

STATES OF JERSEY



UK-EU TRADE AND ECONOMIC COOPERATION AGREEMENT – INCLUSION OF THE BAILIWICK OF JERSEY

Lodged au Greffe on 24th December 2020
by the Council of Ministers

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to endorse the decision of the Council of Ministers that, based on the summary terms of the UK-EU Trade and Economic Cooperation Agreement as set out in the report, and subject to giving further consideration to the full and final text within the 90-day confirmatory period, the Bailiwick of Jersey should consent to its inclusion in the Agreement;
- (b) to agree that, in accordance with their concurrent responsibility for the conduct of Jersey's external relations, the Chief Minister and the Minister for External Relations should formally communicate the decision of the States Assembly in respect of part (a) to the Government of the United Kingdom; and
- (c) to request the Council of Ministers, following full consideration of the final legal text, to present a report to the States which gives the Council's view on whether the final legal text reflects the terms of the summary agreement and includes the legal text of the agreement and any other information that, in the opinion of the Council, should be brought to the attention of the Assembly

COUNCIL OF MINISTERS

REPORT

Foreword by the Chief Minister and Minister for External Relations

Introduction

This proposition is presented to the Assembly immediately following the conclusion of negotiations on the UK-EU Trade and Economic Co-ordination Agreement (TECA). An agreement between the UK and the EU was announced on the afternoon of 24th December 2020. The final outcome has been the result of protracted negotiations since the commencement of the Transition Period, and follows an intensified period of talks in recent weeks despite the ongoing difficulties caused by the Covid-19 pandemic. The conclusion of these negotiations is welcome, given the clarity and stability it now offers for Jersey, the United Kingdom, and the European Union over our immediate and ongoing relationships.

The Government of Jersey has been preparing for all possible outcomes since the UK electorate voted to leave the European Union in 2016, and has worked closely with the UK Government, and our fellow Crown Dependencies, to ensure that our interests are understood fully and represented appropriately through what has been a challenging course of negotiation.

The analyses and recommendations contained within this report are based on sections of the legal text of the TECA specific to Jersey, which have been closely reviewed by Jersey Ministers and officials. Although the full legal text of the TECA is not yet available, sharing of near-final drafts in recent weeks has allowed Ministers and officials to build up a detailed picture of the deal now on offer to Jersey.

Outline of the offer to Jersey

Jersey's proposed involvement within the TECA would extend to relevant elements of both the goods and fisheries chapters. Jersey would not be involved in the services elements of the Agreement.

The high-level offer on goods is that participation in the TECA would preserve tariff-free goods trade between Jersey and the EU. The detailed provisions underpinning that outcome have been considered and endorsed previously by Government Ministers and officials and – as detailed within the report – in-depth consideration of the impact and implications for Jersey has been undertaken.

On fisheries, participation in the TECA would effectively supersede the Granville Bay Agreement, bringing to an end joint management of Jersey waters. Thus participation would preserve and strengthen the ability for Jersey to assert unilateral control over its waters. Qualifying French vessels with an appropriate track record would continue to be able to fish in Jersey waters between 3nm and 12nm, though such vessels would be licensed solely by Jersey.

The decision

As has always been clear, Jersey's ultimate decision on whether to participate in the TECA must be made on the basis of the overall package on offer.

Ministers have considered the overall impact upon Jersey, in accordance with the key principles agreed at the beginning of the Transition Period. These principles look to

promote and preserve Jersey's international reputation and constitutional autonomy, as well as to protect and pursue the continuation of our trade flows and market access to safeguard our current trading and cultural relationships, and to provide stability for businesses and citizens. On the basis of the summary terms, the Council of Ministers recommends to the States Assembly that, on balance, Jersey's interests would be best served by participation in the TECA.

Ratification

The UK Government has determined that the UK's ratification of the TECA must be concluded by the end of the Transition Period on the 31st December 2020. This presents significant timing challenges for Jersey's consent processes as the final legal text of the TECA is not yet available. Nonetheless, based on receipt of extracts of the latest legal text in areas specifically relevant to Jersey, together with a good overview of the Agreement as a whole based on near-final earlier drafts, Jersey officials have been able to provide Ministers with solid advice on the overall implications for Jersey of a decision on whether or not to participate. This has supported the recommendation by the Council of Ministers that Jersey should choose to participate.

Nonetheless, in recognition of the challenging timescales for ratification, the UK and the EU have agreed a 90-day period from 1 January 2020, during which Jersey, through the UK, would be able to terminate its involvement in the Agreement. This period of time provides for further consideration of the detailed terms, including by reference to the full legal text, once received. If, upon such further consideration, the opinion of both Ministers and States Members is that the legal text does not in fact represent Jersey's interests, and therefore that Jersey should decline to participate, the UK would invoke the clause and remove Jersey from the Treaty.

The structure of this report

This report contains a narrative of the background and context leading to this point, followed by a summary of the terms of the TECA and an assessment of the impact for Jersey. Also included as an Annex is a letter from the Lord Chancellor which reiterates and confirms in reference to the Agreement the Island's constitutional position and domestic autonomy, including in relation to its territorial waters. Taken together, this has informed Ministers' decisions and thus the recommendation contained in the proposition, for Members to opine on, that it is in Jersey's interests to participate and thus that consent should be given to the extension of the TECA to the Island.

Conclusion

As the Ministers with concurrent responsibility for the conduct of Jersey's external relations, we wish to sincerely thank our Ministerial colleagues and officials from across the Government of Jersey for their ongoing diligence and commitment to the Island's preparations for our future trading relationships, and we commend this proposition to the Assembly and ask for Member's support.

INTRODUCTION

It is eleven months since the UK formally left the EU on 31st January 2020. A transition period (“the Transition Period”) is in place until 31st December 2020, which commits the United Kingdom (“UK”) and European Union (“EU”) to maintaining the status quo in their relationship until after this date. This has allowed Jersey’s legal relationship with the EU to remain unchanged until the Transition Period ends. It has also allowed both the UK and EU to negotiate a new Trade and Economic Cooperation Agreement (hereinafter referred to as “TECA”) to come into effect after 31st December.

This report does 5 things -

- (1) It sets out the background so as to provide the reader with context for the EU withdrawal process that is in hand;
- (2) It provides an overview of the negotiations that have taken place between the UK and the EU since 31st January 2020;
- (3) It summarises what the Government of Jersey has been doing to secure Jersey’s interests since the 31st January 2020;
- (4) It provides a summary of the UK-EU TECA and explains what it means for Jersey in practical terms; and
- (5) It gives an analysis of whether Jersey should consent to inclusion in the UK-EU TECA.

BACKGROUND

Since the decision taken by the UK electorate to leave the EU (which does not include the electorate of Jersey, because Jersey is not part of the UK) in the referendum of 23 June 2016, the UK have provided various assurances that Jersey will, in accordance with constitutional convention, be consulted upon, have its interests represented within, and provide its consent to any involvement with new trading relationships with the EU. These assurances have resulted in successful working relationships over a four-year period between Ministers, officials and lawyers in the UK Government and Ministers and officials from the Government of Jersey, and the Law Officers, on a range of Brexit and post-Brexit trade issues.

Looking back to the time of the UK accession, the States Assembly played an important part in shaping Jersey’s relationship with the (now) “European Union” over a number of years: in 1967 it approved proposition P.59/1967 stating that it was the wish of Jersey to remain outside the EEC, and in 1971 it agreed on proposition P.116/1971 which approved the special arrangements proposed by the EEC with respect to Jersey and the CDs (arrangements to become Protocol 3 to the UK Treaty of Accession). In 1972, the States then agreed proposition P.110/1972 which brought forward legislation to implement arrangements for Jersey in connection with the European Communities. The European Union (Jersey) Law 1973 brought into effect Protocol 3 under which certain rights and obligations were created in and for Jersey. Protocol 3 has served Jersey well since 1973.

Jersey's position on UK Exit

After the electorate of the UK voted to leave the EU on 23rd June 2016, the Government of Jersey issued report R.72/2016 on 27th June 2016, setting out the broad proposition that it was the Government's objective to preserve the substance of our relationship with the UK. The basis for agreeing and setting this objective was the fact that the bulk of our cultural, political, industrial, trade and communications ties are with the UK. In addition, our economic prosperity is closely tied to our customs relationship and currency board arrangements with the UK, and also to the freedom of movement that we enjoy as part of the Common Travel Area ("CTA"). The closeness of the economic ties and the benefits that they bring not only to Jersey, but, significantly to the UK also, are set out in the independent report by Capital Economics (October 2016), which estimated that the funds and investment that are brought to the UK through Jersey could provide up to a quarter of a million UK jobs. Nothing that has happened since the 23rd June 2016 Referendum would support a revision of the view that the maintenance of our close and mutually beneficial relationship with the UK is fundamental to our interests.

R.72/2016 further set out that the Jersey Government's objective at that time was to preserve as far as possible the substance of the benefits of our relationship with the EU, as set out under Protocol 3. Chief among these benefits has been free trade in goods, in particular agricultural products (and products derived therefrom). On 17th January 2017, the then UK Prime Minister Theresa May clarified that the UK would not be seeking to retain membership of the Single Market or Customs Union, and would instead be seeking a new customs agreement with the EU.

Jersey's preparations for UK Exit

In order to secure Jersey's interests after UK leaves the EU, and before clarity on negotiations for future trade was forthcoming, the Government of Jersey secured both a new Customs Arrangement with the UK to allow Jersey to become part of the new UK-Crown Dependencies (CDs) Customs Union, and the extension of the UK's membership of the World Trade Organisation ("WTO"). The latter will mean that Jersey, as part of the new UK-CDs Customs Union, can also benefit from the lower trade barriers offered to WTO members, which includes tariffs and import quotas. The Customs Arrangement and the WTO extension will come into effect at the end of the Transition Period on 1st January 2021.

In addition to securing the Customs Arrangement and WTO extension, there was a need for legislative intervention in preparation for the UK's withdrawal and the resulting effect upon Jersey's international obligations. Certain primary legislation was to be repealed, but it was also necessary to give effect in Jersey law to the Withdrawal Agreement that would be eventually reached between the UK and EU. It was also considered prudent to provide Regulation-making and Order-making powers to allow Jersey legislation to be amended swiftly to remedy any deficiencies that would arise either from the Transition Period or from the change in obligations upon the UK's withdrawal from the EU itself. The European Union (Repeal and Amendment) (Jersey) Law 2018 was accordingly enacted, amending the European Union Legislation (Implementation) (Jersey) Law 2014 to provide these powers to allow Jersey's statute book to function under the Transition Period and beyond.

Jersey's position and preparation is in accordance with Article 18(2)(c) of the States of Jersey Law 2005, the Common Policy for External Relations agreed by the Council of Ministers, presented as report R.140/2012 on 23rd November 2012, and amended as R.86/2015 on 27th July 2015. The Common Policy contains six principles for the conduct of Jersey's External Relations, the first of which is to: "Protect Jersey's unique constitution, and its domestic and fiscal autonomy".

UK exit and Withdrawal Agreement

On 24th January 2020, the UK and the EU signed a Withdrawal Agreement, dealing with the key matters of money (the 'divorce bill'), the rights of UK and EU citizens residing in the EU and UK respectively, border arrangements, and dispute resolution. Aspects of the Withdrawal Agreement have been relevant in Jersey, notably on citizens' rights.

For the UK, the Withdrawal Agreement was ratified through the EU (Withdrawal) Act, which came into force on 31st January 2020 after passing through the UK Parliament and receiving Royal Assent. With the Act, the UK's formal exit from the EU was completed.

The Withdrawal Agreement also provided for an 11-month Transition Period, the objective of which was to allow both sides time to negotiate a Comprehensive Free Trade Agreement (CFTA), and thereby hopefully reduce potential negative economic impacts and uncertainty arising from a more sudden departure from the EU Customs Union and single market. This period of time would determine the ambition, basis and content of their future relationship. The Transition Period also applied to Jersey's relationship with the EU, essentially providing a temporary continuation of the existing relationship through Protocol 3.

OVERVIEW OF UK-EU NEGOTIATIONS

Summary of the UK's and EU's opening negotiation position

The broad parameters for the UK-EU future relationship were set out in the UK-EU Political Declaration of 17th October 2019. As that Declaration makes clear, a CFTA was to be at the core of the future relationship, with both Parties agreeing to the aim of concluding a 'zero tariffs, zero quotas' CFTA.

The Withdrawal Agreement committed both sides to publish mandates setting out their policy objectives for the CFTA within a month of the UK's legal exit from the EU, on the 31st January 2020. The EU published its mandate on 25th February 2020, with the UK following on 27th February 2020. Clear positions were set out on a range of topics and indicated that both Parties would enter the negotiations on a future relationship from markedly different starting points.

The UK's publicised approach was based on "friendly cooperation between sovereign equals", that Parties will respect each other's legal autonomy and the right to manage their respective borders, immigration policy and taxes. The offer presented the UK's unwavering view, sustained throughout the negotiations, that the UK will control its own laws, political life and rules. In respect of legal format, the UK proposed that the CFTA would cover substantially all trade, to sit alongside separate agreements on fisheries; law enforcement and judicial cooperation; and technical areas covering aviation, energy and civil nuclear cooperation. The approach, in its entirety, was to set the UK's new footing as an independent sovereign trading nation.

The EU's envisaged partnership was instead a single Agreement comprising of three main components: general arrangements relating to governance; economic arrangements inclusive of 'Level Playing Field' guarantees; and security arrangements including provisions on judicial cooperation. The partnership for the EU was premised on enhancing the rules-based international order and on ensuring high standards of protection of workers', consumers' rights and the environment.

Considering both Parties opening positions, the key areas of difference identified were to be Open and Fair Competition (also known as Level Playing Field); fisheries (including quotas and access to waters); and the role of the European Court of Justice.

UK-EU Key negotiation events and dates

Throughout 2020, there have been nine formal rounds of negotiations since the post-Withdrawal discussions began in March, with meetings of the Chief Negotiators and specialised sessions in between these rounds. In the "End Game" of the negotiations, both parties agreed to intensify discussions so that talks have taken place concurrently on a daily basis, concentrating on each party's legal texts.

The Withdrawal Agreement had allowed for a two-year extension to give more time for these negotiations if necessary. However, despite the COVID-19 pandemic, the UK Government was strident in its opposition to such a proposal, rejecting extension at the 15th June high-level summit between the Prime Minister of the UK and the President of the EU Commission.

The time constraints on both sides for negotiating this deal controlled the parameters of what would be negotiable before the end of the Transition Period. As the negotiations progressed, it became clear that the new UK-EU relationship would come to be "quite

light” by way of scope i.e. that it would be a goods-based, tariff free arrangement but with new non-tariff barriers, and relatively little in the way of market access for the UK’s services exports. The emphasis moved away from a CFTA to a text which is based far more on high-level principles and cooperation. Throughout the negotiations, the EU Commission also made it clear that no member state can benefit from leaving the EU trading bloc, including the UK, and, by implication, Jersey.

Key UK-EU issues within the negotiation

As per any successful negotiation, the outcome is that of compromise. Both the UK and EU’s negotiating teams have seen a departure from their original objectives, to reach a final deal acceptable to each of their jurisdictions. This process has been accompanied by discussions on the outstanding political issues, including the most controversial ones, such as Open and Fair Competition, Governance, Fisheries, Access to waters, Energy and goods/services provisions.

During the “End Game” of the negotiations, difficult concessions were granted on either side, including the UK offering limited access for 5 and a half years to their 6-12 mile territorial waters.

OVERVIEW OF JERSEY’S NEGOTIATION POSITION

Summary of Jersey’s opening negotiating position

Jersey’s participation in the UK’s future relationship with the EU was founded on a set of objectives, developed at the start of the ‘Brexit’ process in 2016 and further expanded in the previous Brexit reports (R.155/2020 and R.64/2020). These looked at targeted representation, maintaining frictionless trade with the UK and their trading partners, and adopting an agile and flexible approach based upon the course of negotiations. These objectives helped the formulation of four key principles, agreed by Ministers at the beginning of the Transition Period, which guided the Government of Jersey’s analysis and input into the UK’s negotiations with the EU. The latest Brexit Report (R.64/2020) presented to the States Assembly in June 2020, set out how the Government of Jersey engaged these principles throughout the negotiations:

- 1) promote Jersey’s existing constitutional autonomy, unique economic interests and cultural heritage;
- 2) maintain and strengthen Jersey’s reputation as a well-administered jurisdiction that is responsible for its own prosperity;
- 3) uphold the long-established rights and privileges of Jersey residents and businesses that enable them to trade and remain agile, innovative and competitive as Jersey seeks to grow and diversify its economy; and
- 4) maintain or increase the ability of the States Assembly and Government of Jersey to make decisions expeditiously in areas of domestic policy, including where close collaboration with the UK Government and EU is required.

The Government of Jersey’s key principles – as set out – were to protect the continuation of our trade flows and market access both to safeguard our current trading and cultural relationships, and to provide stability for businesses and citizens. To this end the Government sought to ensure that goods imported and exported to Jersey can do so as freely and as cost effectively as possible avoiding any unwanted tariffs, and other barriers and checks. To support our main export market of fisheries, the Government

pursued measures to allow for responsible and sustainable management of our marine resources (to conserve the marine environment) and that Jersey retains ultimate control over its own waters and stock management.

Jersey Key negotiation events and dates

In constitutional terms, the UK is of course responsible for Jersey's formal international relations, and has therefore negotiated, on Jersey's behalf, the terms of the Island's participation (if agreed) in the TECA. Wherever possible, Jersey has sought to work in concert with Guernsey and the Isle of Man in order to advance shared interests, recognising that this approach is most likely to produce a beneficial response from both the UK and the EU.

Jersey's input has taken place at both Ministerial and Official levels. On the Ministerial side, Jersey Ministers have engaged frequently with UK counterparts through both correspondence and meetings, including regular discussions with the Paymaster General in the Cabinet Office (and her predecessors in the Department for Exiting the European Union) and the Lord Chancellor. Equally, there have been frequent (fortnightly and later weekly) meetings between Jersey and Cabinet Office (and before that DExEU) officials, as well as further meetings with other key UK Government departments, including DEFRA, BEIS, DfT and HMT. During the final stages of the negotiations, Taskforce Europe provided near-daily briefings – by encrypted phone call – which allowed Jersey officials to keep Ministers frequently updated on the latest developments, and seek Ministerial steers as required.

In parallel with the negotiations, the Government of Jersey has acted to protect Jersey's interests, whatever the eventual outcome of UK-EU talks, by putting in place two important elements of trade architecture.

Firstly, on 26th November 2018, Jersey signed a Customs Arrangement with the UK. Alongside parallel arrangements for Guernsey and the Isle of Man, this ensures that a customs union between the UK and the Crown Dependencies will come into effect from the end of the Transition Period. The customs union guarantees that tariff-free trade between Jersey, the other Crown Dependencies and the UK will continue following the Transition Period, regardless of arrangements (if any) between the UK and the EU, and regardless of Jersey's participation (or not) in such arrangements.

Secondly, on 18th October 2019, the UK wrote to the World Trade Organisation on Jersey's behalf, providing formal notification that the UK's membership would extend to Jersey and the other Crown Dependencies from the end of the Transition Period. This will ensure a minimum baseline guarantee for Jersey's ability to trade with third countries, beyond the UK. It applies regardless of the terms of any Free Trade Agreements between the UK and third countries, and regardless of Jersey's participation (or not) in such agreements.

Key Jersey issues within the negotiation

By the 20th May 2020, both the EU and UK's opening legal texts had been published, with the UK's position over territorial extent (and thereby Jersey's and the other Crown Dependencies' level of involvement) being reserved until there is agreement on the final text. Conversely, the EU's initial opening position was for territorial scope to be established early on and for the Crown Dependencies to be out of scope for the entire

agreement, albeit with inclusion of the waters adjacent to the Crown Dependencies by derogation from Article FINPROV.1(3) (b) defined as ‘the United Kingdom waters’.

Disputes over Crown Dependencies’ waters set the tone for the subsequent negotiations. On 17th July 2020, the European Commission offered the Crown Dependencies participation in Chapters of the TECA relating to goods, in return for continued access by EU vessels (French) to Jersey waters. In terms of goods, under the proposal, Jersey’s participation in the TECA was confirmed to be free from any onerous regulatory and ‘Level Playing Field’ commitments imposed by the EU on the UK. On aspects of the offer relating to access to waters, Ministers endorsed joint Crown Dependency high-level principles on fisheries access, along with Jersey’s individual detailed return setting out our specific position on fisheries access, to be presented to the EU.

For the rest of the Transition Period intense negotiations on the complexities of fisheries access and regulatory easements continued, where the EU has remained resolute on its position and has rejected Jersey’s request for regulatory easements on fish landings and fish exports. Consequently, Jersey’s offer focused on ensuring sole control of management and licensing arrangements within its territorial waters, which currently operates under joint management arrangements by virtue of the Granville Bay Agreement. Joint management would also cease under the offer, and Jersey would be responsible for issuing access permits to French vessels wishing to fish in Jersey’s 3nm to 12nm zone.

The EU subsequently proposed legal text in respect of fisheries which took a quite different position. In particular: (i) the EU sought ongoing access to Jersey waters in line with the Granville Bay Agreement, i.e. within the 3-12nm zone and historic access rights; and (ii) the EU proposed a one-sided suspension provision, which would allow the EU to unilaterally suspend tariff-free access for Jersey goods into the EU market, at 60 days’ notice, in response to any perceived violation on fisheries provisions. Jersey strongly resisted both points.

On 17th November 2020, new developments in the negotiations requested Jersey’s inclusion in the VAT Protocol. This Protocol has two elements (i) administrative cooperation on VAT and (ii) ‘Assistance in Collection’ (AIC) of tax owed to Governments of EU Member States. Alongside this, on 20 November 2020, the UK and the EU introduced a joint declaration, which made reference also to the Crown Dependencies and British Overseas Territories, committing to certain actions on ‘countering harmful tax regimes’. Both developments were deemed by Ministers as constitutionally and politically inappropriate, in addition to having limited relevance to Jersey – as a jurisdiction without VAT, and a tax regime independently assessed by the OECD and EU as fully cooperative.

On 11th December 2020, TFE confirmed the EU accepted that Jersey should remain outside the VAT Protocol, though the UK itself would be bound by it. As a condition of inclusion within the Customs chapter of the TECA, the EU accepted the joint Channel Islands offer to collaborate to establish future AIC provisions under a separate arrangement with the EU. At the time of signing the TECA, the UK and EU will publish a declaration containing this wording of the commitment, should the States Assembly consent to participate in the deal as a whole.

On 24th December 2020, the EU finally dropped their demand, within the fisheries provisions, which would have allowed suspension (at 60 days’ notice) of Jersey’s tariff-

free access to the EU market in response to any perceived breach of terms on fisheries access.

The UK Government (UKG) has determined that the UK's ratification of the TECA must be concluded by the end of the Transition Period on 31st December 2020. This presents timing challenges for Jersey's consent process as the final legal text of the TECA is not yet available. UKG have provided extracts of the final legal text, dealing with issues specifically relevant to Jersey. This builds upon the substantial information already shared in relation to goods, which is detailed further in this report and also includes the final commitments that have been agreed between the Parties specifically relating to the Channel Islands on fishing and dispute settlement arrangements which have been the outstanding issues for resolution.

In recognition of the challenges presented by the tax declarations and to reiterate the constitutional reality of Jersey's domestic and fiscal autonomy, the Lord Chancellor has written to the Chief Minister to provide assurances on these points. The Lord Chancellor's letter will be presented as an addendum to this proposition.

THE TRADE AND ECONOMIC COOPERATION AGREEMENT

The Trade & Economic Cooperation Agreement (TECA) is the legally binding agreement which will set out the basis for the UK and EU's future trading relationship. For the UK and EU this covers in summary arrangements on Goods, Services, and Fisheries along with associated governance and market protection measures. It is an agreement which, if ratified by both Parties, will ensure an orderly exit for the UK from the EU.

How Jersey is included.

If approved, the TECA would be applicable to Jersey and the other Crown Dependencies to a more limited extent than to the UK. If Jersey participates in the TECA then it will govern the relationship between Jersey and the EU principally in relation to:

- trade in goods, including customs tariff and procedures, as well as certain recognition of regulatory standards in relation to agricultural and manufactured goods^[1]; and,
- the exploitation of maritime resources in Jersey's territorial waters.

In summary, the effect of the territorial extent clause in the TECA is to apply the following parts of Agreement on a chapter-by-chapter basis to Jersey:

All of the Chapters in Title IV (Goods), namely:

- National treatment and market access
- [Rules of Origin](#)
- [Sanitary and Phytosanitary Measures](#)
- [Technical barriers to trade](#)
- [Customs and trade facilitation](#)
- Fisheries Arrangements
- Annexes to the Chapters 3 and 4 (including on: Chemicals, Medicinal Products, Motor Vehicles and Equipment and Parts thereof; Trade in Wine; and Organic Products; and geographical indications)
- Provision for future extension of; An Annex to Chapter 5 on Authorised Economic Operators
- A Protocol to Chapter 5 on Mutual Administrative Assistance in Customs Matters (the "PMAA").

The following portions of the TECA are relevant, in some respects, to the construction of the obligations in the Title IV or to the relationship on fisheries, but do not contain specific additional obligations for the Crown Dependencies

- Part One, Common Provisions, including general provisions, basis for cooperation and principles of interpretation and definitions;
- Part Five on Institutional and Horizontal Provisions, such as the institutional framework, dispute settlement, compliance, common procedural provisions and fulfilment of obligations and safeguard measures, which are all "cross-cutting" and therefore relevant to trade in goods;

There are two separate, but related, aspects to the deal on tax, which are formally outside the TECA but have been negotiated in parallel and are part of the 'price' of participation.

- Jersey (and Guernsey) have been asked to commit to 'endeavour to establish arrangements to cooperate with the EU on the recovery of claims related to VAT, customs duties and excise duties within a reasonable time frame'. This

commitment will be outlined in one of a number of self-standing Declarations signed by the UK and EU at the time of concluding the TECA if Jersey consents to participate;

- In a separate, non-legally-binding Political Declaration on Harmful Tax Regimes (HTR), “the UK and the EU have agreed that they should encourage, within the framework of their constitutional arrangements, the application of these principles in the territories for which they have special responsibilities or taxation prerogatives.” This political declaration will be made irrespective of Jersey’s decision to participate.

It is important to note that extension of the TECA would not affect Jersey’s existing third country relationships with the EU in relation to financial and other services, nor in relation to data protection. Relationships with the EU on these matters will continue to be based on third country adequacy or equivalence arrangements that already permit Jersey businesses to access the EU services market.

Content Analysis of Jersey’s inclusion

Goods

By providing for a relationship in relation to trade in goods, the TECA is comparable in scope to Protocol 3 to the UK Act of Accession (“Protocol 3”), which up until now has contained the terms of the Crown Dependencies relationship with the EU. This aspect of the TECA reflects the Government’s objective of maintaining, to the extent possible, continuity in Jersey’s trading relations. However, there are some important differences between Title IV (Goods, TECA) and Protocol 3:

The rights and obligations set out in the Title IV apply to customs and require a degree of co-operation in relation the setting and monitoring of regulatory standards for all types of manufactured and agricultural goods. The scope of Title IV is therefore broader than Protocol 3 which, as supplemented by EU Regulation 706/73^[2], only applied expressly to customs and trade in agricultural or derived products.

Under Protocol 3, EU law in relation to customs and regulatory standards in agricultural products was directly applicable to Jersey and enforceable in Jersey’s courts. Conversely, the TECA obligations will need to be implemented separately in each jurisdiction to which its provisions will apply. To some extent, the TECA obligations will need to be reflected in Jersey’s domestic legislation, though the extent to which changes in product regulation will be required will need to be discussed further with the UK and EU.

The TECA contains its own mechanisms for the monitoring and development of trade policy and practices between the UK and EU, through a series of Trade Committees. These will be important for determining the scope and application of the Agreement into the future. The TECA also contains its own enforcement mechanisms. Jersey will be dependent on the UK to protect its interests in the Committees and in the event of any enforcement proceedings taking place as these are only accessible by the sovereign state parties to the TECA (i.e. the EU and the UK).

By protecting continuity of access to the EU goods market, the TECA may be said to achieve the government’s continuity objective. However, the institutional and procedural provisions of TECA do raise issues for the CDs as to how they work with

the UK authorities (principally Whitehall departments HMRC, DEFRA, BEIS and the Department for International Trade). The territorial application clause in the TECA recognises that the CDs have separate competent authorities that are responsible for implementing customs or regulatory controls in the respective Islands. However, the UK will ultimately be responsible under the TECA for developing trade policy with the EU using the mechanisms in the TECA, or for defending or pursuing any enforcement action. It will also act with respect to the CDs as the contact point or “post box” for with respect to international requests and communications.

In the absence of direct access to these mechanisms, Jersey’s participation in the TECA does entail a degree of risk to Jersey’s autonomy and ability to develop its own international identity. To mitigate these risks, it will be essential to ensure that, to the greatest extent possible, agreements are in place with the UK to ensure it will protect Jersey’s interests through these mechanisms and facilitate Jersey’s participation in them. The Government of Jersey has sought commitments from the UK that its constitutional position will be respected in the operation of the TECA by the UK. These are reflected in the letter from the Lord Chancellor and which sets out that the UK intends to preserve the constitutional position within the context of this Agreement.

It is important to note that, in respect of Chapter 5 (Customs and Trade Facilitation) and its related Protocols and Annexes, Jersey (like Guernsey) will not participate in the Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties (‘the VAT Protocol’). Nor will Jersey participate in the Annex on Authorised Economic Operators (‘the AEO Annex’). , [which the UK Government will sign on Jersey and Guernsey’s behalf, with their consent, with further assurances provided the Lord Chancellor’s letter at Annex]. Discussions between Jersey and the UK and Jersey and the EU as to the nature and progression of any such arrangements. These discussions will take place in the New Year.

The AEO Annex may be extended to the Bailiwick later, with its consent, if appropriate but participation at present is not desirable owing to the lack of any AEOs in Jersey.

The UK-CDs customs union, established by the three Arrangements concluded in 2018, recognises that, customs law, regulations and practices should correspond in several respects throughout the customs union. However, each jurisdiction maintains autonomous control of its customs operations and legislation and the correspondence required is as to the outcome rather than the form of legislation. Each jurisdiction agrees to implement a common external tariff to that determined by the UK (paragraph 8(2), which will now include applying the preferential tariff regime applied to goods coming from the EU.

Adoption of the TECA will, drive changes in UK Customs law and practice that will need to be replicated in Jersey to comply with its obligations under the Customs Arrangement. As the Crown Dependencies will constitute an external customs border of the UK with the EU, the extent to which customs procedures or other checks (e.g. phytosanitary controls) are carried out in ports or airports, on goods arriving from France or Ireland, will become important to the operation of the UK-CDs customs union as a whole. The implementation of the TECA will therefore inevitably have resource implications in order to adapt to and appropriately check goods arriving from the EU or elsewhere – for example as regards origin, customs valuation and compliance with relevant industrial, sanitary or phytosanitary standards. Discussions remain on-going

with the UK on the final form and timing of new Jersey border checks for the movement of goods, particularly live animals and animal products, both north and east.

Fisheries

There is a special heading for Jersey and the other Crown Dependencies under the TECA, and their waters are defined specifically in this regard. The relevant provisions deal with fisheries management; authorisations compliance and enforcement; access to waters; remedial measures and disputes; data sharing; the Specialised Committee; termination and the effect on prior agreements.

Fisheries management:

With respect to fisheries management, the text provides to the effect that Jersey (and the other Crown Dependencies) will decide on what measures it applies to its territorial waters in pursuit of the broad objectives and principles under TECA on fish, which focus on sustainability. Thus, management measures are a matter for Jersey but the Island must also ensure that those measures follow objective, scientific advice and are non-discriminatory with respect to their effect on vessels from Jersey and those from the European Union. It is also required that any measures that are likely to affect the vessels of the other Party (thus Jersey or the European Union) are notified to that Party before being applied, and in good time so as to allow them provide comments or seek clarification. Jersey would be working with the UK to ensure that arrangements are in place to best communicate relevant measures.

Authorisations, compliance and enforcement:

In this regard, the text provides to the effect that where vessels from Jersey or the European Union have access to fish in respective waters, each side must communicate in sufficient time its list of those vessels for which it seeks to obtain authorisations or licences to fish, with the other side issuing those authorisations or licences. Although the UK is the sovereign state Party to TECA, it is a matter for Jersey to issue any authorisations or licences to European Union vessels wishing to fish in its waters.

It is important to note that both sides must ensure that they take the necessary measures to ensure compliance by their respective vessels with the rules applicable in the other Party's waters, including with respect to authorisation or licence conditions.

Access to waters:

With regard to the extent of the access that Jersey vessels may have in European Union waters and European Union vessels in Jersey waters, access granted under TECA must reflect the actual extent and nature of fishing activity that was carried out during the period beginning on 1st February 2017 and ending on 31st January 2020 by qualifying vessels, and under any treaty arrangements that existed on 31st January 2020. This provides a defined window of time through which access rights may be assessed and a qualifying vessel from either side must be able to show more than 10 days of activity in those waters in any of the three twelve month periods ending on 31st January on, or between, 1st February 2017 and 31st January 2020.

In order to ensure that Jersey and the other Crown Dependencies, as well as the European Union, are content with the operation of the fishing relationship, there is also provision which allows for the UK or the European Union to request to the Partnership Council, within 90 days of entry into force, that they terminate the fisheries provisions for the relevant Crown Dependency. Such termination would take place following thirty

days from the decision of the Partnership Council and would have the effect of not only removing Jersey from the fisheries provisions but also from the applicable Goods chapters of TECA. Thus, the relationships Jersey has under the Agreement for goods and fish are connected and subsist only where both are in operation. It should also be noted that the Partnership Council has powers to decide to amend the articles on access, notification periods for importation or landing of fisheries products, as well as connected articles, and Jersey would look to the UK to represent its interests where either Jersey wished an amendment to be pursued, or the European Union were suggesting changes.

Notification periods on the importation and direct landing of fisheries products:

Where Jersey vessels wish to land any species of marine fish, molluscs and crustaceans caught within their territorial waters, or the waters of the European Union, into the European Union, the relevant vessel must ensure that it gives between three and five hours prior notification before landing such fresh products into the Union's territory. Further, it is required that vessels must give between one and three hours prior notification of the validated catch certificate for the direct movement of consignments of fisheries products by sea before their estimated time of arrival in European Union territory.

Remedial measures and dispute resolution:

The fisheries Heading which affects Jersey and the other Crown Dependencies, also has its own remedial measures and dispute resolution provisions. Thus, in relation to an alleged failure by either side to comply with access to waters provisions, notification periods or any other connected Articles, the complaining Party must take a gravity-based approach to remedial action. It may after giving notice (i) suspend, in whole or in part, access to its waters, or (ii) suspend, in whole or in part, the preferential tariff treatment granted to fisheries products or (iii) suspend, in whole or in part, the preferential tariff treatment for all goods. The text makes clear that any measures taken must be proportionate to the alleged failure and its economic and societal impacts and may only take earliest effect seven days after the complaining Party has given the respondent Party notice of the proposed suspension. It is also provided that both sides should consult within the Specialised Committee with a view to reaching a mutually agreeable solution and, again, Jersey will ensure that suitable arrangements with the UK are in place to represent its interests and position in any such consultations.

The text further sets out the process for a complaining Party to follow whereby within fourteen days of the notification being sent, the complaining Party may request the establishment of an arbitration tribunal. Accordingly, a suspension shall cease to apply when either the complaining Party is satisfied that the other is complying with its relevant obligations, or the arbitration tribunal has decided that no failure has occurred. There is also provision such that where there is a finding against the complaining Party procedurally, the other may make further remedial requests of the arbitration tribunal.

Data sharing:

With respect to data sharing, it is provided that the Parties shall share information that is necessary to support the implementation of the Heading in accordance with each Party's laws. The laws of the Bailiwick of Jersey are included by way of relevant TECA definitions and interpretation provisions.

Specialised Committee:

There is provision in the Agreement for a Specialised Committee on Fisheries which may consider the application and implementation articles on access to waters and notification periods, and may adopt measures, including decisions and recommendations. Again, Jersey will work to ensure that the UK will properly represent its interests in this forum.

Termination:

By way of termination provisions, goods and fish are linked such that where one relationship falls away, the other likewise comes to an end. The articles on fisheries which apply to Jersey may be terminated by either side giving three year's written notice of termination to the other, or, if earlier, the date on which the general geographical application article (which draws Jersey into the customs provisions) of the Agreement cease to be in force. Termination may be given in respect one or more Crown Dependency thus preserving the position of the others.

Other Agreements:

The fisheries Heading provides that it shall entirely supersede and replace any existing agreements or arrangements with respect to fishing by vessels of the European Union in Jersey's territorial sea and to fishing by Jersey vessels in the territorial sea adjacent to a Member State. However, where Jersey opts out from the TECA using the 90-clause, those prior agreements will retain their effect.

Economic Analysis of Jersey's inclusion

Jersey's proposed involvement in the TECA, will be determined by the economic impact on Jersey's imports and exports.

Imports

Imports would be largely unaffected by a decision by the States Assembly on whether to accept or reject the UK-EU TECA. This is because almost all imports of goods into Jersey come via the UK, and the Customs Union between the UK and Jersey protecting this free flow of trade is not directly affected by the decision on the UK-EU TECA. However, it is possible that Jersey's non-inclusion in the Agreement would put stress on that arrangement.

Exports

Most exports from Jersey are financial services. Should the States Assembly accept the deal, Jersey's exports would be only affected through changes in exchange rates and, for the export of goods to the EU, the imposition of NTMs.

Should the States Assembly choose to reject the deal, the agricultural and fishing exports from Jersey going to EU destinations would still be affected by changes in exchange rates and NTMs, but additionally be affected by the imposition of tariffs. However, the overall economic impact for Jersey of changes in trade in goods resulting from agreement or rejection of a TECA is likely to be small compared to any changes in trade in financial services arising from changes in the relationship between the UK, Jersey and the EU on services. By way of illustration, our best estimate of GVA in 2019 is £3m for fishing, £50m for manufacturing and £1966m for financial services. Therefore, any longer-term economic impacts on services arising from the UK and Jersey's changing trade relationship with the EU might easily outweigh any impacts arising from changes to trade in goods.

There are four sectors of the Jersey economy that have significant exports: financial services (1), tourism (1), agriculture (2) and fisheries (3).

1. The trade terms for financial services and tourism will remain largely unchanged should the States Assembly accept the deal, except for changes in exchange rates.

However, should the States Assembly reject the deal, it should be noted that Jersey has experienced increasing pressure from the EU in recent years, particularly in areas such as international taxation policy and financial services. Sitting completely outside a trading framework with the EU would leave Jersey more vulnerable to such threats.

The EU, as well as individual Member States (notably France), have real and tangible mechanisms to make life difficult for Jersey if they view Jersey as uncooperative, including 'blacklisting' our jurisdiction.

2. In terms of the export of agricultural goods, given that the vast majority go to the UK, the sector will remain largely unaffected as there will be a Customs Union with the UK whether the TECA is accepted or not.

That said, while Jersey has protected its relationship and free flow of goods with the UK through the Customs Union, it is possible that a rejection of the deal would put strain on this arrangement.

If Jersey faced WTO tariffs on the import of goods from the UK then this alone could, all else equal, raise Jersey inflation by over 1%; non-tariff barriers could add 0.3%+.

Estimates suggest that a 1.3% increase in the price of goods and services liable for GST would cost over £20m per annum in perpetuity – the increase in the price level would be permanent. By way of illustration a 1.3% increase in prices could cost the average Jersey household an additional £11 a week in their typical expenditure.

3. Addressing the export of fisheries, it is estimated that about 80% of Jersey catch is exported to France. Fisheries therefore could be materially affected through the introduction of WTO tariffs following a decision by the States Assembly to reject the TECA. This would further impact the trade in fish products when exporting to the EU, which will be already affected by non-tariff measures (e.g. regulation, customs delays) as a result of the UK leaving the EU. Fisheries and aquaculture directly support around 140 jobs, with merchants and industries such as engineering and maintenance benefiting indirectly. In terms of economic importance, shellfish dominate Jersey's commercial fisheries, which will be the area most affected by the imposition of non-tariff barriers.

Tariffs

External economic consultants Oxera have estimated that trading under WTO tariffs Jersey would face an average tariff of roughly 9% on its £5m of fishing exports to the EU.

In the 'best-case scenario', where economists considers the effect on quantity demanded should there be a percentage change in price due to tariffs, the imposition of tariffs and a subsequent fall of 9% in the value of EU exports of c. £400k would mean a fall in economic output of c. £130k for the economic output (gross value added) of fisheries and agriculture.

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Estimates from the UK suggest that the output (GVA) multiplier for 'Fish and other fishing products; aquaculture products; support services to fishing' is 2.4, so that for every £1 increase or decrease in fishing GVA, the impact on GVA for the whole economy would be £2.40.

Hence the inclusion of not only the direct impacts on fishing, but also the wider impacts across the whole economy, that totals c. £310k GVA. It should be noted that this could be treated as a short-run impact that would diminish over time as the economy adjusts, and it might be expected that any labour lost in fishing to eventually be re-employed elsewhere in the economy.

The next reasonable 'worst-case scenario' is where exporters must bear the cost of the tariffs through receiving roughly a 9% lower price for their catch. The economic impact of this would be much greater because for the same quantity of exports, whilst costs would be unchanged, value-added that is split between labour and profits would be lower.

Rough calculations suggest that the impact on GVA might be double that in the case where tariffs are reflected in higher consumer prices, but even at c. £600k the economic impact is small relative to other sectors in the economy.

In the absolute 'worst-case scenario', it is theoretically possible that, EU fishing exports of £5m could be reduced to zero. Based on the formula above, the direct GVA impact could be estimated at £1.6m because there are costs of 70% to deliver those sales of £5m. There are then indirect effects in industries supplying those costs etc. to fishing and taking those into account (using UK data for a 'multiplier') the GVA impact direct and indirect could be £3.8m.

Non-tariff Measures

Non-tariff measures (NTMs) will apply to Jersey when exporting goods to the EU as a result of the UK's decision to leave the EU. Whether or not the States Assembly accept or reject the UK-EU TECA, Jersey will now be impacted by these NTMs, explored below.

NTMs are generally defined as policy measures other than ordinary customs tariffs that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both. The World Trade Organisation identifies various NTMs to trade, including import licensing, pre-shipment inspections, rules of origin, custom delayers, and other mechanisms that prevent or restrict trade.

The following measures explain the commonly used methods of introducing NTMs:

1. Regulations: rules which dictate how an imported product can be manufactured, handled, or advertised in a country
2. Rules of Origin: rules which require proof of which country goods were produced in. They are the criteria used to define where a product was made and are important for implementing other trade policy measures, including trade preferences.

3. Quotas: rules that limit the amount of a certain product that can be sold in a market.

Non-tariff measures can be more restrictive for trade than actual tariffs. During the second half of the 20th century, multilateral trade rounds dramatically reduced tariffs. In 1949, the US charged an average tariff of 33.9%. Today it is 3.5%. The EU's is 5.3%, while China's is 9.5%. Except for a few sensitive products where tariffs remain high, it is non-tariff measures that are the real impediment to international trade today. A 2009 study of the trade policies of 91 countries found that non-tariff measures were equivalent to a 12% tariff barrier across the sample.

Directly quantifiable checks include checks such as country of origin certificates, export health certificates, the cost of official controls, organic certification, sampling and lab testing etc.; indirectly quantifiable checks include training time, administrative processing time, labelling costs, import licensing, haulage delays, value deterioration and warehouse storage, and; non quantifiable checks include issues such as development of IT systems, cost of future UK/EU divergence, or exceptional delays due to weather etc.

When analysing NTMs, it is also necessary to consider physical check and sampling rates. The incidence of checks and requirements will be dependent on the outcome of the negotiations between the UK and the EU. Physical check rates go beyond a basic visual inspection and involve checks on packaging, means of transport, labelling and temperature to ensure compliance with the regulations. Sampling or laboratory testing check rates can apply in addition to the checks above.

Key areas of economic concern for Jersey will include:

- Value deterioration, for example if boat sailings are delayed due to weather or slow processing at borders;
- Administration of Catch Certification, especially in the case of mixed loads;
- SPS/NTM will prevent export altogether in some circumstances, for example where there is no EU export Health Certificate;
- Designation of ports and BCPs. Jersey will not be able to export commodities into the EU unless the destination port is designated to receive the item in question, either through a BCP (for export) or an Illegal, Unreported, Unregulated Fishing (IUU) or North Eastern Atlantic Fisheries Convention (NEAFC) designated port (for direct landing). The designation of these ports is subject to negotiation between the UK and EU. It is hoped that ports of interest to Jersey will have the appropriate designation but at this time it remains undetermined. In this situation mitigation would be more significant and it would be vitally important to support industry to find alternative markets; and
- Prior Notification requirements, for example currently the NEAFC requirement for prior notification is 72 hours for direct landing.

With cash management at the forefront of any fisheries business heavily dependent upon an export market and logistical means of supply, additional cost is likely to prove detrimental to local fishermen given the pre-existing risks of weather, declining stocks and lack of sector cohesion already faced by businesses.

At this stage it is challenging to quantify costs and impacts associated with increased regulation and delays at ports of entry, however it is reasonable to assume that with the majority of Jersey's catch exported off island any such delays to cash payments

from markets will be difficult for local fishermen to manage. However regardless of the outcome of our participation Ministers will continue to consider ways in which the Government can support the industry.

CONCLUSION ON JERSEY'S PARTICIPATION

As is the constitutional convention for all international treaties, the TECA can only be extended to include Jersey if the Island provides its express consent. The recommendation put to the States Assembly through this proposition is therefore whether or not to accept the deal on offer under the UK-EU TECA. This is a binary decision, with no opportunity to change the text agreed between the UK and the EU at this stage.

This report sets out the primary considerations that Members may wish to use as a basis for their decision, but to assist further below we set out the two sets of objectives that Ministers have drawn on throughout the entire Brexit process and the States Members have been briefed on.

Firstly; the objectives set by the Council of Ministers back in 2016 on the result of the UK referendum. These objectives aimed to aid the entire Brexit Process and the decisions making that would lie ahead.

- To continue the fundamentals of our existing relationship with the United Kingdom
This includes membership of the Common Travel Area; a Common Customs Territory; freedom of movement of capital; and external trade based on tariffs in common with the UK.
- To continue the benefits of our relationship with the EU (as under Protocol 3)
This includes access to EU goods markets on terms no less favourable than the UK; access to EU markets for financial services through meeting requirements of equivalence, mutual recognition or regimes for 'third countries'; and securing a no less favourable deal on movement of persons in the EU for British nationals resident in Jersey as for British nationals generally.
- To ensure Jersey has the right agreements and international relationships to benefit from global opportunities
This includes strengthened relationships with non-EU global markets (in particular Africa, Asia and the Middle East); an expanded network of international agreements; and entrustment to negotiate bilateral investment treaties between Jersey and key trading partners.
- To mobilise the Government to:
ensure effective engagement with the UK Government, States Members and public; manage a legislative programme to ensure the uninterrupted functioning of relevant law in Jersey related to EU legislation; ensure Jersey will still control access to its housing and labour markets; and work with the governments of Guernsey and the Isle of Man to maximise influence on the UK's Brexit negotiations.

Secondly; the objectives set by the Council of Ministers back in January of 2020 that aimed to set the parameters for how the Government should approach the negotiations to ensure Jersey's interest were correctly reflected with any final agreement reached between the UK and EU.

- promote Jersey's existing constitutional autonomy, unique economic interests and cultural heritage;
- maintain and strengthen Jersey's reputation as a well-administered jurisdiction that is responsible for its own prosperity;
- uphold the long-established rights and privileges of Jersey residents and businesses that enable them to trade and remain agile, innovative and competitive as Jersey seeks to grow and diversify its economy; and
- maintain or increase the ability of the States Assembly and Government of Jersey to make decisions expeditiously in areas of domestic policy, including where close collaboration with the UK Government and EU is required.

Based on (i) the information outlined in this report, (ii) Jersey's original objectives, and (iii) taking into account what are believed to be Jersey's best long-term interests, Ministers consider the UK-EU Trade & Economic Agreement (TECA), taken holistically, is within the parameters of our core interests and objectives.

Ministers have always been clear as negotiations have developed that change is inevitable, therefore the crux of the issue at hand is how that change impacts Jersey's key fundamental constitutional and economic interests. This analysis across all areas of the Jersey economy shows that – broadly speaking – the inclusion which is on offer to Jersey as part of the UK-EU TECA, along with the other measures taken by the Jersey Government does indeed meet our fundamental needs, and any associated economic impacts with the UK's exit from the EU would be present regardless of our participation. Accordingly, and taking everything into account, Ministers recommend that – on balance – States Members should agree to Jersey's inclusion within the UK-EU TECA.

Financial and manpower statement

The impact of this proposition is outlined within this report.

