
- Agreement for the establishment of the Indian Ocean Tuna Commission (IOTC)
- Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas
- Agreement on Port State measures to prevent, deter, and eliminate Illegal, unreported and unregulated fishing

UK accession to international fisheries agreements

All of these international fisheries agreements and conventions were [laid before Parliament](#) on 8 February.

Foreign Policy instruments

- The Kimberley Process Certification Scheme (regulating trade in conflict diamonds)

Procurement

- Agreement on Government Procurement (GPA)

This is a plurilateral agreement under the umbrella of the WTO. The Government said that the GPA parties had agreed in principle to UK accession.

UK to accede to Common Transit Convention, preventing need for additional paperwork when crossing multiple territories

Customs

- The Convention on a Common Transit Procedure (CTC)
- Convention concerning the simplification of formalities in trade in goods (SAD Convention)

Membership of the CTC and SAD Convention reduces administrative burdens on traders by removing the need for additional import/export declarations when transiting across multiple customs territories. The

conventions cover transit of goods between the EU member states, the EFTA countries and Turkey, Macedonia and Serbia. The Government said that an invitation to accede to these conventions had been received from the EU, and that the UK intended to deposit its instrument of accession by the end of January, once UK Parliamentary scrutiny was complete.

Transport

- Agreement on the international occasional carriage of passengers by coach and bus (INTERBUS)²⁷

In addition to these agreements, [a convention on social security co-operation between the UK and Ireland](#) was laid before Parliament on 12 February 2019. This ensures continued reciprocity in social security in the Common Travel Area, which is currently provided for under EU law.

4.4 Agreements under EU's area of freedom, security and justice

Following on from Stephen Barclay's letter to committee chairs on 25 January, the Chair of the Lords EU Committee, Lord Boswell of Aynho [wrote back](#) to Mr Barclay on 6 February asking for further information on a number of points, including the Government's approach to EU agreements relating to justice and home affairs co-operation. He wrote:

We note also that the lists do not include any agreements falling within the scope of the EU's area of freedom, security and justice (AFSJ). This is a shared competence, but the EU has entered into a number of international agreements on behalf of its Member States. Will agreements falling within the scope of the AFSJ need to be rolled over, and, if so, which ones? If they are not to be rolled over, by what means will the Government ensure that the UK's cooperation with partners in the areas of data sharing, law enforcement and internal security is not disrupted?

4.5 Agreements where Foreign and Commonwealth Office is taking lead

In oral evidence to the International Trade Committee on 30 January 2019, Sarah Taylor, Director for International Agreements at the Foreign and Commonwealth Office (FCO), explained that the FCO is leading on the rollover of EU association agreements with Albania, Algeria, Bosnia, the Central Americas, Egypt, Georgia, Jordan, Kosovo, Lebanon, Macedonia, Moldova, Montenegro, Morocco, Serbia, Tunisia and Ukraine.

Although these agreements contain a trade element, they also contain other political and co-operation areas of agreement, and it was decided that the FCO should lead on them "because of the breadth of the nature of the relationships that those agreements represent". In addition to these, the FCO is also leading on 11 political co-operation agreements relating to the support of human rights, democracy and security co-operation rather than trade.

²⁷ Allowing for occasional coach services between the EU, Albania, Bosnia and Herzegovina, the Republic of Macedonia, Moldova, Montenegro, Turkey and Ukraine.

Ms Taylor explained that the political co-operation agreements do not require rollover in the same way, as they are not treaty based and take a number of different forms, not all of which “has to be replicated in exactly the same way”.

Regarding the 16 association agreements, Ms Taylor said she was “confident that a number of those agreements will be signed in time for 29 March” but did “not have absolute confidence that every single agreement will be in place by 29 March” and it was “unlikely that all those agreements will be in place”. Ms Taylor explained that:

These discussions are ongoing. You will know that, through technical discussions, which are happening as we speak, things can become unblocked very quickly, discussions can move very fast and, equally, discussions where you think you are nearly there can throw up new legal questions that you need to go away and think about. I am not going to prejudice those discussions.²⁸

4.6 Government Procurement Agreement

On 27 February 2019, the Government [announced](#) that the World Trade Organization had confirmed that the UK will join the Government Procurement Agreement (GPA) as an independent member if the UK leaves the EU without an agreement.

Alternatively, the UK will remain a member under EU schedules should a withdrawal agreement be approved and there is a transition period.

The Government described this as “a significant step in the UK establishing its independent trade policy for the first time in more than 40 years” and said that the UK had already submitted its own tariff schedules to the WTO and will take up its independent seat in Geneva after exit day.

The GPA mutually opens up government procurement markets among its parties (the EU plus 18 other countries, including Canada, Japan, New Zealand, Norway, Switzerland, South Korea, and the USA)²⁹.

International Trade Secretary Dr Liam Fox said that there “may be a short period of less than a month before the GPA takes legal effect in a no deal scenario” but “disruption to businesses is likely to be minimal”.

Membership of GPA retains UK access to international procurement markets

²⁸ International Trade Committee [Oral evidence](#): The impact of UK-EU arrangements on wider UK trade policy, HC 1549, 30 January 2019.

²⁹ For further information on the UK and the GPA, see the House of Commons Library Briefing Paper CBP8390, [Brexit: public procurement](#), 5 September 2018.

5. Parliamentary scrutiny of replacement treaties

Under the Constitutional Reform and Governance Act (CRA) 2010, the Government is also required to lay before Parliament most treaties it wishes to ratify, along with an Explanatory Memorandum. The Government may not ratify the treaty for 21 'sitting days' (i.e. days when both Houses are sitting) after it is laid before Parliament. The House of Commons can resolve against ratification, requiring a Government statement to be laid and another 21 sitting day period to be triggered. This process can be repeated indefinitely if the Commons continues to resolve against ratification, effectively giving the Commons the power to block ratification.³⁰

Bilateral international treaties laid before Parliament in the form of a Command Paper are listed on the FCO website [here](#). This includes several Brexit-related replacement treaties laid before Parliament since late 2018.

Following a decision by the House of Lords Procedure Committee on 14 January 2019, the House of Lords European Union Committee will be responsible for scrutinising any UK treaties replacing agreements to which the UK is party by virtue of its EU membership laid before Parliament in accordance with CRA until the end of the current 2017-19 parliamentary session.

Brexit-related treaties scrutinised by House of Lords EU Committee

Brexit-related treaties scrutinised by the Lords EU Committee are listed [here](#).

The scrutiny and implementation process in relation to these treaties will be examined in Commons Library Briefing Paper CBP8509 [Brexit: Parliamentary scrutiny and implementation of UK continuity treaties](#).

³⁰ See House of Commons Library Briefing Paper CBP5855, [Parliament's role in ratifying treaties](#), 17 February 2017.

6. EU multilateral agreements

EU Multilateral Agreements since October 2015. Agreements signed but not yet in force are identified by an asterisk (*).³¹

Title	Type	Date of Signature
Treaty establishing the Transport Community (*)	Multilateral	09/10/2017
Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the accession of Ecuador (*)	Multilateral	11/11/2016
Agreement extending the Framework Agreement for International Collaboration on Research and Development of Generation IV nuclear energy systems (*)	Multilateral	10/11/2016
Agreement establishing the EU-LAC International Foundation (*)	Multilateral	25/10/2016
Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part (*)	Multilateral	10/06/2016
Agreement between the European Union, Iceland, the Principality of Liechtenstein and the Kingdom of Norway on an EEA Financial Mechanism 2014-2021 (*)	Multilateral	03/05/2016
Paris Agreement adopted under the United Nations Framework Convention on Climate Change	Multilateral	12/12/2015
Agreement continuing the International Science and Technology Center (*)	Multilateral	09/12/2015

³¹ For EU Multilateral Agreements before this date see House of Commons Library [Briefing Paper CBP-7850](#)

<u>Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism</u>	Multilateral	22/10/2015
<u>International Agreement on Olive Oil and Table Olives, 2015 (*)</u>	Multilateral	09/10/2015

7. EU bilateral agreements

EU Bilateral Agreements since February 2016. Agreements signed but not yet in force are identified by an asterisk (*).³²

Title	Type	Date of Signature
Protocol on the implementation of the Fisheries Partnership Agreement between the European Union and the Republic of Côte d'Ivoire (2018-2024) (*)	Bilateral	01/08/2018
Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part (*)	Bilateral	17/07/2018
Agreement for scientific and technological cooperation between the European Union and the Kingdom of Morocco setting out the terms and conditions for the participation of the Kingdom of Morocco in the Partnership for Research and Innovation in the Mediterranean Area (PRIMA) (*)	Bilateral	10/04/2018
Agreement between the European Union and the Swiss Confederation on supplementary rules in relation to the instrument for financial support for external borders and visa, as part of the Internal Security Fund, for the period 2014 to 2020	Bilateral	15/03/2018
Agreement between the European Union and Iceland on supplementary rules in relation to the instrument for financial support for external borders and visa, as part of the Internal Security Fund for the period 2014 to 2020 (*)	Bilateral	02/03/2018
Agreement for scientific and technological cooperation between the European Union and the Republic of Lebanon setting out the terms and	Bilateral	27/02/2018

³² For EU Bilateral Agreements before this date see House of Commons Library [Briefing Paper CBP-7850](#)

conditions for the participation of the Republic of Lebanon in the Partnership for Research and Innovation in the Mediterranean Area (PRIMA)		
Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax	Bilateral	06/02/2018
Protocol to the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other part, to take account of the accession of the Republic of Croatia to the European Union (*)	Bilateral	06/02/2018
Amendment 1 to Memorandum of Cooperation NAT-I-9406 between the United States of America and the European Union (*)	Bilateral	13/12/2017
Amendment 1 to the Agreement on cooperation in the regulation of civil aviation safety between the European Community and the United States of America (*)	Bilateral	13/12/2017
Protocol setting out the fishing opportunities and the financial contribution provided for by the Fisheries Partnership Agreement between the European Union and the Republic of Mauritius (*)	Bilateral	08/12/2017
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	Bilateral	04/12/2017
Comprehensive and enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their	Bilateral	24/11/2017

<u>Member States, of the one part, and the Republic of Armenia, of the other part (*)</u>		
<u>Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems (*)</u>	Bilateral	23/11/2017
<u>Agreement for scientific and technological cooperation between the European Union and the Hashemite Kingdom of Jordan setting out the terms and conditions for the participation of the Hashemite Kingdom of Jordan in the Partnership for Research and Innovation in the Mediterranean Area (PRIMA)</u>	Bilateral	10/11/2017
<u>Agreement for scientific and technological cooperation between the European Union and the Arab Republic of Egypt setting out the terms and conditions for the participation of the Arab Republic of Egypt in the Partnership for Research and Innovation in the Mediterranean Area (PRIMA)</u>	Bilateral	27/10/2017
<u>Agreement for scientific and technological cooperation between the European Union and the People's Democratic Republic of Algeria setting out the terms and conditions for the participation of the People's Democratic Republic of Algeria in the Partnership for Research and Innovation in the Mediterranean Area (PRIMA) (*)</u>	Bilateral	26/10/2017
<u>Bilateral Agreement between the European Union and the United States of America on prudential measures regarding insurance and reinsurance</u>	Bilateral	22/09/2017
<u>Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part (*)</u>	Bilateral	07/08/2017

Agreement between the European Union and New Zealand on cooperation and mutual administrative assistance in customs matters	Bilateral	03/07/2017
Third Additional Protocol to the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, to take account of the accession of the Republic of Croatia to the European Union (*)	Bilateral	29/06/2017
Protocol to the Framework Agreement between the European Union and its Member States, on the one part, and the Republic of Korea, on the other part, to take account of the accession of the Republic of Croatia to the European Union	Bilateral	21/06/2017
Agreement between the European Union and the Republic of Chile on trade in organic products	Bilateral	27/04/2017
Protocol to the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, to take account of the accession of the Republic of Croatia to the European Union (*)	Bilateral	10/04/2017
Agreement between the European Union and Iceland on the protection of geographical indications for agricultural products and foodstuffs	Bilateral	23/03/2017
Agreement in the form of an Exchange of Letters between the European Union and Iceland concerning additional trade preferences in agricultural products	Bilateral	23/03/2017
Cooperation Agreement on Partnership and Development	Bilateral	18/02/2017

between the European Union and its Member States, of the one part, and the Islamic Republic of Afghanistan, of the other part (*)		
Protocol to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, to take account of the accession of the Republic of Croatia to the European Union	Bilateral	15/12/2016
Political Dialogue and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Cuba, of the other part (*)	Bilateral	12/12/2016
Agreement between the European Union and the Kingdom of Norway on supplementary rules in relation to the instrument for financial support for external borders and visa, as part of the Internal Security Fund for the period 2014 to 2020	Bilateral	08/12/2016
Acquisition and cross-servicing Agreement between the European Union and the United States of America (ACSA)	Bilateral	06/12/2016
Agreement between the European Union and the Principality of Liechtenstein on supplementary rules in relation to the instrument for financial support for external borders and visa, as part of the Internal Security Fund for the period 2014 to 2020	Bilateral	05/12/2016
Agreement in the form of an Exchange of Letters between the European Union and the Federative Republic of Brazil pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the	Bilateral	25/11/2016

schedule of the Republic of Croatia in the course of its accession to the European Union		
Framework Agreement between the European Union and Kosovo* (*This designation is without prejudice to positions on status, and is in line with UNSCR 1244(1999) and the ICJ Opinion on the Kosovo declaration of independence.) on the general principles for the participation of Kosovo in Union programmes	Bilateral	25/11/2016
Protocol to the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part, to take account of the accession of the Republic of Croatia to the European Union (*)	Bilateral	31/10/2016
Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part (*)	Bilateral	30/10/2016
Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part	Bilateral	30/10/2016
Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands	Bilateral	14/10/2016
Agreement between the European Union and Solomon Islands on the short-stay visa waiver	Bilateral	07/10/2016
Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part (*)	Bilateral	05/10/2016

52 UK adoption of the EU's external agreements after Brexit

Agreement between the European Union and the Federated States of Micronesia on the short-stay visa waiver	Bilateral	19/09/2016
Agreement in the form of an exchange of letters between the European Union and the Islamic Republic of Afghanistan on the extension of the Agreement between the European Union and the Islamic Republic of Afghanistan on the status of the European Union Police Mission in Afghanistan (EUPOL AFGHANISTAN) OJ L 273, 8.10.2016, p. 3	Bilateral	04/08/2016
Stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part (*)	Bilateral	28/07/2016
Amending Protocol to the Agreement between the European Community and the Principality of Monaco providing for measures equivalent to those laid down in Council Directive 2003/48/EC	Bilateral	12/07/2016
Agreement between the European Union and Tuvalu on the short-stay visa waiver (*)	Bilateral	01/07/2016
Agreement between the European Union and the Republic of the Marshall Islands on the short-stay visa waiver (*)	Bilateral	27/06/2016
Agreement between Georgia and the European Union on security procedures for exchanging and protecting classified information	Bilateral	23/06/2016
Agreement between the European Union and the Republic of Kiribati on the short-stay visa waiver (*)	Bilateral	23/06/2016
Agreement between the United States of America and the European Union on the protection of personal	Bilateral	02/06/2016

information relating to the prevention, investigation, detection, and prosecution of criminal offences		
Additional Protocol to the Agreement between the European Economic Community and the Kingdom of Norway	Bilateral	03/05/2016
Additional Protocol to the Agreement between the European Economic Community and the Republic of Iceland	Bilateral	03/05/2016
Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2014-2021	Bilateral	03/05/2016
Protocol amending the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, to take account of the accession to the European Union of the Republic of Croatia (*)	Bilateral	03/05/2016
Protocol to the Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon of the other part, to take account of the accession of the Republic of Croatia to the European Union	Bilateral	28/04/2016
Agreement in the form of an Exchange of Diplomatic Notes with Japan in accordance with Article 15(3)(b) of the Agreement on Mutual Recognition (MRA) in order to amend Part B of the Sectoral Annex on Good Manufacturing Practice (GMP) for medicinal products (*)	Bilateral	22/04/2016
Agreement in the form of an exchange of letters between the European Union and the People's	Bilateral	19/04/2016

Republic of China pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedule of the Republic of Croatia in the course of its accession to the European Union		
Participation Agreement between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union Advisory Mission for Civilian Security Sector Reform in Ukraine (EUAM Ukraine)	Bilateral	13/04/2016
Participation Agreement between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union CSDP mission in Mali (EUCAP Sahel Mali)	Bilateral	13/04/2016
Agreement between the European Union and the Republic of Peru on the short-stay visa waiver	Bilateral	14/03/2016
Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, regarding the participation of the Republic of Croatia as a Contracting Party, following its accession to the European Union	Bilateral	04/03/2016
Agreement between the Council of Ministers of the Republic of Albania and the European Union on security procedures for exchanging and protecting classified information	Bilateral	03/03/2016
Agreement between the European Union and the People's Republic of China on the short-stay visa waiver for holders of diplomatic passports	Bilateral	29/02/2016

<u>Amending Protocol to the Agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments</u>	Bilateral	12/02/2016
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