

STATES OF JERSEY



PRINCIPLES FOR JERSEY'S PARTICIPATION IN UNITED KINGDOM FREE TRADE AGREEMENTS

Lodged au Greffe on 12th October 2021
by the Minister for External Relations and Financial Services
Earliest date for debate: 23rd November 2021

STATES GREFFE

PROPOSITION

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

to adopt the following principles upon which the Council of Ministers shall determine Jersey's participation in future United Kingdom Free Trade Agreements:

- (a) Protecting Jersey's existing constitutional autonomy and cultural heritage;
- (b) Maintaining and strengthening Jersey's reputation as a well administered jurisdiction that is responsible for its own prosperity;
- (c) Upholding the long-established rights and privileges of Jersey residents and businesses that enable them to trade and remain agile, innovative, and competitive as Jersey seeks to grow and diversify its economy;
- (d) Maintaining or increasing the ability of the States Assembly and Government of Jersey to make decisions expeditiously in areas of domestic policy, including where close collaboration with the UK Government and other international partners is required;
- (e) Further to the current baseline of customs and goods participation, seeking the inclusion of extension provisions to enable Jersey's participation in additional provisions, post-ratification, and, where extension includes the basis of new commitments, obtaining the consent of the States Assembly wherever practicable or otherwise reporting to the States at the earliest opportunity;
- (f) Taking into account commitments already undertaken in existing Free Trade Agreements which Jersey participates in; and,
- (g) Keeping the relevant Scrutiny Panel informed and up to date on all Free Trade Agreement negotiations with which the Government of Jersey is involved.

MINISTER FOR EXTERNAL RELATIONS AND FINANCIAL SERVICES

REPORT

INTRODUCTION

As the UK Government negotiates its network of Free Trade Agreements (FTAs) with partners around the globe, Jersey will, in turn, need to determine the extent to which it wishes to negotiate its own participation in these new trading arrangements.

The process for concluding Jersey's participation in UK FTAs is markedly different to that of the Island agreeing other bilateral international agreements with partner countries. The UK's procedure for agreeing to new FTAs therefore presents the need for a bespoke approach that differs to other international agreements.

It remains of paramount importance that the Government can assess the terms and implications of any involvement in a FTA, and communicate a decision on participation to the UK Government before the FTA is signed and subsequently laid before the UK Parliament for ratification. The Government always reaches this position after substantive engagement throughout the negotiations on the terms of any FTA. Jersey's final position must be conveyed to the UK Government upon receipt of stable text, following a formal request from the UK to confirm its inclusion. Generally, this decision is taken around the point of 'agreement in principle', by which time it is expected that all Parties would have a high degree of assurance on the forthcoming decision by Jersey.

It is important to note that the text of the FTA is not publicly available for scrutiny in the UK Parliament until it has been signed, at which point it is agreed and cannot be substantively changed. This fits with the UK Parliamentary procedure for the ratification of FTAs¹. Likewise, this has the practical effect that States Assembly scrutiny processes will need to align with 'sight of text' occurring at the same time as in the UK Parliament.

Such arrangements are not unique to Jersey's constitutional history, but they are now becoming more frequent and having a greater and more relevant political and economic impact, hence this proposition for a specific approach in respect of FTAs. The Government recognises that the Assembly should have sight of the principles, considerations, and priorities informing the decisions of Ministers on participation in such agreements, to ensure that Members have an overall steer and expectation of the likely outcomes for Jersey from negotiations. Accordingly, the principles are set out in this proposition for the Assembly's consideration and, I hope, endorsement.

In supporting these guiding principles, Members would agree that the extent of Jersey's current inclusion in FTAs from the outset, will be for customs and goods provisions only, should Jersey seek inclusion in an FTA. Members would also be endorsing the current position that services and investment extension (as well as other chapters) may be agreed later, post ratification, until such a time this becomes an established baseline for Jersey.

Importantly, this proposition will set a clear steer for Ministers in all future FTA negotiations, and is one that can be amended and refined in future years to meet changing circumstances and to ensure the Assembly and Government remain aligned in the approach to negotiations, as has been the case to date and as it must remain. Such refinement will be necessary, as Jersey better develops its presence in the international

¹ [Constitutional Reform and Governance Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk)

trading arena. As such, the principles are a reflection of the present, and may change over the course of time, particularly in relation to services and investment participation.

OVERARCHING PRIORITIES FOR FTAs

To date, Jersey's trade policy has been to seek as broad a participation as was possible at the time of negotiating an agreement. This was to ensure that no opportunities were missed from the UK's ambitious new trading agenda post-Brexit. Abiding by the Key Negotiating Principles agreed by Ministers for the UK-EU Trade and Cooperation Agreement² (**TCA**), officials similarly negotiated Jersey's involvement in the UK-Japan CEPA³ (**Japan**) and the UK-EEA EFTA FTA⁴ (**EEA**). These negotiating priorities have provided the basis upon which the guiding principles are built, which importantly also account for the commitments Jersey has already entered into in other FTAs.

The proposed guiding principles seek to consolidate and codify the values of relevance, proportionality, and practicality. They are envisaged to be a central component of Ministers' decision-making, which will measure the strategic advantages of participation against the practical requirements for compliance. For example, Ministers will assess whether involvement in an FTA is advantageous for Jersey's international identity, and consider this against the goods obligations to be justified by the volume and type of trade undertaken.

Operationally, enacting these principles may require negotiating constitutionally appropriate references to the application of an agreement to Jersey, such as the territorial extent of application and the mechanisms for disapplying an agreement to Jersey. It may also include ensuring, for example, consistent referencing to Jersey's autonomous customs authorities and competent authorities, as required.

More broadly, any decision will work towards the strategic and political objectives of the Government of Jersey. Domestically, these are defined and prioritised by the interests and protections of Jersey's population, businesses, and stakeholders; whilst internationally, these are informed by the wider global context and international legal obligations the Government has to other nation states. As with all international agreements, FTAs must be underpinned by appropriate governance arrangements with the UK, in addition to effective structures within the FTA, to facilitate maximum involvement.

CUSTOMS AND GOODS PROVISIONS

Jersey has previously taken the decision to participate initially in certain customs and goods chapters only. In the case of Japan and the EEA, this maintains a continuity of arrangements as Jersey was also privy to goods aspects of trade with these countries under Protocol 3 (to the UK Act of Accession) and the previous relationship with the EU trade agreements. For Australia and New Zealand, it also looks likely that Jersey could consent to Day 1 inclusion for customs and goods chapters only.

When Jersey participates in the customs and goods provisions of an FTA, it has the same advantages as the UK with the trading partner(s) Party to that FTA. This could include the application of preferential customs tariffs, quotas, and border measures. As the UK is both Jersey's closest bilateral trading partner (and indeed competitor), Jersey's

² [The EU-UK Trade and Cooperation Agreement | European Commission \(europa.eu\)](#)

³ [UK-Japan Comprehensive Economic Partnership Agreement - GOV.UK \(www.gov.uk\)](#)

⁴ [EEA EFTA States Free Trade Agreement with the UK | European Free Trade Association](#)

products could be at a competitive disadvantage compared to those originating in the UK, should Jersey not participate. There would, of course, be corresponding obligations and resource implications, but participation would ensure that current trade interests and future trading opportunities are protected and promoted.

The UK-Jersey Customs Arrangement, negotiated in 2018⁵, requires the Bailiwick to apply both the UK Global Tariff and any preferential tariffs agreed in their FTAs. These would apply to all imported goods regardless of whether Jersey participates in the FTA, to enable the free flow of goods between both jurisdictions. As Jersey has committed to keeping its customs regime correspondent with that of the UK, it is considered logical for the Bailiwick to participate in customs provisions in FTAs, given that Jersey should already comply with those terms.

In summary, the guiding principles accommodate these benefits outlined for Jersey from 'Day 1' i.e., the point of ratification. They do so by recognising that customs and goods inclusion is an established "baseline" which exists in FTAs which Jersey already participates in, including the TCA, Japan, and EEA. This baseline includes chapters such as Market Access, Customs Facilitation, Rules of Origin, and Sanitary and Phytosanitary Measures.

SERVICES AND INVESTMENT

The services and investment provisions of FTAs include some international obligations which are new to Jersey and which operate in areas of greater economic significance. These obligations and subsequent implications cannot be committed to without a change in approach to accommodate Jersey having sufficient time to consider the detail and policy implications. For these reasons, Jersey has, and will continue to, carefully consider participating to such an extent in FTAs.

In practice, matters such as economic activity, trade ambition, and bilateral relations with the trading partner in question will be assessed, which will, in turn, determine to what extent Jersey wishes to further participate in the Agreement. However, broader inclusion may require Jersey to adopt certain commitments in exchange, directly related to services or otherwise. Such obligations in FTAs can be wide-reaching and vary between each agreement. They may include measures regarding environmental standards, mobility requirements, or financial services regulatory compliance; and are all, generally, aimed at further liberalising trade.

A full assessment, with compliance analysis, is therefore required to ensure Jersey has understood the risks and benefits of enhanced participation. Sufficient time is needed to undertake legal assessment of Jersey's ability to adopt the new obligations, including necessary consultation with the UK and consideration of our legislative frameworks, where appropriate.

The extension mechanism that has been provided for in the Japan and EEA FTAs to date is helpful in bridging this impasse. The proposition, at part (e), therefore outlines the request that the UK continue to secure such an extension mechanism for chapters beyond the "baseline", to utilise post-ratification. This serves as a pragmatic compromise in the absence of the UK offering greater access for the Crown Dependencies or negotiating similar terms to the TCA that could allow for wider 'Day 1' coverage.

⁵ [Jersey UK Customs Arrangement \(2018\) \(gov.je\)](#)

The key advantage is to allow Jersey to consider the obligations and undertake any necessary compliance assessment in more reasonable time. Where appropriate, this will allow the Government, and States Members, to assess and scrutinise participation on the basis of the final text as agreed and ratified by the Parties to an agreement. This scrutiny will be of particular benefit for those initial agreements which we look to extend the services elements of - where we believe it is in Jersey's best interest to do so - and in future services extensions where elements of the agreement differ from those previously entered into.

The disadvantage to the extension mechanism, however, is that there is no fixed timeframe and Jersey is subsequently not able to reap the benefits of services provisions by any guaranteed point. It also represents an as yet untried mechanism. As the formal negotiation rounds will have concluded, it is uncertain how much momentum or negotiating advantage will be available in the extension process. This may mean it is challenging to have any particular interests or key asks accommodated. To address this, the Government will also seek as a matter of course for the UK to secure a separate commitment from the UK and the treaty partner to facilitate the extension mechanism for Jersey swiftly, upon Jersey's request.

In the longer term, particularly when Jersey has successfully utilised this extension mechanism, and thus has a better understanding of the practical impact of services participation, further solutions may be found - including for broader Day 1 coverage.

GUIDING PRINCIPLES

The proposition sets out the principles which will be adhered to when considering Jersey's participation in a UK FTA. It covers what the Assembly, and the people of Jersey, can expect from Ministers when it is agreed for Jersey to be included for Day 1 coverage within an FTA. Of particular note is the commitment to seek to obtain, where possible, the specific consent of the States Assembly for Jersey's inclusion in additional chapters (where an extension mechanism is secured), post ratification, where extension includes the basis of new commitments. This will be the duty of this Government, and the requirement for future Governments. It is important, however, that the proposition builds in sufficient flexibility for scenarios where, even with the best of intentions, a parliamentary debate isn't possible prior to ratification. In such circumstances, the Government would be required to report to the States at the earliest opportunity to update on any agreement which is signed.

Members will hopefully be further re-assured that additional scrutiny and checks are built in through the requirement and commitment to keep the relevant scrutiny panel (currently Economic and International Affairs) updated on live negotiations with which Jersey is involved, as per part (g) of the proposition.

NEXT STEPS

In the event that Members adopt this proposition, Ministers' decisions on participation will be guided by these principles. As required, Ministers shall consider more detailed operational factors and be flexible in respect of the style and content of FTAs, depending on the preferences of different Treaty partners. But the framework for their negotiations will be set by the Assembly via this proposition.

This proposition therefore preserves and enhances the ability to refer FTAs to the States Assembly for consideration and debate where this is practicable. It brings Jersey closer into alignment with similar parliamentary procedures in the UK, where this is greater precedent for ensuring suitable democratic oversight of the executive's function to agree and enter into free trade agreements. Given the nature of how such agreements are reached, this is not a simple matter, and this proposition therefore seeks to ensure clarity and ongoing flexibility for the Assembly.

Importantly, the extension mechanism under current FTAs is helpful as it will enable the Assembly to consider the text and obligations of services chapters once agreed, where it may wish to do so. The services sector, especially financial services, is Jersey's largest economic driver, so potential new international obligations in this area may carry greater implications for the Island. It is therefore appropriate that the Assembly is given particular opportunity to review any such commitments proposed by the Government in this regard.

As is committed to, the Government will continue to keep Scrutiny and the wider Assembly updated on the progress of all FTAs.

Members may also wish to note that the Policy and Resources Committee of the Bailiwick of Guernsey have reviewed and accepted a similar proposal outlined in P.2021/82⁶. This proposition seeks the same distinction between goods and services chapters of FTAs for Day 1 participation and accounts for the other islands to which Guernsey is responsible.

Members will appreciate that this represents the most suitable manner of ensuring the Assembly is properly involved in this new aspect of international negotiations for Jersey. Members have, to date, always been united with the Government as we seek together to represent Jersey's best interests on the global stage. It is important that this partnership between the legislature and executive remains strong, and I accordingly ask that Members support this proposition.

Financial and manpower implications

There would be no additional resource implications for the Government that would arise from the adoption of this proposition.

Re-issue Note

This projet has been re-issued due to the following wording being omitted from part (e) of the proposition, "Further to the current baseline of customs and goods participation..."

⁶ [The Bailiwick of Guernsey's Participation in UK Free Trade Agreements: Policy & Resources Committee \(P.2021/82\)](#)