

HOUSE OF LORDS

International Agreements Committee

2nd Report of Session 2019–21

**Scrutiny of international
agreements: Economic
Partnership Agreement
with Kenya, Trade in Goods
Agreement with Norway
and Iceland, and Free Trade
Agreement with Vietnam**

Ordered to be printed 2 February 2021 and published 3 February 2021

Published by the Authority of the House of Lords

HL Paper 221

International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider matters relating to the negotiation, conclusion and implementation of international agreements, and to report on treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.

Membership

The Members of the International Agreements Committee are:

<u>Lord Foster of Bath</u>	<u>Lord Morris of Aberavon</u>
<u>Lord Gold</u>	<u>Lord Oates</u>
<u>Lord Goldsmith</u> (Chair)	<u>Lord Risby</u>
<u>Lord Kerr of Kinlochard</u>	<u>Lord Robathan</u>
<u>Lord Lansley</u>	<u>Lord Sandwich</u>
<u>Baroness Liddell of Coatdyke</u>	<u>Lord Watts</u>

Declaration of interests

See Appendix 1.

A full list of Members' interests can be found in the Register of Lords' Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

Publications

All publications of the Committee are available at:

<https://committees.parliament.uk/committee/448/international-agreements-committee/publications/>

Parliament Live

Live coverage of debates and public sessions of the Committee's meetings are available at:

<https://www.parliamentlive.tv>

Further information

Further information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is available at:

<http://www.parliament.uk/business/lords>

Committee staff

The current staff of the Committee are Jennifer Martin-Kohlmorgen (Clerk), Moriyo Aiyeola (Assistant Clerk), Andrea Ninomiya (Policy Analyst), Alexander Horne (Legal Adviser) and George Stafford (Committee Assistant).

Contact details

All correspondence should be addressed to the [insert Committee name], Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 5791. Email HLIntlAgreements@parliament.uk

Twitter

You can follow the Committee on Twitter: [@HLIntlAgreements](https://twitter.com/HLIntlAgreements).

CONTENTS

	<i>Page</i>
Summary	2
Chapter 1: Agreement drawn to the special attention of the House	3
Economic Partnership Agreement, done at London on 8 December 2020, between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Kenya, a Member of the East African Community, of the other part (CP 339, 2020)	3
Entry into force	4
Other EAC countries' accession to the Agreement	4
Potential implications of the Agreement for regional coherence	5
The UK's trading relationship with Kenya	7
Tariffs	7
Rules of origin	7
Origin quotas	8
Bilateral safeguards	8
The Cotonou Agreement and respect for human rights	8
Governance and amendments	8
Expanding the Agreement	9
Territorial application	10
Consultation	10
Chapter 2: Agreements reported for information	11
Agreement, done at London on 8 December 2020, between the United Kingdom of Great Britain and Northern Ireland and Iceland and the Kingdom of Norway on Trade in Goods (CP 328, 2020)	11
Free Trade Agreement, done at London on 29 December 2020, between the United Kingdom of Great Britain and Northern Ireland and the Socialist Republic of Viet Nam (CP 367, 2021)	12
The UK's trade relationship with Vietnam	13
Key divergences from the EU-Vietnam Agreement	13
Appendix 1: List of Members, declarations of interest and Committee staff	15

SUMMARY

This is the International Agreements Committee's second report on treaties, or international agreements, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (CRAG). On 28 January 2021, the International Agreements Committee succeeded the EU International Agreements Sub-Committee, which since April 2020 has had responsibility for scrutinising all international agreements laid before Parliament under CRAG.¹

This report addresses an Agreement considered at the meeting of the International Agreements Committee on 1 February 2021, which we draw to the special attention of the House:

- Economic Partnership Agreement, done at London on 8 December 2020, between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Kenya, a Member of the East African Community, of the other part (CP 339, 2020)

This report also addresses two further Agreements, considered at the same meeting, on which we report for information:

- Agreement, done at London on 8 December 2020, between the United Kingdom of Great Britain and Northern Ireland and Iceland and the Kingdom of Norway on Trade in Goods (CP 328, 2020)
- Free Trade Agreement, done at London on 29 December 2020, between the United Kingdom of Great Britain and Northern Ireland and the Socialist Republic of Viet Nam (CP 367, 2021)

¹ Previous reports on treaties considered by the International Agreements Sub-Committee can be found on the Treaty page of the Parliament website at: <https://treaties.parliament.uk/>

Scrutiny of international agreements: Economic Partnership Agreement with Kenya, Trade in Goods Agreement with Norway and Iceland, and Free Trade Agreement with Vietnam

CHAPTER 1: AGREEMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Economic Partnership Agreement, done at London on 8 December 2020, between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Kenya, a Member of the East African Community, of the other part (CP 339, 2020)²

1. The Economic Partnership Agreement between the UK and Kenya (the ‘UK-Kenya Partnership Agreement’) was laid on 17 December 2020, and the scrutiny period is scheduled to end on 10 February 2021. It was considered by the International Agreements Committee on 1 February 2021.
2. The UK-Kenya Agreement is development-focused and therefore asymmetrical—it opens the market of the UK more than the Kenyan market. Its focus is on facilitating trade in goods, providing Kenya with duty-free and quota-free access to the UK market. Kenya, in turn, commits to a phased liberalisation of goods, but retains tariffs for some goods deemed sensitive domestically. The Agreement covers trade in goods and related provisions, fisheries, and development cooperation, with trade in services and other areas left to be negotiated under a *rendez-vous* clause.³
3. The precursor agreement to the UK-Kenya Partnership Agreement is the Economic Partnership Agreement between the East African Community Partner States and the EU and its member states (the ‘EU-EAC EPA’), negotiated in 2014.⁴ The members of the EAC are Burundi, Kenya, Rwanda, Tanzania, and Uganda, and South Sudan—but so far only Kenya has both signed and ratified the EPA. In addition, some EAC states have yet to sign the EPA, which means the EU Agreement has not been brought into effect.

2 Economic Partnership Agreement, done at London on 8 December 2020, between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Kenya, a Member of the East African Community, of the other part, CP 339, 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945516/MS_9.2020_Economic_Partnership_Agreement_UK_Kenya_Member_of_East_Africa_Community.pdf [accessed 21 January 2021]

3 *Rendez-vous* clauses are often used in trade agreements and contain commitments to negotiate specific provisions at a later date.

4 Economic Partnership Agreement between the East African Community Partner States, of the one part, and the European Union and its Member States of the other part https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153845.pdf [accessed 3 February 2021]

4. Until the end of the Brexit transition period, Kenya enjoyed duty-free, quota-free access to the UK's markets through the EU's Market Access Regulation (MAR).⁵ As the UK did not replicate the MAR at the end of the transition period, Kenya would have faced an increase in tariffs without a trade agreement or other measures in place.⁶
5. One of the reasons why the other EAC members have either not ratified or not signed the EU Agreement is that as 'least developed countries' (LDCs) they already benefit from duty-free, quota-free access under the EU's Generalised Scheme of Preferences (GSP) Least Developed Countries Framework.
6. By contrast, Kenya is the only country in the EAC which is not classified as a LDC and so does not benefit from the GSP Least Developed Countries Framework.⁷ Instead, Kenya is classified as a 'lower-middle income country', qualifying for the GSP General Framework, providing reduced rates of import duty only on certain goods, with other goods subject to most favoured nation (MFN) rates. The UK Government therefore decided to roll over the EU-EAC EPA on a bilateral basis with Kenya—thus securing preferential access for Kenya—even though the EU Agreement is not actually in effect.

Entry into force

7. The UK-Kenya Agreement has been provisionally applied since 1 January, pending the completion of full ratification procedures by the Parties. On 23 December 2020, the Parties agreed to a Memorandum of Understanding (MoU) which recognised that the necessary domestic procedures required to give effect to the UK-Kenya Agreement would not have been completed by 31 December 2020. The MoU allows the Parties to treat the provisions of the signed Agreement as having effect between them until its formal entry into force. It states that the Parties will use their best endeavours to bring the Agreement into effect within three months of the MoU coming into effect.⁸

Other EAC countries' accession to the Agreement

8. The UK-Kenya Partnership Agreement is open to other EAC member states to join at any time. Article 143 enables them to make an accession request to

5 The EU's Market Access Regulation provides duty-free and quota-free access to the EU single market for products originating in African, Caribbean and Pacific countries, provided the countries do not already benefit from the EU's Everything But Arms scheme and have not yet ratified an Economic Partnership Agreement.

6 Although, as the UK decided to replicate the EU's GSP Framework after the end of the transition period, it would still have qualified for reduced tariffs on certain goods under the new UK Generalised Scheme of Preferences for low-income and lower-middle income countries.

7 The General Scheme of Preferences (GSP) provides trade preferences, via reduced or zero tariffs, on imports from eligible developing countries into the UK. The UK decided to replicate the EU's GSP at the end of the transition period. The GSP provides three tiers of tariff rates to eligible countries depending on their levels of economic development. These are: the Least Developed Countries Framework for countries classified as LDCs by the UN (zero import duties on all goods other than arms and ammunition), the General Framework for countries classified by the World Bank as low to lower-middle income (reduced rates of import duty on certain goods) and the Enhanced Framework for countries classified by the World Bank as low to lower-middle income that are economically vulnerable due to low levels of integration with the international trading system (zero import duties on certain goods).

8 Department for International Trade, 'Memorandum of Understanding between the UK and Kenya', 23 December 2020: <https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-uk-and-kenya-on-the-economic-partnership-agreement/memorandum-of-understanding-between-the-uk-and-kenya#section-2-entry-into-effect-of-the-kenya-uk-epa> [accessed 26 January 2021]

the UK-Kenya EPA Council, which would review the impacts of accession and may decide on amending measures that may be required.

Potential implications of the Agreement for regional coherence

9. Concerns have been expressed that the UK-Kenya Agreement may have disruptive political and economic impacts on the East African Community, and during negotiations between the UK and Kenyan Governments in 2020, other EAC members expressed opposition to the two countries' bilateral decision to roll over the EU-EAC EPA, expressing their preference to renegotiate a future deal as one trading bloc. To avoid Kenya facing UK tariffs at the end of the transition period, they reportedly asked the UK to establish a transitional mechanism that would temporarily continue to provide Kenya with Market Access Regulation-style conditions on a unilateral basis.⁹
10. Some civil society groups have also argued that the UK-Kenya Agreement could disrupt regional trade within the EAC and undermine regional integration.¹⁰ For example, the EAC has been a customs union since 2005, applying zero customs duties on goods and services within the bloc and applying a common external tariff to imports from countries outside of the EAC.¹¹ The UK-Kenya Agreement could undermine this arrangement, as Kenya would be applying a separate tariff regime to the UK—under the Agreement, Kenya must eliminate customs duties for a substantial number of UK goods upon entry into force of the Agreement, and progressively lower and eliminate duties for many others.¹² This difference in tariffs applied to UK goods exported to Kenya, as opposed to the other EAC countries, could result in increased border checks and other barriers between Kenya and other EAC members.
11. We acknowledge that rolling over the EU-EAC EPA with Kenya could indeed have been the most efficient option for maintaining Kenya's preferential access to the UK market, and we also understand that there may be WTO non-compliance issues in adopting unilateral preference measures for Kenya. The Parliamentary Report and other explanatory materials, however, do not explain why the MAR system was not transitioned, nor what alternative arrangements were available or considered. The explanatory materials also do not provide an assessment of the potential disruptive consequences of the Agreement for the EAC as a trading bloc, in particular the Government's response to the concerns set out in paragraphs 9 and 10 above.
12. Given this absence of information, we are unable to evaluate the precise consequences of the new tariff differential. But it does appear that Kenya's divergence from the EAC's common external tariff could have political and

9 Harry Holmes, 'UK-Kenya deal creates "huge risks to regional trade"', *The Grocer* (5 November 2020): <https://www.thegrocer.co.uk/sourcing/uk-kenya-deal-creates-huge-risks-to-regional-trade/650084.article> [accessed 21 January 2021] and Graham Lanktree, 'UK-Kenya deal triggers East African trade tensions', *Politico* (27 October 2020): <https://www.politico.eu/article/uk-kenya-trade-deal-threatens-trade-in-east-africa/> [accessed 28 January 2021]

10 Trade Justice Movement, 'Letter to the Secretary of State for International Trade', (3 November 2020): <https://www.tjm.org.uk/documents/briefings/Letter-Rt-Hon-Elizabeth-Truss-re-Kenya-FTA-031120-TJM.pdf> [accessed 28 January 2021]

11 East African Community, 'What is the Customs Union?': <https://www.eac.int/integration-pillars/customs-union> [accessed 28 January 2021]

12 Annex II sets out the customs duties on products originating in the UK. Annex II (A) lists the UK originating goods for which customs duties will be eliminated upon entry into force. Annex II (B) lists the UK originating goods for which customs duties will be progressively abolished.

economic implications for the coherence of the EAC as a regional bloc.¹³ Even though deepening regional integration is one of the key objectives in the Agreement's Economic and Development Cooperation chapter,¹⁴ there is thus a risk that the Agreement itself could serve to undermine regional integration. This could even call into question the Government's commitment to supporting regional integration and regional trade as part of its wider international development strategy.¹⁵

13. **We call on the Government to explain what other options it considered for ensuring continuity of trading arrangements with Kenya, and why they were not pursued. In particular, we call on the Government to explain why it did not replicate the EU's Market Access Regulation. In addition, the Government should articulate what representations were made by the other EAC members and stakeholders; and explain how it has sought to evaluate and address their concerns.**
14. **The Government should also provide its assessment of the risks of the Agreement and its impact on the East African Community's customs union, as well as an assessment of the implications of the bilateral agreement for regional integration in East Africa.**
15. **We therefore call on the Government to urgently publish a supplementary Explanatory Memorandum that addresses the points raised in paragraphs 13 and 14 above, ahead of a debate on the Agreement in the House. To enable proper scrutiny of the Agreement we ask the Government to extend the CRAG period, so that the scrutiny period only ends after a debate on the Agreement has taken place.**
16. **More broadly, we call on the Government to provide information in its explanatory materials on the political ramifications of trade agreements whenever significant concerns, such as those set out above, have been raised.**

13 Gerard Erasmus, 'The Kenya-UK post-Brexit Trade Agreement', Tralac (23 November 2020): <https://www.tralac.org/blog/article/15008-the-kenya-uk-post-brexit-trade-agreement.html> [accessed 21 January 2021]

14 Articles 75 and 76 of Part V of the Agreement

15 See, for example: Foreign, Commonwealth and Development Office (FCDO), 'Kenya – Strengthening Regional Economic Integration' (22 April 2018): <https://devtracker.fcdo.gov.uk/projects/GB-1-203357> [accessed 28 January 2021] and Department for International Development, *Economic Development Strategy: prosperity, poverty and meeting global challenges* (January 2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/587374/DFID-Economic-Development-Strategy-2017.pdf [accessed 28 January 2021]

The UK's trading relationship with Kenya

17. An overview of UK-Kenya trade is provided in Box 1.

Box 1: UK trade with Kenya

Kenya is the UK's 73rd-largest trading partner, accounting for 0.1% of total UK trade. In 2019, trade in goods and services between the UK and Kenya was worth £1.4 billion.

Trade in goods

The UK exports more goods to Kenya than it imports, with £384 million worth of exports, compared to £321 million of imports in 2019.

Top goods exports to Kenya were vehicles, machinery and mechanical appliances, and pharmaceutical products. Imports from Kenya were mainly coffee, tea and spices, edible vegetables, and live trees and plants, which together represented approximately 80% of Kenyan goods imported by value.¹⁶

Trade in services

In 2019, the UK exported more services than it imported from Kenya, exporting £800 million in services and importing £607 million.

The Parliamentary Report states that a detailed breakdown of types of services traded was not available for the UK's trade with Kenya.¹⁷

18. HMRC has estimated that around 2,502 VAT-registered UK businesses exported goods to and 433 imported goods from Kenya in 2019. The Parliamentary Report explains that these figures are likely to be an underestimate, as they do not include UK companies providing services in Kenya.

Tariffs

19. The Agreement provides Kenya with the duty-free access to the UK markets from which Kenya benefited under the EU's Market Access Regulation (MAR). The tariff preferences set out in the agreement for products being traded between Kenya and the UK will be the same as those in the EU-EAC EPA, even though these were never brought into force.¹⁸ As mentioned in paragraph 2, this means that Kenya would also eliminate customs duties for some UK goods and would progressively eliminate duties for other UK goods within a range of seven to twenty-five years.¹⁹ The elimination and reduction of Kenyan tariffs on UK goods could potentially have disruptive implications for the EAC common external tariff and, more broadly, for regional coherence, as explained in paragraphs 9 to 12.

Rules of origin

20. The UK-Kenya Agreement provides extended cumulation for EU materials and processing in British and Kenyan exports to one another. The Parliamentary Report notes that if cumulation of EU content and processing

16 Parliamentary Report, p 8

17 Parliamentary Report, p 9

18 Parliamentary Report p 18

19 Annex II sets out the customs duties on products originating in the UK. Annex II (A) lists the UK originating goods for which customs duties will be eliminated upon entry into force. Annex II (B) lists the UK originating goods for which customs duties will be progressively abolished.

had not been allowed, some Kenyan exporters might have been unable to gain the duty-free access to the UK's market that was allowed under the MAR during the transition period.

21. The UK-Kenya Agreement also allows cumulation to occur with other third countries where certain conditions are met, such as having a preferential trade agreement with an African, Caribbean and Pacific (ACP) state in place. This replicates the mechanism in the EU-EAC EPA.

Origin quotas

22. The EU-EAC EPA provided an inbound derogation for tuna, and the volume threshold was based on the size of the EU market. The UK re-sized the threshold to reflect the fact that the UK is a smaller market than the EU28, basing the new threshold on bilateral trade flows observed in recent years. The Parliamentary Report notes that given the very low historic trade levels, the impact on British producers and consumers will be limited.²⁰

Bilateral safeguards

23. The EU-EAC EPA allowed one Party to apply a bilateral safeguard duty on imports from the other Party if there was a disturbance in a product market. In particular, if there was a disturbance in the EU sugar market, brought about by a fall in the price of sugar below a certain level, the bilateral safeguard could be triggered. The UK-Kenya Agreement transitions these provisions in line with the principle of technical replication, but in the absence of data regarding the appropriate level for the trigger price mechanism, the Parties have agreed to suspend the trigger price mechanism temporarily. The Parties will review the price trigger after entry into force of the UK-Kenya Agreement. The Government does not foresee this temporary suspension having an impact.²¹

The Cotonou Agreement and respect for human rights

24. The Cotonou Agreement provides a framework for the EU's political, development and trade relations with 79 developing countries in the African, Caribbean and Pacific regions.²² The Cotonou Agreement ceased to apply to the UK at the end of the transition period, but its effect has been replicated, covering respect for human rights and the possible suspension of the Agreement as a last resort in the case of violations of human rights, democratic principles or the rule of law by the Parties.

Governance and amendments

25. The UK-Kenya Agreement replicates the joint institutions in full and largely replicates the amendment clauses in the EU-EAC EPA. The EPA Council is the main governance body established under the Agreement and will consider proposals for amendments submitted by the Parties.
26. **The wording and consequence of this incorporated provision is unclear. It is not clear whether all changes by the EPA Council must be confirmed by the Parties, and which changes would be subject to parliamentary scrutiny under the Constitutional Reform and**

20 Parliamentary Report, p 20

21 *Ibid.*

22 The Cotonou Agreement is shorthand for the Partnership Agreement between the EU and the ACP Group of States.

Governance Act 2010 (CRAG). While it may be that amendments to protocols and annexes are not subject to scrutiny under the Constitutional Reform and Governance Act 2010 (CRAG), the explanatory material is not clear on this point. It is regrettable that, over a year since we first raised these issues, the explanatory materials accompanying agreements still do not specify what parts of an agreement can be amended without parliamentary scrutiny.²³

27. **Section 25 of the Constitutional Reform and Governance Act 2010 sets out the definition of treaties which are covered by the Act. However, section 25(2) provides that the word “treaty” does not include “a regulation, rule, measure, decision or similar instrument made under a treaty (other than one that amends or replaces the treaty (in whole or in part)).” The Government has yet to provide us with a clear interpretation of this provision, nor has it agreed with us what it means in practice for parliamentary scrutiny.**
28. **In addition, the continued absence of a mechanism for the Government to highlight changes to treaties to Parliament causes a significant scrutiny gap. While we welcome the Government’s commitment to “working with departments to ensure that all amendments to treaties are published in the UK’s Treaty Series, including those that are not subject to CRAG”,²⁴ proposals for how this would operate in practice have yet to be put forward. We do, however, note that Government officials have recently committed to updating the Committee on progress in due course.**
29. **We have repeatedly raised the issue of amendments to international agreements, including the lack of clarity in the Government’s explanatory materials. We urge the Government to engage with us to reach an agreed interpretation on the relevant principles that should be applied to determine whether an amendment should be subject to parliamentary scrutiny.**
30. **We also recommend that the Government provide a formal mechanism for notifying Parliament of changes to international agreements where they are not subject to the requirements of CRAG. This could include regular publication of amendments in the UK’s Treaty Series, as previously suggested by the Government.²⁵**
31. Article 144 has been added to the Agreement, allowing amendments to be made on accession of other EAC members, including changes to the title of the Agreement and the list of Parties to the Agreement.

Expanding the Agreement

32. The UK-Kenya Agreement replicates the *rendez-vous* clause in the EU-EAC EPA on areas for future negotiations to expand the agreement within five years of entry into force. The areas for future negotiations include trade in services, competition policy, investment and private sector development,

23 European Union Committee, *Scrutiny of international agreements: lessons learned* (42nd Report, Session 2017–19, HL Paper 387)

24 Department for International Trade, *Government Response to the House of Lords International Agreements Sub-Committee Report: Treaty Scrutiny, Working Practices*, (25 September 2020): <https://committees.parliament.uk/publications/2742/documents/27116/default/> [accessed 28 January 2021]

25 *Ibid.*

environmental and sustainable development, intellectual property rights, transparency in public procurement and any other areas that the Parties might agree to cover.²⁶ It is unclear how the other EAC members who may accede to the Agreement in future would feed into these negotiations and whether they would be subject to the five-year deadline starting from entry into force of the UK-Kenya Agreement. Some of the sectors covered by the negotiations may be sensitive for the other EAC members, and they may therefore wish to have more time to negotiate.

Territorial application

33. The Explanatory Memorandum (EM) states that the territorial application article in the EU-EAC EPA has been replaced by an article which ensures that the Agreement applies to the specified territories for which the UK is responsible, in the same way as the EU-EAC EPA would have applied. The EM states that the Agreement applies to Gibraltar for provisions not relating to goods or customs; to the Channel Islands and the Isle of Man for provisions relating to tariff and trade in goods; and to the Overseas Territories for some specific provisions on cumulation with respect to rules of origin.

Consultation

34. **Although the Government's EM states that consultation has taken place with Gibraltar, the Crown Dependencies and the Devolved Administrations, it does not set out whether, and if so what, concerns were raised. The Committee has repeatedly expressed concern at the lack of information on the substance of such consultation, and we reiterate that in future the Government should make clear not only that consultation has taken place, but whether concerns have been expressed and, if they have, what actions have been taken to address them.**
35. **We draw special attention to the Economic Partnership Agreement between the UK and Kenya on the grounds that:**
- **It is politically important and gives rise to issues of public policy that the House may wish to debate prior to ratification.**
 - **The explanatory material laid in support provides insufficient information on the agreement's policy objective and on how it will be implemented.**

CHAPTER 2: AGREEMENTS REPORTED FOR INFORMATION

Agreement, done at London on 8 December 2020, between the United Kingdom of Great Britain and Northern Ireland and Iceland and the Kingdom of Norway on Trade in Goods (CP 328, 2020)²⁷

36. The Agreement on Trade in Goods between the UK, Iceland and Norway (‘the Trade in Goods Agreement’) was laid on 16 December 2020, and the scrutiny period is scheduled to end on 9 February 2021. It was considered by the International Agreements Committee on 1 February 2021.
37. The Trade in Goods Agreement seeks to provide for substantial continuity of effect of the UK’s existing trade in goods arrangements with Norway and Iceland under the European Economic Area (EEA) Agreement and the relevant EU-Iceland and EU-Norway bilateral agreements. It is designed to be a temporary agreement until a comprehensive Free Trade Agreement can be negotiated. The Parliamentary Report explains:
- “The closely intertwined relationship between Iceland, Norway and the EU means that translating our existing trade relationship (within the Single Market and the European Economic Area) into a bilateral arrangement is a complex process. We have agreed with the EEA-EFTA states that our long-term future trade relationship should be through a comprehensive FTA. Our negotiations towards an ambitious and comprehensive agreement began in the summer, and we are on track towards our ambition of having the agreement in force in 2021.”²⁸
38. The Trade in Goods Agreement is part of the wider suite of agreements that the UK has finalised with the EEA/EFTA states, replicating in this instance the terms of the Agreement on *Trade in Goods between the United Kingdom of Great Britain and Northern Ireland, Iceland and the Kingdom of Norway (CP89, 2019)*, deposited in Parliament in April 2019. That agreement was only due to come into force in the case of a ‘no deal’ Brexit, or if the UK had left the EU on terms that would not have allowed its continued participation in predecessor EU-Iceland and/or EU-Norway arrangements during the transition period. It was scrutinised by the EU Internal Market Sub-Committee and drawn to the special attention of the House in May 2019. Readers are therefore invited to refer the EU Committee’s previous report, *Scrutiny of international agreements: treaties considered on 14 May 2019*, for further analysis and information.²⁹
39. There has been one substantial update affecting trade in goods between the UK and Norway since the publication of the 2019 report—the UK recently signed a UK-Norway Fisheries Framework Agreement. We drew that

27 Agreement, done at London on 8 December 2020, between the United Kingdom of Great Britain and Northern Ireland and Iceland and the Kingdom of Norway on Trade in Goods, CP 328, 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/944837/MS_8.2020_Agreement_Trade_in_Goods_between_the_UK_Norway_Iceland.pdf [accessed 21 January 2021]

28 Parliamentary Report, para 8

29 European Union Committee, *Scrutiny of international agreements: treaties considered on 14 May 2019* (40th Report, Session 2017–19, HL Paper 362)

agreement to the special attention of the House in November 2020, and our report is currently awaiting debate.³⁰

40. We report the Agreement on Trade in Goods between the UK, Iceland and Norway to the House for information.

Free Trade Agreement, done at London on 29 December 2020, between the United Kingdom of Great Britain and Northern Ireland and the Socialist Republic of Viet Nam (CP 367, 2021)³¹

41. The Free Trade Agreement between the UK and Vietnam (the ‘UK-Vietnam Agreement’) was laid on 8 January 2021, and the scrutiny period is scheduled to end on 22 February 2021. It was considered by the International Agreements Committee on 1 February 2021.

42. As with other Agreements considered by the Committee, the Government has sought to ensure continuity of effect with the underlying EU-Vietnam Free Trade Agreement (‘the EVFTA’),³² but has made minor modifications to suit the new bilateral context. The Government’s Explanatory Memorandum (EM) notes that it considers the UK-Vietnam Agreement an important step towards joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), in that it secures preferential arrangements for UK businesses in the Asia-Pacific region.

43. The EU has also signed an investment protection agreement with Vietnam. However, the Parliamentary Report accompanying the UK Agreement explains that “the UK and Vietnam have decided not to incorporate the IPA into the UK-Vietnam FTA”.³³ While the IPA is a separate text from the EVFTA, the Government’s explanatory materials do not explain the rationale and consequences of this decision.

44. We call on the Government to set out its reasons for not rolling over the EU-Vietnam Investment Protection Agreement and to explain the consequences of this decision, in particular on the protection of British investor interests in Vietnam.

45. The UK-Vietnam Agreement includes provisions on:

- trade in goods;
- trade in services;
- intellectual property, including geographical indications (GIs); and
- government procurement.

30 European Union Committee, [Scrutiny of international agreements: UK-US Spaceports Agreement; and UK Fisheries Framework Agreements with Norway and the Faroe Islands](#) (17th Report, Session 2019–21, HL Paper 181)

31 Free Trade Agreement, done at London on 29 December 2020, between the United Kingdom of Great Britain and Northern Ireland and the Socialist Republic of Viet Nam, CP 367, 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950585/CS_Viet_Nam_1.2021_Free_Trade_Agreement_UK_Vietnam.pdf [accessed 21 January 2021]

32 Free Trade Agreement between the European Union and the Socialist Republic of Vietnam: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1437> [accessed 21 January 2021]

33 Parliamentary Report, p 7

The UK's trade relationship with Vietnam

46. An overview of UK-Vietnam trade is provided in Box 2.

Box 2: UK trade with Vietnam

Vietnam is the UK's 39th-largest trading partner, accounting for 0.4% of total UK trade. In 2019, trade in goods and services between the UK and Vietnam was £5.8 billion.

Trade in goods

The UK imports more goods from Vietnam than it exports, with £0.6 billion worth of exports, compared to £4.6 billion of imports in 2019.

Top goods exports to Vietnam were machinery and mechanical appliances, pharmaceutical products and electrical machinery and equipment. Top goods imports from Vietnam were electrical machinery equipment, footwear, and articles of apparel and clothing.

Trade in services

In 2019, the UK and Vietnam have only a modest trade in services, with the UK exporting £0.2 billion worth of services and importing £0.2 billion.

The Parliamentary Report explains that a detailed breakdown of the types of services traded is not available for UK trade with Vietnam.³⁴

47. HMRC has estimated that around 3,100 VAT-registered UK businesses exported goods to and 2,900 imported goods from Vietnam in 2019. The Parliamentary Report explains that these figures are likely to be an underestimate, as they do not include UK companies providing services in Vietnam.

Key divergences from the EU-Vietnam Agreement

48. The UK-Vietnam Agreement diverges from the underlying EU Agreement in the following areas:
- Tariff rate quotas have been adjusted in size to reflect the fact that the UK is a smaller market for imports and exports than the EU. Article 8 of the Agreement provides for a new review clause that commits the Parties to reviewing the tariff rate quotas for rice three years after the Agreement has entered into force. According to the text of the Agreement, this is in recognition of the rice sector's importance to Vietnam's economy.³⁵
 - The UK-Vietnam Agreement introduces an extended cumulation of origin, allowing both Parties to recognise materials from the EU as originating in the UK or Vietnam in exports to one another. For UK exports to Vietnam, EU processing is also recognised. For Vietnam exports to the UK, products from the Association of Southeast Asian Nations (ASEAN) countries that have undergone further processing in Vietnam can be cumulated. This extended cumulation of origin, however, does not apply to UK goods or materials exported to the EU, which may subsequently be exported to Vietnam. This is because the

³⁴ Parliamentary Report, p 9

³⁵ Parliamentary Report, p 14

UK-EU Trade and Cooperation Agreement does not provide for UK content to be recognised as EU content in trade with common trade partners.

- The precursor EU Agreement contains an Entry Price System (EPS), which applies to certain types of fruit and vegetables from Vietnam, ensuring that during the European growing seasons an additional duty is charged if fruits and vegetables imported are below a pre-determined entry price. The EPS is not being immediately applied by the UK Agreement, but the UK reserves the right to apply it in future. We note that neither the Government's EM nor the Parliamentary Report address the UK's proposed entry price system within this Agreement.
- Regarding geographical indications (GIs), the Agreement clarifies that cross-border GIs (Irish Whiskey and Irish Cream) will continue to be protected. The Agreement also commits to further protection of Scotch Whisky, which already enjoys separate GI status in Vietnam, and the GI for Scottish Farmed Salmon will continue to be protected in Vietnam under its domestic laws.
- Concerning Bank Equity, side letters constituting an integral part to the EU-Vietnam Agreement commit Vietnam for five years from entry into force of the Agreement to "favourably consider" allowing EU financial institutions to raise foreign ownership to 49% of charter capital in two joint-stock commercial banks of Vietnam. In the UK-Vietnam Agreement, this has been adjusted so Vietnam has agreed to favourably consider a proposal by the UK's financial institutions to hold up to 49% of charter capital in one joint-stock bank. The Parliamentary Report explains that this change is "not expected to have a material impact on trade flows in the financial services sector".³⁶

49. We report the Free Trade Agreement between the UK and Vietnam to the House for information.

APPENDIX 1: LIST OF MEMBERS, DECLARATIONS OF INTEREST AND COMMITTEE STAFF

International Agreements Committee Members and staff

Lord Foster of Bath

No relevant interests

Lord Gold

Director, Gold Collins Associates Ltd

Principal, David Gold & Associates LLP

Lord Goldsmith (Chair)

Partner, Debevoise & Plimpton LLP

Lord Kerr of Kinlochard

Chairman, Centre for European Reform

Deputy Chairman, Scottish Power plc

Member, Scottish Government's Standing Council on Europe

Lord Lansley

Director, LOW Associates Ltd

Chair, UK-Japan 21st Century Group

Trustee, Radix

Baroness Liddell of Coatdyke

Adviser, PricewaterhouseCoopers

Association Member, Bupa

Chair, Annington Ltd

Honorary Vice President, Britain-Australia Society Education Trust

Trustee, Northcote Educational Trust

Lord Morris of Aberavon

No relevant interests

Lord Oates

Chair, Advisory Committee, Weber Shandwick UK

Non-Executive Director, Centre for Countering Digital Hate

Director, H&O Communications Ltd

Lord Risby

No relevant interests

Lord Robathan

No relevant interests

Earl of Sandwich

No relevant interests

Lord Watts

No relevant interests

The Committee staff are Jennifer Martin-Kohlmorgen (Clerk), Moriyo Aiyeola (Assistant Clerk), Alexander Horne (Legal Adviser), Andrea Ninomiya (Policy Analyst), and George Stafford (Committee Assistant).

A full list of Members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>