



Wendy Dorey  
Chair  
Guernsey Institute of Directors

30 December 2020

Dear Wendy

### **THE BAILIWICK'S TRADE RELATIONSHIP WITH THE EU FROM 2021**

Preparing for the end of the Brexit transition period, including the Bailiwick of Guernsey's ('the Bailiwick') representation in the UK-EU negotiations, has been a priority for the States of Guernsey in 2020. The government has worked clearly, decisively and robustly to represent the Bailiwick's interests, so that in turn the UK could seek an agreement with the EU on our behalf that is relevant, proportionate and practical for our economic needs.

As set out in more detail below, a number of significant and positive steps have been secured by the States of Guernsey leading up to the UK-EU deal, including:

- Continuity for the Bailiwick in respect of the Common Travel Area;
- A new Customs Agreement with the UK which will enable the free and frictionless flow of goods between the Bailiwick and the UK to continue;
- Membership of the World Trade Organisation extended to the Bailiwick, providing trade stability and the potential for the Bailiwick to join UK Free Trade Agreements ('FTAs') where it is thought to be beneficial;
- Confirmed preferential tariffs agreed for trade into FTA partners such as Canada, Japan, South America, Norway, Iceland, Switzerland and South Africa with future opportunities being progressed with Australia, New Zealand and the USA;
- Reaffirmation by the UK Government that it shall not legislate for the Bailiwick without its express consent;
- Mutual recognition of data adequacy between the Bailiwick and the UK;
- Third country recognition for trade in certain products of animal origin and movement of certain live animals;

- Extension of the Bailiwick's territorial sea securing the islands' sovereignty and creating new economic opportunities; and
- No change in the Bailiwick's relationship with the EU as a third country for services.

### **UK-EU Trade Cooperation Agreement ('TCA')**

On 24 December 2020, the UK Government and the European Parliament announced that an agreement in principle had been reached on a future relationship with the EU, for trade, security and other cooperation. The highlights for the Bailiwick's participation include:

- Reciprocal access with EU markets for goods only with 'zero tariffs, zero quotas'.
- Bailiwick vessels to be able to fish in the Exclusive Economic Zones ('EEZ') of EU Member States, including the French EEZ adjacent to the Bailiwick's waters.
- Access to the Bailiwick's territorial waters for EU vessels is based on a 'static pool' of a fixed level of effort, which EU vessels could seek a licence to fish within.
- Side declarations in relation to taxation to ensure that any information exchange and administrative arrangement is consistent with the Bailiwick's fiscal autonomy.

Further detail on the agreement as it relates to the Bailiwick has been enclosed with this letter.

The States of Deliberation (as well as the States of Alderney and Chief Pleas of Sark) considered and approved the new agreement, as it relates to the Bailiwick, on Sunday 27 December. The agreement is a reasonable and proportionate balance of rights and obligations for the Bailiwick.

The TCA is due to be signed and ratified by the UK and the EU later today in order for it to take effect by the end of 2020. Legislation to implement this new agreement in the Bailiwick is being finalised and will be in place before the end of the transition period.

### **Continuity arrangements**

#### **Services**

The Bailiwick's Protocol 3 relationship with the EU, which existed while the UK was an EU Member State, was primarily concerned with the trade in goods. For trade in services the Bailiwick has always been a third country to the EU, and for many years the island's economy has been prosperous on this basis. This relationship with the EU for services will not change, providing certainty for Guernsey businesses as the new agreement is implemented.

## **Data protection**

This 'third country' status also extends to the Bailiwick's personal data protection regime, which has been recognised as having 'adequacy' status by the European Commission since 2003 enabling personal data to be moved freely between the Bailiwick and EU Member States. This is of benefit to local businesses who rely on free movement of personal data. The EU is currently processing a revised adequacy decision based on the General Data Protection Regulation.

The Bailiwick has agreed to extend its recognition of the UK as an 'authorised jurisdiction' until the end of 31 December 2021, in the event that the EU does not grant the UK an adequacy decision by the end of 2020.

## **Immigration and mobility**

The Common Travel Area ('CTA') is a long-standing arrangement between the UK, Bailiwick of Guernsey, Bailiwick of Jersey, Isle of Man and the Republic of Ireland, pre-dating the UK's membership of the EU. Under the CTA, British and Irish citizens can move freely between, and reside in, these islands (subject to population management controls).

It was agreed early in the Brexit process that the current rights for UK citizens within the EU, and those EU/EEA/Swiss citizens living in the UK, would be protected after the UK had withdrawn from the EU. The Bailiwick's respective EU settled status scheme to facilitate this process will take applications until 30 June 2021.

EU/EEA/Swiss citizens arriving in the Bailiwick from 1 January 2021 will need to apply for a work permit. The Committee *for* Home Affairs has combined the process of applying for an immigration work permit with the existing process to apply for a population employment permit. EU/EEA/Swiss nationals who have registered on the EU Settlement Scheme are exempt from this requirement. This deviation from the UK's immigration policy will ensure that businesses are able to continue accessing the important EU/EEA/Swiss workforce for vital sectors such as hospitality and care homes.

In addition to the work permit, EU/EEA/Swiss nationals coming to the Bailiwick to work will have to apply for a visa, prior to travel. Applications must be made by the employee once the Population Management permit (or approval in principle) has been submitted through the (Guernsey) Population Management Portal. The visa application must be submitted through the UK Government's online system.

## **Customs Arrangement with the UK**

A Customs Arrangement, signed between the UK Government and States of Guernsey, on behalf of the Bailiwick, will provide that the Bailiwick will form part of a single British Islands customs territory and that common customs tariffs applicable to third countries are applied

at Bailiwick borders in the same way as at any UK border. The Arrangement ensures that the free flow of goods from the UK to the Bailiwick and *vice versa*, in relation to customs tariffs, is preserved and continues to be as frictionless as possible in respect of customs procedures.

### **International trade post-Brexit**

#### **Membership of the World Trade Organization ('WTO')**

From 1 January 2021, the UK's WTO membership will be extended to the Bailiwick providing certainty for Bailiwick businesses that trade in goods or services with the 164 WTO member countries. It will ensure the Bailiwick has access to the international rules of fair trade for goods, and services, as well as the trade-related aspects of intellectual property.

#### **Rest of World Free Trade Agreements ('FTAs')**

As of 19 December 2020, the UK has secured 29 trade agreements with 58 countries through its FTA continuity programme, which will continue to apply to the Bailiwick to the extent that Protocol 3 applied.

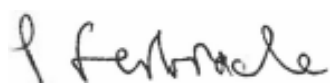
Brexit has enabled the UK to start negotiations on new international agreements with countries such as Australia and New Zealand and the USA. Guernsey's government is engaging with the Department for International Trade and has confirmed that the Bailiwick's interests should be taken forward within the wider negotiations. FTA development work will continue throughout 2021 and beyond as the Bailiwick continues to develop its own international trade policy within the context of the UK's own international trade policy. It is likely that the UK will pursue a range of other agreements focusing on topics other than free trade, and there may be opportunities for the Bailiwick to participate in those other agreements.

### **Future engagement**

We look forward to working with the business community and its representative bodies as we embrace the opportunities that are now presented to us.

Further information can be found on [www.gov.gg/brexit](http://www.gov.gg/brexit).

Yours sincerely



Deputy Peter Ferbrache  
President

## SUMMARY OF THE PROVISIONS IN THE TCA RELEVANT TO THE BAILIWICK OF GUERNSEY

### Goods relationship

The relevant chapters relate to the trade in goods, customs and rules of origin matters. The aims and purposes of those chapters are summarised as follows:

- Chapter 1 – National Treatment and Market Access for Goods (including trade remedies): To facilitate trade in goods between the UK and the EU and to maintain liberalised trade in accordance with the provisions of the agreement.
- Chapter 2 – Rules of Origin: To lay down the provisions for determining the origin of goods for the purpose of the application of the preferential tariff treatment under the TCA.
- Chapter 3 – Sanitary and Phytosanitary ('SPS') Measures: To set out the measures that are required to ensure human, animal and plant health is protected by the individual parties while facilitating the trade and movement of agri-foods between them. This chapter includes an Annex setting out related process matters.
- Chapter 4 – Technical Barriers to Trade ('TBT'): To facilitate trade in goods by preventing, identifying and eliminating unnecessary TBTs. This chapter includes associated Annexes. These Annexes are either relevant to current trade in goods, or areas of potential future economic opportunity and industry development. The following five Annexes are an integral part of the chapter:
  - Annex on Chemicals: To facilitate the trade of chemicals and related products, ensure high levels of protection for the environment, and human and animal health, and provide for cooperation between the UK (and the Bailiwick) and the EU responsible authorities.
  - Annex on Organic Products: To set out the provisions and procedures for fostering trade in organic products in accordance with the principles of non-discrimination and reciprocity. It means recognition of equivalence by the UK (and the Bailiwick) and the EU of their respective laws.
  - Annex on Motor Vehicles and Equipment and Parts thereof: To apply to trade between the UK (and the Bailiwick) and the EU for all categories of motor vehicles, equipment and parts thereof.
  - Annex on Trade in Wine: To ensure that science relating to wine making, referred to as oenological practices, complies with the international standards published by the International Organisation of the Vine and Wine ('OIV').
  - Annex on Medicinal Products: To apply provisions relating to the marketing of finished medicinal products for human or veterinary use, as well as intermediates, including biological products for human and veterinary use and active pharmaceutical ingredients ('API').

- Chapter 5 – Customs and Trade Facilitation: To ensure that there are compatible and effective administrative and enforcement customs procedures in place to facilitate trade whilst also ensuring proper protection, safety and security processes are in place to protect citizens, and national prohibitions and restrictions and financial interests of both the UK and the EU. (Note: the Bailiwick is not included in any aspects relating to maintaining an Authorised Economic Operators ('AEO') partnership programme, either within this Chapter or in the Annex on AEOs)
  - Protocol on Mutual Administrative Assistance in Customs Matters: To formalise and support the mutual assistance between customs authorities as agreed within the Customs and Trade Facilitation Chapter.

### **Fisheries relationship**

- Bailiwick vessels to be able to fish in the Exclusive Economic Zones ('EEZ') of EU Member States on the same terms as UK vessels. This includes the French EEZ which is adjacent to Bailiwick waters.
- Access to the Bailiwick's territorial waters for EU vessels is based on a 'static pool' of a fixed level of effort, which EU vessels could seek a licence to fish within. The level of effort is defined using a track record period of 10 days in any of the three 12 month periods ending on 31 January on or between 1 February, 2017 and 31 January, 2020.
- Vessels landing fresh fishery products caught in the Bailiwick's territorial seas to have between a three and five hour prior notification period for landings.
- Recognition of Bailiwick responsibility for the management of its territorial seas and for authorising vessels to fish in its waters by way of licence or otherwise.
- Governance, Dispute Resolution Mechanism and termination provisions.
  - A specialised committee/s to discuss the implementation of the agreement.
  - A dispute resolution mechanism, which is reciprocal, that provides for suspension of access arrangements; application of tariffs on fisheries products and finally application of tariffs on all goods. There is a provision for arbitration of any dispute by an independent panel.
  - There is a 'sunset clause' or cooling off period which can be activated at any stage in the first 90 days, to take effect within 30 days. This can be activated unilaterally by Guernsey or the EU.
  - There are general provisions which would allow amendment by mutual consent of the UK and the EU. This would require the consent of the Bailiwick in respect of any changes that would affect the Bailiwick's interests in the TCA.

## **Side declarations**

The TCA includes a political commitment entitled: 'A declaration in respect of the Bailiwick of Guernsey and the Bailiwick of Jersey on cooperation with the European Union on the recovery of claims related to VAT, customs duties and excise duties'. Essentially, it seeks to create a relationship with the EU about tax information exchange and administrative assistance regarding certain indirect taxes and ensures that this arrangement is consistent with the Bailiwick's fiscal autonomy.

The UK and the EU have agreed a 'Joint Political Declaration on the Countering of Harmful Tax Regimes which includes a commitment that the Parties will encourage the application of its principles in the territories for which they have special responsibilities or taxation prerogatives'.

That Declaration is a non-legally binding political commitment for the UK. Guernsey already meets the Organisation for Economic Co-operation and Development ('OECD') and EU Code of Conduct standards on fair taxation and tax cooperation which are referred to or implied in the political declaration.