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Dear Clare

UK-EU Trade and Cooperation Agreement: Barriers to trade in goods and opportunities to improve the UK-EU trading relationship

I welcome the Committee's report on the barriers to trade in goods under the Trade and Cooperation Agreement and opportunities to improve the trading relationship. As I made clear in providing evidence to the committee in June, the imposition of non-tariff trade barriers significantly damaged the UK and Scottish economies. The evidence received by the Committee in preparing the report provides a clear testimony of some of the most harmful and regrettable consequences of Brexit.

I especially welcome the focus of the Committee to identify opportunities to improve the UK-EU trading relationship. Until Scotland rejoins the European Union as an independent nation, the Scottish Government will continue to actively pursue areas where we can support business and improve trading conditions.

The Scottish Government notes that the Committee will produce a further report focussed on trade in services and mobility – both areas where Scotland has substantial interests. I look forward to that report and the Scottish Government stands ready to provide assistance or information which may help the Committee in its preparation.

The report directly addresses the Scottish Government on the issues of regulatory alignment, our interaction with the UK Government's Border Target Operating Model, and support provided for Scottish business.

Regulatory alignment

Paragraph 61:

"The committee seeks further clarity from the Scottish Government on the impact its alignment policy has had on businesses, including the extent to which it has facilitated improved trade with the EU, as this is unclear from the evidence we received."

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As the Committee notes, the operation of the new trading relationship with the EU has been challenging for businesses in Scotland. The UK Government's stop-start approach to imposing new border controls, its capricious approach to regulatory standards and checks, the passing of the Retained EU Law Act, and the imposition of the UK Internal Market Act in areas of devolved policy have all caused significant uncertainty for business. Throughout this uncertainty the Scottish Government has consistently maintained a clear intention that legislation in Scotland would remain aligned with EU law wherever meaningful and appropriate. It would be difficult to isolate specific evidence on the extent to which improved trade with the EU has been facilitated by the Scottish Government's alignment policy against this complex backdrop of policy and legislative development in the UK.

I note the Committee references Dr Whitten's EU Law Tracker report that "*overall there has not been significant divergence between Scots and EU Law*", which is likely to have contributed to the absence of evidence received by the committee by business.

I also note that the new UK Government's Product Regulation and Metrology Bill recognises some of the underlying rationale of our alignment policy by proposing to establish a framework for the potential alignment with EU products and product-related environmental standards.

Paragraph 61:

"The Committee also asks the Scottish Government to provide an update on what additional resource and capacity has been required in supporting the commitment to align with EU law."

The Scottish Government has worked with the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee since passage of the UK Exit from the European Union (Continuity) (Scotland) Act 2021 to ensure development of a transparent and detailed process for reporting its consideration of EU alignment. As well as providing statutory reporting on the Continuity Act, the Scottish Government now reports on legislation made in the Scottish Parliament, EU legislation that is being tracked by the Scottish Government, and a strategic narrative on Scotland's EU priorities over the last 12 months.

Delivery of the above approach has been achieved through putting in place new internal guidance and reporting mechanisms during the policy and legislative development process, re-purposing capacity in existing policy teams to focus on our alignment commitments, and increasing resources in a central coordinating team to monitor EU developments, manage casework and prepare reports.

These reports are accessible to the general public and a source of useful information for business on how our approach to maintain EU standards influences the Scottish Government's approach to legislation.

Paragraph 62:

"The Committee invites the UK Government to explore, in collaboration with the Scottish Government and other devolved administrations, establishing a formal mechanism to monitor relevant changes to EU law and track the emerging and increasing divergence in policy or technical standards between the EU and the UK, including where the extent of divergence or alignment with the EU differs in Scotland from the rest of the UK."

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We would welcome discussions with the UK Government and other Devolved Governments to explore a formal mechanism to monitor relevant changes to EU law and track divergence in policy and technical standards between the EU and UK.

Where regulatory requirements differ between the UK (or parts of the UK) and the EU, this affects trade in both directions. We agree that more transparency on which requirements apply in which trading situation would make it easier for businesses (in the UK and the EU) to overcome the additional administrative burdens created by Brexit. For such a mechanism to be useful for businesses, it would need to include the impacts of the Internal Market Act 2020 and Common Frameworks on each regulatory situation.

Border Target Operating Model (BTOM)

Paragraph 133:

“The Committee would welcome further clarity from the Scottish Government on its asks of the new UK Government with regards to delivering border controls on goods entering the UK from the EU. We would also welcome further clarity on the Scottish Government’s role and the steps it will take to deliver the BTOM in Scotland.”

Brexit has regrettably required new import controls to be implemented at the GB border. Some EU goods are now being checked entering GB for the first time since leaving the single market. Critical elements of the UK model remain outstanding. The system is not yet live for inbound goods from Ireland and Northern Ireland, while the model’s interactions with the Windsor Framework are still to be determined. Anti-avoidance schemes to deter illicit trade and underpinning legislation remain in development.

Scottish Ministers agreed to endorse the BTOM in order for necessary checks to be put in place to protect our people, businesses and environment from possible biosecurity risks. This endorsement was contingent on the previous UK Government addressing the outstanding issues we highlighted to them prior to the publication of the BTOM on 29 August 2023. Scottish Ministers were assured that there would be comprehensive and meaningful engagement to address these issues, but regrettably this engagement did not take place and the same issues remain outstanding.

The key issue is ensuring a consistent approach to GB’s west coast ports where checks are yet to go live – we wish to see a proportionate and workable solution for trade from Ireland and Northern Ireland. We believe this will necessitate the clarification of the definition of a Qualifying Northern Irish Good and the establishment of a four-nations working group on anti-avoidance and enforcement. We are ready to work collaboratively with the UK Government to deter illicit trade and protect our biosecurity, people and environment whilst minimising the burden on business as much as possible. Given many of the outstanding issues are devolved policy areas any solutions will need to be developed with input from all the Devolved Governments if they are to be effective.

We have worked pragmatically to balance the need for introducing these important controls while minimising burdens on traders. For instance, the new model brings in a sliding scale of checks depending on the level of product risk with more goods now classified as low risk, thereby no longer requiring possibly costly and burdensome checks. A comprehensive veterinary and SPS agreement with the EU would of course remove many more of these barriers. However, until the UK negotiates such an agreement with the EU, it is vital that we

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continue to deliver outstanding elements of the BTOM for the reasons outlined above, but also to provide clarity for UK and EU businesses.

Support for business

Paragraph 263:

“Recognising the significant difficulties that Scottish businesses are experiencing in navigating and complying with the customs and regulatory requirements of trading with the EU, the Committee’s view is that greater support and guidance is required from the UK Government and Scottish Government to manage the complexity of the new trading environment.”

The Scottish Government agrees with the Committee that the customs and regulatory requirements for businesses trading with the EU have become significantly more complicated as a third country and we are committed to providing ongoing support and advice.

There is a distinction between EU regulatory requirements (most of which already existed and applied to UK goods sold in the EU before Brexit) and novel or new administrative burdens created by the fact that the UK is now a third country. The latter means UK goods have higher levels of documentary requirements and undergo stricter checks to ensure they meet EU regulatory requirements, even when, in practice, they are mostly still produced to the same technical and quality standards as before Brexit.

In light of these third-country challenges, our work with businesses and through Scottish Enterprise (SE) highlights that the main issues companies face are around non-tariff barriers such as logistics, SPS controls, labelling and other regulatory requirements, and labour supply issues. In providing support to business and in addition to providing generic advice, SE take a company specific approach within a sector context. For instance, SE’s website (Exports & International Markets) provides guidance, support and advice via a range of self-service export digital tools, guides and resources. Specific issues, such as Borders or Export documentation issues, are also addressed.

Further support for business is provided by SE’s international market research, which helps companies identify the right markets and latest export opportunities researched by trade teams. This information is supplemented by in-market trade specialists who assist with a range of issues including local regulatory issues. In addition, SE organise webinars and workshops on specific markets or to address TCA-related trade matters. For specific issues and enquiries of a technical nature SE operates a support service via the Institute of Export. Half of these enquiries are related to trading with Europe and almost all of them relate to non-tariff issues. SE trade specialists provide advice on accessing finance, for example, that programs such as Horizon are open again to UK/Scottish companies. Export Finance advice through specialist UK government departments continues to be relevant for Scottish companies who require access to finance to fund international growth plans. Again, this is something highlighted to companies via SE trade specialists.

The Scottish Government’s European based Global Scots also provide helpful general advice and guidance to companies looking to trade with European countries and understand local regulations in more depth. Examples include building relationships with influential and likeminded organisations throughout Europe. In the Energy transition space, where the theme of industrial sovereignty has emerged over the past few years, the in-market teams

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have helped establish strategic relationships with key Offshore Wind regions and stakeholders across Europe through joint activities and partnership agreements enabling the Scottish supply-chain's voice to be heard across Europe.

Notwithstanding the above examples, the Scottish Government, and its agencies, recognises the ongoing challenges caused by Brexit to businesses and is committed to providing continued support and guidance.

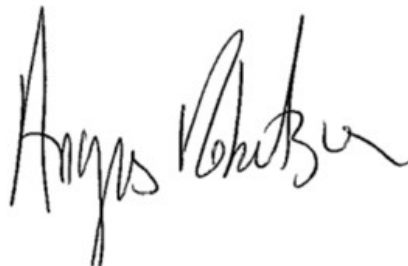
Scottish Government priorities for improving UK EU relations

When I gave evidence to the Committee I drew attention to the Scottish Government's priority objectives for improving the implementation of the Trade and Cooperation Agreement. As the UK Government pursues its intention to reset UK EU relations I will continue to champion Scottish interests, with a focus on the items set out below:

- Work with UKG to seek a Veterinary and Sanitary & Phytosanitary (SPS) Agreement between the UK and the EU. The Scottish Government published a paper on this in late August 2024: [Trading arrangements with the EU - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultation-papers/collections/documents/trading-arrangements-with-the-eu-2024-08-29.pdf)
- Seek full participation in relevant EU programmes, with specific priority to request a commitment to open negotiations with the EU Council to discuss options for partial or full association with Erasmus+ and Creative Europe.
- Seek restored opportunities for professionals in sectors across our economy to work in the EU.
- Negotiate for a stronger and clearer role for Scottish Ministers in shaping the immigration system to ensure that it is more responsive to and reflective of Scotland's specific needs.
- Seek assurance of the continued and close involvement of the Scottish Government in international fisheries negotiations.
- Removal of unnecessary Brexit red tape and barriers to trade;
- Closer cooperation on security and law enforcement; and
- Closer energy and climate cooperation, to support energy security and net zero priorities.

In closing, I would like to note that Scottish Ministers share the Committee's overall conclusions that Brexit, and in particular the "hard" Brexit pursued by the previous UK Government, has caused significant difficulties for many UK businesses and traders.

Yours,



ANGUS ROBERTSON

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