

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

**POLICY & RESOURCES COMMITTEE**

**THE BAILIWICK'S PARTICIPATION IN UK FREE TRADE AGREEMENTS**

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled "The Bailiwick's Participation in UK Free Trade Agreements" dated 25<sup>th</sup> June, 2021, they are of the opinion:-

1. To agree that the Guernsey's participation in any Free Trade Agreement ("FTA") (or other trade arrangement) should –
  - a) meet Guernsey's needs, while respecting the constitutional relationship with the UK through the Crown and Guernsey's domestic autonomy; and,
  - b) be underpinned by the principles of relevance, proportionality, and practicality, taking into account the island nature of Guernsey, its size and population, and unique needs arising out of the same.
2. To note the intention to establish a process to enable effective consultation between the Bailiwick authorities in relation to participation in any FTA (or other trade arrangement).
3. To direct the Policy & Resources Committee to maintain efforts to ensure that Guernsey's interests (and, subject to the necessary authorisations from Alderney and Sark, the Bailiwick's interests) continue to be represented to the UK during negotiations in relation to any FTA (or other trade arrangement).
4. To authorise the Policy & Resources Committee, subject to the necessary authorisations from Alderney and Sark, to agree to the Bailiwick's participation in UK FTAs (or other trade arrangements) and signal that agreement to HM Government.
5. To endorse the process and approach (set out in Paragraphs 2.5-2.7 and 2.18-2.33) regarding Guernsey's (and the wider Bailiwick's) participation in UK FTAs (or other trade arrangements).
6. To agree that there shall be implemented such measures (including legislative measures) as the Policy & Resources Committee thinks fit for the purpose of

ensuring that Guernsey may comply and remain in compliance with obligations that arise from participation in any UK FTA (or other trade arrangement).

7. 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.

**THE STATES OF DELIBERATION**  
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**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE**

**THE BAILIWICK'S PARTICIPATION IN UK FREE TRADE AGREEMENTS**

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

25<sup>th</sup> June, 2021

Dear Sir

**1. Executive Summary**

- 1.1 Following its withdrawal from the EU, the UK is seeking new trade relationships around the world. There is an opportunity for Guernsey (and the wider Bailiwick) to be included in the resulting Free Trade Agreements (FTAs) (and other trade arrangements). The negotiations and ratification of the proposed FTAs are often proceeding within very short timescales<sup>1</sup> (which are set by the UK Government and its potential trading partners).
- 1.2 If the Bailiwick participates in all or part of a UK FTA, it would have the same advantages as the UK for trade with that trading partner. That could include the application of preferential customs tariffs, quota and border measures for the trade in goods and preferential access to markets for services. There will be obligations to be met if the Bailiwick participates in future UK FTAs, with corresponding resource implications – as is the case with existing FTAs – but participation will: ensure that current and future trade interests are protected and promoted; provide trade stability; and open up future trading opportunities with the FTA trade partner(s).
- 1.3 There would be significant constitutional difficulties if the UK were to ratify a FTA which purported to extend to Guernsey (or the wider Bailiwick) without relevant decisions having been made in the island(s) first. This Policy Letter sets out the proposed process and approach to deal with that, so that Guernsey, and the wider Bailiwick, can decide whether, and to what extent, to participate in UK FTAs and other trade arrangements.

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<sup>1</sup> Months, rather than years (which would be more typical for such negotiations).

- 1.4 In the Policy Letter considered by the three Bailiwick parliaments on 27<sup>th</sup> December, 2020<sup>2</sup> regarding the UK-EU Trade and Cooperation Agreement<sup>3</sup> ('the TCA Policy Letter'), there were references to trade agreements between the UK and other 'rest-of-world' (RoW) partners. That included consideration of the UK's continuity 'roll over' FTAs (which were agreements which used to apply to the UK when it was a Member of the EU, and now apply to the UK in its own right) and new FTAs.
- 1.5 In deciding whether it is beneficial for the Bailiwick to participate in a particular FTA, the Bailiwick will need to weigh up the advantages of any FTA at a strategic and practical level, compared to the requirements for compliance. That will include considering whether the obligations required by the FTA would be justified by reference to the volume and type of trade undertaken (or likely to be undertaken in future) and deliverable by the Bailiwick. It might also be advantageous for the Bailiwick's international relationships or international identity for it to participate (or not) in any particular FTA.
- 1.6 It has already been recognised that the Bailiwick's approach to inclusion in FTAs after Brexit would need to adhere to the principles of relevance, proportionality and practicality, whilst respecting the Bailiwick's autonomy. The Bailiwick can ensure its interests are served by participating in agreements that best suit the Islands' needs, whilst non-participation should not undermine the UK-Bailiwick Customs Arrangement<sup>4</sup>.
- 1.7 The UK has repeatedly provided assurances that the UK Government understands and respects the Bailiwick's centuries-old constitutional relationship with the Crown and the Bailiwick's domestic autonomy. The UK Government is responsible for representing the interests of the Bailiwick during FTA negotiations, even when the UK and the islands' interests are different. Each of the three Bailiwick jurisdictions need to make their own decisions about participation (or otherwise) in any future trade arrangements and the Bailiwick will need to ensure that it implements its obligations, whether by legislation or other measures, to meet its commitments.
- 1.8 Guernsey/the Bailiwick needs to make decisions within the FTA timescales set by the UK and its trading partner(s). Owing to the sensitive nature and pace of the negotiations for UK FTAs, it has not been possible to provide frequent or detailed

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<sup>2</sup> [Billet d'État XXIX](#) of 2020 – 'The Bailiwick's Participation in the UK-EU Trade and Cooperation Agreement,' - and [Resolutions](#), approved by the States of Deliberation, the States of Alderney and the Chief Pleas of Sark on 27<sup>th</sup> December, 2020.

<sup>3</sup> [Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part](#) – signed in Brussels and London 30 December 2020, full text available on gov.uk

<sup>4</sup> As in Paragraph 2.3 and Appendix 1, Paragraphs A1.3-A1.5, of this Policy Letter.

updates to all Committees of the States of Guernsey nor to make public statements. However, the Policy & Resources Committee's ('the Committee') mandated responsibilities and previous decisions of the States<sup>5</sup> have enabled the Committee, working with other Principal Committees and with the Alderney and Sark authorities, to represent the Bailiwick's interests in ongoing discussions with the UK Government. The Committee will continue to work closely with the UK Government during periods of negotiation to ensure that any particular FTA would suit the Bailiwick's needs, that the relevant provisions of that FTA meets the Bailiwick's negotiating principles and that the Bailiwick can comply with any obligations.

1.9 Throughout the progress of the negotiations on FTAs thus far, the politicians and officers representing Guernsey and the Bailiwick have continued to work to the principles set out in Section 4 of Billet d'État II of 2020 ('the January 2020 Policy Letter')<sup>6</sup>. Those principles were in regard to any Bailiwick involvement in an agreement for the UK-EU future relationship but are appropriate for other trade agreements. These objectives are that any trade agreement will:

- in its extension to and application in the Bailiwick, be relevant, proportionate and practical; and,
- in its entirety, respect the Bailiwick's domestic autonomy and constitutional relationship with the UK (through the Crown).

1.10 If the States agrees to the Propositions for this Policy Letter, it will enable decisions to be made by the Policy & Resources Committee (taking into account the views of the Principal Committees responsible for the policy areas covered by the FTA (or other trade arrangement)) on a case-by-case basis as to whether Guernsey/the Bailiwick should or should not be included in the customs and goods element of a particular FTA. Each decision would be on the basis that the commitments and obligations in respect of goods were the same as or similar to those entered into by the Bailiwick in existing FTAs, including the UK-EU Trade and Cooperation Agreement ('TCA'), whilst taking into account the resulting benefits. For each FTA, it is intended that the Policy & Resources Committee would request the UK to secure an extension mechanism together with an undertaking from the partner country (and provide one itself) to facilitate any services provisions of a FTA being extended to Guernsey/the Bailiwick at a later date.

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<sup>5</sup> Resolutions of the States from 1987, 2016 and 2020 are particularly relevant; as in Paragraphs 2.9-2.11, 2.19 and Appendix 3 of this Policy Letter.

<sup>6</sup> [Billet d'État II of 2020](#) – 'The Withdrawal Agreement between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey' and [Resolutions](#) of 8<sup>th</sup> January, 2020.

1.11 This Policy Letter is to:

- ask the States of Deliberation to agree the process and approach to enable the government to respond swiftly to FTA developments – in the case of Guernsey, that would be for the Policy & Resources Committee (with due regard to the 1987 States’ Resolution on international agreements and having taken into account the process and approach set out in this Policy Letter) to decide to what extent the island should participate (or not) in any particular UK FTA
- ask the States to make Resolutions relating to the objectives and principles underpinning the Bailiwick's participation in FTAs; intra-Bailiwick engagement; compliance with obligations arising under FTAs; and the preparation of any necessary legislation
- update the States on the Policy & Resources Committee’s consideration and decision about Guernsey’s participation in the UK-EEA EFTA FTA, having due regard to the timescales being set by the UK and its trading partners; to the Committee’s mandated responsibilities and previous States’ decisions; and noting that officers from across relevant parts of the States of Guernsey had been working on FTA provisions

**2. The Bailiwick’s participation in FTAs (including other trade arrangements)**

2.1 Free Trade Agreements (FTAs) are agreements which, according to international law, are created between two or more nations with the aim and purpose of removing trade restrictions and barriers to stimulate and encourage economic growth.

2.2 The UK Government has what it has described as ‘ambitious goals’ for British trade, aiming, “to have 80 per cent of UK trade covered by free trade agreements within the next three years [i.e. by the end of 2022], starting with the USA, Australia, New Zealand and Japan.”<sup>7</sup> The UK Government has already commenced various negotiations to achieve its aim of securing these new FTAs; indeed, some of these began before the TCA negotiations were concluded. The TCA Policy Letter<sup>8</sup> noted that, “FTA development work will continue throughout 2021 and beyond as the Bailiwick continues to develop its own international trade policy.”

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<sup>7</sup> Page 57 (‘Increase trade and prosperity’) of [Get Brexit Done Unleash Britain’s Potential – The Conservative and Unionist Party Manifesto 2019](#) 24<sup>th</sup> November, 2019.

<sup>8</sup> Paragraph 11.8 of the TCA Policy Letter.

## UK-Bailiwick Customs Arrangement

- 2.3 The UK-Bailiwick Customs Arrangement negotiated with the UK in 2018<sup>9</sup> is a customs union<sup>10</sup> as defined by the WTO. It means that the Bailiwick has to apply the UK external tariff (known as the UK Global Tariff); it must apply any preferential tariffs agreed in UK FTAs to imported goods regardless of whether the Bailiwick participates in those FTAs.

## The Bailiwick can choose whether to participate in a UK FTA or not

- 2.4 The Bailiwick (and the jurisdictions within it) is not obliged to participate in all UK FTAs – but it can do so, if it so chooses and if the trading partner agrees. In line with long-standing constitutional principles, the Bailiwick will only be included in any international agreement, at the point of the UK's ratification or by extension at a later date, if the Bailiwick consents to this<sup>11</sup>. The Bailiwick (and the jurisdictions within it) can select which FTAs it wishes to participate in.
- 2.5 The Bailiwick will need to weigh up the advantages of any FTA, at a strategic and practical level, against the requirements of compliance including the resources required, so that it can decide whether, overall, it is beneficial to participate in that FTA. Consideration will include whether implementing or otherwise complying<sup>12</sup> with the obligations and commitments required by the FTA could be justified by the volume and type of trade undertaken (or likely to be undertaken in future). It might also be considered advantageous from the perspective of the Bailiwick's international relationships or international identity for the Bailiwick to participate (or not) in any particular FTA.
- 2.6 It has already been recognised<sup>13</sup> (in the context of the TCA) that the Bailiwick's approach to inclusion in FTAs after Brexit should adhere to the principles of relevance, proportionality and practicality, whilst respecting the Bailiwick's autonomy. It has also been noted that one means of ensuring that the Bailiwick's interests are served is by participating in international agreements that best suit

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<sup>9</sup> [Arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the States of Guernsey \(the Government of Guernsey\) Concerning the Establishment and Operation of a United Kingdom-Crown Dependencies Customs Union](#), signed 26<sup>th</sup> November, 2018. It came into effect at 11pm on 31<sup>st</sup> December 2020.

<sup>10</sup> The WTO defines a customs union as 'the substitution of a single customs territory for two or more customs territories'.

<sup>11</sup> In accordance with the constitutional relationship between the Bailiwick of Guernsey and the UK, through the Crown, the Bailiwick (and each of the three jurisdictions within it) cannot sign up to an international agreement in its own right, except where authorised to do so by entrustment. It is possible for international agreements to which the UK is a party to be extended to the Bailiwick (or part of it).

<sup>12</sup> This could include requirements such as notification, reporting or transparency standards.

<sup>13</sup> In the TCA Policy Letter – this paragraph adapted from Paragraphs 3.3-3.5 of that Policy Letter.

the Islands' needs, whilst non-participation should not undermine the extant Customs Arrangement with the UK.

- 2.7 If the Bailiwick chooses not to participate in any particular FTA (or other trade arrangement), there will be different impacts depending on whether that FTA is in respect of goods and/or services and/or other matters. By way of example:
- if the Bailiwick does not participate in 'goods and customs' chapters of a FTA: goods that originate in the Bailiwick<sup>14</sup> (which are then shipped into the UK's FTA partner country) would not benefit from any preferential treatment under that FTA (and would thus be at a competitive disadvantage compared to a product originating in the UK and could also be less attractive as part of the UK supply chain);
  - if the Bailiwick does not participate in 'services and investments' chapters of a FTA: UK businesses/service providers could have a competitive advantage (compared to those in the Bailiwick);
  - if the Bailiwick does not participate in a FTA at all:
    - Bailiwick businesses and individuals would not enjoy any preferential arrangements when trading with that trading partner. They would then need to rely on WTO rules and protections from discrimination when trading with them.
    - the Bailiwick would also lose any potential benefit of the wider strategic relationship that a FTA may provide with any trading partner.
- 2.8 Paragraph 2.35 indicates what might happen if only one or two of the three jurisdictions of the Bailiwick wish to participate in any particular FTA (or only in part of that FTA).

#### Previous relevant decisions made by the States of Deliberation

- 2.9 Previous decisions of the States of Deliberation<sup>15</sup>, including in June 2016, have directed the Policy & Resources Committee to engage with the UK Government, in accordance with the Committee's mandate, in order to seek opportunities for Guernsey in new UK trading relationships including any new FTAs.<sup>16</sup> The 2016

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<sup>14</sup> As in Paragraph 7.3 of the TCA Policy Letter: "The UK would be obliged as part of any trade agreement to protect the integrity of any shared customs arrangements (including that between the Bailiwick and the UK). The origin of any goods exported from the Bailiwick to the UK would need to be identified to ensure that the correct tariff is applied if those goods were subsequently exported..."

<sup>15</sup> As outlined in Appendix 2, since 2016, the States of Deliberation has considered various matters relating to the UK's withdrawal from the EU, which has included the potential for new trading opportunities to arise as the UK seeks to develop its new international trade agenda.

<sup>16</sup> As outlined in Appendix 3 of this Policy Letter, the States had decided in June 2016 that one of its main areas for engagement with the UK Government was to, "(iv) Seek opportunities for Guernsey in



Resolutions also directed the Committee, “to take all other necessary measures that may be considered appropriate.”

- 2.10 In January 2020, the States of Deliberation agreed that, “any agreement or protocol in respect of the Bailiwick [in respect of the UK-EU future relationship] should be underpinned by the principles of relevance, proportionality and practicality taking into account the island nature of the Bailiwick, its size and population and unique needs arising out of the same”.<sup>17</sup> While those principles were in regard to any Bailiwick involvement in an agreement for the UK-EU future relationship, they are also considered appropriate for other trade agreements<sup>18</sup>.
- 2.11 In December 2020, the States of Deliberation noted the inclusion of the Bailiwick within various FTAs that had been “rolled over” as part of the UK’s continuity programme, and other agreements, which would take effect at the end of the Brexit transition period. The Policy & Resources Committee was directed to implement such measures as the Committee, “thinks fit for the purpose of ensuring that Guernsey...may comply and remain in compliance with the obligations that arise from the inclusion of the Bailiwick in such agreements”.<sup>19</sup>

#### Preparation for the Bailiwick’s possible participation in UK FTAs

- 2.12 There has been close engagement with the UK’s Department for International Trade (‘DIT’) as the UK has commenced its negotiations with international partners. It was noted in the TCA Policy Letter that it had, “been confirmed that the islands of the Bailiwick wish their interests to be taken forward within the wider negotiations... 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.”<sup>20</sup>
- 2.13 Preparatory steps, or implementation measures, may be required to enable the Bailiwick to participate in FTAs that the UK negotiates, particularly for chapters that are wider than trade in goods, such as services (including financial services), digital or intellectual property and related data protection issues. This could require certain parts of the population management framework or aspects of domestic regulatory arrangements to be changed to allow natural persons and businesses additional access to the Bailiwick.

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any new UK trading relationship including with the EU and with other countries outside of the EU, including any new FTAs and exploring extension of the UK membership of the WTO”.

<sup>17</sup> [Resolutions](#) of 8th January, 2020.

<sup>18</sup> See also Paragraph 2.6 of this Policy Letter.

<sup>19</sup> [Resolutions](#) of 27<sup>th</sup> December, 2020.

<sup>20</sup> From the TCA Policy Letter, Paragraphs 11.8 and 11.9. Those agreements would include the potential extension of the CPTPP and any agreement between the UK and Singapore relating to digital trade.

### The UK's FTA negotiations

- 2.14 The UK's FTA negotiations are fast-paced and there are different negotiations happening in parallel, as the UK seeks to use political opportunities to secure new FTAs within a short period of time following the end of the Brexit transition period. In addition to the UK-Japan Comprehensive Economic Partnership Agreement ('CEPA')<sup>21</sup> and the UK-EEA EFTA Agreement<sup>22</sup>, the UK has recently announced that agreement in principle has been reached for a UK-Australia FTA<sup>23</sup>. The UK is also seeking agreements with other countries and groups of countries - including New Zealand, India and the USA - and working on accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ('CPTPP').

### The Bailiwick's involvement in UK FTA negotiations

- 2.15 Owing to the historic and special constitutional relationship with the UK (through the Crown), the UK is responsible for the Bailiwick's formal international relations and defence, and so represents the Bailiwick's interests during FTA negotiations. This responsibility to represent the Bailiwick's interests exists even where the Bailiwick's interests differ from those of the UK, and the UK Government has confirmed that it takes this responsibility seriously (more detail is available in Appendix 4).
- 2.16 Bailiwick representatives are not generally present in the FTA negotiations themselves, but Guernsey officers and politicians have met with counterparts in the UK Government (and from the other Crown Dependencies) to ensure that the UK Government fully understands the Bailiwick's position and, whether aligned or not, the Crown Dependencies' interests. Guernsey officers have been working hard to ensure that the UK Government understands and represents the Bailiwick's interests accurately during any international FTA negotiations. That involves work at the UK's FTA objective-setting stage, and before and during the negotiation phases, for each of the various FTAs which the UK Government is simultaneously pursuing at present. The Bailiwick's interests are being taken into consideration by the UK Government but, given the speed and unpredictability of negotiations, it is important that the Bailiwick can react quickly and decisively to meet condensed timelines when necessary. The Bailiwick needs to be able to move swiftly, but with accuracy and care, to ensure that the Bailiwick's interests are incorporated into the wide range of negotiations in a timely manner.

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<sup>21</sup> As in paragraph 11.7 of the TCA Policy Letter.

<sup>22</sup> For the UK-Japan CEPA and the UK-EEA EFTA FTA, the Bailiwick is included in the trade in goods elements from the time of implementation together with a territorial extension clause which could allow the Bailiwick to participate in further elements, namely trade in services parts of the agreements, in the future.

<sup>23</sup> [UK-Australia free trade agreement negotiations: agreement in principle – policy paper](#) published by DIT on 17<sup>th</sup> June, 2021.

### Process to consider participation in future UK FTAs

- 2.17 The pace of negotiations has highlighted the need to devise a new process for agreeing FTAs which is streamlined, to enable the Bailiwick to respond accordingly and flexibly to the UK's work programme whilst allowing for appropriate scrutiny. This Policy Letter outlines the process and approach recommended by the Committee to enable Guernsey – and the other islands of the Bailiwick – to deal with the extension of (all or part of) FTAs.
- 2.18 In accordance with custom and practice relating to international agreements, it is important that Guernsey – and the other islands of the Bailiwick – has an opportunity to decide for itself which of the UK's future FTAs it participates in and the extent of its participation in each FTA, prior to ratification of those FTAs by the UK (as in Section 5).
- 2.19 The Committee notes that in relation to agreeing the extension of international agreements it already has authority to negotiate on behalf of, execute and represent Guernsey under its own mandate, existing delegated authority derived from the 1987 States' Resolution<sup>24</sup> on international agreements ('the 1987 States' Resolution') and in accordance with the Resolutions from the June 2016 Brexit Policy Letter (as outlined in Paragraph 2.9 and Appendix 3). It intends that the process for agreeing Guernsey's participation in future UK FTAs will follow these established precedents.
- 2.20 The process should be customised to suit the specific needs of the various trade agreements. This will allow a fast-track process for agreeing participation in FTAs in respect of customs and goods because this "baseline" already exists in the continuity 'roll-over' FTAs (with their link to Protocol 3<sup>25</sup>), the UK-Japan CEPA, the TCA<sup>26</sup>, and the UK-EEA EFTA FTA<sup>27</sup>.
- 2.21 The process would also have specific scrutiny requirements for participation in FTAs in respect of services. Services aspects of FTAs have a greater potential to impact autonomy (compared to goods aspects of FTAs) and to do so in areas of greater economic importance.

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<sup>24</sup> Billet d'État IV of 6 February 1987, and Resolutions of 25<sup>th</sup> February, 1987 (hyperlinks not available) set out the process to be followed to deal with the extension to Guernsey of international agreements. The Resolutions are provided in Appendix 3 for ease of reference.

<sup>25</sup> The Bailiwick's approach to the continuity 'roll-over' FTAs is outlined in Section 11 of the TCA Policy Letter (and earlier Policy Letters). Information on the Bailiwick's participation in the TCA is contained in the TCA Policy Letter.

<sup>26</sup> For the TCA, the principles for the Bailiwick's participation were defined in the TCA Policy Letter and agreed by the three Bailiwick parliaments on 27<sup>th</sup> December, 2020; the most pertinent paragraphs from the TCA Policy Letter are replicated in Appendix 5 of this Policy Letter for ease of reference.

<sup>27</sup> Section 4 and Appendix 6 of this Policy Letter explain Guernsey's approach to the UK-EEA EFTA FTA.

- 2.22 It is recommended that the States endorse the process and approach (set out in Paragraphs 2.5-2.7 and 2.18-2.33) regarding the Policy & Resources Committee's exercise of its delegated authority in relation to Guernsey's - and the wider Bailiwick's - participation in UK FTAs. This process and approach would apply equally to other trade arrangements by analogy, according to whether the trade arrangements in question concerned customs & goods or, alternatively, services & investments (or other matters).
- 2.23 In making any decision in respect of a FTA in which the Bailiwick might participate, the Committee will seek the views of the President(s) (or another nominated representative) of Committees responsible for the policy areas covered by the particular FTA.<sup>28</sup>
- 2.24 The Committee intends to report back to the States periodically about those new FTAs in which all or part of the Bailiwick is taking part, in accordance with the 1987 States' Resolution on international agreements.
- 2.25 In addition, the Committee would retain the option of returning questions about participation in all or part of a particular FTA to the States of Deliberation, which is also consistent with the approach to international agreements as set out in the 1987 States' Resolution. This could be used, for instance, if "baseline" commitments for customs and goods or the costs of compliance substantially exceeded those found in the TCA or in other FTAs applying to the Bailiwick or if the Committee was of the view that referral was appropriate for some other reason.
- 2.26 It should be noted that, because of the timescales involved which are dictated by decisions and timings in the UK and elsewhere, such consideration by the States of Deliberation might involve a request to the Presiding Officer for either (a) a later-than-usual publication date for an additional Billet for a scheduled States Meeting, or (b) a short-notice States Meeting.

#### Approach for trade in goods

- 2.27 The UK Government and its negotiating partner(s) will agree terms relating to trade in goods that involve reducing tariffs and quotas, simplifying customs and inspection procedures, and managing and minimising non-tariff barriers to trade.

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<sup>28</sup> This could be done in various ways to be determined by the Policy & Resources Committee, which might include convening a specific group of Committee representatives (with delegated authority from their Committees). There was a similar approach in the UK-EU negotiations (during the Brexit transition period) when there was a body called the Future Partnership Delivery Group ('FPDG') – as in Appendix 1, Paragraph A1.23. The committees most likely to be called upon for this purpose would be the Committee *for* Economic Development, the Committee *for the* Environment & Infrastructure and the Committee *for* Home Affairs, but may include other committees depending on the scope of the FTA chapters being considered.

Guernsey already applies any applicable tariff or quota for goods arriving from other countries, in accordance with its Customs Arrangement with the UK. The Bailiwick is also required to keep its customs regime 'correspondent' with that in the UK. Therefore, in broad terms, it is considered easier for the Bailiwick to participate in the customs elements of any UK FTA because the Bailiwick will already comply with many, if not all, of those terms.

- 2.28 For FTAs concerning trade in goods, there would be a presumption of "baseline" participation, where commitments, obligations and benefits would be the same as or similar to those found in the TCA and UK FTAs which already apply to the Bailiwick. This includes areas such as market access, customs facilitation, rules of origin, sanitary & phytosanitary measures, and technical barriers to trade.

#### Approach for trade in services and investments

- 2.29 As each FTA is different depending on the trade interests of the UK and its negotiating partner(s), careful consideration needs to be given by the Bailiwick as to whether or not to participate in each FTA beyond the goods and customs "baseline" as the Bailiwick will have distinct trade interests for services and investments.
- 2.30 The UK Government requires a compliance process to be completed by the Bailiwick prior to the Bailiwick's participation in a FTA being considered by the UK and its trading partner. The Bailiwick will wish to participate in FTAs in a manner that best suits the Bailiwick's interests, taking into account matters such as economic activity, trade ambitions, administrative practicalities and similar factors – that might include only participating in certain parts of the FTA.
- 2.31 The obligations and commitments can be wide-reaching and vary according to each agreement. For example, they could include commitments and obligations ensuring equal and fair market access, regarding environmental standards, labour laws and procurement, and are generally aimed at achieving the full benefits of liberalised trade. The FTA may also include obligations regarding equal access to financial services, digital and e-commerce sectors and others which require oversight and regulatory compliance. It might require the Bailiwick to adopt certain population management measures to align with mobility requirements for certain professional, skilled and experienced workers<sup>29</sup>.
- 2.32 The Committee intends that the general approach to Guernsey's, or the wider Bailiwick's, participation in parts of FTAs relating to services and investments (and other supporting chapters) would be to seek provision within the FTA that would enable its service and investments aspects, if considered appropriate by

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<sup>29</sup> Further details are outlined in Appendix 7.

the Bailiwick, to be extended to the Bailiwick in future (rather than at the time of the provisional application or coming into force of the FTA). This will allow full assessment and compliance work to be carried out, ensuring the Bailiwick has assessed all risk and benefits of such enhanced participation. In addition, it is proposed that the Bailiwick should seek a commitment from the UK, and, ideally, the partner country, to adopt a 'best endeavours' and timely approach to such future extension and related negotiations if the Bailiwick indicates that it wishes those additional parts of a FTA to be extended to it.

- 2.33 Once the States have agreed to Guernsey's participation in additional parts of a FTA (such as services and investments) for the first time, it could be that the Policy & Resources Committee would then decide the issue for subsequent FTAs under its existing delegated authority. This is because, as with customs and goods parts currently, there would be a "baseline" which the Committee could take account of when considering whether to agree to such additional participation in a FTA or to refer the question back to the States of Deliberation.

#### Alderney and Sark

- 2.34 The Committee continues to work with the States of Alderney and the Chief Pleas of Sark to ensure that both islands are kept updated on the progress of the negotiations to enable them to provide input on their own positions<sup>30</sup>.
- 2.35 Owing to the nature of the intra-Bailiwick and Bailiwick-UK trading relationships, Alderney and Sark's inclusion for the customs and goods elements of any future UK FTAs (those to be extended to Guernsey) would be necessary in order to ensure that all the parts of the Bailiwick remain aligned. Should only part of the Bailiwick resolve to take part in future FTAs in respect of the "baseline", the direct consequences are likely to impact the trade in goods with the relevant FTA partner for that jurisdiction(s) only, but there are likely to be indirect consequences for relations with the UK. There may also be unforeseen consequences and wider implications for relations within the Bailiwick<sup>31</sup>. It is also possible that if the three jurisdictions are not aligned, it could weaken the negotiating stance of one or more of them.
- 2.36 As noted above<sup>32</sup>, even in cases of non-participation, each of the jurisdictions of the Bailiwick is required to apply the UK's Global Tariff or preferential tariffs under FTAs because of the UK-Bailiwick Customs Arrangement.
- 2.37 Owing to the likely complexities involved in being included in additional aspects of FTAs (beyond customs and goods), it will be necessary to give further detailed

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<sup>30</sup> See also Paragraphs A1.25-A1.26 in Appendix 1 to this Policy Letter.

<sup>31</sup> Adapted from Paragraph 7.1 of the TCA Policy Letter.

<sup>32</sup> Paragraph 2.3.

consideration to the obligations arising from FTAs. It might be necessary to make significant legislative and/or policy changes to achieve compliance, which could differ across the Bailiwick because of the different circumstances in each of the islands. The obligations (and requisite changes) will need to be balanced against any benefits which could be achieved to ensure that any participation best suits the needs of each of the islands within the Bailiwick. It could potentially lead to differences in participation in FTAs (in whole or in part) in future.

- 2.38 Given the importance of each of the islands within the Bailiwick signifying their consent to be bound by obligations within any future UK FTAs which they wish to participate in, it is suggested that Alderney and Sark should establish a similar process for considering and consenting to FTAs within those islands. (Guernsey process outlined in Paragraphs 2.5-2.7 and 2.18-2.33 above.)
- 2.39 Consideration could be given as to whether Alderney and Sark would wish to consider inclusion within each new UK FTA on a case by case basis (for the customs and goods "baseline", as well as any additional elements where the Bailiwick may be seeking inclusion in a particular FTA). It would also be possible to explore whether Alderney and Sark would be willing to delegate authority to the Policy & Resources Committee in Guernsey to approve the Bailiwick's inclusion within FTAs for the customs and goods "baseline" only, with the relevant authorities from Alderney and Sark considering inclusion for any additional elements on a case by case basis, at a later stage, as will be the case in Guernsey.
- 2.40 If the States agrees to the Propositions for this Policy Letter, the Committee intends to discuss these matters with the governments of Alderney and Sark further, in order to find a way that the consent process can be streamlined for the Bailiwick as a whole while working to the UK's own condensed timelines.

### **3. Management of FTAs**

- 3.1 Each FTA will be different depending on the UK's and the trading partner's objectives, but each trade agreement will include various standard provisions to enable its day-to-day management (including but not limited to the following):
- Governance – usually a combination of general and specialised committees<sup>33</sup>;

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<sup>33</sup> It is anticipated that the Bailiwick would agree arrangements with the UK for its participation in any committee(s) established to discuss implementation of any part of that FTA in line with the arrangements for the TCA, as set out in a [letter from the Rt Hon Lord Frost CMG](#), dated 27<sup>th</sup> May, 2021, regarding engagement with the Devolved Administrations and Crown Dependencies on TCA implementation.

- Dispute Resolution<sup>34</sup> – which may apply to different chapters in different ways and with a series of escalating steps;
- Review – to allow the FTA to respond to changes over time;
- Termination – in cases where the FTA is no longer in the interests of a participating country or territory (usually involving a defined notice period).

### Governance

- 3.2 The UK has an ongoing obligation to represent the interests of the Bailiwick, taking account of the principles in the International Identity Framework<sup>35</sup>. This will include representation at committees established under FTAs<sup>36</sup>. In a Ministerial meeting in December 2020, it was agreed between the UK and Guernsey<sup>37</sup> to develop a mechanism to facilitate dealing with FTAs, in terms of both representation and any trade disputes. The principles and format for that UK-Bailiwick mechanism are still under consideration.

### Dispute resolution mechanisms

- 3.3 The UK Government would be responsible for representing the Bailiwick's interests within any international dispute. DIT is responsible for handling international trade disputes, including any concerns which may arise from or about the Bailiwick<sup>38</sup>. A UK-Bailiwick mechanism for managing international trade relations (including in the unlikely event of a dispute) is under discussion. The issue of differentiation (in the disputes context) between the different parts of the British family taking part in any given FTA will also need to be addressed.
- 3.4 In case there were to be any dispute or non-compliance issue that only related to one or two of the three Bailiwick jurisdictions, it is proposed that there would be an intra-Bailiwick process to deal with that. It is likely that would take the form of an agreement between Guernsey, Alderney and Sark which sets out the agreed principles for a timely and effective response and how any costs would be apportioned.

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<sup>34</sup> Trade agreements generally include specific provisions for a reciprocal dispute resolution mechanism ('DRM'). The DRM would allow for disputes to be discussed through a process of consultation, mediation and, ultimately, some form of arbitration.

<sup>35</sup> As in Paragraph A1.17 in Appendix 1.

<sup>36</sup> Although it may also be possible for the Bailiwick to represent itself, when appropriate, as in footnote 33.

<sup>37</sup> UK Government represented by the Rt Hon Greg Hands MP, Minister of State for Trade Policy; Guernsey represented by Deputy Peter Ferbrache, as Chief Minister.

<sup>38</sup> Trade disputes can be either 'defensive' (for the Bailiwick, that would be trade disputes that are caused by the Bailiwick's own trade policies) or 'offensive' (where trade distortion is caused by another country's trade policies and the Bailiwick raises a concern). Additionally, the disputes can be in relation to a FTA or other trade agreement or in regard to WTO principles or otherwise.



### Review clauses

- 3.5 FTAs can contain general review clauses which would allow for amendment by mutual consent of the UK and the other country/organisation. This would require the consent of the Bailiwick in respect of any changes that would affect the Bailiwick's participation in the FTA.

### Termination

- 3.6 It is usual for FTAs to include a termination clause, so that any participating country or territory can withdraw from its terms after giving the required notice. If the UK or its FTA partner were to terminate the FTA, then the FTA should also cease to apply to the Bailiwick. It will also be important for FTAs to enable termination by the Bailiwick in isolation<sup>39</sup> (of the provisions which apply to the Bailiwick) – because of its distinct international identity and domestic autonomy – even if this is unlikely to arise in practice.

## **4. The Bailiwick's participation in the UK-EEA EFTA FTA**

- 4.1 On 4<sup>th</sup> June, 2021, the UK announced<sup>40</sup> that it had concluded negotiations for a FTA<sup>41</sup> with Norway, Iceland and Liechtenstein, collectively known as the EEA EFTA States<sup>42</sup> (which are the three European Free Trade Association ('EFTA') States that are also part of the European Economic Area ('EEA')). This FTA now needs ratifying, including any necessary domestic parliamentary consent processes in the UK and the EEA EFTA States. Following agreement in principle, the legal text will be finalised.
- 4.2 The UK-EEA EFTA FTA will apply to the Bailiwick, in respect of customs and goods only, from the point of ratification of the FTA by the UK. The FTA broadly mirrors the TCA and contains similar obligations; in addition, there are no fisheries access commitments to consider. The agreement in effect replicates the goods and customs terms of the TCA for the wider EEA EFTA area. There is also an 'extension mechanism', together with a supporting side declaration, for the

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<sup>39</sup> There is a provision in the proposed EEA EFTA FTA to allow the Bailiwick (or another Crown Dependency) to seek to terminate its trading relationship under the FTA, separately to the UK.

<sup>40</sup> Agreement in principle was [announced by the UK Government](#) on 4<sup>th</sup> June 2021.

<sup>41</sup> [Free Trade Agreement between the United Kingdom or Great Britain and Northern Ireland and Iceland, the Principality of Liechtenstein and the Kingdom of Norway](#). There is already an [interim continuity trade agreement](#) in place for trade between the UK and Iceland and Norway (signed 8<sup>th</sup> December, 2020). Before the end of the Brexit transition period, the UK's trade with the three countries was principally underpinned by the EEA Agreement. The new FTA is intended to replace that one for trade between UK and the EEA EFTA States.

<sup>42</sup> The 27 EU Member States, together with the three European Free Trade Association (EFTA) States Iceland, Liechtenstein and Norway, make up the European Economic Area (EEA) Contracting Parties (the 31 EEA States). Norway, Iceland and Liechtenstein go by the term "EEA EFTA States" in order to clarify that the other EFTA State, Switzerland, is not party to the EEA Agreement.

Bailiwick (or parts of it) to be included in the additional elements (such as services and investments) of the UK-EEA EFTA FTA in the future, if the Bailiwick or any part of it so chooses.

- 4.3 Owing to the need to conclude the agreement at pace to secure the negotiated outcome and for the Bailiwick to consent to inclusion before the end of the UK's ratification process for the UK-EEA EFTA FTA, the Policy and Resources Committee considered Guernsey's inclusion in that FTA for trade in goods and the declaration committing the parties to further discussions about inclusion in services and the investments-related chapters. The Committee did so using the Committee's mandated responsibilities, the 1987 Resolution on international agreements and the June 2016 Resolutions (more information in Appendix 3).
- 4.4 It is understood that consideration is being given to this FTA by the relevant authorities in Alderney and Sark for inclusion of those islands on the same terms as Guernsey.

## **5. Next steps**

- 5.1 To protect and respect the Bailiwick's autonomy and democratic processes, it is necessary for the Bailiwick to indicate whether or not it wishes to be included in each UK FTA, or other agreement, before it is ratified in the UK (before the end of the period when the FTA is laid before the UK Parliament). This will enable the UK Parliament to consider the final legal text and, if content, the UK Government can ratify it on behalf of the UK as well as the Bailiwick, if it has consented to be included in the agreement.
- 5.2 If the States agrees to the Propositions for this Policy Letter, it will mean that it has endorsed the proposed process and approach to be used by the Committee when it makes decisions about Guernsey's participation in FTAs (or other trade arrangements) using its delegated authority under the 1987 Resolution on international agreements.
- 5.3 For any FTA which is to be extended to the Bailiwick (in whole or in part), the Law Officers of the Crown (or officers) would advise whether there are any additional legislative (or other) requirements to be implemented to ensure that the Bailiwick is compliant with the obligations in that agreement. In order to effect inclusion in any particular agreement, letters from the Policy & Resources Committee will be issued through the official channel to set out the formal request for Guernsey, or the wider Bailiwick, to be included in certain elements of the FTA. Further detail of the legislative requirements is set out in Section 6.

## **6. Legislative requirements**

- 6.1 The UK and the Bailiwick both have 'dualist' legal systems, where, save in exceptional circumstances, treaty obligations exist on the international plane and must be given effect separately, whether through laws, regulatory practices, or governmental policies, as a part of the domestic framework. As Guernsey, Alderney and Sark are separate territories for whose international relations the UK is responsible, it is the Bailiwick's own administrations and assemblies that are responsible for applying and implementing international obligations, even though the UK remains ultimately responsible for compliance as a matter of international law.
- 6.2 The Bailiwick's inclusion in the customs and goods "baseline" of FTAs is principally underpinned by legislation relating to customs, agri-foods and manufactured goods. In accordance with the Customs Arrangement, customs legislation will be kept 'correspondent' with that in the UK. For the other two categories of legislation, which concern goods regulation, further development of the domestic legal framework is intended and will likely be equivalent to the arrangements in the UK.
- 6.3 Specific implementing legislation is unlikely to be required for particular FTAs; however, if it is, and in addition to any category-specific powers, there are general implementing powers contained in The International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018<sup>43</sup>. This was one of the three principal pieces of legislation which was enacted in readiness for Brexit and which provides a power for the States to make Ordinances to implement any international trade agreement or resolve trade disputes arising therein. Given the pace at which FTA negotiations, agreement and ratification could occur, and in cases where legislative changes might be required rapidly, further thought is being given to supplementing the Ordinance-making power.
- 6.4 Were the Bailiwick (or any part of it) to seek participation in additional chapters of FTAs, it is highly likely that legislative changes would be required to ensure the Bailiwick (or relevant part of it) was compliant at that time with the new international obligations it was consenting to be bound by.

## **7. Compliance with Rule 4**

- 7.1 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.

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<sup>43</sup> [The International Trade Agreements \(Implementation\) \(Bailiwick of Guernsey\) Law, 2018](#)

- 7.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 7.3 In accordance with Rule 4(3), the Policy & Resources Committee and the Committee *for* Economic Development have monitored, and continue to monitor, the resources used for FTA work, including work to help to mitigate and respond to any uncertain and changing operational, political and legal situations that may arise. This has meant and may continue to mean reviewing and changing legislation and assessing any opportunities or challenges that have arisen and may arise. Resources may continue to be required to ensure that the States can act swiftly to implement new arrangements. The use of resources, from across the organisation, will continue to be kept under review.
- 7.4 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.
- 7.5 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.
- 7.6 The Committee was directed by the States to lead on Guernsey's (and the wider Bailiwick's) engagement with the UK Government for potential participation in the TCA and in FTAs. The States made Resolutions in that regard in the June 2016, January 2020 and December 2020 Brexit Policy Letters (as in Paragraphs 2.9-2.11). At times, these negotiations have proceeded at an extremely fast pace.
- 7.7 The UK's withdrawal from the EU and related matters remain key external influences for the Bailiwick. The States confirmed<sup>44</sup> that managing the effects of Brexit is one of the four key strategic priorities for the States of Guernsey at this time<sup>45</sup>.

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<sup>44</sup> In Resolution 1 arising from the Government Work Plan debate in March 2021.

<sup>45</sup> As identified in the [Government Work Plan – Stage 1](#) and the States' [Resolutions](#) of 26<sup>th</sup> March, 2021. Also explained in the [Government Work Plan 2021-2025](#) (due for debate in July 2021).

7.8 The Committee's consultation with other parties is outlined in Appendix 8, in accordance with Rule 4(5).

Yours faithfully

P T R Ferbrache  
President

H J R Soulsby  
Vice-President

M A J Helyar  
J P Le Tocq  
D J Mahoney

**BACKGROUND TO THE UK'S TRADE NEGOTIATIONS**

**UK-EU Trade and Cooperation Agreement and continuity FTAs – preparing for the end of the Brexit transition period**

- A1.1 Following the United Kingdom's ('UK') withdrawal<sup>46</sup> from the European Union ('EU') and during the Brexit transition period (in 2020), the UK and EU negotiated a Trade and Cooperation Agreement ('TCA') (for trade, security and other cooperation). The three parliaments of the Bailiwick (the States of Deliberation, the States of Alderney and Chief Pleas of Sark) each agreed on 27<sup>th</sup> December, 2020, to participate in the TCA insofar as it applies to the Bailiwick, in particular in respect of fisheries and the trade in goods. It was considered that the terms of the TCA satisfied the objectives agreed by the three parliaments of the Bailiwick in June 2016 and January 2020 (the main areas for engagement with the UK Government for the States of Guernsey are detailed in Appendix 3; whilst the full list of Bailiwick objectives and a comparison with the outcome of the UK-EU negotiations is set out in table 1 of the TCA Policy Letter).
- A1.2 In addition to the Bailiwick's participation in the TCA, the three parliaments of the Bailiwick also agreed to participate in other agreements from the end of the Brexit transition period, including **continuity FTAs** which had been "rolled over" by the UK<sup>47</sup>. The Bailiwick's agreed approach is that those FTAs which previously had effect in the Bailiwick by virtue of the Bailiwick's relationship with the EU would continue to apply to the extent that Protocol 3 applied.

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<sup>46</sup> The UK's referendum about membership of the EU took place in June 2016. The UK left the EU at 11pm on 31<sup>st</sup> January, 2020. The Brexit transition period then lasted from 31<sup>st</sup> January, 2020 until 11pm on 31<sup>st</sup> December, 2020. The TCA came into effect from 11pm on 31<sup>st</sup> December, 2020.

<sup>47</sup> Resolution 5 of the TCA Policy Letter, "to note the inclusion of the Bailiwick in various FTAs (which have previously had effect in the Bailiwick by virtue of the Bailiwick's relationship with the EU, and the operation of which has been "rolled over" by the UK) and other agreements which will take effect at the end of the Brexit transition period and to agree that there shall be implemented such measures (including legislative measures) as the Policy & Resources Committee, in relation to Guernsey, the Policy and Finance Committee of the States of Alderney, in relation to Alderney, and the Policy and Finance Committee of the Chief Pleas of Sark, in relation to Sark, thinks fit for the purpose of ensuring that Guernsey, Alderney and Sark may comply and remain in compliance with obligations that arise from the inclusion of the Bailiwick in such agreements."

### The UK-Bailiwick of Guernsey Customs Arrangement<sup>48</sup>

- A1.3 The Bailiwick entered into a Customs Arrangement with the UK<sup>49</sup> which came into effect at 11pm on 31<sup>st</sup> December, 2020.<sup>50</sup> “The Customs Arrangement provides 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.”<sup>51, 52</sup> Certain obligations arise from that Customs Arrangement.
- A1.4 There are three Arrangements which together recognise that the Bailiwick, along with Jersey and the Isle of Man, will be treated as part of the UK's customs area and that trade between the Islands and the UK should continue, undisrupted, without customs' tariffs and without new checks at the borders between the members of the Arrangements (the UK, Bailiwick of Guernsey, Jersey and the Isle of Man).
- A1.5 One of the effects of this arrangement is that if the Bailiwick does not participate in a particular FTA which has been entered into by the UK, the Bailiwick must still apply the common customs tariffs for imported goods which have been agreed under the FTA between the UK and the partner country. However, any goods originating in the Bailiwick and exported to the partner country would not benefit from any preferential tariffs which may have been agreed under the FTA.

### The extension of the UK's membership of the WTO to the Bailiwick of Guernsey

- A1.6 The UK's WTO membership was extended to the Bailiwick from 11pm on 31<sup>st</sup> December, 2020, at the end of the Brexit transition period, when the UK became an independent member of the WTO.<sup>53,54</sup> “The extension of the UK's WTO

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<sup>48</sup> [Arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the States of Guernsey \(the Government of Guernsey\) Concerning the Establishment and Operation of a United Kingdom-Crown Dependencies Customs Union](#), signed 26<sup>th</sup> November, 2018.

<sup>49</sup> As outlined in the TCA Policy Letter and in a Policy Letter on 'Customs Duties and Associated Powers Required in Respect of Brexit' - [Billet d'État XIX](#) of 2018 ([Resolutions of 18<sup>th</sup> July, 2018](#))

<sup>50</sup> As outlined in paragraphs 9.10 to 9.14 of [the TCA Policy Letter](#).

<sup>51</sup> From the TCA Policy Letter Paragraph 9.10

<sup>52</sup> As stated in the TCA Policy Letter (Paragraph 9.12), “Under this Customs Arrangement, Guernsey can set its own prohibitions and restrictions as long as they can be justified under certain protocols. The four member jurisdictions within the arrangement (the UK, Guernsey, Jersey and the Isle of Man) form a safety and security zone and the carriers of any goods entering the zone are required to submit a safety and security declaration. This provides a safeguard from the import of high level dangerous goods and from security risks.”

<sup>53</sup> [Billet d'État IV of 2019](#) - 'Extending the United Kingdom's Membership of the World Trade Organization' - [and Resolutions](#) approved by the States of Deliberation on 18<sup>th</sup> February, 2019, the Policy & Finance Committee of Alderney on 16<sup>th</sup> April, 2019 and the Chief Pleas of Sark on 27<sup>th</sup> March, 2019.

<sup>54</sup> Confirmed in the letter from the UK's Foreign Secretary to the Director-General of the WTO, dated 15<sup>th</sup> October, 2019. There is a Memorandum of Understanding (MoU) between the Government of the

membership ensures that 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.”<sup>55</sup> WTO membership provides opportunities for the Bailiwick to access any FTAs negotiated by the UK, which are based on WTO standards but may provide for more preferential trade terms as agreed under each particular FTA.

- A1.7 Any Bailiwick trade which is not covered by the TCA or a FTA will be covered by WTO rules in any event. This offers “trade certainty but does not eliminate tariffs being applied to exports from the Bailiwick, which could be considerably higher than tariffs applied to goods from countries where a FTA exists. In general, FTAs offer lower maximum tariffs and preferential treatment for the parties compared to those provided for by the WTO.”<sup>56</sup>
- A1.8 While WTO membership is not a requirement for the Bailiwick to be party to any UK FTAs, confirmation of adherence to the WTO rules and obligations is required for agreeing any FTAs. This means that the Bailiwick must demonstrate the same level of compliance as the UK in respect of its membership of the WTO. Partaking in the UK’s WTO membership provides a compliance baseline in support of the Bailiwick’s participation in any potential future FTAs.<sup>57</sup>

UK’s approach to pre-existing international trade agreements which it was party to whilst a member of the EU - continuity (‘roll over’) agreements

- A1.9 As part of its preparations for withdrawal from the EU, the UK approach has been to seek continuity for the various pre-existing international trade agreements and arrangements which it was party to while a member of the EU.<sup>58</sup> The UK has sought to become a party to those international agreements in its own right, either bilaterally with partner countries or by acceding to various relevant multilateral agreements in its own right (rather than as part of the EU).
- A1.10 Not all the EU agreements were converted into UK ‘roll over’ (continuity) agreements by the end of the Brexit transition period, either due to willingness of the treaty partner or due to a lack of time to agree the necessary terms to roll

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United Kingdom and the States of Guernsey concerning the relationship between the United Kingdom of Great Britain and Northern Ireland and the Bailiwick of Guernsey in relation to World Trade Organization matters, dated 9<sup>th</sup> October, 2019, which sets out the intended manner in which to operate the extension of the UK’s membership to the Bailiwick and future co-operation in that context. The MoU does not create legal obligations between the participants and is not intended to alter or affect the constitutional relationship between the UK and the Bailiwick.

<sup>55</sup> Taken from Paragraph 10.2 of the TCA Policy Letter.

<sup>56</sup> Adapted from Paragraph 7.12 of the TCA Policy Letter.

<sup>57</sup> This paragraph is adapted from Paragraph 9.4 of the WTO Policy Letter (Billet d’État IV of 2019).

<sup>58</sup> As set out in the January 2020 Policy Letter, paragraphs 3.16 to 3.18



over the agreement. This means that some of the preferential trading terms enjoyed by the Bailiwick under the Protocol 3 relationship (when the UK was a member of the EU) were lost at the end of the Brexit transition period.

A1.11 Some of those pre-existing agreements and arrangements relate to Protocol 3<sup>59</sup>, including customs matters and agri-foods/sanitary/phytosanitary measures. The Bailiwick had agreed to adopt a continuity approach for, “EU international agreements that apply by virtue of, and to the extent provided for by Protocol 3”<sup>60</sup>. Therefore, certain agreements and arrangements have been transitioned in respect of the Bailiwick, but where it was not relevant, proportionate or practical to do so, they were not extended to the Bailiwick at the end of the Brexit transition period. The option remains for such agreements to be extended at a later date if required.

A1.12 Of those pre-existing EU-third country trade agreements, such as FTAs, partnership agreements or economic cooperation agreements, as of 31<sup>st</sup> December 2020, the UK had secured approximately 30 trade agreements with 58 countries, which for the purposes of trading goods continue to apply to the Bailiwick to the extent that Protocol 3 applied<sup>61</sup> (as was the case under the UK’s membership of the EU and due to the Bailiwick’s resulting relationship with the EU.)

#### 2021 and beyond (after the end of the Brexit transition period)

A1.13 The work in relation to Brexit and its implications for the Bailiwick did not end on 31<sup>st</sup> December, 2020 (the end of the Brexit transition period) nor with the initial implementation of the TCA. The work encompasses continued compliance with WTO obligations, the TCA and continuity FTAs, other opportunities and challenges for relationships and agreements with the UK, EU and other jurisdictions, and further development of constitutional resilience. The work will need to continue to be prioritised and adequately resourced.

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<sup>59</sup> From 1<sup>st</sup> January, 1973 until 31<sup>st</sup> January, 2020, the Bailiwick had a special relationship with the EU that was set out in Protocol 3 to the UK’s Act of Accession to the European Community (1972) (‘Protocol 3’). The Protocol 3 relationship is explained in Appendix 2 of the December 2020 Policy Letter.

<sup>60</sup> From the January 2020 Policy Letter, paragraph 3.17. Examples of the types of agreements transitioned relating to Protocol 3 are shown in Section 11 of the TCA Policy Letter.

<sup>61</sup> In addition, as advised in paragraph 11.7 of the TCA Policy Letter, the UK-Japan CEPA formed part of the UK’s original trade continuity programme, but the terms of that agreement were renegotiated such that it fell outside of the parameters of the continuity programme. The Bailiwick’s inclusion remains based on a Protocol 3 relationship for that agreement but includes a provision to extend other elements to the Bailiwick in the future, such as the cross border supply in services, financial services and digital elements.

A1.14 Guernsey's Government Work Plan<sup>62</sup> recognises managing the effects of Brexit and Guernsey's international obligations as one of the four main priorities for government in this political term (2020-2025).

A1.15 Ongoing work is required to ensure that the Bailiwick continues to participate in, and remain compliant with, the TCA and any existing UK-third country FTAs insofar as they relate to the Bailiwick. Work is also continuing for compliance checks and cost-benefit assessments for considering whether to request extension of any new UK FTAs beyond the baseline.

#### Representing the Bailiwick's interests during the FTA negotiations phase

A1.16 The islands of the Bailiwick are self-governing dependencies of the Crown, with their own directly elected legislative assemblies, their own administrative, fiscal and legal systems, and their own courts of law. However, neither the Bailiwick, nor any of its constituent jurisdictions, are sovereign States. The UK has responsibility for the formal international relations of the Bailiwick, as it does for Jersey, the Isle of Man and the Overseas Territories. Usually, the UK Government negotiates international agreements on behalf of the Bailiwick<sup>63</sup>, either at the request of the Bailiwick (or any of its constituent jurisdictions) or if the Bailiwick agrees to such a suggestion by the UK Government. Generally, international agreements which apply to the UK can be extended to all or any of the islands at the time of ratification, accession or at a later date.

A1.17 The UK Government and Guernsey signed an International Identity Framework ('the Framework') in 2008<sup>64</sup>. The Framework seeks to develop Guernsey's international identity through an agreed set of principles with the UK. In particular, the Framework states that "the UK will not act internationally on behalf of Guernsey without prior consultation" and that "the UK recognises that the interests of Guernsey may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity."

A1.18 Accordingly, the Bailiwick has not been directly represented at the UK-FTA negotiations but has, instead, been represented by the UK Government. This might be considered a risk because of the potential difficulty in ensuring that the

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<sup>62</sup> [Government Work Plan – Stage 1](#) and the States' [Resolutions](#) of 26<sup>th</sup> March, 2021; and [Government Work Plan 2021-2025](#) (due for debate in July 2021).

<sup>63</sup> The States of Guernsey has sought agreement from the UK Government, acting on behalf of the Crown, to enable Guernsey to negotiate certain international agreements directly with other countries, rather than being represented in the negotiations by the UK. Entrustment has been used on various occasions, including in relation to tax transparency agreements, an asset sharing agreement with the US and, more recently, for Guernsey to enter into a social security agreement with Latvia, which was signed in September 2020.

<sup>64</sup> [Framework for developing the international identity of Guernsey](#) – signed between Guernsey and UK governments on 18<sup>th</sup> December, 2008

Bailiwick's interests are fully understood and therefore accurately presented by the UK negotiators, and, in turn, well understood by the potential trading partner. To mitigate that risk, Guernsey has continued to build on strong relationships at Ministerial and official level across various UK Government Departments.

- A1.19 The UK Government is responsible for representing the Bailiwick's interests in these trade negotiations even where they differ from those of the UK. The UK Government has repeatedly acknowledged this responsibility (some examples are shown in Appendix 4).
- A1.20 Officials from the States of Guernsey have been working closely with the UK Government, particularly with the Department for International Trade (DIT), the Department for Business, Energy and Industrial Strategy and the Ministry of Justice. Political liaison has been through engagement with the Minister of State for Trade Policy in DIT, the Rt Hon. Greg Hands MP. There have also been meetings with other Ministers, including the Lord Chancellor.
- A1.21 The Bailiwick has sought to maximise opportunities and minimise risks from the effects on it of the UK's departure from the EU – including the opportunities to participate in future UK FTAs.

#### Bailiwick of Guernsey governance structure – negotiations phase

- A1.22 The Committee was directed by the States of Deliberation to lead on Guernsey's participation in the UK-EU negotiations on the future relationship, as well as to seek opportunities for Guernsey in any new UK trading relationship including with the EU and with other countries outside of the EU, including any new FTAs and exploring extension of the UK membership of the WTO<sup>65</sup>.
- A1.23 Two groups were formed in January 2020 to offer support, advice and guidance to the Committee during the UK-EU negotiations phase, to ensure a collaborative approach with other Principal Committees as the many facets of UK-EU negotiations crossed all Committee mandates. In broad terms, the Future Partnership Delivery Group ('FPDG') was the political group comprising representatives of the Policy & Resources Committee and each Principal Committee, the States of Alderney, Chief Pleas of Sark and senior civil servants; and the Trade Policy Advisory Panel ('TPAP') was the business representative group enabling engagement with industry and external stakeholders. As the UK commenced negotiations on FTAs with other international partners (such as Japan and the USA), those groups also considered the Bailiwick's position towards inclusion within the UK's FTAs. Both groups were disbanded at the end of March 2021, at the end of the TCA 'cooling off period'.

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<sup>65</sup> Resolutions of the June 2016 Policy Letter.

A1.24 A new group, the Trade Policy Forum ('TPF') was set up in 2021 to establish regular, constructive engagement with external stakeholders on future trade policy for Guernsey. This includes consideration of TCA implementation matters and discussions in relation to UK FTAs (and associated negotiations) and other trade matters. The TPF comprises political representatives from the Policy & Resources Committee, Committee *for* Economic Development and the Committee *for* Home Affairs, representatives from industry and external stakeholders. Other representatives will be invited to attend as necessary.

#### Alderney and Sark

A1.25 The Committee, on behalf of the Bailiwick, has led the engagement with the UK Government in respect of the FTA negotiations (and previously in the UK-EU negotiations with the EU) to ensure that the interests of the entire Bailiwick are understood by the UK Government, including when the interests of the three islands of the Bailiwick may differ. Liaison between Alderney, Sark and Guernsey (including other Guernsey Committees) occurs for technical and operational matters, or where shared legislation, policy or practice exists or could be beneficial.

A1.26 Issues have been, and continue to be, discussed in meetings between the islands of the Bailiwick to ensure that Alderney and Sark's matters and positions are known and understood – including when appropriate in the Bailiwick Council, the Alderney Liaison Group and the Sark Liaison Group – as well as in less formal fora as matters arise.

**SUMMARY OF MAIN REFERENCES TO FTAs FROM CERTAIN POLICY LETTERS  
CONSIDERED BY THE STATES OF DELIBERATION**

(MAIN FOCUS OF THOSE POLICY LETTERS IS THE UK'S WITHDRAWAL FROM THE EU  
AND BAILIWICK'S RELATIONSHIPS WITH UK AND EU)

- A2.1 Since 2016, the States of Deliberation has considered various matters relating to the UK's withdrawal from the EU, which has included the potential for new trading opportunities to arise as the UK seeks to develop its new international trade agenda. Below is a summary of certain Policy Letters with references to international trading opportunities and FTAs.
- A2.2 **June 2016 – “Managing the implications for Guernsey because of the UK's changing relationship with the EU” – Policy & Resources Committee**

The first main Brexit Policy Letter<sup>66</sup> set the high level objectives for Guernsey and the potential for new opportunities following the UK's exit from the EU. This Policy Letter was also approved by Alderney's Policy & Finance Committee and by Sark's Policy & Performance Committee (July 2016)<sup>67</sup>. Paragraph 6.9.3 of that Policy Letter noted the opportunities for new trading relationships that could arise following the UK's withdrawal from the EU:

“Importantly, when the UK leaves the EU, the EU will no longer have the competence to enter into international trade agreements on the UK's behalf as is currently the case under the Treaty of Lisbon. This will enable the UK to enter into new trade agreements of its own. This change may therefore provide new trading opportunities for Guernsey as it has been hitherto unable to extend EU trade agreements, except in so far as Protocol 3 applies. However, experience suggests that it is likely to take the UK many years to negotiate new trade agreements.”

The Policy Letter also set out the main areas for engagement with the UK during the UK's negotiations with the EU (set out in paragraph 7.4 and Appendix 4) – see Appendix 3 of this FTA Policy Letter.

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<sup>66</sup> [‘Urgent Proposition’ at the States’ Meeting of 29 June 2016](#) – ‘Managing the Implications for Guernsey because of the UK's Changing Relationship with the EU’ and [Resolutions for Billet d’État XX - 29<sup>th</sup> June, 2016](#)

<sup>67</sup> Approved by Sark's Policy & Performance Committee on 12<sup>th</sup> July, 2016 and approved by Alderney's Policy & Finance Committee on 19<sup>th</sup> July, 2016. A statement recognising the UK's decision to leave the EU was made by the President of the States of Alderney at its meeting on 20<sup>th</sup> July, 2016

### **A2.3 March 2017 – Acknowledging the Triggering of Article 50 of the Treaty on European Union in Respect of ‘Protocol 3’**

In March 2017, the States of Deliberation considered a Policy Letter<sup>68</sup> that ensured due parliamentary process by formally acknowledging the UK’s withdrawal from the EU. That Policy Letter was also approved by Alderney’s Policy & Finance Committee and by Chief Pleas of Sark (April 2017).<sup>69</sup>

That Policy Letter set out the objectives of the then UK Government’s negotiating objectives for its withdrawal from the EU, which included (as summarised in paragraph 6.1 of that Policy Letter) “Securing new trade agreements with other countries – We will forge ambitious free trade relationships across the world”.

Paragraph 6.4 of that Policy Letter set out the importance for Guernsey of these future trading opportunities: “Also of interest to Guernsey, is that the UK Government will seek a new network of regional and free trade agreements, including with the EU alongside some sort of new customs arrangement. The opportunity for Guernsey to have access to any such agreements [is seen] as being essential.”

That Policy Letter outlined the four initial priority areas that had been established for engagement with the UK government in the course of the negotiations, set out in paragraph 6.9. This included:

“Customs and goods: the maintenance of Guernsey’s trade links with the UK and the EU provides stability and protection for its businesses in order to safeguard and build on its trading relationships. No doors for new trading opportunities should be closed to the islands and with that in mind, the extension of the UK’s membership of the World Trade Organisation (WTO) will become a priority”.

### **A2.4 November 2017 – “Protecting the interests of the Bailiwick of Guernsey as the UK leaves the EU” – Policy & Resources Committee.**

In November 2017, the States of Deliberation considered the third main Brexit Policy Letter<sup>70</sup> which set out the rationale for repealing the European Communities (Bailiwick of Guernsey) Law 1973, for implementing relevant EU measures into domestic law and other legislative provisions to provide continuity

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<sup>68</sup> [Billet d’État VI of 2017](#) – ‘Acknowledging the Triggering of Article 50 of the Treaty on European Union in Respect of “Protocol 3”’ and [Resolutions](#) of 8<sup>th</sup> March, 2017.

<sup>69</sup> Approved by Alderney’s Policy and Finance Committee on 25<sup>th</sup> April 2017 (acknowledged by the States of Alderney on 24<sup>th</sup> May, 2017) and by Chief Pleas of Sark on 26<sup>th</sup> April 2017.

<sup>70</sup> [Billet d’État XXI of 2017](#) – ‘Protecting the Interests of the Bailiwick of Guernsey as the UK Leaves the EU and [Resolutions](#) of 8<sup>th</sup> November, 2017.

and certainty during the Brexit process. This was also approved by Alderney's Policy & Finance Committee and by Sark's Chief Pleas (December 2017)<sup>71</sup>. That Policy Letter noted the importance of Guernsey being able to benefit from any new opportunities arising from the UK's withdrawal from the EU. Part of the work required was to enact an enabling *Projet de Loi* for the purpose of the implementation of any international agreement relating to trade, in reference to international trading agreements and other instruments and associated materials. The Law Officers of the Crown prepared the relevant legislation - The International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018<sup>72</sup>. The relevant *Projet* was approved by all three Bailiwick parliaments and the law was granted Royal Sanction in December 2018.

#### **A2.5 January 2020 – “The Withdrawal Agreement between the United Kingdom and European Union - Implications for the Bailiwick of Guernsey” – Policy & Resources Committee**

The fourth main Brexit Policy Letter<sup>73</sup> provided an update on Bailiwick-related developments that had taken place in advance of the UK's exit from the EU, sought approval of the next steps and directed preparation of any necessary legislation. It was considered and approved in Guernsey, Sark and Alderney (January 2020)<sup>74</sup>.

The Policy Letter explained (in paragraphs 3.16 and 3.17) the UK's intention to 'roll over' agreements (including FTAs) which it had participated in by virtue of its EU membership. The UK approach was to seek to become a party to the international agreements in its own right either bilaterally with partner countries or by acceding to various relevant international agreements. The Policy & Resources Committee agreed in March 2019 to adopt a continuity approach in respect of EU international agreements that applied by virtue of, and to the extent provided by, Protocol 3 so that the various international agreements would continue to apply post-Brexit insofar as Protocol 3 applied. Alderney and Sark's relevant Committees also adopted a similar approach.

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<sup>71</sup> Alderney's Policy and Finance Committee on 5<sup>th</sup> December, 2017 and by Sark's Chief Pleas on 7<sup>th</sup> December, 2017.

<sup>72</sup> [The International Trade Agreements \(Implementation\) \(Bailiwick of Guernsey\) Law, 2018](#) approved by the States of Deliberation at its meeting of 6<sup>th</sup> June, 2018; approved by the Chief Pleas of Sark at its meeting of 4<sup>th</sup> July, 2018; approved by the States of Alderney at its meeting of 25<sup>th</sup> July, 2018.

<sup>73</sup> [Billet d'État II of 2020](#) – 'The Withdrawal Agreement Between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey' and [Resolutions](#) of 17<sup>th</sup> January, 2020.

<sup>74</sup> Approved by Alderney's Policy & Finance Committee on 23<sup>rd</sup> January, 2020 and by Sark's Policy & Finance Committee on 20<sup>th</sup> January, 2020.

#### A2.6 December 2020 – “The Bailiwick’s Participation in the UK-EU Trade and Cooperation Agreement” – Policy & Resources Committee

The fifth main Brexit Policy Letter<sup>75</sup> (the TCA Policy Letter) set out the outcome of negotiations between the UK and EU and the terms of the agreement reached, insofar as they would apply to the Bailiwick of Guernsey. The Policy Letter summarised the terms of the agreement in comparison to the Brexit objectives agreed in successive Policy Letters since 2016, and authorised the Policy & Resources Committee to agree and signal approval of the TCA if the Committee was of the view that the terms and conditions of that agreement gave satisfactory effect to the principles agreed by the States<sup>76</sup>. The Policy Letter was considered and approved in Guernsey, Alderney and Sark (December 2020).

The Policy Letter set out the UK’s approach to continuity agreements following its departure from the EU and the ability for the UK to start negotiations on new international agreements, which the Bailiwick could seek to benefit from (as set out in section 11 of that Policy Letter). Resolution 5 of that Policy Letter asked the States of Deliberation: “To note the inclusion of the Bailiwick in various free trade agreements (which have previously had effect in the Bailiwick by virtue of the Bailiwick’s relationship with the EU, and the operation of which has been “rolled over” by the UK) and other agreements which will take effect at the end of the Brexit transition period and to agree that there shall be implemented such measures (including legislative measures) as the Policy & Resources Committee, in relation to Guernsey, the Policy and Finance Committee of the States of Alderney, in relation to Alderney, and the Policy and Finance Committee of the Chief Pleas of Sark, in relation to Sark, thinks fit for the purpose of ensuring that Guernsey, Alderney and Sark may comply and remain in compliance with obligations that arise from the inclusion of the Bailiwick in such agreements.”

There is further information about the TCA Policy Letter in Appendix 1 paragraph A1.1 and Appendix 5.

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<sup>75</sup> [Billet d’État XXIX](#) of 2020 – ‘The Bailiwick’s Participation in the UK-EU Trade and Cooperation Agreement’ – and [Resolutions](#) of 27<sup>th</sup> December, 2020. Approved by the States of Deliberation, States of Alderney and Chief Pleas of Sark at their (separate) meetings on 27<sup>th</sup> December, 2020.

<sup>76</sup> The TCA Policy Letter included an Appendix which listed and summarised all the Brexit-related Policy Letters to date.



**PREVIOUS RESOLUTIONS OF THE STATES OF DELIBERATION**

**Guernsey's objectives in relation to the UK's withdrawal from the EU and new trading relationships**

- A3.1 Guernsey's objectives were set out in the June 2016 Policy Letter ('Managing the Implications for Guernsey because of the UK's Changing Relationship with the EU') <sup>77</sup>. Appendix 3 contained the negotiating objectives and considerations (which were also replicated elsewhere, including in the TCA Policy Letter in 2020):
- a) "Negotiating considerations – relationship with the UK"
  - b) "Negotiating objectives - relationship with the EU"

Paragraph 7.4 (also duplicated for ease of reference in Appendix 4 to that 2016 Policy Letter) was the "Main areas for engagement with the UK Government for the States of Guernsey".

- A3.2 The Resolutions of 29<sup>th</sup> June, 2016, included one which was for, "the Policy & Resources Committee to lead on the negotiations with the UK, in accordance with its mandate, in particular to: "(i) engage with the UK in the four main areas of concern outlined in paragraph 7.4; (ii) seek to protect and secure the best interests of Guernsey in its trading relationship and for those resident in the Bailiwick; (iii) to take all other necessary measures that may be considered appropriate; and (iv) to note that that the Policy & Resources Committee will undertake to keep States Members advised of progress."
- A3.3 The last two points from paragraph 7.4 of that June 2016 Policy Letter are particularly pertinent to the Bailiwick's potential participation in any UK FTAs and are copied below for ease of reference.

**"7.4 Main areas for engagement with the UK Government for the States of Guernsey**

In order to ensure that Guernsey's interests are best served in the negotiations with the UK it will need to ensure it monitors and engages with the UK Government to:

- (i) Ensure the interests of Guernsey residents are taken into account by the UK / EU exit agreement. This includes ensuring that Guernsey

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<sup>77</sup> ['Urgent Proposition' at the States' Meeting of 29 June, 2016](#) – 'Managing the Implications for Guernsey because of the UK's Changing Relationship with the EU' ('the June 2016 Policy Letter') and [Resolutions](#)

residents/persons with EU rights do not suffer any detriment compared to those resident in the UK;

- (ii) Ensure, where possible, the arrangements for free movement of goods described in Protocol 3 are replicated in some way. This may be through extension of the relevant part of any new UK / EU relationship. The States should also ensure that the best interests of Guernsey residents and businesses are served under that new agreement;
- (iii) Ensure there is no detriment to the existing, and historic, constitutional relationship between Guernsey and the UK. Work to mitigate against any risks of unintended consequences; and
- (iv) Seek opportunities for Guernsey in any new UK trading relationship including with the EU and with other countries outside of the EU, including any new free trade agreements and exploring extension of the UK membership of the WTO.”

A3.4 The January 2020 Policy Letter<sup>78</sup> also contained an overarching objective for the UK-EU negotiations and the States resolved (inter alia): “To agree, in particular, that any agreement or protocol in respect of the Bailiwick should be underpinned by the principles of relevance, proportionality and practicality taking into account the island nature of the Bailiwick, its size and population and unique needs arising out of the same.”

#### 1987 States’ Resolution on International Agreements

A3.5 For information about the 1987 Resolution on international agreements, refer to Billet d’État IV of 6<sup>th</sup> February, 1987, and Resolutions of 25<sup>th</sup> February, 1987.

Resolution:

“That each international agreement in the application of which to this Island the Insular Authorities are invited to acquiesce shall be referred by the Bailiff to the States Advisory and Finance Committee and that the States Advisory and Finance Committee shall make to the Bailiff its recommendations as to whether a notification of acquiescence in the application of an agreement to this Island either in whole or with reservations or of non-acquiescence should be made and thereupon the Bailiff shall communicate with the proper quarter in accordance with such recommendations provided that:-

- (a) where the terms of any international agreement appear to the States

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<sup>78</sup> [Billet d’État II of 2020](#) – ‘The Withdrawal Agreement between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey’ and [Resolutions](#)

Advisory and Finance Committee to involve questions of human rights and fundamental freedoms, or matters which, in the opinion of the States Advisory and Finance Committee are likely to be considered controversial, the terms of the proposed agreement shall be laid before the States;

(b) where the subject matter of the agreement relates to a subject which is the concern of any other States Committee, the States Advisory and Finance Committee shall refer the agreement to that Committee with a request for its views;

(c) where the States Advisory and Finance Committee or a States Committee concerned considers it necessary or expedient that the matter of acquiescence or non-acquiescence in the application to this Island of an agreement should be submitted to the States for a decision, the matter shall be so submitted by the States Advisory and Finance Committee together with any necessary clarification and recommendations; and

(d) where the views of the States Advisory and Finance Committee and of any other States Committee concerned are not in accord on the matter, the difference between them shall be submitted by the States Advisory and Finance Committee to the States for a decision thereon.”

- A3.6 In accordance with the Resolutions of 27<sup>th</sup> January, 2016<sup>79</sup>, relating to the work of the Constitutional Investigation Committee, and in accordance with the States’ Resolutions of 25<sup>th</sup> August, 2020<sup>80</sup>, following consideration of a Requête entitled ‘Extension of the Bailiwick of the UK-US Extradition Treaty of 2003 and Changes to Processes Relating to the Approval of International Instruments’, the Policy & Resources Committee is currently reviewing the 1987 Resolution with a view to requesting the States to update it (later in 2021).

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<sup>79</sup> [Billet d’État I of 2016](#) – ‘Proposal to Achieve Greater Autonomy in the Legislative Process and International Affairs for Guernsey’ – and [Resolutions](#) of 27<sup>th</sup> January, 2016.

<sup>80</sup> Requête, [‘Extension of the Bailiwick of the UK-US Extradition Treaty of 2003 and Changes to Processes Relating to the Approval of International Instruments’](#) by Deputy J Merrett and others; and Resolutions of [25<sup>th</sup> August, 2020](#).

**RECENT CORRESPONDENCE WITH THE UK GOVERNMENT WHICH INCLUDES  
REFERENCES TO FTAs OR OTHER TRADING RELATIONSHIPS WITH (NON-EU)  
COUNTRIES OR ORGANISATIONS**

- A4.1 There has been regular engagement and correspondence with the UK Government to ensure that the Bailiwick's interests are understood and fully represented during the UK's trade negotiations with other countries and organisations. A summary of some of the correspondence relating to the UK-EU future relationship and the Bailiwick's participation in the TCA was included in Appendix 1 of the TCA Policy Letter.
- A4.2 Some of the correspondence is directly relevant to the Bailiwick's participation in UK-Rest of World FTAs and is summarised below.
- A4.3 The UK Prime Minister, the Rt Hon Boris Johnson MP wrote to the then Chief Minister, Deputy Gavin St Pier, in September 2019 about the UK's withdrawal from the EU and the Crown Dependencies' part in the new UK-EU relationship. He said that the UK government was, "keen to further strengthen this [UK – Bailiwick of Guernsey/Crown Dependencies] relationship after the UK has left the European Union, when **the UK Government will be negotiating its own free trade agreements on behalf of the entire British family, including the Crown Dependencies.**"<sup>81</sup> (emphasis added)
- A4.4 On 2<sup>nd</sup> March, 2020, a joint letter was sent to the Chancellor of the Duchy of Lancaster setting out aspirations of the Bailiwick of Guernsey, Jersey and the Isle of Man for participation in any future UK-EU agreement. This was in response to the publication on 27<sup>th</sup> February of the UK's approach to the negotiations. The overriding objectives, as set by each of the islands, were summarised as including, "Setting our own priorities; retaining autonomy of our own laws; maintaining our tax sovereignty and continuing to set our own fiscal policies; keeping the Common Travel Area; being in control of our own waters; and managing our own borders." It was further stated that it was, "our intention **to be constructive and collaborative partners in** the UK-EU negotiations on the future relationship, as well as **the UK's negotiations with the rest of the world.**" (emphasis added)
- A4.5 On 31<sup>st</sup> March, 2020, Guernsey's Minister for External Relations wrote to the Paymaster General to confirm the Bailiwick's position for participation in any UK-EU and RoW agreements and said, "**The Bailiwick's part in** the UK-EU future relationship (and **UK-Rest of the World relationships**) **needs to be practical, relevant and proportionate to the needs of the Bailiwick.**" (emphasis added)

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<sup>81</sup> [Letter from Prime Minister to Deputy St Pier 13<sup>th</sup> September, 2019](#)

A4.6 The UK has provided assurances throughout the Brexit transition period, in respect of the UK-EU negotiations, that the Government recognises the historic constitutional relationship between the Bailiwick and the Crown. On 1<sup>st</sup> May, 2020, the Parliamentary Under-Secretary of State for Justice, Alex Chalk MP, reaffirmed the UK's commitment to representing the Bailiwick's interests (including in RoW FTA negotiations) and to the principles of the constitutional relationship:

"This Government recognises and values the historic relationship between Guernsey and the Crown. I am glad the Prime Minister's recent recognition of this relationship has assured you that our position on this remains unchanged. ... This Government takes its constitutional responsibilities towards the Crown Dependencies very seriously. We respect your autonomy in domestic matters and we look forward to working together on matters of mutual interest."

A4.7 Mr Chalk also said that the **UK Government** would, "**continue to engage with you in a collaborative and transparent way as we seek to represent your interests**, and the interests of the whole British family, **during** the EU negotiations as well as **negotiations for new Free Trade Agreements with other countries in the rest of the world.**" (emphasis added)

A4.8 On 22<sup>nd</sup> July 2020, the Rt Hon Greg Hands MP, Minister of State for Trade Policy provided further assurance that the UK would represent the Crown Dependencies during all negotiations for agreements with other countries, with a particular reference to Rest of World FTAs. "**I recognise the constitutional role the UK Government has in representing your interests internationally, including through our RoW FTAs.**" "...the UK Government confirmed that it's [sic] **priority in its approach to including the Crown Dependencies in RoW FTAs is to ensure coverage in those areas that support the effective functioning of the UK-CD customs union**". (emphasis added)

A4.9 On 19<sup>th</sup> August, 2020, following a number of negotiating rounds between the UK and the EU, the Paymaster General confirmed that the **UK** was continuing to seek to secure the **best possible outcome for the Bailiwick in the negotiations** between the UK and EU and **for RoW FTAs**, which would meet the objectives agreed by the States of Deliberation in June 2016 and again in January 2020. "I note your concerns over the possibility of precedent being set during EU negotiations for other FTA negotiations. I understand that my colleague, Minister Hands, has committed to **regular engagement with you on the UK's approach to including the Crown Dependencies in Rest of the World FTAs.**"<sup>82</sup> (emphasis

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<sup>82</sup> These exchanges highlighted the UK's commitment to ensure that the Bailiwick could participate in UK FTAs to the fullest extent possible and not just for the purposes of goods or customs matters only (which was the case for the TCA).

added) “We will...focus our attention and efforts on securing the best possible goods-based arrangement for your jurisdictions.”

A4.10 The Lord Chancellor wrote to the Committee<sup>83</sup> in December 2020 to set out the UK’s interpretation of how, at the domestic level, the UK and Bailiwick will work together to meet the obligations of the TCA. The letter reaffirmed that the UK Government remains committed to the principles set out in the International Identity Framework and to the development of Guernsey’s international identity. It also stated that the UK Government would continue to work with Guernsey whilst developing new trading relationships with other countries:

“I am pleased to reaffirm the UK Government’s commitment to the much valued and long-standing constitutional relationship between the UK and Guernsey. I look forward to continuing to strengthen that relationship, in line with the Justice Select Committee Reports and Government responses of 2010-14; and the Framework for Developing the International Identity of Guernsey, signed in 2008. The UK Government **will continue to work closely with Guernsey**, in positive collaboration and in the context of our existing constitutional relationship, **as we** implement the Agreement and **develop new trading relationships with other countries**. The UK Government continues to support Guernsey and the other Crown Dependencies seeking Letters of Entrustment in additional policy areas, where appropriate, recognising as it does the value to the Crown Dependencies of representing their own interests on the international stage.” (emphasis added)

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<sup>83</sup> [Letter dated 24<sup>th</sup> December, 2020, from the Lord Chancellor and Secretary of State for Justice to the President of the States of Guernsey Policy & Resources Committee](#). The letter was primarily about Guernsey’s participation in the agreement between the UK and the EU. The letter was read in full during the debate in the States of Deliberation on 27<sup>th</sup> December, 2020. The letter was noted in the Resolutions of the States of Deliberation that day. It was subsequently added (for completeness) as Appendix 9 to the TCA Policy Letter (together with an explanatory note to that effect).

**THE PRINCIPLES OF THE BAILIWICK'S COMMITMENTS  
IN RESPECT OF GOODS FOR THE TCA**

EXTRACTS FROM 'THE BAILIWICK'S PARTICIPATION IN THE UK-EU TRADE AND  
COOPERATION AGREEMENT' POLICY LETTER (DECEMBER 2020)<sup>84</sup>

- A5.1 The principles relating to the Bailiwick's participation in the goods and customs elements of the TCA were described in the TCA Policy Letter. That Policy Letter primarily focussed on the requirements which the Bailiwick needed to meet to be able to take part in the TCA. It also covered the basis for the Bailiwick's participation in continuity FTAs and referred to future UK FTAs to be negotiated following the end of the transition period.
- A5.2 Decisions by the three parliaments of the Bailiwick to participate in the TCA were based on the principles that had already been agreed by those parliaments, as due to the timings involved with the negotiations a finalised legal text was not available to base those decisions on. Due to the fast pace of negotiations currently being undertaken by the UK for other FTAs, it will be necessary to take a similar approach to FTAs.
- A5.3 Paragraphs 1.20-1.27 of the TCA Policy Letter outlined the chapters of the TCA that the Bailiwick was being asked to participate in for the purpose of trade in goods. For ease of reference, those chapters are:
- 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

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<sup>84</sup> [Billet d'État XXIX of 2020](#) – 'The Bailiwick's Participation in the UK-EU Trade and Cooperation Agreement' - and [Resolutions](#), approved by the States of Deliberation, the States of Alderney and the Chief Pleas of Sark on 27<sup>th</sup> December, 2020.

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."

A5.4 Further details on the goods relationship, and what participation in the above Chapters and Annexes of the TCA means for the Bailiwick, were set out in Section 3 of the TCA Policy Letter, Paragraphs 3.1-3.68.

A5.5 Paragraphs 3.3-3.5 of the TCA Policy Letter made specific reference to the Bailiwick's possible approach to inclusion within future UK FTAs:

"3.3 Under Protocol 3, the EU rules on customs matters and quantitative restrictions applied to the Bailiwick under the same conditions as they applied to the United Kingdom. In the application of Protocol 3, the Bailiwick was treated as being part of the UK Member State and,



therefore, as part of the EU Customs Union. It also provided the basis for alignment in regulatory standards for trade in agri-food products. It is not possible to recreate Protocol 3 through the participation in a UK-EU trade agreement, or, indeed, through any other trade agreement with new trading partners. This is because Protocol 3 directly governed the Bailiwick's relationship with the EU (including the EU's external-facing Common Commercial Policy<sup>85</sup>). With the end of Protocol 3, a new approach to the Bailiwick's inclusion in Free Trade Agreements ('FTAs') will need to be found – one that adheres to the principles of relevance, proportionality and practicality, whilst respecting the Bailiwick's autonomy. In terms of the UK-EU negotiations, this meant seeking to recreate (at least) a customs and goods-based relationship.

- "3.4 The Customs Arrangement negotiated with the UK in 2018 is a customs union<sup>86</sup> as defined by the WTO. This British Islands Customs Union provides one basis on which the Bailiwick could partake in future UK - Rest of World FTAs. The Bailiwick can also take part in any UK FTA as a territory for whose international relations the UK is responsible.
- "3.5 This provides some flexibility meaning the Bailiwick is not obliged to join all FTAs that the UK enters into; however, as part of the British Islands' Customs Union, it is bound to apply any preferential tariffs to goods imported under all UK FTAs. The Bailiwick is able to ensure its interests are served by participation in such international agreements that best suit the Islands' economic needs, without undermining the Customs Arrangement."

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<sup>85</sup> [EU Common Commercial Policy](#)

<sup>86</sup> The WTO defines a customs union as 'the substitution of a single customs territory for two or more customs territories'.

**THE BAILIWICK'S PARTICIPATION IN THE UK-EEA EFTA FTA**

**The UK-EEA EFTA FTA**

- A6.1 The UK-EAA EFTA FTA covers trade in goods, services and investment, digital trade, capital movements, government procurement, intellectual property, competition, subsidies, small and medium sized enterprises, good regulatory practices and regulatory cooperation, recognition of professional qualifications, trade and sustainable development.

**The Bailiwick's participation in the UK-EU EEA EFTA FTA**

- A6.2 Participation in the goods elements of the UK-EEA EFTA FTA is extremely important for those Bailiwick businesses which already export goods to these countries and offers trade stability. The effect of the Bailiwick's participation is that the Bailiwick will benefit from preferential tariffs on any goods originating in the Bailiwick and exported to the EEA EFTA States, as agreed under the FTA. If the Bailiwick had not been included, preferential tariffs resulting from the UK-EEA EFTA FTA would still have to be applied by the Bailiwick to goods originating from the EEA EFTA States imported into the Bailiwick, due to the UK-Bailiwick Customs Arrangement.
- A6.3 Following negotiations, it was considered that this FTA should apply to the Bailiwick in respect of trade in goods only at this time. The Bailiwick's participation in this FTA provides for post-Brexit continuity for trade in goods, through commitments that are the same as or similar to the TCA (though there are no fisheries access commitments to consider), together with a commitment for further discussions in the future about trade in services and investments, so that the services chapters can be extended to the Bailiwick if agreement is found on the terms of that extension.
- A6.4 Due to the shortness of time available to agree the FTA, it was not possible for the Bailiwick's (nor the other Crown Dependencies) participation in the services parts of the FTA to be considered by the EEA EFTA negotiators. However, an 'extension mechanism', together with a supporting side agreement, about the Bailiwick participating in the services and investments elements of the FTA at a later date has been included.
- A6.5 In addition, the EEA EFTA States have also agreed to include a clause within the territorial extension article which allows the Bailiwick to seek to terminate the trading relationship under the FTA separately to the UK. This is important for the Bailiwick's autonomy and international identity, although it is unlikely to arise in practice. The Bailiwick's participation in the FTA would also cease if the UK (or

EEA EFTA States) decided to end the FTA altogether.

#### Process to approve the Bailiwick's participation

- A6.6 In order to meet the short timescales, a local consent process was required for the Bailiwick to agree to participate in this FTA before it is considered and ratified by the UK Parliament. It is understood that this is likely to be soon; one factor being condensed timescales for ratification of the FTA by the EEA EFTA States.<sup>87</sup> Such action was necessary to protect the constitutional position that new international obligations must be consented to by the three jurisdictions of the Bailiwick before they apply in respect of the islands.
- A6.7 Consequently, the Committee considered Guernsey's participation in the UK-EEA EFTA FTA using the Committee's mandated delegated authority derived from the 1987 States' Resolution on international agreements and other relevant previous States' decisions.<sup>88</sup> In using this delegated authority, the Committee noted the earlier significant engagement during the negotiations process through various forums across the States of Guernsey, including the Finance Sector Forum, the Future Partnership Delivery Group ('FPDG') and at the recently formed Trade Policy Forum ('TPF'). It also noted that officers from relevant service areas across the States of Guernsey had assisted in their areas of expertise in regard to the likely effects and obligations which would arise from the possible extension of the UK-EEA EFTA FTA to the Bailiwick. The Committee *for* Economic Development has been regularly updated regarding all aspects of future trade policy and the wider negotiations and it is understood that it supports Guernsey's participation in this FTA.
- A6.8 By delegated authority under the aforementioned 1987 States' Resolution, the Committee approved Guernsey's inclusion in the following chapters of the UK-EEA EFTA FTA relating to trade in goods:
- (i) National Treatment and Market Access;
  - (ii) Rules of Origin;
  - (iii) Customs Administration and Trade Facilitation;
  - (iv) Sanitary and Phytosanitary Measures; and
  - (v) Technical Barriers to Trade;
- A6.9 The Committee also approved the approach taken by the UK Government to agree a joint declaration with the EEA EFTA States regarding further inclusion in other parts of the FTA in the future. The declaration commits the parties to

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<sup>87</sup> For example, the date of the next Norwegian parliamentary election is September 2021.

<sup>88</sup> As outlined in Paragraphs 2.9-2.11, Paragraph 2.19 and Paragraph 4.3 in the main body of the Policy Letter.

further discussions about inclusion in trade in services and investments-related chapters as soon as possible.

- A6.10 As stated in Section 4 of this Policy Letter, it is understood that consideration is being given to this FTA by the relevant authorities in Alderney and Sark for inclusion of those islands on the same terms as Guernsey.

**MATTERS TO BE CONSIDERED FOR GUERNSEY/THE BAILIWICK'S POSSIBLE PARTICIPATION IN FTAs**

**What are the benefits to Guernsey and the Bailiwick to be part of a UK FTA?**

- A7.1 Now that the UK has left the EU and has become an independent trading nation, the situation for the Bailiwick has also had to change. The Bailiwick, along with the other Crown Dependencies of Jersey and the Isle of Man, also needs to establish and secure its place in the world to ensure that future trade interests are protected.
- A7.2 In December 2018, Policy & Resources Committee and the Committee *for* Economic Development developed and released a consultation to Bailiwick businesses which sought to identify the impacts of Brexit on business. Businesses were also asked questions to identify the flows of goods imported and exported globally from the Bailiwick.
- A7.3 Whilst the consultation was primarily about the impacts of the UK's withdrawal from the EU, it clearly identified that the Bailiwick is a global exporter of locally manufactured products, with exports now estimated to be c.£100m annually in goods such as medical devices, electronics, software, and specialised plant equipment. A large proportion of these businesses will benefit from FTA preferential market access depending on the country of export.
- A7.4 In addition to FTAs with individual countries, there is potentially further benefit from multilateral agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ('the CPTPP'). Established in 2011, the CPTPP currently covers 11 Pacific Rim countries (Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Canada and Vietnam) which ensures preferential tariffs and market access for goods and services between those countries.
- A7.5 Whilst Guernsey's interest in the trade in goods is clear, the other potential benefits of future FTAs are still to be realised (which will be carefully considered with Sark and Alderney and also with industry, through the forums established such as the Trade Policy Forum). Securing preferential access within FTAs could ensure opportunities not only for goods, but also for services, such as professional and financial services and IP. As the UK continues to negotiate with international trade partners, it is important that the Bailiwick's interests are also included, where relevant, proportionate and practical.

Why should the Bailiwick seek the option for future inclusion in the services elements of FTAs?

- A7.6 Where the Bailiwick's interests in a particular trade agreement are not clear, or there needs to be further analysis or consideration, it is intended that the Bailiwick's position be reserved for further negotiation at a later date. This is to ensure that it is possible to be included later in relevant chapters of a FTA. This is particularly relevant for trade in services.
- A7.7 For trade in services, tariffs and quotas are not applied as it is difficult, if not impossible, to track these intangible elements of trade. Trade in services can be restricted by other means, through applying controls around how services are delivered and offered to consumers. These are known as the modes of supply: 1) Cross-Border supply; 2) Consumption Abroad; 3) Local Presence; 4) Temporary Entry. This presents a complex picture for the Bailiwick. The following elements are generally included in services chapters of FTAs:
- general commitments on cross-border trade in services across modes 1-3<sup>89</sup>;
  - 'mode 4' or mobility provisions, which seek to liberalise the rules that allow temporary entry of natural persons from the trading partner's territory for the purposes of supplying services;
  - investment-related provisions;
  - commitments relating to domestic regulatory framework; and
  - mutual recognition of professional qualifications ('MRPQ'), e.g. medical, legal and other professional qualifications).
- A7.8 In order to liberalise trade across the four modes, countries will agree certain approaches to liberalising trade to make access to each other's economies easier for business. Sometimes this means levelling domestic regulation and treating international business in the same way as domestic businesses. This does not prevent domestic regulation; it simply leads to a levelling of the playing field for businesses based within and outside the country.
- A7.9 In many cases, goods are sold together with a wide range of services and therefore both goods and services trade need to be considered very carefully together. For example, the purchase of machinery (goods) may also include services such as remote or in-country training or repair by remote access. There are different obligations and commitments which need to be agreed to achieve the full range of benefits of each FTA and these need to be considered carefully.

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<sup>89</sup> Together with annexes of sector-specific application of commitments ('positive listing') or of sector-specific exceptions ('negative listing').

### FTAs currently being considered/negotiated by the UK

A7.10 The timescales for inclusion within any UK FTA is dictated by the UK's negotiating programme. The pace is set by the UK and the negotiating trade partner. The list below sets out some of the ongoing UK Government consultation relating to potential future bilateral and multilateral FTAs:

- On 18<sup>th</sup> July, 2019, the UK Government published a consultation document<sup>90</sup> on the potential of joining Comprehensive and Progressive Agreement for Trans-Pacific Partnership ('the CPTPP');
- On 2<sup>nd</sup> March, 2020, the UK Government published a consultation document on a potential UK-USA FTA;<sup>91</sup>
- In December 2020, the UK and Singapore announced<sup>92</sup> proposals to negotiate a UK-Singapore Digital Economy Agreement ('DEA')
- On 25<sup>th</sup> May, 2021, the UK Government published a consultation document<sup>93</sup> on a potential UK-India FTA;
- On 4<sup>th</sup> June, 2021, the UK Government announced that it had reached an agreement in principle ('AIP') in principle<sup>94</sup> with the EEA EFTA States (Norway, Iceland and Liechtenstein)<sup>95</sup>, which in effect replicates some of the terms of the UK-EU TCA for the wider EEA EFTA area.
- On 17<sup>th</sup> June, 2021 <sup>96</sup>the UK Government announced that it had reached an agreement in principle ('AIP') with Australia with regards to taking forward a UK-Australia FTA;
- On 17<sup>th</sup> June, 2021, the UK Government announced that it would expedite progress on negotiations with New Zealand towards agreeing a UK-New Zealand FTA. It is expected that an agreement in principle may be reached by August 2021.

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<sup>90</sup> [UK Government consultation on trade with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership](#)

<sup>91</sup> [UK-US Free Trade Agreement](#)

<sup>92</sup> [Joint statement by the UK and Singapore on 10<sup>th</sup> December, 2020](#)

<sup>93</sup> [UK Government consultation - trade with India](#)

<sup>94</sup> Agreement in principle was [announced by the UK Government](#) on 4<sup>th</sup> June 2021

<sup>95</sup> The 27 EU Member States, together with the three European Free Trade Association (EFTA) States Iceland, Liechtenstein and Norway, make up the European Economic Area (EEA) Contracting Parties (the 31 EEA States). Norway, Iceland and Liechtenstein go by the term "EEA EFTA States" in order to clarify that the other EFTA State, Switzerland, is not party to the EEA Agreement.

<sup>96</sup> [UK-Australia FTA negotiations: agreement in principle](#)

**ENGAGEMENT AND CONSULTATION ON THESE PROPOSALS**

- A8.1 The Committee *for* Economic Development is mandated to develop and implement policies on matters relating to the promotion and development of all sectors of business and for the reputation of the Island as a centre for commerce and industry. It is responsible for developing any future trade policy. The Policy & Resources Committee is mandated to deal with international relations, external relations and constitutional affairs. Therefore, there is the continued need for very close collaboration between the two Committees in ensuring the Bailiwick's international trade interests and objectives are achieved. Other States Committees also hold mandated policy responsibilities relating to FTAs and other trade arrangements. Principally these are: the Committee *for* Home Affairs, the Committee *for the* Environment & Infrastructure and the Committee *for* Health & Social Care. All States' Committees remain responsible for their policy areas and legislation within their mandates and for driving forward any necessary changes to satisfy international obligations.
- A8.2 Often the TCA and FTA negotiations have proceeded at a fast pace, with intense periods of engagement taking place and limited time for UK-Bailiwick consultation and consideration within the Bailiwick, regarding the Bailiwick's participation in the resulting agreements between the UK and its partner countries. As each FTA and FTA negotiation is different, the pace, timescales and potential participation of the Bailiwick will vary depending on the depth and complexity of the draft agreement. There could be differences about whether the Bailiwick could, or would want to, participate in different chapters of a FTA from the time of implementation of the FTA.
- A8.3 For the period following the end of the Brexit transition period, a governance structure was set up in Guernsey to facilitate effective and timely engagement with industry and external stakeholders through the establishment of the Trade Policy Forum ('TPF')<sup>97</sup>. Whilst it does not have any decision-making function, the TPF acts as a sounding board on the impacts of certain strategic decisions and a critical friend to any negotiating strategy<sup>98</sup>.
- A8.4 The Law Officers of the Crown have also been consulted and have provided legal advice and legislative drafting throughout the consideration of the issues described in this Policy Letter.

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<sup>97</sup> As in Paragraph A1.24 in Appendix 1.

<sup>98</sup> In 2020, prior to the establishment of TPF, there were two bodies which advised the Committee on the UK-EU relationship negotiations and FTA matters – namely the Trade Policy Advisory Panel (including representatives from industry) and the Future Partnership Delivery Group (which was the political body). More information on those three bodies is in Appendix 1.



- A8.5 There has been frequent engagement between the governments of Guernsey and the UK, particularly with DIT. During this process, the UK Government has been reminded repeatedly that each of the Bailiwick's three jurisdictions needs to make its own decisions about its participation (or otherwise) in any future trade arrangements and that the Bailiwick will need to ensure it implements its own legislation to meet its commitments.
- A8.6 As it did throughout the process leading to the UK's legal separation from the EU (from 2016 until 31<sup>st</sup> December, 2020<sup>99</sup>), the Committee has continued to work with the governments of Alderney and Sark so that both those islands were informed during negotiations and approval phases for the Bailiwick's potential participation in the UK's future trade relationships with other countries.<sup>100</sup>
- A8.7 Guernsey's officials have worked and continue to work closely on future FTAs with counterparts in Jersey and the Isle of Man to ensure a shared understanding of the issues and priorities for each of the Crown Dependencies.

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<sup>99</sup> As in Paragraphs 2.9-2.11 of the main text, in paragraphs A1.1 and A1.2 of Appendix 1 and in the summary of Brexit-related Policy Letters set out in Appendix 2 of this Policy Letter (and a more complete list in Appendix 8 of the TCA Policy Letter, December 2020).

<sup>100</sup> Issues referred to in this Policy Letter and future trade relationships more generally have also been discussed in previous meetings of the Future Partnership Delivery Group (the governance structure set up for the EU-UK negotiations process, which included Alderney and Sark political representatives and since disbanded), and through the Bailiwick Council.