

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE**

EXTENDING THE UNITED KINGDOM'S MEMBERSHIP OF THE WORLD TRADE  
ORGANIZATION

The States are asked to decide:-

Whether, after consideration of the Policy Letter dated 15<sup>th</sup> February, 2019, of the Policy & Resources Committee, they are of the opinion:-

1. To agree that the United Kingdom's membership of the World Trade Organization should extend to Guernsey.
2. To agree that the States commit to meet the UK's World Trade Organization obligations, on an ongoing basis, and to resolve any issues or disputes promptly in a manner which is consistent with the States of Guernsey's extant policy with regard to international standards, the 2008 Framework for developing the International Identity of Guernsey agreed with the UK Government and protecting the Bailiwick of Guernsey's international reputation.
3. To delegate authority to the Policy & Resources Committee to negotiate and agree on behalf of the States, with the States of Alderney and the Chief Pleas of Sark, all such matters as may be necessary to enable a request to be forwarded by the Policy & Resources Committee, on behalf of all three Bailiwick authorities, to the UK government for the extension of the United Kingdom's membership of the World Trade Organisation to the Bailiwick.
4. To direct the Policy & Resources Committee (following the conclusion of suitable agreements with the States of Alderney and the Chief Pleas of Sark) to send a formal request to the UK Government for the extension.
5. To agree that suitable legislative and administrative measures are implemented and adopted, including statutory privileges and immunities relating to the World Trade Organization and its officials, in order to ensure that the extension may have effect.

6. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer  
States of Guernsey  
Royal Court House  
St Peter Port

15<sup>th</sup> February 2019

Dear Sir

**1. Executive Summary**

- 1.1. As a result of the United Kingdom (UK)'s withdrawal from the European Union (EU), the Bailiwick of Guernsey (the Bailiwick) has taken steps to ensure that there is a continued flow of trade to, and from, the Bailiwick – in respect of the UK, the EU and globally - to provide certainty for business and to promote stability and economic growth. The Bailiwick has been clear in outlining that an orderly exit by the UK, from the EU, is in the best interests of the Bailiwick. Significant steps have been, and continue, to be made to ensure that the Bailiwick's interests are taken into consideration as part of the UK's withdrawal from the EU.
  
- 1.2. Shortly after the UK's EU Referendum, the Policy & Resources Committee (the Committee) identified that membership of the World Trade Organization (WTO) would play an important part in the future of the UK's and the Bailiwick's trading relationships with other jurisdictions. This strategic objective is an important part of the States of Guernsey's Brexit planning and risk mitigation strategy. It will help to provide certainty for business and ensure that the Bailiwick has access to and is subject to globally applied international trade rules, which will complement the customs arrangement signed between the Committee *for* Home Affairs and HM Treasury in November 2018.

1.3. The States are asked to approve the extension of the UK's membership of the WTO. This recommendation is being made in advance of the UK leaving the EU on 29<sup>th</sup> March 2019, in particular to offset some of the major risks if the UK leaves the EU in a 'no-deal' scenario. The Committee has worked closely with UK counterparts to ensure that the Bailiwick is compliant with the UK's obligations under its own membership. It has also sought agreement with the UK Government on how all parts of the Bailiwick will participate in the WTO including the resolution of potential disputes.

## **2. Background**

2.1. The Bailiwick has a long-standing relationship with the UK in terms of trade. It has a constitutional relationship that provides for the free trade in goods with the UK. These arrangements are underpinned by rights described in historic Royal Charters.

2.2. The General Agreement on Tariffs and Trade 1947<sup>1</sup> (GATT 47) was extended to the Bailiwick. The WTO was established in 1994 pursuant to the Marrakesh Agreement<sup>2</sup>, which replaced GATT 47. The UK became a member in its own right at the WTO's inception, albeit one that was represented as part of the EU bloc. The Bailiwick was not able to join the WTO at that time.

2.3. The UK signed the Convention Establishing the European Free Trade Association in 1960, which led to the establishment of EFTA. Guernsey was included in the territorial extent of this Convention. The Convention was implemented by the European Free Trade Association (Guernsey) Law, 1960 (the 1960 Law). This enabled Guernsey to participate in the co-ordination of trade within EFTA. The UK withdrew, including in respect of Guernsey, from that Convention on 31<sup>st</sup> December 1972 (on accession to the European Economic Community). The 1960 Law was subsequently repealed.

2.4. In 1973, when the UK joined the EU, the Crown Dependencies entered into a special relationship with the EU allowing for the trade in agricultural products and placing the Bailiwick within the EU customs area. This allows for tariff-free trade. This relationship is defined by Protocol 3<sup>3</sup> to the UK Act of Accession.<sup>4</sup> The European Communities (Bailiwick of Guernsey) Law, 1973 was enacted to give

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<sup>1</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm)

<sup>2</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm)

<sup>3</sup> Protocol 3: <https://gov.gg/CHttpHandler.ashx?id=3464&p=0>

<sup>4</sup> The relationship between Guernsey and the EU treaties is described in Appendix 1 Policy & Resources Committee: Acknowledging The Triggering Of Article 50 Of The Treaty On European Union In Respect Of 'Protocol 3' (2017) <https://gov.gg/article/158324/Triggering-of-Article-50>

effect to this new relationship with (what is now) the EU. The Bailiwick benefits from access to certain trade rules, and remedies, in respect of agricultural goods under Protocol 3.

- 2.5. The WTO provides the rules on which the international trading system is based. It deals with the regulation of the trade in goods, services and Intellectual Property (IP) between its members. It also provides the framework for negotiating trade agreements (which provide for more preferential market access than standard WTO rules allow) and for dispute resolution. Outside of the trade agreements and maximum tariff rates, WTO members define the areas where they make commitments to be open or closed in respect of market access. These terms are negotiated by WTO member states by economic sector classification (in the case of services) or type of goods. Where there is a commitment to be liberal in terms of market access, the WTO prohibits discrimination and operates on a principle of equal treatment of foreign and domestic trade in defined sectors (further details can be found in Appendix 1).
- 2.6. At the time that the WTO was being established, the UK consulted the Crown Dependencies about extending the UK's membership of the WTO. Neither Guernsey nor Jersey were able to obtain extension at that time because neither had up-to-date or sufficient IP regimes. The Isle of Man was in a position to obtain extension of the UK's IP regime and thus was able to become part of the WTO alongside the UK. Since that time, both Guernsey and Jersey opted to implement their own domestic IP regimes and seek extension of WTO membership at a later date, i.e. once their IP regimes were compliant with the required standards.
- 2.7. The States of Guernsey and the Government of Jersey have had intermittent negotiations in respect of extending the UK's membership of the WTO. However it was not previously possible to agree a process for this which would demonstrate compliance to the satisfaction of all parties and therefore progress was slow.
- 2.8. The UK Government's Brexit objectives include the establishment of an independent trade policy and being able to establish new trading agreements with other countries<sup>5</sup>. The UK is a member of the WTO in its own right, but operates in a bloc within the EU which is itself a WTO member. In order to become a fully independent member of the WTO, the UK Government has

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<sup>5</sup> The Government Negotiation Objectives for Exiting the EU, 17 January 2017  
<https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

commenced a ‘technical rectification’ process. This is a method used by WTO members to make technical changes to their WTO commitments where there are no underlying substantive changes. This means that the UK commitments after Brexit will remain as close as possible to those WTO commitments it had as an EU Member State. When the UK goes through the technical rectification process, there is an opportunity for the Bailiwick to be included in the UK’s WTO membership.

- 2.9. Therefore, in 2017, HM Government consulted Guernsey (and Jersey) to ask whether the Channel Islands wished to be included within the territorial scope of the UK’s membership of the WTO.
- 2.10. The Committee has ensured it was appropriately resourced to develop a strategy to take forward these complex discussions, working closely with the Law Officers’ Chambers. During 2018, Bailiwick officers undertook a compliance assessment exercise in respect of the major WTO agreements, which is being assessed by UK authorities. This assessment also included Alderney and Sark.

### **3. The Case for WTO Membership**

- 3.1. The UK’s exit from the EU will end the Bailiwick’s relationship with the EU under Protocol 3 to the UK’s Act of Accession. This will in turn end the Bailiwick’s participation in the EU Customs Union and its indirect relationship with the EU’s participation in the WTO in respect of agricultural goods and the Common External Tariff. Through this relationship, the Bailiwick also benefits from being able to take part in the trade in agricultural goods covered by the EU’s own trade agreements with third countries, including its Free Trade Agreements (FTAs). The ending of this relationship could have a detrimental impact on the Bailiwick’s economy if no alternative framework is put in place. Extension of the UK’s WTO membership will help provide certainty for business and ensure Bailiwick businesses are afforded the same protection as is available to businesses in the Isle of Man.
- 3.2. It is one of the UK Government’s objectives to seek ambitious arrangements for services and investments that go well beyond WTO commitments<sup>6</sup>. These high level ambitions are aligned to the aspirations of the States and were included in Guernsey’s own Brexit objectives<sup>7</sup>. Discussions have been ongoing for some time

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<sup>6</sup> Dr Liam Fox: A world beyond Europe and a time beyond Brexit, 1 February 2019

<https://www.gov.uk/government/news/dr-liam-fox-a-world-beyond-europe-and-a-time-beyond-brexit>

<sup>7</sup> Policy & Resources Committee: Managing the Implications for Guernsey because of the UK's Changing Relationship with the EU <https://gov.gg/article/154352/Managing-the-Implications-for-Guernsey-because-of-the-UKs-Changing-Relationship-with-the-EU>

as part of the wider EU exit negotiations with the UK's Department for International Trade (DIT) and Department for Exiting the European Union (DEEU). The aim and purpose of the negotiations have been to ensure that the Bailiwick is as best placed as possible, at the point that the UK leaves the EU, to continue to develop its economy.

- 3.3. As the future trading policy objectives for the UK and EU become clearer, the Bailiwick's own consideration of extending the UK's membership of the WTO becomes more important. In particular, it will help ensure that the Bailiwick is well placed as part of the wider exit negotiations. Furthermore, it will provide appropriate protection and potential opportunities for Bailiwick businesses which trade globally. Extending the territorial scope of the UK's WTO membership will be an important step for the Bailiwick's economy, to both maintain and deepen the free flow of goods, services and IP with other WTO members, including EU Member States and the majority of countries worldwide.
- 3.4. The benefits for the Bailiwick in joining the UK's WTO membership go far beyond the Bailiwick's previous trading relationship with the EU, which was only in relation to agricultural goods. The benefits of joining the UK's WTO membership include:
- Trade Protection - Protection from arbitrary trading controls being imposed on the Bailiwick by trading partners for goods, services and IP following the UK's withdrawal from the EU, as all WTO members have to adhere to certain non-discrimination obligations.
  - Trade Opportunities – Greater opportunity for the Bailiwick to access any FTAs negotiated by the UK, which are based on WTO standards but provide for more preferential trade terms.
  - Mutual Recognition – Potential for the Bailiwick to benefit from any mutual recognition agreements (MRAs) negotiated between the UK and other WTO members. MRAs are aimed at recognising and agreeing conformity standards for certain goods.
  - Global Markets – The Bailiwick would have access to global markets for goods and services (including, but not limited to, EU Member States) within a stable, non-volatile and transparent framework of trade rules.
  - Trade Defence – The Bailiwick could benefit from protection against unfair trade practices.
  - Dispute Settlement – The Bailiwick would have access, through the UK, to the WTO Dispute Settlement Body which provides a fair mechanism/process to resolve trade disputes, without ceding the jurisdiction of the domestic courts.
  - Assisting Overseas Development - Around two-thirds of WTO members are classified as 'developing countries' giving access to developed markets at a

lower tariff rate. This provides developing nations greater opportunity to develop their economies. Through participation in the WTO, the Bailiwick could help support developing countries through trade.

- 3.5. If the Bailiwick was not to be part of the WTO after the UK's exit from the EU, it would be in a minority of countries worldwide. This could leave it vulnerable to discriminatory treatment from trading partners. It would also mean that the Bailiwick would not be able to raise any trade disputes within the protection of an international trading framework. Furthermore the Bailiwick would need to be and remain compliant with WTO rules in any event to benefit from any future trade opportunities which the UK might negotiate with other nations.
- 3.6. The extension of the UK's membership of the WTO is an important part of the States of Guernsey's contingency planning, which focuses on putting in place mitigating actions in case the UK leaves the EU without a deal on 29<sup>th</sup> March 2019<sup>8</sup>. On 26<sup>th</sup> September 2018, the Vice President of the Policy & Resources Committee gave a statement to the States Assembly detailing that:

*“Consideration is also being given to the potential opportunity for Guernsey to join the UK's membership of the World Trade Organization (WTO). Joining the WTO would enable Guernsey to trade in goods and services globally using the WTO's rules which ensure that all countries trade on the same basis and are protected from any unfair or excessive trade sanctions (trade restrictions or high tariffs). Obtaining membership of the WTO would be significant for the Bailiwick's future. It will ensure that the Islands can trade with, and be treated as, any other global trading partner. Preparatory work has progressed well and I am hopeful that we will be in a position to present more details on this to the Assembly for consideration in the coming months.”<sup>9</sup>*

- 3.7. The President of the Policy & Resources Committee gave a detailed statement on 30<sup>th</sup> January 2019 on the Bailiwick's planning in case of the UK leaving the EU without a deal. This included the work being undertaken to extend the UK's membership of the WTO<sup>10</sup>. Subsequently, on 7<sup>th</sup> February 2019, the President met the Secretary of State for International Trade in London to discuss these plans.

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<sup>8</sup> <https://www.gov.gg/brexitplanning>

<sup>9</sup> <https://gov.gg/article/167403/Vice-President-Policy--Resources-Committee---Brexit-Update>

<sup>10</sup> <https://www.gov.gg/janbrexitstatement>



#### **4. The Basis of WTO Membership – General**

- 4.1. The Bailiwick is able to join the WTO through the extension of the UK's membership to it, as has been achieved by the Isle of Man. This would be in accordance with the Bailiwick's constitutional relationship with the UK through the Crown and the Framework for developing the International Identity of Guernsey agreed with the UK Government<sup>11</sup>. As with Jersey, the Bailiwick has been exploring the possibility of extending the UK's WTO membership since the WTO was formed, particularly following the establishment of new IP regimes in the Bailiwick.
- 4.2. Consideration has also been given to the Bailiwick becoming a WTO member in its own right<sup>12</sup>. However, such a proposal would be disproportionate when considering the years it would take to accede to the WTO as an independent member and the substantial resources which would be required to negotiate accession and ongoing trading arrangements with all the other WTO members. The same result can be achieved in a more proportionate and manageable way, through extending the UK's WTO membership. If the Bailiwick were to seek to join the WTO as an independent member, unless other arrangements were concluded with the UK, it could risk the creation of a conceptual 'hard border' between the Bailiwick and the UK, which would run contrary to the long-standing position, guaranteed by the historic Royal Charters, that there is free movement of goods between the Bailiwick and the UK.

#### **5. The Basis of WTO Membership – Goods and Customs Territory**

- 5.1. One prerequisite to the extension of the UK's WTO membership is the Bailiwick being within a 'customs territory' with the UK. This provides a basis for applying the WTO commitments in relation to goods and allows the Bailiwick to apply external customs tariffs (principally the UK set tariffs) to goods entering the border of the customs territory in a unified manner.
- 5.2. In July 2018, the States directed the Committee *for* Home Affairs to negotiate a customs arrangement with the UK<sup>13</sup> to succeed the EU Customs Territory. A 'Customs Arrangement' with the UK was signed by the President of the Committee *for* Home Affairs and a Minister from HM Treasury on 26<sup>th</sup> November

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<sup>11</sup> Framework for developing the International Identity of Guernsey (2008)

<https://www.gov.gg/CHttpHandler.ashx?id=2174&p=0>

<sup>12</sup> WTO accessions [https://www.wto.org/english/thewto\\_e/acc\\_e/acc\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/acc_e.htm)

<sup>13</sup> Committee *for* Home Affairs: Customs Duties and Associated Powers Required in Respect of Brexit (2018) <https://www.gov.gg/article/165679/Customs-Duties-and-Associated-Powers-Required-in-Respect-of-Brexit>

2018, to come in to effect when the UK and the Bailiwick leave the EU Customs Union. This Customs Arrangement (titled a Customs Union) is limited to eliminating import and export duty, and adopting a common customs tariff. The Customs Arrangement reaffirms the extant close customs arrangements between the Bailiwick and the UK and helps to ensure that, when the UK leaves the EU, traders moving goods between the UK, the Bailiwick and the other Crown Dependencies will continue to do so free from any customs duties or tariffs<sup>14</sup>. The Customs Arrangement specifies that the duties and quantitative measures applicable to goods entering the UK customs territory (including the Bailiwick) are applied in a unified manner.

- 5.3. The establishment of the Customs Arrangement was a significant first step in the extension of the UK's WTO membership to the Bailiwick. The Customs Arrangement allows the Bailiwick to maintain regulatory autonomy and fiscal independence<sup>15</sup>. The Bailiwick will therefore adopt a new external tariff (set by the UK) which replaces the current Common External Tariff that applies in the EU's Customs Union (set by the EU).
- 5.4. On the 26<sup>th</sup> November 2018, HM Treasury laid the statutory instrument (SI) before Parliament (The Crown Dependencies Customs Union (Guernsey) (EU Exit) Order 2018). This SI legally provided for the Customs Arrangement between the Bailiwick and the UK and formally established the operation of the UK-Crown Dependencies Customs Union in accordance with section 31(2) of the Taxation (Cross-border Trade) Act 2018. Accordingly, the Bailiwick will introduce, where it is considered necessary for the operation of the Customs Arrangement, correspondent customs provisions limited to import/export duty and import controls as applicable in the UK<sup>16</sup>.
- 5.5. The UK and the Bailiwick will need to establish agreed frameworks relating to the movement of certain goods, referred to as 'prohibitions and restrictions' (P&Rs), underpinned, where necessary, by legislation. These P&Rs are, in the majority, aimed at protecting the trade in goods which pose risks to human, animal and plant health such as high risk foods, protected animals, animal derived products, and organic and plant products. There are also measures which are subject to international sanctions, such as the restriction on the movement of military

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<sup>14</sup> A customs duty or tariff is a charge paid on importation of goods. The charge is calculated on the value of the good (*ad valorem*) and the levy varies on the type of goods, by a standard classification. This differs from consumption taxes and excise duties, provided they are not levied in such a way that has an equivalent effect.

<sup>15</sup> <https://www.gov.uk/government/publications/customs-arrangements-with-the-crown-dependencies>

<sup>16</sup> <https://www.gov.gg/article/169118/The-Customs-and-Cross-Border-General-and-Enabling-Provisions-Bailiwick-of-Guernsey-Law-2018>

weapons and other specified goods. These measures are necessary to help protect the integrity of the Customs Arrangement.

- 5.6. The Bailiwick's membership of the EU's Customs Union means that the WTO requirements in respect of the trade in goods, in particular those in the General Agreement on Tariffs and Trade (GATT), are already met.
- 5.7. The UK defines what level of market access for goods it is prepared to offer in a schedule to GATT. A draft goods schedule was published by the UK government on 24<sup>th</sup> July 2018<sup>17</sup>. In line with the technical rectification approach, this schedule has its origins in the EU's schedules and is modified to make it relevant for the UK without substantive policy changes being required.

## **6. The Basis of WTO Membership – Services**

- 6.1. The General Agreement on Trade in Services (GATS) provides the framework for trade in services. The various commitments are made on a sector by sector basis and through the manner in which each service is supplied. It is possible to place reservations against any sector and to make any sector unbound by WTO rules. The UK defines what level of market access it is prepared to offer in a schedule to the GATS. A draft schedule was published by the UK government on 3<sup>rd</sup> December 2018<sup>18</sup>. In line with the technical rectification approach, this schedule has its origins in the EU's schedules and is modified to make it relevant for the UK without making substantive policy changes.
- 6.2. The Bailiwick is not part of the EU in respect of the free movement of services and so has not previously had to comply with the EU's services schedule. This means a detailed assessment of compliance of policies and legislation has been undertaken across all relevant sectors (described in Section 10) to ensure compliance with the UK's schedules.

## **7. The Basis of WTO Membership – Intellectual Property**

- 7.1. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) is the third core piece of the WTO architecture, alongside GATT and GATS. In 2002, the States agreed to establish a modern IP regime that was TRIPs

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<sup>17</sup> <https://www.gov.uk/government/publications/uk-goods-and-services-schedules-at-the-wto> and [https://www.wto.org/english/news\\_e/news18\\_e/mark\\_24jul18\\_e.htm](https://www.wto.org/english/news_e/news18_e/mark_24jul18_e.htm)

<sup>18</sup> <https://www.gov.uk/government/publications/uk-goods-and-services-schedules-at-the-wto> and [https://www.wto.org/english/news\\_e/news18\\_e/mark\\_03dec18\\_e.htm](https://www.wto.org/english/news_e/news18_e/mark_03dec18_e.htm)

compliant in order to assist with any move to participate in the WTO<sup>19</sup>. This regime has been developed with the strategic objective of ensuring it would be TRIPs-compliant. The Bailiwick's IP regime was independently assessed as being TRIPs-compliant by David Llewelyn, Professor of Intellectual Property Law, King's College London in 2010<sup>20</sup>.

## **8. The Basis of WTO Membership – Other**

- 8.1. WTO membership entails commitments towards a package of international agreements. In general, WTO membership necessitates joining all core WTO agreements, rather than being able to pick and choose which agreements members wish to participate in. However, there are also a limited number of optional or 'plurilateral' agreements that WTO members can choose to partake in, or not. If the UK's WTO membership were to be extended to the Bailiwick then the Bailiwick, as a whole, would need to comply with all the core WTO agreements.
- 8.2. Two of the largest goods-related agreements that will affect the Bailiwick, and must be adhered to, relate to Sanitary and Phytosanitary (SPS) measures and the Agreement on Technical Barriers to Trade (TBT).
- 8.3. The SPS Agreement requires that WTO members apply unified international standards when they introduce, or operate, measures that seek to protect humans, animals, and plants from diseases, pests or contaminants<sup>21</sup>.
- 8.4. The TBT is aimed at ensuring that technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade<sup>22</sup>. This agreement ensures that countries do not apply controls at the frontier, on goods, that are unjust and have the aim of economic protection.
- 8.5. The WTO also includes an Agreement on Subsidies and Countervailing Measures. Adherence to this agreement will play an important part in any future consideration that may be given, by the Bailiwick, to granting subsidies or other

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<sup>19</sup> Board of Industry: Bailiwick Intellectual Property Legislation and Economic Opportunities in a Knowledge Economy (2002) <https://www.gov.gg/CHttpHandler.ashx?id=3694&p=0>

<sup>20</sup> <http://ipo.guernseyregistry.com/article/159430/TRIPS-Compliance>

<sup>21</sup> [https://www.wto.org/english/tratop\\_e/sps\\_e/spsagr\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm)

<sup>22</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt.pdf](https://www.wto.org/english/docs_e/legal_e/17-tbt.pdf)

financial contributions with the primary aim of distorting trade<sup>23</sup>. It is important to note that this agreement does not restrict the Bailiwick from granting subsidies or financial support, but any such subsidy must be in compliance with the agreement, transparent, declared to the WTO and not aimed at distorting trade. All current funding programmes have been reviewed against this agreement and are compliant.

- 8.6. The UK is seeking to join the General Agreement on Procurement (GPA) as an independent member. The GPA is a plurilateral agreement, meaning that it is an optional WTO agreement that opens up government procurement markets above certain financial thresholds. It will be for the WTO membership to determine whether they accept the UK's proposed terms to join the GPA. It is not recommended that the Bailiwick takes part in the GPA at this stage, but the option to participate at a later date should be retained.

## **9. Access to More Preferential Trade – Free Trade Agreements**

- 9.1. One of the UK's objectives, following its exit from the EU, is to be responsible for its own independent trade policy. This includes developing ambitious FTAs with developing markets on terms that are more suited to the UK, rather than those developed to suit the breadth of the economic interests within the EU. In addition to this, the UK is seeking a continuity approach by transitioning many EU trade agreements, including its extensive network of FTAs, and replacing them with UK agreements on identical terms. These transitioned agreements should apply to the Bailiwick to the extent that they applied to the Bailiwick under Protocol 3.
- 9.2. Trade from the Bailiwick is global and external-facing and the ability to be included within the territorial scope of FTAs, to an extent that hitherto has not been possible, presents a potential economic opportunity. This could help to maintain and develop these trade flows.
- 9.3. The Committee *for* Economic Development has been engaging with industry to identify which countries Guernsey businesses trade with globally and which other markets present new opportunities. In September 2018, the Committee *for* Economic Development surveyed Guernsey businesses across all business sectors. The survey findings provided clear evidence showing that there are trade flows in goods and services across the globe in areas such as the EU, North America, Australia, New Zealand, South Africa, the Middle East and Asia.

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<sup>23</sup> [https://www.wto.org/english/tratop\\_e/sps\\_e/spsagr\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm)

Furthermore, the survey identified that, for the trade in services, there is anticipated trade growth in areas such as the EU Member States, South Africa, Australia, New Zealand, North and Latin America, Hong Kong and Singapore.

- 9.4. It is important to note that WTO membership is not a requirement for the Bailiwick to be party to any UK FTA, but confirmation of adhering to the WTO rules and obligations is required. This means that the Bailiwick must demonstrate the same level of compliance as the UK has in respect of its membership of the WTO. As such, partaking in the UK's WTO membership will provide a compliance baseline in support of the Bailiwick's participation in any potential future FTAs.

## **10. Compliance with the UK's WTO Obligations**

- 10.1. The process for the Bailiwick to join the UK's WTO membership is complex and requires an analysis across the Bailiwick in relation to all applicable WTO agreements<sup>24</sup>, in particular on goods, services and IP.
- 10.2. In order to determine the possibility of WTO extension to the Bailiwick, officers carried out a review of the policies of the States of Guernsey, States of Alderney and Chief Pleas of Sark as they relate to international trade and the UK's WTO schedules. This was to identify any areas of legislation or policy relating to international trade, in particular in relation to services and IP, which may not currently comply either with the UK's commitments or the general WTO rules.
- 10.3. In April 2018, the Committee provided DIT with a substantial assessment of how Bailiwick legislation aligned with the relevant WTO agreements and what was expected to be in the draft UK Schedules (which had yet to be finalised and published at that stage). In August 2018, officials from DIT visited the Bailiwick to work through the compliance assessment and met with officers from across the States and the Law Officers' Chambers, which ensured that there was a clear and mutual understanding of how the Bailiwick complies with the varying WTO obligations.
- 10.4. Further engagement with the Department for Business, Energy and Industrial Strategy (BEIS), DIT and HM Treasury has focused on IP and the services elements of WTO compliance. This provided a basis to explore and compare the different approaches and policies between the Bailiwick and the UK. The Policy & Resources Committee has coordinated its work with all relevant Committees during the compliance assessment process. For example, for agri-foods and

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<sup>24</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](https://www.wto.org/english/docs_e/legal_e/legal_e.htm)

fisheries trade, policy issues fall into the mandate of the UK's Department for Environment, Food and Rural Affairs (DEFRA) and in Guernsey the Committee *for the Environment & Infrastructure*, the Office of Environmental Health and Pollution Regulation and the Committee *for Economic Development*.

- 10.5. In general, the Bailiwick is open to international trade and could be considered as having a relatively liberalised free market approach to economic development. Generally, there has not been an approach to policy or regulation that was designed to or had the effect of distorting trade with the intent of protecting the small, internal markets.
- 10.6. As a consequence, no significant issues of non-compliance which would prevent extension of the UK's WTO Membership before 29<sup>th</sup> March 2019 were identified. In due course, some minor adjustments may be needed to reduce the risk of any dispute arising, but these are not considered to be contentious. In other cases, our approach to certain matters is, necessarily, different to that of the UK given our constitutional autonomy. Should a dispute arise, the Bailiwick may need to consider the issue arising in greater detail to discharge its international obligations. This would be a long-standing commitment and would form part of the ongoing work as the Bailiwick manages its participation of the WTO in the medium and long term.
- 10.7. The core texts on which the compliance assessment has been carried out are the UK draft schedules<sup>25</sup>:
- UK draft Goods Schedule:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/762822/UKs\\_Goods\\_Schedule\\_at\\_the\\_WTO.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762822/UKs_Goods_Schedule_at_the_WTO.pdf)
  - UK draft Services Schedule:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/762808/SCW380 - UK GATS Schedule-FINAL 03 12 2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762808/SCW380_-_UK_GATS_Schedule-FINAL_03_12_2018.pdf)
- 10.8. As the WTO develops and as the UK exercises its rights as an independent trading member of the WTO to develop these schedules, the Bailiwick will have the opportunity to contribute to the development of these obligations to ensure that the Bailiwick's interest are taken into account. The necessary governance arrangements will be agreed with the UK Government, underpinned by a Memorandum of Understanding, in order to manage the Bailiwick's ongoing participation in the WTO as part of the UK's membership.

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<sup>25</sup> <https://www.gov.uk/government/publications/uk-goods-and-services-schedules-at-the-wto>

## **11. Resolving Disputes**

- 11.1. Resolving trade disputes is a core activity of the WTO. A summary of these processes is included in Appendix 1. The way that the WTO Dispute Body works does not raise the sort of jurisdictional issues that are sometimes raised in respect of the Court of Justice of the European Union. In addition, the remedies available are not financial but are intended to rely on persuasive power to remedy or withdraw an illegal act by another WTO Member.
- 11.2. Necessarily, trade disputes could be brought against the Bailiwick (or, more correctly, against the UK as the WTO member in respect of Guernsey). In these situations, the Bailiwick would have to address the policy or legal areas which the WTO dispute mechanisms considered to be incompatible with WTO obligations. If WTO disputes are raised, the Bailiwick may, on a pre-emptive basis, have to agree with the UK what measures can be taken to amend its policy or legislation to align with WTO obligations. It would be desirable for the Bailiwick to correct or otherwise address any issue relating to WTO compliance before a trade complaint is raised as a formal dispute. This would protect the Bailiwick's international reputation and its status as a participant member of the WTO. It would also reduce the risk and costs associated with managing a trade dispute.
- 11.3. The UK Government has established a Trade Remedies Authority (TRA) (at present this role is carried out by the Director General of Trade at the European Commission). The UK TRA will enable the UK to manage any offensive and defensive trade disputes that may arise between the UK and other WTO members. Should the Bailiwick wish to raise a dispute through WTO dispute mechanisms because of treatment by another WTO member it would need to raise the matter with the UK Government in order to engage the UK TRA.
- 11.4. The Memorandum of Understanding with DIT (see paragraph 10.8) will cover the arrangements, particularly with respect to compliance and dispute resolution.

## **12. Process of Extension**

- 12.1. The UK is already an independent member of the WTO. The UK is able to extend its membership of the WTO, to a territory for which it has responsibility for international relations, by a unilateral declaration from the UK to the WTO Secretariat.



12.2. There will not need to be any negotiation on the accession, however, it is possible that there will be additional scrutiny on the legislation and policies of the Bailiwick by other WTO members. It is for this reason, as previously indicated, that a comprehensive review of compliance has been undertaken and that it would be necessary to make a commitment to address concerns promptly through close working with the UK before such concerns risk becoming an official dispute.

### **13. Consultation**

13.1. The Committee has worked closely at political and official level with the UK Government and Parliament, in particular with the Cabinet Office, DExEU and DIT. Senior officers from Guernsey meet with senior officials from the Cabinet Office and DExEU in London on a fortnightly basis to develop and coordinate such work relating to the UK's withdrawal from the EU. The President of the Committee has also discussed this work in depth with Robin Walker MP, Parliamentary Under-Secretary of State at DExEU, most recently at the quarterly meeting held on 28<sup>th</sup> January 2019, and with the Rt Hon Liam Fox MP, Secretary of State for International Trade in correspondence (see Appendix 2) and at a meeting on 7<sup>th</sup> February 2019.

13.2. The Committee *for* Economic Development has coordinated engagement with the private sector to understand the concerns of importers and exporters in Guernsey and to raise awareness of Brexit issues. The first phase of work included fact-finding and developing an understanding of the issues faced by businesses. A series of Brexit engagement workshops were held in the autumn of 2017. That work informed the commissioning of a business survey to ascertain the Brexit preparedness of businesses and to identify the flow of goods and services. The survey findings were reported back to the Committee during the final quarter of last year, and have informed further meetings with business representative bodies and individual businesses regarding concerns and potential solutions.

13.3. In general, businesses that rely on trade in goods and services on a global scale are extremely supportive of joining the UK's WTO membership and these opinions have been confirmed in the results of the survey. Industry representatives are also supportive. The survey identified that:

- Two-thirds of all businesses considered the extension of the UK's WTO membership to the Bailiwick for trade in goods to be important

to their business (68% very/quite/a little bit important); one third (32%) answering very important.

- All manufacturers considered the extension of the UK's WTO membership to the Bailiwick for trade in goods to be very, quite or a little bit important to their business; around half (52%) said very important. The proportion that considered it to be important was also above average in the professional/technical (79%) and information/communications (91%) sectors.
- Importers and Exporters are significantly more likely to consider WTO extension to be important (79% and 88% respectively).

13.4. The States of Alderney and Chief Pleas of Sark have been consulted throughout the Committee's work to manage the impact of Brexit, including on the work to join the WTO. This included direct engagement with the relevant Committees in Alderney and Sark, as well as through the Bailiwick Council, Alderney Liaison Group and Sark Liaison Group. Representatives for the Committee have recently visited the newly constituted States of Alderney and Chief Pleas of Sark to discuss this matter. The States of Alderney's Policy & Finance Committee and Sark's Chief Pleas will soon be considering this matter with a view to the UK's membership being extended to the Bailiwick as a whole.

13.5. The Law Officers of the Crown have been consulted and have provided legal advice throughout.

#### **14. Legislation and Resources**

14.1. There are no direct financial costs for requesting extension of the UK's WTO membership as the WTO membership costs would be managed by the UK Government. There are no additional resource requirements. There will be additional work required when developing new policies and legislation to ensure that they meet the WTO obligations. Should the Bailiwick wish to raise a dispute, or defend a dispute raised against it, there may be consequential financial and resource implications. In due course there may be additional resources needed to support the negotiation and management of the UK's FTAs to the extent it is agreed they extend to Guernsey.

14.2. In November 2017, the States agreed a set of legislative proposals to protect Guernsey's interests as the UK exits the EU<sup>26</sup>. This included facilitating the

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<sup>26</sup> Policy & Resources Committee: Protecting the interests of the Bailiwick of Guernsey as the UK leaves the EU (2017) <https://gov.gg/CHttpHandler.ashx?id=110188&p=0>

extension of the UK's membership of the WTO and participation in FTAs and other trade agreements. The International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018 was granted Royal Sanction in December 2018.

- 14.3. Subject to what is said below concerning privileges and immunities, no further legislation is required to give effect to the agreements as a direct consequence of extending the UK's membership of the WTO. Legislation may be required as part of the Bailiwick's ongoing participation in the WTO, either to maintain compliance with the UK's existing WTO commitments or to ensure future compliance if trading commitments alter. These will need to be presented to the States separately for consideration, as and when they arise, with an explanation of why they are required to meet the relevant WTO obligations.
- 14.4. As a matter of formality, and in line with provisions made in the UK and elsewhere, an Ordinance under the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004 can be made in respect of the WTO.

## **15. Compliance with Rule 4**

- 15.1. Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 15.2. In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. HM Procureur has advised that there is no reason in law why the Propositions should not be put into effect.
- 15.3. In regard to Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, the Civil Contingencies Authority, the Brexit Transition Group<sup>27</sup> and part of the Policy & Resources Committee's Brexit Group's<sup>28</sup> activity includes regularly monitoring the resources dedicated to managing the implications of Brexit and to assessing the opportunities which may arise. It is not envisaged that additional resources will be required when the UK extends its membership of the WTO to the Bailiwick.

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<sup>27</sup> The establishment of the Brexit Transition Group is described in a statement made by the President of the Committee at the States of Deliberation meeting held on 30<sup>th</sup> January 2019:

<https://www.gov.gg/janbrexitstatement>

<sup>28</sup> The Policy & Resources Committee's Brexit Group is a strategic group which includes politicians and officials from its own Committee, the Committee *for* Home Affairs and the Committee *for* Economic Development along with the Law Officers and representatives from the Guernsey Financial Services Committee and industry where appropriate.

- 15.4. In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Propositions above have the unanimous support of the Committee.
- 15.5. In accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees, the Propositions relate to the duties of the Committee because its mandate includes responsibilities to, “advise the States and to develop and implement policies and programmes relating to: (a) leadership and co-ordination of the work of the States” and “(c) external relations and international and constitutional affairs, which includes: 2. relations with the United Kingdom and other jurisdictions; 3. relations with the European Union and other supranational organisations; 4. relations with the other islands of the Bailiwick ...; [and] representing, or overseeing the representation of, and negotiating for, the Island; ...” The Committee considers that the measures outlined in this Policy Letter touch on all those aspects of its mandate.
- 15.6. Further it is confirmed that the proposals outlined in this Policy Letter are strategically aligned to the objectives of the States of Guernsey. Phase One of the Policy & Resource Plan<sup>29</sup> set out the vision for Guernsey in 20 years’ time and the priority areas for the next five years. It was approved on 16<sup>th</sup> November 2016. ‘Our Place in the World’ is one of four themes and is supported by the measures outlined in this Policy Letter. The underlying priorities of this theme are for Guernsey to maintain its reputation as a “*centre of excellence and innovation*” and to develop further its “*mature international identity*”. The ‘Our Economy’ and ‘Our Quality of Life’ themes are also significant in regard to this Policy Letter.
- 15.7. Phase Two of the Plan<sup>30</sup>, which sets out the Committees’ policy plans, was approved on 30<sup>th</sup> June 2017. Phase Two focusses on the work that Principal Committees need to do to move towards achieving the vision set out in Phase One. In response to the ‘mature international identity’ priority, the Policy & Resources Committee’s policy plan recognises that a significant focus of the Committee’s work in the short to medium term will be on the protection of the island’s interests in the aftermath of Brexit. One of the objectives identified within Phase Two is to “*ensure our interests are taken into account in the UK/EU*

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<sup>29</sup> The ‘Future Guernsey’ document was amended by and then approved by the States on 16<sup>th</sup> November 2016. The final version is available at <https://gov.gg/CHttpHandler.ashx?id=105052&p=0>. (The final version includes the amendments made by the States. An earlier version was published in Billet d’État XXVIII of 2016.) The Resolutions of 16<sup>th</sup> November 2016 can be found at:

<https://gov.gg/CHttpHandler.ashx?id=104885&p=0>

<sup>30</sup> Billet d’État XII of 2017: <https://www.gov.gg/CHttpHandler.ashx?id=107774&p=0>

The Resolutions of 30<sup>th</sup> June 2017 can be found at: <https://gov.gg/CHttpHandler.ashx?id=108566&p=0>

*exit agreement and seek new opportunities where possible".* The Committee considers this work to be one of its top priorities.

- 15.8. The Committee's consultation with other parties is outlined in Section 13 above, in accordance with Rule 4(5).

## **16. Propositions**

The States are asked to decide whether they are of the opinion:-

1. To agree that the United Kingdom's membership of the World Trade Organization should extend to Guernsey.
2. To agree that the States commit to meet the UK's World Trade Organization obligations, on an ongoing basis, and to resolve any issues or disputes promptly in a manner which is consistent with the States of Guernsey's extant policy with regard to international standards, the 2008 Framework for developing the International Identity of Guernsey agreed with the UK Government and protecting the Bailiwick of Guernsey's international reputation.
3. To delegate authority to the Policy & Resources Committee to negotiate and agree on behalf of the States, with the States of Alderney and the Chief Pleas of Sark, all such matters as may be necessary to enable a request to be forwarded by the Policy & Resources Committee, on behalf of all three Bailiwick authorities, to the UK government for the extension of the United Kingdom's membership of the World Trade Organisation to the Bailiwick.
4. To direct the Policy & Resources Committee (following the conclusion of suitable agreements with the States of Alderney and the Chief Pleas of Sark) to send a formal request to the UK Government for the extension.
5. To agree that suitable legislative and administrative measures are implemented and adopted, including statutory privileges and immunities relating to the World Trade Organization and its officials, in order to ensure that the extension may have effect.
6. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

Yours faithfully

G A St Pier  
President

L S Trott  
Vice-President

A H Brouard  
J P Le Tocq  
T J Stephens

## World Trade Organization (WTO) – A summary

### *History and background*

1. In 1947 the UK was an original signatory to the General Agreement on Tariffs and Trade (GATT 47) which aimed to liberalise trade by reducing or eliminating trade barriers such as tariffs and quotas on a mutually acceptable basis. The agreement was first discussed within the United Nations prior to 1947 following the failure of negotiating governments to agree and create an International Trade Organisation. GATT 47 was signed by 23 nations in Geneva on 30<sup>th</sup> October 1947, and took effect on 1<sup>st</sup> January 1948. It remained in effect until 123 nations signed the ‘Uruguay Round Agreements’ in Marrakesh on 14<sup>th</sup> April 1994, thus establishing the World Trade Organization (WTO) on 1<sup>st</sup> January 1995. The WTO is a successor to GATT and the original GATT text (GATT 1947, albeit modified by GATT 1994) is still in effect under the WTO framework<sup>31</sup>.
2. The WTO deals with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible. Its primary purpose is “to open trade for the benefit of all.” The WTO currently has over 160 members, accounting for 98% of world trade.<sup>32</sup> As a WTO member, each country commits to a range of comprehensive trade principles and rules in respect of goods, services and intellectual property (IP).
3. The total budget for the WTO is around US\$200 million per year. The WTO is primarily funded by member countries making contributions (based on a formula relating to each member’s share of international trade). The budget covers the WTO’s various work streams including: trade negotiations, administrative and technical support, trade policy monitoring, trade dispute resolution, technical assistance and training for development countries.
4. The UK contributes less than 4% of the total WTO budget. Details of its participation in the WTO can be found at:  
[https://www.wto.org/english/thewto\\_e/countries\\_e/united\\_kingdom\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/united_kingdom_e.htm).

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<sup>31</sup> The General Agreement on Trade and Tariffs 1994 [https://www.wto.org/english/docs\\_e/legal\\_e/06-gatt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/06-gatt_e.htm)

<sup>32</sup> European Union Committee: [Brexit: the options for trade \(5th Report, Session 2016-17, HL, Paper 72\)](#)

## **WTO Principles**

5. The WTO embraces the philosophy that free trade, or more accurately freer trade, is the route to economic progress. The opening paragraph in the preamble of the treaty which established the WTO<sup>33</sup> ('the WTO treaty') outlines the objectives to raise "*standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of the trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development*". It is important to note that the WTO acknowledges that its goal is not free trade at all costs; but rather it is balanced by protecting the global natural environment and resources.
6. An objective of the WTO is that the benefits of trade should be shared by all countries, not only the wealthy ones. This recognises that uncontrolled competition between countries can have harmful consequences – particularly important as more than two-thirds of WTO member countries are classified as developing. Multilateralism is the basis of the WTO system with the principle that the more partners there are to an agreement the better.
7. The WTO is a democratically constituted body that is governed by international law. Each member country has equal standing at the WTO meaning that each one has the same capacity to effect change through voting. The WTO creates rules about free trade such that member countries are bound by the same trading rules and standards and no one nation, person or corporation is above the legal obligations imposed by the organisation. The WTO does not have its own political agenda, its objectives are those expressed by its constituent members.
8. A core principle of the WTO is dispute resolution. There have been over 300 disputes. If any rules are broken, there are consultative and legal processes which are applied. If a dispute is upheld legal measures, such as defensive measures and compensation awards, can be handed down for countries to adhere to. This compensation does not mean monetary payment; rather, the respondent to the dispute is supposed to offer a benefit, for example a tariff

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<sup>33</sup> Agreement Establishing the World Trade Organization  
[https://www.wto.org/english/docs\\_e/legal\\_e/04-wto.pdf](https://www.wto.org/english/docs_e/legal_e/04-wto.pdf)



reduction, which is equivalent to the benefit which the respondent has nullified or impaired by applying its measure<sup>34</sup>.

9. The WTO aims to inhibit protectionism. Protectionism can lead to discontent and aggravation amongst the WTO membership leading potentially to trade wars. Recently, the President of the United States of America unilaterally applied aggressive tariffs on certain products from Mexico, Canada, the European Union and China, ostensibly to reduce the USA's trade deficits and protect American national interests. In response, WTO member countries can formally request the USA to consult with the aim of resolving the matter or can register a trade dispute with the WTO Dispute Settlement Body. This can result in some of these high tariffs being removed or defensive measures being implemented to mitigate their impact.
10. WTO negotiations produce general rules that apply to all members, and specific commitments made by individual member governments which are listed in 'schedules of concessions'<sup>35</sup>. There are two schedules for WTO members: a 'Goods Schedule' and a 'Services Schedule'. The Goods Schedule includes: the maximum tariff levels which will be imposed on a particular product or product category; tariff rates quotas (which allows for a product to be imported at a lower tariff, up to a set quota); limits on export subsidies; and any domestic support. The Services Schedule shows a range of sectors and sub-sectors that the WTO Member is liberalising. If a sector is not listed in the schedule, then the WTO Member makes no commitment to liberalise that sector. For listed sectors, the schedules show the degree of market access or national treatment liberalisation or restriction, according to how the services are delivered (these are referred to as 'Modes of Supply'<sup>36</sup>). Currently, the EU has a single Goods Schedules and a single Services Schedule for all its Member States (although, consolidated versions for the most recent EU accessions are not always available).

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<sup>34</sup> [https://www.wto.org/english/tratop\\_e/dispu\\_e/disp\\_settlement\\_cbt\\_e/intro1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/intro1_e.htm)

<sup>35</sup> World Trade Organization, 'members' commitments':

[https://www.wto.org/english/tratop\\_e/schedules\\_e/goods\\_schedules\\_e.htm](https://www.wto.org/english/tratop_e/schedules_e/goods_schedules_e.htm)

<sup>36</sup> There are four modes of supply in respect of the trade in services that are protected by the WTO:

- Mode 1 — Cross border trade: from the territory of one Member into the territory of any other Member
- Mode 2 — Consumption abroad: in the territory of one Member to the service consumer of any other Member
- Mode 3 — Commercial presence: by a service supplier of one Member, through commercial presence, in the territory of any other Member
- Mode 4 — Presence of natural persons: by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member

11. There are two central WTO principles aimed at avoiding and prohibiting discrimination between trading partners<sup>37</sup>. They are the Most-Favoured-Nation treatment (MFN) and National Treatment' (NT):
  - a. MFN is about treating trade from other WTO jurisdictions the same. Members cannot, usually, discriminate between WTO trading partners. Therefore, if a country improves the benefits it gives to one trading partner (for example by lowering a customs tariff rate for a particular type of product) it has to give the same treatment to all other WTO members. Some exceptions are permitted<sup>38</sup>.
  - b. NT is about treating foreigners and locals equally. For example, foreign (imported) and local (locally produced) goods should be treated equally. NT applies only once a product, service or item of intellectual property has entered the local market. Charging a customs tariff on an import, for instance, is not contrary to the NT principle, even if locally-produced goods are not charged an equivalent levy.
12. There are certain exceptions to the WTO's non-discriminatory principles. These exceptions arise only where specifically authorised. For instance, the WTO may authorise preferential trading areas for certain WTO members to benefit from more preferable tariff rates.
13. Some issues remain beyond the scope of the WTO such as labour (including wages and working conditions) and environmental commitments. WTO allows members to have their own policies on environmental protection even if this might impact on international trade. Importantly, in terms of economic policies, the WTO has no direct control over domestic tax issues. Direct taxation is only within the jurisdiction of the WTO if it is applied in such a way that they distort trade<sup>39</sup>. However if a tax was introduced, which acted as a trade barrier to entry of foreign goods, this would potentially infringe the WTO principles and trade rules.

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<sup>37</sup> The World Trade Organization, 'Principles of the trading system': [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm)

<sup>38</sup> The WTO website gives these examples of exceptions, "... countries can set up a free trade agreement that applies only to goods traded within the group — discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. And in services, countries are allowed, in limited circumstances, to discriminate. But the agreements only permit these exceptions under strict conditions."

<sup>39</sup> The WTO and Direct Taxation [https://www.wto.org/english/res\\_e/publications\\_e/disc\\_paper9\\_e.htm](https://www.wto.org/english/res_e/publications_e/disc_paper9_e.htm)

14. Competition law is also outside the WTO's jurisdiction. The WTO's objectives are international and not national. It is concerned more about the normal functioning of global markets and not the operation of national markets. It is for WTO member countries to enact competition laws to ensure that damaging monopolies and practices like price controls are not employed by companies. If multinational companies demonstrate harmful market dominance, they should be controlled by the domestic laws of the countries in which they operate.

### ***WTO Governance and Agreements Overview***

15. The WTO is formed of a Ministerial Council who oversee the work of a General Council as well as councils with certain special focus, including the appellate body (the equivalent of the WTO court). Figure 1 provides a pictorial summary of WTO governance structure.
16. The body of WTO law is contained in its international agreements<sup>40</sup>. The WTO's main agreements cover goods, services and intellectual property. These agreements are not static but rather they are renegotiated from time to time and new agreements can be added to the overall package. However, the WTO trade rules move and change at a very slow pace. By contrast, European Commission trade rules are more regular and detailed in nature covering, for example, specific manufacturing or production criterion for certain products to ensure uniform trading standards for products across the Single Market.

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<sup>40</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](https://www.wto.org/english/docs_e/legal_e/legal_e.htm)

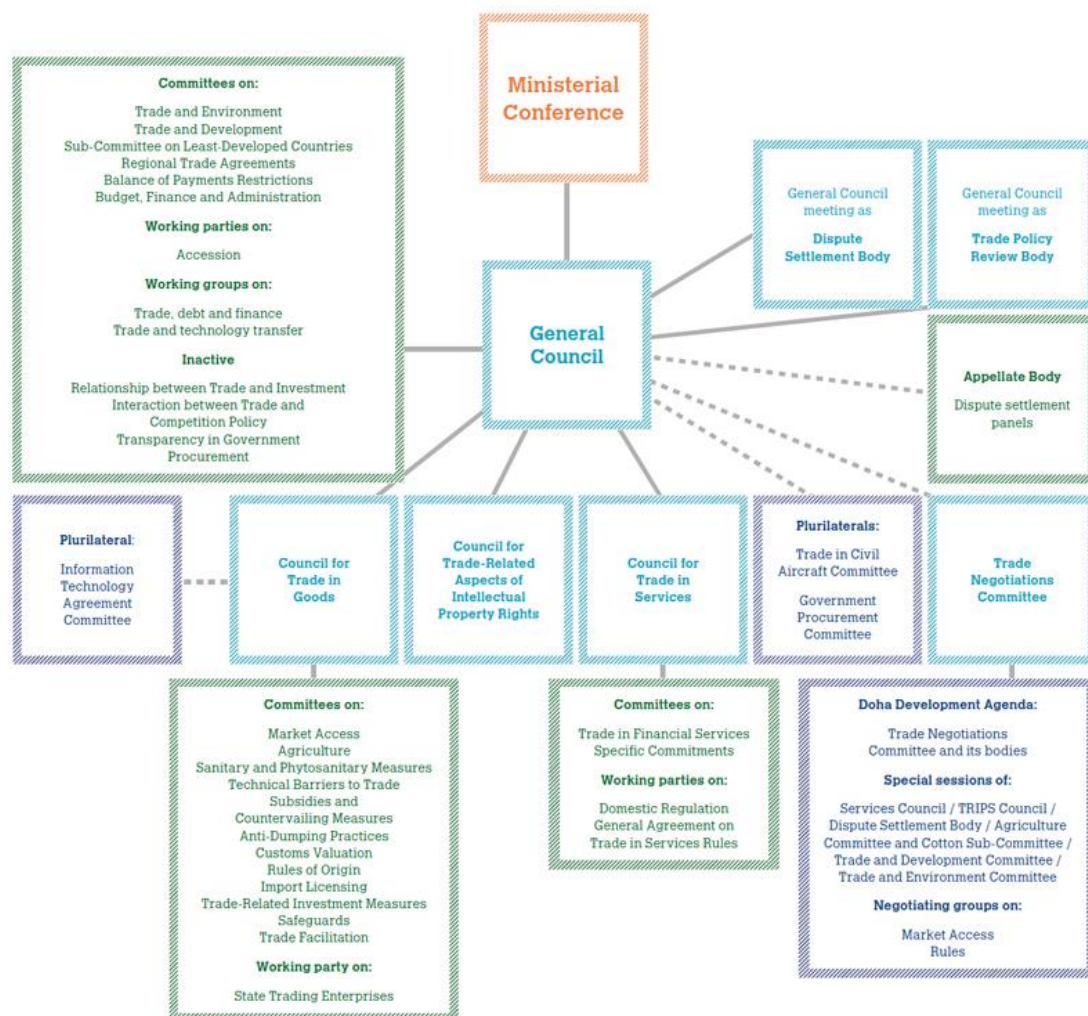


Figure 1: WTO Governance - source: [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/orq2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/orq2_e.htm)

17. The main WTO agreements are summarised below:

### General Agreement on Tariff and Trade (GATT)

The GATT is one of the precursor agreements before the WTO formed. Its aim is to promote international trade by reducing or eliminating tariffs. It has been developed and modified following a number of rounds of GATT trade negotiations (the most recent being the Uruguay Trade Round<sup>41</sup>).

<sup>41</sup> [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm)

### General Agreement on Trade in Services (GATS)

GATS was inspired by essentially the same objectives as its counterpart in merchandise trade, the GATT, by creating a credible and reliable system of international trade rules, ensuring fair and equitable treatment of all participants (principle of non-discrimination) stimulating economic activity through guaranteed policy bindings, and promoting trade and development through progressive liberalization. In summary, the GATS was designed to reflect the growing level of global trade in services.

### Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPs)

The purpose of this agreement is to protect parties who have acquired rights in IP. It sets down minimum standards for the regulation by national governments of IP as applied to nationals of other WTO member nations. The agreement also provides for stronger enforcement of rights beyond the consultation mechanisms that were usual in earlier international IP Conventions.

The rights protected include, inter-alia, patents and copyright, trademarks and geographical indications, industrial designs and layout designs for Integrated Circuits. It also covers areas such as the protection of literary and artistic works, and for the protection of performers, producers and broadcasters as well as more commercial rights in patents, copyright and related rights. The agreement also provides for stronger enforcement of rights beyond the consultation mechanisms that were usual in earlier IP Conventions.

### Agreement on Agriculture

The scope of this agreement can be broadly summarised as: setting rules for agricultural trade, in the light of the results of the Uruguay Round of trade talks, setting detailed rules to limit agricultural support measures, both domestic and export subsidies, and procedures in case of new subsidy schemes. Measures which assist developing, least developed and net-food importing countries are also included.

### Agreement on application of GATT Article VI: anti-dumping

This agreement sets the rules for investigating complaints about the dumping of imported goods (i.e. flooding the local market with goods at lower prices than those provided domestically) and for applying anti-dumping duties (as a defensive measure).

### Agreement on Subsidies and Countervailing measures (ASCMs)

This agreement sets the rules for dealing with subsidies and their adverse effects on the global trading platform. For instance, this includes a prohibition of export

subsidies (such as those used to get rid of surplus agricultural production) and rules to limit the distorting effects created by domestic support policies on the interests of third countries.

#### Agreement on Safeguard Measures

This agreement sets out the rules for the application of safeguard measures, which are generally import restrictions which protect a domestic industry that is facing serious injury as a result of increases in imports. The criteria are set out which would justify such exceptional action.

#### Agreement on Technical Barriers to Trade (TBT)

This agreement differs to some of the other agreements which impose specific rules and procedures on trade measures. Instead, this agreement is more focused on promoting conformity with international norms and standards (which also reduce barriers to trade). The main commitment of this agreement is therefore to use international standards wherever possible (although the right to set one's own standards is recognised), and to justify any necessary departures from them. There is also an emphasis on recognition of standards of other countries, and on bilateral agreements on the equivalence of standards.

#### Agreement on Sanitary and Phytosanitary measures (SPS)

This agreement concerns the protection and improvement of human and animal health in member countries. It also concerns phytosanitary (plant) matters. Similar to the TBT agreement (above), there is some freedom to set health and environmental standards at levels considered necessary in the domestic context, but also a commitment to use international norms where possible.

#### Agreement on Trade-Related Investment Measures (TRIMs)

The essence of this agreement is for trade negotiations to try to avoid the trade-restrictive and distorting effects of measures which restrict foreign investment and, further, to help to facilitate investment across international frontiers, open up foreign markets and increase the economic growth of all WTO partners.

#### Agreement on Government Procurement (GPA)

This agreement seeks to establish an effective multilateral framework of rights and obligations in the area of government procurement. Some of the main areas include non-discrimination, national treatment and transparency in the procedures for seeking tenders, selecting suppliers and awarding contracts. The agreement applies to all contracts above a set threshold level, that threshold is reviewed from time to time. The specific procedures related to tendering are set out in detail.

**Letters from the President of the Policy & Resources Committee to the Secretary of State for International Trade**

21<sup>st</sup> January 2019

Dear Dr Fox

**EXTENSION OF THE UK'S MEMBERSHIP OF THE WORLD TRADE ORGANIZATION (WTO)**

The government of Guernsey has a strong working relationship with the UK government, which has developed further in recent years as the United Kingdom continues to move towards its exit from the European Union. Although the Bailiwick of Guernsey did not participate in the UK's June 2016 referendum, it is and has been seeking to manage the impact upon the Bailiwick. The UK's exit from the EU will end the relationship the Bailiwick has with the EU under Protocol 3 of the UK's Treaty of Accession. We appreciate the support we have received from the UK Government to date, acting on behalf of the Crown, in ensuring that the Bailiwick of Guernsey's interests are taken into account.

The Bailiwick of Guernsey (comprising the three jurisdictions of Guernsey, Alderney and Sark) has a constitutional relationship with the Crown that has lasted for centuries. The Bailiwick has its own judiciaries, its own legislatures and other important distinctions from the UK. The relationship is underpinned by the right for the free trade in goods between the Bailiwick and the UK. Our relationship with the UK Government relies on trust, confidence and respect for our interests, even where they may differ from those of the UK. The Bailiwick has a long-standing policy of taking its international obligations seriously in order to safeguard the reputation both of the islands and the UK. It is on this basis that Guernsey agreed an international identity framework with the UK in 2008. It is within that framework that we wish to seek the extension of the UK's membership of the WTO to Guernsey.

As a jurisdiction with a reliance on global trade in goods and services, and in light of the relationship with the UK, Guernsey formed part of the UK's membership of General Agreement on Tariffs and Trade, 1947 (GATT 47) and the European Free Trade Area. Guernsey is part of the EU Customs Union under the UK's membership of the EU, in accordance with Protocol 3 to the UK's Treaty of Accession to the EU. It was not possible to extend the UK's membership of the WTO at the time it was created. The government of Guernsey decided to pursue extension when the islands had legislated

to implement a modern intellectual property ('IP') regime that would be compliant with WTO standards (in particular the Agreement on Trade-Related Aspects of Intellectual Property Rights); an objective that has now been met.

As a consequence of the UK's decision to leave the EU, the current trading relationship that the Islands have with the EU will cease to exist. The impacts for the Bailiwick of Guernsey in respect of UK, EU and global trade in goods and services are significant. In the absence of Protocol 3, the Bailiwick needs to consider how best to trade both with EU Member States and globally in the future. Consequently, Guernsey's government prioritised preparatory work to seek extension of the UK's membership of the WTO in time for the UK's exit from the EU. There has been a very constructive working relationship between our officials in this regard.

The objective of being included in the territorial scope of the UK's membership of the WTO remains one of the highest priorities for the Bailiwick. Whilst we have been able to demonstrate compliance with the UK's draft schedules there are a few minor issues to resolve, on which we are working closely with your Department. [redacted] This is in line with the long-standing approach that we have taken on other international obligations. We, of course, have a long track record of delivering on such commitments when they have been given by us in the past.

In an exchange of letters in September/October 2018, the Prime Minister repeated previous assurances that the long-standing constitutional relationships between the UK and the Crown Dependencies will not change. The Prime Minister also recognised the long-standing close trading relationships, which underpin the new customs arrangements recently agreed between the UK and Guernsey. [redacted] Such businesses will need to rely on WTO principles when the UK has left the EU. If the UK does not extend its membership of the WTO to Guernsey before the UK leaves the EU and if there is a 'no-deal' outcome, these constitutional and trading relationships will be placed at risk. Protecting these economic interests is important for the British family as a whole.

Our industry engagement across all sectors has provided strong evidence that extension of the UK's membership of the WTO is an important issue for more than two-thirds of businesses in the Bailiwick. Guernsey was the fastest growing market for UK imports of goods and services between 2010 and 2017, with increases of 456% to £2.4bn (ONS Pink Book 2018); emphasising its importance as an economic partner to the UK. WTO membership is strategically important for business development post-Brexit and operationally important for traders when the Bailiwick loses the access to the EU's Free Trade Agreements that Protocol 3 provides. As a consequence, this is a significant strategic threat to our no-deal contingency planning.



I would welcome an assurance that the UK will extend its membership of the WTO to Guernsey before the UK leaves the EU. As I have outlined, this is particularly important for a no deal scenario. An early indication of the UK's willingness to extend the WTO membership to us will be necessary to ensure that the island has the necessary domestic parliamentary approvals in place. In Guernsey, the next parliamentary session when this subject can be considered will be on 27 February 2019 and an order paper will need to be published a reasonable time in advance.

Given the urgency of the situation, I would welcome a meeting with you in London to discuss this matter as soon as possible and I or another senior member of Guernsey's government would ensure we were available at any time that would suit you.

I have copied in the Lord Chancellor, the Rt Hon the Lord Keen of Elie QC and Robin Walker MP in light of their responsibilities for managing the relationship with the Crown Dependencies.

Yours sincerely

**Deputy Gavin St Pier**  
Chief Minister of Guernsey/Le Prumier de Giernes

8<sup>th</sup> February 2019

Dear Liam

#### **EXTENSION OF THE UK'S MEMBERSHIP OF THE WORLD TRADE ORGANIZATION (WTO)**

Thank you for taking the time to meet with me yesterday in London, following my letter of 21 January 2019. It was helpful to discuss the critical importance of the extension of the UK's membership of the World Trade Organization ('WTO') to the Bailiwick of Guernsey, taking into account the economic and political consequences of failing to do so.

I was extremely grateful for the constructive and positive dialogue, which reflects the engagement that Guernsey has had with the UK Government since the UK's EU Referendum. I am pleased that the UK is continuing to take the interests of the Bailiwick into consideration as we move closer to the date that the UK will leave the EU. As I said, the government of Guernsey takes its international obligations extremely seriously and

is seeking to be part of the UK's WTO membership in good faith and by maintaining high standards alongside the UK. I am sure this will be part of an ongoing dialogue and strengthening of our relationship during the months and years to follow. I have, as a matter of urgent priority, directed my officials to work with your Department's officials to develop a memorandum of understanding to underpin this relationship and provide reassurance regarding our approach to WTO compliance.

I welcome your offer to discuss with you these and other trade matters at any time and look forward to continuing to work alongside the UK, as part of its WTO membership, to help maintain and champion free trade and to seek to build a stronger and more resilient global economy together. It will be important that we continue to engage closely together as the UK develops its network of Free Trade Agreements in order that Guernsey's interests are properly represented. I would therefore also be pleased to welcome you, or one of your Ministers, to Guernsey in the very near future to build and strengthen the relationships and understanding between our jurisdictions which will be so important in the months and years ahead.

As for my letter of 21 January 2019, I have copied in the Lord Chancellor, the Rt Hon the Lord Keen of Elie QC and Robin Walker MP in light of their responsibilities for managing the relationship with the Crown Dependencies.

Yours sincerely

**Deputy Gavin St Pier**

Chief Minister of Guernsey/Le Prumier de Giernes