

Extending the United Kingdom's Membership of the World Trade Organization

Sir,

I will take the policy letter as read and will therefore not seek to regurgitate its contents here. Rather I want to focus on the challenges and implications of our being compliant with the World Trade Organization ('WTO'). The States of Deliberation recognised that WTO membership would play an important role in the Brexit process when we set out our high level objectives in June 2016.

The WTO is comprised of series of agreements, not a single agreement. It is also a 'principles based organisation' that sets the rules of trade between its members. It does not describe how the outcomes are achieved or exact rules. It differs to the EU in that regard. The UK is likely to seek to go beyond this, in a way that is consistent with WTO rules, to get better, or more preferential, access to global markets through establishing so-called Free Trade Agreements with other countries. Within this lies opportunities that will help businesses in Guernsey to ensure that they can access the same preferential treatment as the UK if, as and when it develops its own trade policy and a new global framework of trade deals.

It is also worth noting that the WTO is open to "*any state or customs territory having full autonomy in the conduct of its external commercial relations.*" Guernsey could theoretically therefore seek WTO membership in our own right – and this does remain an option. But if we were to make that choice, rather than simply seeking to extend the UK's membership, we would need to negotiate with all other WTO members (including the UK). This would be a complex and time consuming process that would take a number of years.

We have been working through the issues with the UK since 2016. The WTO agreements are numerous and this is a complex task for which there is no set process to follow. The Propositions as set out before Members will give the mandate to the Policy & Resources Committee to conclude this work on behalf of the States.

The Committee have established our assessment of compliance to such a level of detail that we are now ready to put the question to the States. This was to ensure that we have explored the implications of maintaining compliance against the UK's WTO commitments and aspirations when it becomes an independent state in respect of trade.

As part of our general approach to Brexit we been having strategic discussions with the UK through the Department for Exiting the EU and the Minister responsible for engaging with the Crown Dependencies on Brexit matters, Robin Walker MP. Senior officials continue to engage with their UK counterparts on a daily basis.

The extension of the UK's membership of the WTO is matter of ongoing negotiation between the Policy & Resources Committee and the UK Government and it may not be possible to go into some details during debate in order not to prejudice those discussions. We will, of course, update States Members on progress in the negotiations.

Much of the work to prepare and mitigate the impact of Brexit has taken into account the risk of the UK exiting the EU with no deal on 29 March 2019. We have also been taking into account that we might want to ask the UK to extend the membership of the WTO to the Bailiwick. For example, the Customs Arrangement agreed between the Committee for Home Affairs and the UK in November

2018 comes into effect in the event of 'Day 1 No Deal'. It will provide a foundation to ensure we continue to comply with the goods elements of the WTO agreements when Protocol 3 of the UK's Treaty of Accession falls away.

Membership of the WTO will help Bailiwick trade to flow smoothly in the absence of Protocol 3. It will place us on a similar footing to the UK and the Isle of Man when businesses trade in goods, as well as services outside the EU. Being in the WTO is very much part of the norm as an out-facing, liberal, open economy that relies on an export sector for economic growth.

If the States do not agree to ask the UK to extend its membership of the WTO, or if the UK does not agree to this request, these benefits will be harder to access. We cannot provide the assurance to business on how their goods and services will be treated in other markets. The WTO does not in itself provide unrestricted trade. You can still trade without the WTO, you just cannot rely on principles, underpinned by the various agreements, or the dispute resolution mechanism within the WTO to resolve trade issues that may arise.

If the UK does not agree to our request by exit day we can still have the UK's membership extended at a later date. It's simply a timing issue - we would lose the opportunity to do this as Protocol 3 falls away and when the UK starts to trade as an independent member of the WTO for the first time; we would not be precluded from this happening later.

If the UK and the EU agree the Withdrawal Agreement, we all then enter into a phase of the transition period or so called 'implementation period' and the effects and benefits of Protocol 3 will be maintained during that time. We will not need to extend the UK's membership of the WTO but it would be desirable before the implementation or transition period ends. If the UK seeks and the EU agrees to extend the Article 50 period, then the same outcome will apply.

Managing Guernsey's WTO compliance

The UK can be assured that Guernsey would approach membership of the WTO in exactly the same way as we would with any other international obligation.

As Members will know, International Standards is one of the 22 priorities in our Future Guernsey government plan. We, of course, take our international reputation seriously – it is hard fought and easily lost. And we can rightly be proud of how we have discharged our other international commitments.

We will need to ensure on an ongoing basis that our policies and legislation comply with the WTO principles and the UK's 'offer to the world' in its WTO membership. That offer to the world is expressed in so-called WTO Schedules which the UK lodged last year. We will commit to remaining compliant with these WTO obligations and there is no risk whatsoever that the UK's international relations will be damaged by our joining under their membership.

This approach will be supported by the 2008 International Identity Framework document and the work of the House of Commons Justice Select Committee and the House of Lords EU Committee which outlines the UK's duty to represent our interests even when they differ to their own. These principles have been recognised by the UK Prime Minister in each item of correspondence we have had (August 2016, March 2017 and October 2018).

We will need to behave responsibly and act in good faith in the WTO just as we do elsewhere on the international stage. We will of course look to avoid international trade disputes at the WTO's international level and recourse to the dispute resolution mechanisms. We will work with the UK to

create the necessary governance arrangements, underpinned by a Memorandum of Understanding (not dissimilar to that created for the customs arrangement) that recognises our constitutional relationship with the UK and the principles of mutual respect and understanding that go with it. Naturally many compliance issues are based on differing opinions or ways to achieve compliance and where this is the case we must resolve any issues on this basis. The MoU will also provide the basis for discussing issues of common interest and mutual concern. This will not differ from how we approach any other international obligation, be that the European Convention on Human Rights or the 'Vienna Convention' on Road Transport.

Furthermore, it should provide for a forum in which any concerns of WTO members are identified in a timely manner and discussed to enable their prompt resolution, well before any dispute might be lodged at the WTO. This will minimise the reputational, economic and financial risks to both Guernsey and the UK.

If we join the UK's WTO membership, we would look to ensure that we discuss and develop trade policy together in partnership in order that our interests are properly represented. We will need to continue the detailed discussions we are currently having about trade with the UK during Brexit on an ongoing basis, as we manage our participation with the WTO in the future. This will be part and parcel of how we expect to manage our relationships as part of the so-called 'British Family'.

I met with the Rt Hon Dr Liam Fox MP, Secretary of State for International Trade on 7 February to agree the basis of the future relationship in respect of international trade. The subsequent talks are ongoing. I am confident that these conversations will reach a satisfactory conclusion shortly.

I urge Members to support the Propositions today.

Deputy Gavin St. Pier

28th February 2019