Department for International Trade

Department for Business, Energy & Industrial Strategy

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The Rt Hon. the Lord Goldsmith QC
House of Lords
London
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By email: goldsmithp@parliament.uk

9 April 2021

Dear Peter,

Thank you to your Committee and officials for the report entitled "Scrutiny of International agreements: Free Trade Agreement with Turkey, Air Services Agreement with Iceland, and Headquarters Agreement with the Square Kilometre Array Observatory". I am writing to offer a response to points raised concerning the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Turkey ("UK-Turkey Agreement" or "Agreement").

UK-Turkey Review Clause

Within the report, you call on HM Government to undertake an early public consultation on proposals for an enhanced agreement, and to publish its negotiating objectives.

We and Turkey have committed to reviewing these arrangements within two years of the Agreement coming into force. Prior to the commencement of any new negotiations the Department will want to build a robust understanding of what changes would be in UK interests. As with other agreements, we will gather views of stakeholders prior to commencing new discussions with Turkey. This will be similar to those recently carried out for Japan, the US, New Zealand and Australia. This engagement will provide all stakeholders with the opportunity to give their views on potential future Free Trade Agreement (FTA) negotiations, and the responses will help to inform our overall approach to potential negotiations.

Transitioning from a Customs Union to a Free Trade Agreement Structure

The reports asks HM Government to provide an assessment of what impact and additional costs transitioning from a Customs Union to an FTA relationship will have for UK business and supply chains.

The key change is that goods will now need to meet preferential Rules of Origin agreed between us and Turkey that previously they did not need to. Documentary requirements for traders will also change due to new Rules of Origin requirements for trade previously covered by the Customs Union. This means that traders will need to issue a declaration of origin where they previously did not need to and so we have endeavoured to make origin administration provisions as accessible as possible. However, if traders fulfil the Rules of Origin requirements, then the tariffs they are charged will stay the same as previously. The very few exceptions where there are minor changes to tariffs (converting tariff commitments from Euros to Sterling and not applying complex agricultural tariffs) will have minimal impact on trade flows.

Over the period 2017-19, we estimate 80% of Turkey's goods imports from the UK and 87% of the UK's goods imports from Turkey were traded within the Customs Union. Though free circulation will no longer be possible for goods previously covered by the Customs Union, the Rules of Origin provisions are designed in a way that should enable traders to continue to maintain their existing supply chains and export routes. The UK-Turkey provisions also allow both UK and Turkish manufacturers to continue to use, or cumulate, content from the EU27 in finished products that are directly exported to one another, provided that there is some working in the UK that goes beyond insufficient processing (an exhaustive list of which can be found in the text). This means that the value added by EU27 materials can continue to be included in UK finished goods that are exported to Turkey.

We are working very closely with the Turkish Ministry of Trade to provide advice to all businesses – including SMEs – requiring support in adapting to the new requirements.

Rules of Origin

In the report you ask the Government to provide an update on aligning to the TCA Rules of Origin and how the differences transitioning from Revised PEM Rules will be resolved. You also call on HM Government to provide comprehensive and detailed guidance on any new arrangements.

As you note in your report, to limit a gap in preferences with Turkey from 1 January, the Agreement currently includes a Rules of Origin Protocol with a number of temporary provisions, including the Product Specific Rules. These temporary provisions are based on the Revised pan-Euro-Mediterranean (PEM) rules modified for a bilateral context.

However, in light of Turkey's obligations under its Customs Union with the EU, these temporary measures which were put in place to allow trade to continue from 1 January will need to be replaced with the UK-EU TCA on Rules of Origin. The UK's immediate priority since the signing of the Agreement has been to complete the technical changes needed to align the UK-Turkey Agreement with the UK-EU TCA on Rules of Origin as soon as practically possible.

This work is now complete and the Joint Committee established under the Agreement met on 15 March 2021 and adopted a decision to update the Rules of Origin Protocol. A large majority of the text simply transitions the TCA text, with only a few technical differences. Both sides are committed to implementing this as soon as possible.

We currently anticipate these changes being implemented by a statutory instrument on 14 April 2021 – the instrument having been laid before the House of Commons on 24 March 2021. We will also be providing updated business guidance on GOV.UK that is comprehensive and detailed. This business guidance will be in line with Rules of Origin guidance published for the UK-UK TCA. Online tools that business can use to confirm Product Specific Rules under any of the UK's FTAs will also be updated to reflect the changes.

A notable difference between the existing Revised PEM-based rules and the revised Rules of Origin Protocol is that UK businesses will no longer be able to consider parts and materials from other PEM signatories as originating, which is known as cumulation. Under the new Rules of Origin with Turkey, manufacturers are only eligible to count UK, Turkish and/or EU content as originating providing the right conditions (including going beyond insufficient processing) are met. The reason for this is that similar provisions do not exist in the TCA, and so Turkey was unable to accept this provision without breaching its obligations to the EU.

Technical Barriers to Trade

The report calls for HM government to engage with business and regulatory authorities to identify areas where regulatory cooperation can be improved, and to seek agreement to empower specific regulatory authorities from the UK and the EU to recognise standards set by, and products approved by, both Parties.

We have agreed a TBT chapter with Turkey based on cooperation and reaffirmation of WTO TBT Agreement. Turkey's own relationship with the EU meant that we were limited in what we could agree on technical regulations and standards. However, with the outcome of negotiations between the UK and the EU now complete, the UK and Turkey are undertaking a complete review of the TBT chapter.

We are also committed to working with other departments and regulators to develop a programme of work which will expand mutual recognition of conformity assessment arrangements with other countries.

Subsidies

Within the report, you ask the government to provide an explanation as to why we did not include a Subsidies chapter within the UK-Turkey Agreement.

The arrangements between the EU and Turkey on subsidies are written to mirror EU state aid rules, and to be interpreted with specific reference to EU law. The UK is no longer bound by the EU state aid rules - therefore it would not have been appropriate to transition these arrangements in a bilateral context between the UK and Turkey, as this would have required the UK, via the UK-Turkey Agreement, to mirror EU state aid rules, and so would have undermined the UK's ability to set its own domestic rules.

While the UK-Turkey Agreement does not contain a specific chapter on Subsidies, both the UK and Turkey remain committed to the principles of the WTO SCM Agreement and acknowledge this in the Trade Remedies Chapter of the Agreement. In addition, Subsidies are specifically included in the review clause of the Agreement; this provides an opportunity for both parties to discuss and negotiate more comprehensive subsidy commitments moving forward.

Human Rights

The report urges the government to utilise the review clause in the Agreement to argue for the future introductions of provisions on human and workers' rights.

Our priority was to replicate the effects of existing trade arrangements between the EU and Turkey, as far as possible, into a bilateral arrangement by the end of the Transition Period. This approach has protected existing trade flows and ensured security for businesses, in line with other continuity agreements.

However, the UK has a strong history of safeguarding human rights and promoting our values globally and we are clear that upholding that record can and will go hand-in-hand with our trading ambitions, indeed that such contacts can help create relationships and opportunities to promote human rights internationally. Strengthening our relationship will help present opportunities to promote human rights internationally, a key part of our foreign policy.

Gibraltar

The reports seeks confirmation that the Government of Gibraltar was consulted and content with the Agreement.

Throughout the course of the continuity programme, we have held a regular and detailed dialogue with Government of Gibraltar officials. DIT provided comprehensive updates on negotiations, advance sight of Agreement text before publication and notification to support with legislative implementation. We can therefore confirm that the Government of Gibraltar was consulted and content with the UK-Turkey Agreement.

I am placing a copy of this letter in the House of Lords Library.

Yours Sincerely,

Lord Grimstone of Boscobel, Kt
Minister for Investment
Department for International Trade
Department for Business, Energy and Industrial Strategy