



Department for  
International Trade

# **Continuing the United Kingdom's trade relationship with the Republic of Chile**

Agreement establishing an Association between the United  
Kingdom of Great Britain and Northern Ireland and The Republic of  
Chile

February 2019



© Crown copyright 2019

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3)

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.uk/dit](http://www.gov.uk/dit)

Any enquiries regarding this publication should be sent to us at [enquiries@trade.gov.uk](mailto:enquiries@trade.gov.uk)

ISBN 978-1-5286-1006-3

CCS0219502344

02/19

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

# Contents

<b>Introduction</b>	<b>4</b>
<b>Legal Approach</b>	<b>6</b>
<b>Resources</b>	<b>6</b>
<b>Economic background</b>	<b>8</b>
Trade between the UK and Chile	8
UK businesses exporting to and importing from Chile	9
Economic impact of the EU-Chile Agreement	10
Potential loss to UK if the UK-Chile Agreement is not ratified	11
Immediate impact if not ratified	11
Tariffs	11
Businesses	13
Consumers	13
Longer-term impact	13
<b>Explanation of the Agreement, including any significant differences between the UK-Chile Agreement and the EU-Chile Agreement</b>	<b>14</b>
General Provisions	14
Removal and replacement of references to the EU	14
Territorial Application	14
Continuation of Time Periods	14
Institutions and Committees	15
Amendment Clauses	15
Trade Remedies and Dispute Settlement	16
Review Clauses	16
Annexes and Protocols	17
Goods	17
Tariff-rate quotas	17
Rules of origin	19
Sanitary and phytosanitary measures	20
Intellectual property and geographical indications	21
Services	21
Government procurement	21
Mutual administrative assistance in customs matters	22

## Introduction

1. In line with the Minister for Trade Policy's commitment to Parliament, this report explains the Government's approach to delivering continuity in the trade relationship of the United Kingdom (the "UK") with Chile as the UK leaves the European Union (the "EU").
2. As the UK leaves the EU, the Government has sought to deliver the maximum possible certainty to businesses and consumers through ensuring continuity in the UK's existing trade relationships. It is in no-one's interests to disrupt existing trade flows.
3. To achieve this, we have developed new bilateral agreements that replicate, as far as possible, the effects of our existing trade agreements with existing partners. The agreements provide for entry into force when the existing agreements between the EU and a third country cease to apply to the UK, whether the UK leaves the EU with no agreement or at the end of the Implementation Period if the Withdrawal Agreement is ratified. In either event, the new bilateral agreements will form the starting points for our future trade agreements with partners.
4. Wherever possible, the Government has sought a technical replication of these agreements, but in some cases, it has applied bespoke solutions for individual agreements as necessary to ensure continuity of effect in a bilateral context.
5. In accordance with commitments provided for in the Trade Bill 2017-2019, this report gives details of, and explains the reasons for, any significant differences between:
  - a. the Agreement establishing an association between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile (the "UK-Chile Agreement"); and
  - b. the trade-related provisions of the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part (the "EU-Chile Agreement").<sup>1</sup>
6. The report first sets out the general drafting changes necessary across all the UK's (short form) continuity trade agreements and which have no significant impact on the UK's current trade relationships. It then considers articles of the UK-Chile Agreement, in turn explaining any significant differences between the trade-related provisions of the UK-Chile Agreement and the corresponding provisions of the EU-Chile Agreement. To assist the reader, this report includes some discussion of the economic impacts as appropriate. This report focuses solely on the changes made to the trading arrangements between the UK and Chile in preparation for the UK ceasing to be bound by the EU-Chile Agreement and entering into the UK-Chile Agreement. Any wider economic impacts resulting from the UK's exit from the EU or the nature of the Future Economic Partnership (the "FEP") have been excluded from this report.
7. The UK has agreed with many third countries that the most appropriate and proportionate form of legal instrument to ensure continuity in the current circumstances is a short form agreement which incorporates by reference the relevant provisions of the underlying EU-third country agreement with relatively few but necessary modifications; the advantages of the short form approach are set out below. However, the UK has simply chosen the form that the States

---

<sup>1</sup> This includes the EU-Chile Agreement, its Annexes, Appendices, Protocols and Notes as well as the decisions made by the Association Council and the Association Committee before the EU-Chile Agreement ceased to apply to the UK, to the extent that those decisions relate to the UK and Chile.

involved agreed was the most pragmatic and sensible in the circumstances, taking into account the wishes of the partner countries. Accordingly, some agreements have been drafted in long form to reflect these wishes.

## Legal Approach

8. The UK has agreed with the majority of third countries that the most appropriate and proportionate form of legal instrument to ensure continuity in the current circumstances is a short form agreement which incorporates by reference relevant provisions of the underlying EU-third country agreement with relatively few but necessary modifications. The approach is similar to that used in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the “CPTPP”), where Article 1 of the CPTPP incorporates by reference the provisions of the Trans-Pacific Partnership Agreement into and makes them part of, *mutatis mutandis*, the CPTPP. The advantages of this approach include that:
  - a. the short form agreement may more easily be adapted to accommodate different scenarios, such as the various possible outcomes of the UK’s ongoing negotiations with the EU regarding the end state of the UK-EU relationship;
  - b. the format itself will send a clear message to businesses, consumers and investors in both countries that the aim is simply to secure continuity in existing trading arrangements, with the only changes being the ones clearly specified on the face of the agreement; and
  - c. the approach will provide a clear legal text, making rights and obligations unambiguous where they have by necessity changed.
9. The UK-Chile Agreement reproduces the effects of the EU-Chile Agreement as closely as possible, including the establishment of institutional arrangements between the UK and Chile based on existing structures (such as the Association Council) that allow for the ongoing management and updating of the Agreement.
10. Many of the general changes to the EU-Chile Agreement (such as replacing “EU” with “UK”) are applied *mutatis mutandis*, that is, with the technical changes necessary to apply the Agreement as if it had been concluded between the UK and Chile in the first instance. The interpretive *mutatis mutandis* principle applies to most references to EU law so that, where appropriate, such references are to be read as references to retained EU law or to EU law incorporated in the law of the territories for whose international relations the UK is responsible when relevant EU law ceases to apply to the UK, or legislation in the UK or the territories that replaces that legislation. This has avoided the need to reproduce every page and has significantly reduced the volume of text required.
11. Where more substantive amendments were required to ensure operability in a bilateral context, or where the UK and Chile jointly agreed that *mutatis mutandis* would not deliver adequate certainty over rights and obligations, detailed amendments have been included in the Annex to the UK-Chile Agreement.

## Resources

12. This report is intended to aid businesses, consumers and parliamentarians in understanding any significant changes made to the UK's trading relationship with Chile by the UK-Chile Agreement, the reasons for any changes, and their impact.
13. Should you wish to view the EU-Chile Agreement as originally published, it can be found online on the [EUR-Lex website](#), online on [the UK Parliament website](#) and in hard copy in the Houses of Parliament Libraries.
14. More detail, including decisions of the Association Council and Association Committee established under the EU-Chile Agreement for the purpose of administering the Agreement, can be found on the [EUR-Lex website](#). A consolidated version of the Agreement can also be found on the EUR-Lex website. The consolidated text is not an authoritative version of the Agreement but will assist readers to understand how the Agreement has been amended since its entry into force.
15. Should you wish to view the full text of the UK-Chile Agreement, it will be laid in Parliament alongside an Explanatory Memorandum as part of the UK's treaty ratification process in accordance with the Constitutional Reform and Governance Act 2010. The text will also be available on GOV.UK.

## Economic background

16. This section provides a country-specific background analysis of trade between the UK and Chile.

### Trade between the UK and Chile

17. Chile is the UK's 65th largest trading partner,<sup>2</sup> accounting for 0.1% of total UK trade. Total trade in goods and services between the UK and Chile was £1.8 billion in 2017.<sup>3</sup>

18. In 2017, UK exports to Chile were £0.9 billion, making it the UK's 61st largest export market (accounting for 0.2% of all UK exports). UK imports from Chile were £0.8 billion, making it the UK's 66th largest import source (accounting for 0.1% of all UK imports).

**Table 1: Trade between the UK and Chile, 2017 (£, billion)**

	Trade in goods	Trade in services	Total trade
UK exports to Chile	0.6	0.4	0.9
UK imports from Chile	0.7	0.1	0.8
Total trade	1.3	0.5	1.8

Source: [ONS, \(2018\). UK trade: August 2018](#); [ONS, \(2018\). UK trade in services by partner country experimental data: April to June 2018](#).

19. Using data from HMRC for trade in goods only, Table 2 shows the top goods exported to Chile were in machinery and mechanical appliances (£230 million in 2017) and vehicles other than railway or tramway stock (£93 million), representing over half of the total value of goods exported to Chile. The UK's top goods imported from Chile were largely edible fruit and nuts (£253 million in 2017), beverages, spirits and vinegar (£180 million), and machinery and mechanical appliances (£125 million).

**Table 2: Top 5 UK goods exports to & imports from Chile 2017 (at HS2, £ million)**

Top 5 UK goods exports to Chile	Value	Top 5 UK goods imports from Chile	Value
Machinery and mechanical appliances	230	Edible fruit and nuts	253
Vehicles other than railway or tramway stock	93	Beverages, spirits and vinegar	180
Mineral fuels or oils, products of their distillation	43	Machinery and mechanical appliances	125
Pharmaceutical products	30	Meat and edible meat	29

2 EU members are treated as individual trading partners with the UK.

3 [ONS, \(2018\). UK trade: August 2018](#); [ONS, \(2018\). UK trade in services by partner country experimental data: April to June 2018](#).

Beverages, spirits and vinegar	28	Paper and paperboard; articles of paper pulp	22
--------------------------------	----	--	----

Source: [HMRC trade statistics by commodity code](#) (accessed November 2018). Sectors classified according to Harmonised System Sections. Data presented is recorded on a 'physical movement' basis where a good is recorded as an export (import) if it physically leaves (enters) the economic territory of a country.

20. Table 3 shows that in 2017 travel services was both the largest UK service exported to and imported from Chile, valued at £119 million and £54 million respectively. Transportation services followed as the second largest export and other businesses services (comprised of sectors including legal, accounting, management consulting, and others) as the second largest import.

**Table 3: Top 5 UK services exports to & imports from Chile, 2017 (£ million)**

Top 5 UK services exports to Chile	Value	Top 5 UK services imports from Chile	Value
Travel	119	Travel	54
Transportation	76	Other business services	27
Other business services	62	Financial	24
Telecommunications, computer and information services	34	Government	11
Government	17	Transportation / Telecommunications, computer and information services	7

Source: [ONS, \(2018\). Pink Book 2018](#); [ONS, \(2018\). UK trade in services by partner country experimental data: April to June 2018](#).

Note: Data for 'manufacturing', 'maintenance and repair', 'construction' (import), 'personal, cultural, and recreational' (export) sectors have been omitted by the ONS as the data might be disclosive, but the values are included in the overall totals. Services data is always reported on a 'change of ownership' (Balance of Payments) basis.

21. The goods and services trade figures in the tables above are not directly comparable. The ONS data is recorded on a 'Balance of Payments' or 'change of ownership' basis where a good or service leaving (entering) the economic territory of a country is recorded as an export (import) only if it has changed ownership between the resident of the reporting country and non-residents. Goods exports (imports) are recorded by HMRC if a good physically leaves (enters) the economic territory of a country.

## UK businesses exporting to and importing from Chile

22. In 2017, HMRC estimated that 2,400 VAT registered UK businesses exported goods to and 700 imported goods from Chile.<sup>4</sup> As these figures only include businesses trading in goods, they are likely to underestimate the number of businesses trading with Chile.

23. For context, provisional survey data from the ONS<sup>5</sup> shows that around 340,500 (non-financial) registered businesses in Great Britain traded either goods or services or both in 2017 with another country. This was just under 15% of all VAT/PAYE registered businesses. There were around 203,900 (non-financial) registered businesses in Great Britain engaged in goods trade

4 HMRC, (2018). [Trade in Goods by Business Characteristics](#) 2017.

5 ONS, (2018). [Annual Business Survey: Non-financial business economy, exporters and importers in Great Britain](#) 2017.

with another country and 194,600 (non-financial) registered businesses trading in services in 2017. Some of these businesses traded in both goods and services. There will be other businesses trading internationally, which are not identified by these surveys as they are not registered for VAT. Neither of these sources include businesses trading below the VAT registration threshold.

## Economic impact of the EU-Chile Agreement

24. The EU-Chile Agreement, which includes a free trade agreement, was provisionally applied in 2003 before its entry into force in 2005. The Agreement included a staged reduction in tariffs over a ten-year period, which ended in 2013.
25. The simulation results for a 2002 ex-ante impact assessment found small impacts on macro variables for the EU.<sup>6</sup> They estimated that there would be a positive real income effect of \$800 million dollars (in 1997 terms). When looking at welfare, GDP and exports all change by 0% in these simulations, while imports increase by 0.1%. This could be expected on these variables, in part due to the relative size of the EU compared to Chile.
26. A 2012 report prepared for the European Commission evaluated the economic impact of the trade provisions of the EU-Chile Agreement.<sup>7</sup> Two approaches were taken. One set of econometric analysis suggested that if MFN treatment was reintroduced on goods trade, EU imports from Chile would have decreased by 20% in 2009, while EU exports would have fallen by 40% in 2010. Alternative simulations based on a General Equilibrium Model suggested that EU exports to Chile were 60% higher than in a world where the EU-Chile Agreement was not in place. For EU imports, the figure is a 20% increase. This approach highlights Chilean fruit, wine, fisheries and fish processing benefitting from the Agreement, whilst for the EU it is in transport, machinery and chemical industries that benefits are expected.
27. A separate study prepared for the European Commission found that EU exports to Chile increased because of the Agreement, estimating a statistically significant 148% increase in exports.<sup>8</sup>
28. A 2018 European Commission report looking at implementation of EU free trade agreements included information on the EU-Chile Agreement.<sup>9</sup> It highlighted that goods exports to Chile increased by 197% and imports increased by 65% between 2003 and 2017. In 2016, EU services exports to Chile were 25% greater than in 2010, with imports increasing 18% in the same period.

---

6 Planistat. (2002). [‘Sustainable Impact Assessment \(SIA\) of the trade aspects of negotiations for an Association Agreement between the European Communities and Chile \(Specific agreement No 1\)’](#).

7 ITAQA Sarl. (2012). [‘Evaluation of the economic impact of the Trade Pillar of the EU-Chile Association Agreement’](#).

8 Bergstrand J, et al. (2011). [‘Ex-post Assessment of Six EU Free Trade Agreements’](#). *Copenhagen Economics*, pp. 1-72.

9 European Commission. (2018). [‘Individual reports and info sheets on Implementation of EU Free Trade Agreements’](#).

## Potential loss to UK if the UK-Chile Agreement is not ratified

29. Not being able to rely upon the UK-Chile Agreement would risk UK businesses losing the preferences negotiated in the EU-Chile Agreement. For example, in the absence of any other action, this could lead to the re-imposition of tariffs, with the UK returning to MFN treatment with Chile.
30. However, it is unlikely that the entire effect of the EU-Chile Agreement would disappear. While tariffs would automatically revert to MFN rates, discussed in further detail below, it could take longer for some of the other benefits to be lost. Some gains might endure even in the long-run. For example, the UK might still benefit from any regulatory arrangements established by the Agreement. Business connections formed because of the Agreement might also endure.
31. The size of the impact of not being able to rely upon the UK-Chile Agreement would depend on the responsiveness of trade flows to increased costs brought about by the loss of access to the Agreement.<sup>10</sup>

## Immediate impact if not ratified

### Tariffs

32. Much international goods trade takes place in products for which MFN rates are already zero. However, free trade agreements provide additional opportunities by reducing tariffs in products where this is not the case. If the UK-Chile Agreement could not be relied upon, tariffs between the two countries would risk reverting to MFN rates for all trade in goods. This would lead to an increase in duties on some UK exports to and imports from Chile.
33. To estimate the potential impact of losing tariff preferences, assumptions have to be made. If all current trade between the UK and Chile occurred at the agreed preferential tariff rates, if current patterns of trade remained unchanged in future, and without taking into account the effect of any unilateral preferences, reverting to the UK and Chile's current MFN tariff rates would result in an annual increase in total duties of around £64 million. The extra duties paid on UK exports to Chile would increase by around £35 million, and on UK imports by around £29 million.<sup>11</sup>

---

10 Head K and Mayer T. (2014). ['Gravity Equations - Workhorse, toolkit and cookbook'](#). *Handbook of International Economics*, 4, pp. 131-195.

Dhingra S, et al. (2018). ['Beyond Tariff Reductions: What Extra Boost From Trade Agreement Provisions?'](#). *CEP Discussion Paper No 1532*, LSE, pp. 1-38.

11 DIT's own calculations using tariff data from ITC Market Access Map (MacMap) and HMRC trade statistics (accessed 24th October 2018). Implied additional duties are calculated using the difference in MFN and preferential tariff rates and the current value of trade for each product at HS2 level, 2017. MFN tariff rates for imports into the UK are trade-weighted average rates using a reference group of countries by ITC Market Access Map, rather than bilateral trade data. This is to overcome endogeneity bias which may show low average tariff rates where there are low bilateral trade values. These results assume all eligible trade utilises the preferential trade agreement tariff rates. Different approaches to this analysis are likely to yield different results.

34. However, these estimates assume that all tariff preferences offered under the EU-Chile Agreement are fully utilised by exporters. This is unlikely to be true. For example, in 2016, evidence suggests that 68% of the UK's eligible goods exports to Chile (being those exports which occurred under tariff lines where a preferential rate was provided for in the Agreement) actually utilised the tariff preferences.<sup>12</sup> In 2016, DIT estimates suggest that 96% of the UK's eligible goods imports from Chile were imported utilising the preferences provided for in Agreement.<sup>13</sup> This means that the actual increase in duties could be substantially lower than the estimates above.
35. The total duty which would in fact be charged on exports and imports would depend on how quantities and prices of traded products adjusted to the imposition of tariffs. If UK producers were not previously utilising the preferential rates or producers and consumers changed their behaviour in response to higher tariffs, this cost would be lower than estimated above. These are strong assumptions, so this figure should be treated as an indicative estimate of the magnitude of the trade barrier under this scenario.
36. The indicative estimate is that the largest increases in UK export duties would be for machinery and mechanical appliances (HS84) where there would be an implied increase of up to £14 million, and vehicles (HS87) of up to £6 million. These correspond to the top UK goods exported to Chile. The remaining products have implied duty increases of under £3 million. On the imports side, the largest increases in duties would be for edible fruit and nuts (HS08), with implied increases of up to £20 million. Edible fruit and nuts account for over one-third of the value of UK goods imports from Chile. The next largest increases in import duties would be for beverages, spirits and vinegar (HS22), up to £4 million, and nuclear reactors, boilers, machinery and mechanical appliances (HS84), up to £1.6 million. Both areas are among the top UK goods imported from Chile.
37. Indicative estimates of implied additional tariff duties are provided to give a sense of scale of possible additional costs of trade. Tariff duties are transfers, where the cost to business is equal to the benefit felt by the UK Exchequer and Chile government which could collect more tariff revenue. However, depending on businesses' response to the change in duties, there could be wider effects of increased costs of trade, including negative impacts on consumer choice, prices, and ultimately economic growth and welfare. Estimates of implied additional duties therefore do not constitute an estimate of the impact.

## Businesses

38. Additional duties could be absorbed by either UK or Chilean businesses (depending on whether it is the importer or exporter paying the duty), passed on to consumers, or existing trade patterns could be interrupted. This could impact UK competitiveness, leading to disruptions in supply chains and job losses in the short term.

---

12 Nilsson L and Preillon N. (2018). ['EU Exports, Preferences Utilisation and Duty Savings by Member State, Sector and Partner Country'](#). *European Commission*, pp. 1-17. This report uses data collected by EU Delegations from relevant authorities in countries with which the EU has bilateral reciprocal trade agreements in place.

13 DIT's own calculations using data from [Eurostat](#) (accessed 19<sup>th</sup> November 2018). Note that using a single year does not account for fluctuating trends in bilateral trade flows, which can be significant. In general, data on the preference utilisation of trade deals is not readily accessible and should be treated with caution. They indicate whether businesses trading in goods are benefitting from negotiated preferences, but do not indicate which or how many businesses are using these preferences. Nor do they cover services trade.

39. Businesses that rely on imports as part of their supply chains may be affected if import prices rise, including UK exporters that rely on Chilean inputs to export goods to the rest of the world. In 2015 (latest data), around 15.1% of the value added in UK's gross exports reflected imports from abroad, including approximately 0.1% from Chile.<sup>14</sup> UK companies which rely on Chilean imports would become less competitive, if all else stayed the same. Given the small share of UK trade under the EU-Chile Agreement, in this case one would expect these impacts to be relatively small, but it could be noticeable for some specific companies.

### **Consumers**

40. Imported products could become more expensive for consumers if retailers pass on additional duties to consumers through increases in domestic prices. This could disproportionately affect certain groups of consumers, for example those at the lower end of the income distribution, depending on the specific sectors affected. Consumers might also see a reduction in choice of products and services available. Given the small share of UK-Chile trade in total UK trade, this impact may be relatively small overall, but could be noticeable on specific product lines.

### **Longer-term impact**

41. In the long run, if the UK-Chile Agreement is not able to be relied upon, the UK would forgo the longer-term benefits the EU-Chile Agreement would have brought to the UK. This could result in the long-term UK GDP marginally decreasing. Given the small share of UK-Chile trade in total UK trade, the impact on UK GDP may be relatively small.

---

<sup>14</sup> OECD, 2018. [Trade in Value Added \(TiVA\): Origin of value added in gross exports, December 2018](#). Experimental statistics.

## **Explanation of the Agreement, including any significant differences between the UK-Chile Agreement and the EU-Chile Agreement**

42. The UK-Chile Agreement follows the short form approach explained above in paragraphs 7, and 8 to 11. Beyond the general *mutatis mutandis* changes explained above, this section describes global changes made to continuity free trade agreements following the short form approach and goes on to provide a detailed discussion of the UK-Chile Agreement.

### **General Provisions**

#### **Removal and replacement of references to the EU**

43. Where necessary, references to the “European Union”, “the European Community”, the “EU” “EU Party”, and “Member States” are replaced by the UK. Similarly, references to EU institutions have been replaced with appropriate references to the equivalent institutions in the UK (for example, the Competition and Markets Authority). All other references to “European Union”, “the European Community”, the “EU”, “EU Party” and “Member States” are read, *mutatis mutandis*, as references to the UK but are not explicitly deleted.

#### **Territorial Application**

44. Territorial application provisions in a treaty outline the territory to which a treaty applies and how it applies to them. In the EU-Chile Agreement, the relevant provisions define the territorial application of the Agreement by reference to the EU Treaties and EU legislation. The UK-Chile Agreement retains these provisions and includes an additional article, Article 6, which clarifies that the Agreement applies to the UK and the territories for whose international relations it is responsible to the same extent and under the same conditions as the EU-Chile Agreement applies.

#### **Continuation of Time Periods**

45. Certain provisions of the EU-Chile Agreement provide for a transitional period which requires a party to complete an action within a certain timeframe, but which may not yet have been fulfilled under the conditions of the Agreement. These periods have been amended in the UK-Chile Agreement so that the Agreement reflects the remaining time in which the obligation must be fulfilled. Where a time bound commitment has been completed, reference to the time period has been left in and is covered by the interpretative *mutatis mutandis* principle to reflect any continuing obligations of either party. The general commitment to continue time periods in the EU-Chile Agreement can be found in Article 7 of the UK-Chile Agreement.

46. Article 7 also provides an exception for time periods which relate to a procedure or other administrative matter, such as a review, committee procedure or notification. These periods are not affected and therefore ‘start again’ when the UK-Chile Agreement enters into force. An example of such a clause is Article 100 (Review) of the EU-Chile Agreement, as incorporated into the UK-Chile Agreement.

## **Institutions and Committees**

50. Most of the institutional provisions and bodies provided for in the EU-Chile Agreement are incorporated and retained *mutatis mutandis*, although some modifications have been made to the composition and function of these bodies to ensure they are operable in a bilateral context. For example, the UK representative for the Association Council is now “a Secretary of State of the United Kingdom or their representative(s)”, replacing the “President of the Council of the European Union, assisted by the Secretary General/High Representative, the incoming Presidency, other Members of the Council of the European Union or their representatives and Members of the European Commission” (see Section 1 of the Annex to the UK-Chile Agreement). Other committees, such as the Joint Consultative Committee, are not automatically re-established under the UK-Chile Agreement as they were not immediately operable in a bilateral context, but they can be established again in the future.
51. Article 8 of the UK-Chile Agreement tasks the newly established Association Council with ensuring that the Agreement operates properly from entry into force. It further stipulates that the Association Council and the Association Committee established under the UK-Chile Agreement are deemed to have adopted the decisions of the Association Council and Association Committee established under the EU-Chile Agreement, to the extent those decisions relate to the UK and Chile, *mutatis mutandis*.

## **Amendment Clauses**

52. Amendment clauses set out the process that must be followed if the parties agree to amend the provisions of the agreement after it enters into force. Though parties to an agreement are generally free to amend it as they deem necessary, amendment clauses serve to make the process clearer and more transparent.
53. The UK-Chile Agreement contains an amendment clause which outlines the process that must be followed if the Parties agree to amend the provisions of the Agreement after it enters into force. Article 9 provides that amendments must be agreed in writing and will enter into force on the first day of the second month following the date of the later of the Parties’ notifications confirming that they have completed any necessary legal requirements and procedures or on such date as the UK and Chile otherwise agree. The Agreement also enables the Association Council to make a decision to amend the annexes, appendices, protocols and notes to the Agreement, which the Parties may subsequently adopt. Except where otherwise provided,
54. The insertion of an amendment article into the UK-Chile Agreement does not commit the UK to making any changes to the Agreement once it enters into force. It simply sets out the process which may be used if needed. Therefore, the insertion of an amendment clause is not expected to have an impact on the operability of the Agreement in a bilateral context.

## **Entry into Force and Provisional Application**

55. Entry into force provisions specify the date from which the terms of the agreement will bind the parties. Existing entry into force provisions have been replaced with new provisions in the UK-Chile Agreement to ensure that, whatever the scenario in which the EU-Chile Agreement ceases to apply to the UK, the UK-Chile Agreement enters into force as swiftly as possible. For the Agreement to enter into force, it must first be ratified by both the UK and Chile. In UK domestic law, before an agreement subject to ratification may be formally ratified, it must be laid before Parliament for scrutiny under the Constitutional Reform and Governance Act 2010 (CRaG Act).

56. Provisional application is a mechanism which allows an agreement to be applied prior to its entry into force. This means that the treaty can be provisionally applied prior to completion of the procedures required by the domestic law of the respective negotiating States for its entry into force, provided any necessary domestic implementing measures are in place. Where the negotiating states have agreed that a continuity agreement may be provisionally applied from the date the underlying EU agreement ceases to apply to the UK, the treaty may be operated provisionally from that date if this becomes necessary while, in the case of the UK, the treaty completes the procedures set out in the CRaG Act. A number of the existing EU agreements provide for provisional application and were provisionally applied by the UK as an EU Member State, including the EU-Chile Agreement itself (see Articles 198(3) and (4) of the EU-Chile Agreement).
57. The UK and Chile have agreed to allow the UK-Chile Agreement to be provisionally applied (see Article 10) in the event that this is necessary.<sup>15</sup> Given that the Government is seeking to maintain the effects of the existing EU agreements as the UK leaves the EU, this is a proportionate approach to manage the timing constraints during this unique period and reduces the risk of businesses and consumers experiencing disruption as the UK leaves the EU.

### **Trade Remedies and Dispute Settlement**

58. Trade remedies provide a safety net for domestic industry against unfair or injurious trading practices caused by dumped, subsidised or unexpected surges of imports of goods. Most WTO members have a trade remedies regime. The UK will operate its own regime once outside the EU.
59. The economic benefits of a trade agreement can only be realised if they are faithfully implemented and complied with. A dispute settlement mechanism in an agreement signals the parties' intention to abide by the agreement, thereby increasing business and stakeholder confidence that commitments set out in the agreement can, and will, be upheld. The dispute settlement mechanism therefore provides an important deterrent function. It also provides an effective mechanism for enforcing those commitments, and for resolving any disputes arising.
60. The UK-Chile Agreement replicates the effects of the trade remedies and dispute settlement provisions in the EU-Chile Agreement *mutatis mutandis*.
61. One of the impacts of transitioning the dispute settlement chapters in the existing EU trade agreements is that, in the event that a dispute arises, the UK will be directly responsible for any relevant costs associated with the dispute settlement process.

### **Review Clauses**

62. Article 74 of the EU-Chile Agreement is an evolution clause which required the EU and Chile to examine further liberalisation of trade in agricultural products three years after entry into force of that Agreement. The UK-Chile Agreement replicates the substance of this clause, with some minor modifications. These modifications include: (1) reducing the review period from three years to two years; and (2) focusing the review on, amongst other things, the usage of tariff-rate quotas established in Annexes I and II of the EU-Chile Agreement, as incorporated. The

---

<sup>15</sup> To note that Chile cannot provisionally apply the UK-Chile Agreement until they have completed their domestic procedures required for ratification.

aim of these modifications is to give the UK and Chile the opportunity to review the administration and usage of tariff quotas under the UK-Chile Agreement.

63. Article 201 is a provision relating to the future development of the EU-Chile Agreement which is retained in the UK-Chile Agreement. In order to demonstrate the UK's commitment to developing its trading relationship with Chile and to provide sufficient flexibility to adapt the UK-Chile Agreement in the future, an extra paragraph has been added committing the UK and Chile to discuss the state of their trading relationship every two years, with a view to enhancing the rights, obligations and market access commitments in the Agreement.

## **Annexes and Protocols**

### **Goods**

64. Goods chapters in trade agreements set out the treatment and the level of access to the domestic market granted to goods of the respective parties. Such provisions include setting tariff levels and quotas on various products, establishing agricultural safeguards and determining the rules of origin for goods to qualify for preferential treatment. Commitments on tariffs for both the UK and Chile have, other than in those cases detailed below, been transitioned without changes. This means that tariff preferences applied by the UK for products from Chile will remain the same as those applied by the EU on the date the UK ceases to be bound by the EU-Chile Agreement, and, likewise, Chile will continue to apply the same preferences to products from the UK that it is applying to products from the EU.
65. The only exception to tariff commitments being transitioned without modifications relates to the size of tariff-rate quotas (see below), which can be found in Sections 5 and 6 of the Annex to the UK-Chile Agreement (concerning Annexes I and II of the EU-Chile Agreement, as incorporated) where these have to be resized to deal with the fact that the UK will no longer be a member of the EU.

### **Tariff-rate quotas**

#### **Justification for policy change**

66. Tariff-rate quotas ("TRQs") allow a certain quota of a product to enter the market at a zero or reduced tariff rate. Imports above the quota are subject to a higher tariff rate – usually the MFN rate. The EU has agreed TRQs, both for imports to the EU and to partner countries, in some of its trade agreements. In order for products to be able to continue to benefit from the use of TRQs in trade between the UK and partner countries, these quotas need to be present in the new UK agreement with those partners.
67. TRQs administered by the UK and its agreement partners have been resized to reflect the fact that the UK is a smaller import and export market than the EU-28. Solutions were agreed with partner countries to set quotas at a sufficient level that would allow for continuity of historic trade flows for importers and exporters from both sides.
68. Tables 4 and 5 set out the new UK-Chile quotas applicable under the UK-Chile Agreement. TRQs have been resized based a range of evidence including historical usage data and trade flow data. In order to address future market access opportunities for UK and Chilean businesses, it was also agreed to use a proxy indicator to set TRQs where data showed historic trade was low. This includes instances where the UK or Chile's usage of a TRQ was

zero. Doing so allows future market access opportunities for UK and Chilean businesses using a fair and evidence-based methodology.

## Impacts

69. Without transitioning these TRQs, and without any other mitigating actions, goods imported from Chile that are currently covered by TRQs in the EU-Chile Agreement could face MFN tariffs. This could make these imports more expensive. The nature of this impact will depend on a number of factors, including existing trading patterns and the behaviour and responsiveness of domestic consumers and businesses to the change in tariff. UK imports from Chile, based on trade data (at HS6 level) covering these products<sup>16</sup> were worth around £22m in total in 2017<sup>17</sup>, equivalent to 3.1% of total UK goods imports from Chile. Trade in goods currently exported from the UK to Chile could also be adversely affected if the relevant TRQs are not transitioned. In the absence of any explicit action by the Chilean government, that trade would face MFN tariffs. As explored above for UK imports, the nature of the impact will depend on a number of factors.
70. The overall, immediate, impact on UK producers and consumers resulting from this approach to resizing TRQs is expected to be limited.

**Table 4: List of TRQs applied by the UK for imports from Chile and new quota volumes (tonnes)**

Quota Number	Product description	New UK specific quota volume	Agreed annual increase in UK quota volume*
TQ (1a)	Meat of bovine animals	425	17
TQ (1b)	Swine meat	1,516	58
TQ (1c)	Sheep/Goat meat, Boneless Lamb, Boneless Mutton/Sheep	866	33
TQ (1d)	Poultry	10,477*	403
TQ (1e)	Swine meat	167	NA
TQ (2a)	Cheese and curd	450	12
TQ (2b)	Garlic	159	4
TQ (2c)	Cereal grains	300	8
TQ (2d)	Mushrooms	150	4
TQ (2e)	Cherries	300	8
TQ (3a)	Confectionary (without cocoa)	67	NA

<sup>16</sup> Trade data at HS6 level. Products covered by quotas taken from the EU's TARIC database

<sup>17</sup> HM Revenue and Customs, UK trade statistics data, HS 6 Level. <https://www.uktradeinfo.com/Pages/Home.aspx>. 2017 average. It should be noted that not all commodity codes within the HS product codes will be covered in every TRQ. Further, it is not necessarily the case that all trade in products under the quota will enter under this access commitment. As such, estimates based on HS6 data are likely to give an upper bound to the volume of imports and exports covered by the TRQ.

TQ (3b)	Confectionary (with cocoa)	67	NA
TQ (3c)	Waffles and wafers	83	NA
TQ (4a)	Hake	833	NA
TQ (4b)	Fish fillets, dried, salted or in brine; smoked fish	7	NA
TQ (5)	Prepared or preserved fish	25	NA

**Table 5: List of TRQs applied by Chile for imports from the UK and new quota volumes (tonnes)**

Quota Number	Product description	New Chile quota volume	Agreed annual increase in Chile quota volume
TQ (1a)	Cheese	450	12
TQ (3a)	Fish	25	NA
TQ (3b)	Hake	833	NA
TQ (4)	Salmon	7	NA

\*The agreed annual increase in UK quota volume is aligned to the annual increases in quota volumes provided for in the EU-Chile Agreement.

## Rules of origin

### Justification for policy change

71. In free trade agreements, Rules of Origin are used to determine the economic nationality of a good. To qualify for preferential tariff rates, a good must “originate” in one of the parties to the agreement. Trade agreements may also allow materials originating and/or processing in a country other than the exporting party to count towards meeting the specific origin requirements for preferential treatment, a process known as “cumulation”.
72. There are two categories relevant to determining whether goods “originate” in the exporting country for the purposes of a free trade agreement:
- a. Wholly obtained – These are goods that are wholly obtained or produced entirely in a single country. Examples include mineral products extracted from the soil and live animals born and raised.
  - b. Substantial transformation – These are goods that are made from materials which originate in more than one country, and the origin is therefore defined as the country where the goods were last substantially transformed. This can be determined in three ways:
    - i. Value added – This type of rule requires that a particular proportion of the final value of the product be added in the exporting country.
    - ii. Change in Tariff Classification (“CTC”) – This type of rule requires that the final product be sufficiently different from the imported materials so that it moves to a different tariff classification altogether.
    - iii. Specific processing or manufacturing – These rules typically apply where value added or CTC rules may not sufficiently determine originating status, and where specific processes are required to meet originating criteria.

73. As a member of the EU, all UK content is currently considered as “originating” in the EU and UK exports are designated as being of “EU origin”. This means that materials from, and processing in, the UK and the rest of the EU can be used interchangeably in bilateral trade with existing EU trade agreement partners.<sup>18</sup> This will no longer be the case when existing EU trade agreements cease to apply to the UK. At this point, the designation of UK exports will shift from “EU” originating, to “UK” originating and EU content will (unless specific provision is made in new agreements) no longer count towards meeting the origin requirements for preferential treatment for either party. This would have implications for goods traded between the UK, EU and Chile.
74. To address these implications and to provide maximum continuity for business, the UK-Chile Agreement provides that EU materials can be recognised (i.e. cumulated) in UK and Chilean exports to one another. Furthermore, EU processing can be recognised (i.e. cumulated) in UK exports to Chile. The cumulation arrangements are set out in detail in Title II (Definition of the concept of ‘originating products’) of Annex III, as incorporated and modified (see Section 7 of the Annex to the UK-Chile Agreement) and are subject to satisfying certain conditions specified in the agreement.

## **Impact**

75. If cumulation of EU content for the UK and Chile was not permitted under the UK-Chile Agreement, some UK and Chile based exporters might find themselves unable to access preferences as they are currently able to under the EU-Chile Agreement. UK exporters to Chile who rely on EU content might have to revert to paying MFN tariff rates if they continued using EU content, or they might have to review and reassess their existing supply and value chains as a result of this change to existing terms. The impact would, of course, vary across sectors.
76. The UK-Chile agreement provides only for trade between the UK and Chile, and does not provide for either party’s direct trade with the EU.

## **Sanitary and phytosanitary measures**

77. Sanitary and Phytosanitary (“SPS”) provisions in trade agreements concern the application of food safety and animal and plant health regulations. SPS provisions can increase transparency by enabling one party to recognise as equivalent SPS measures of the other party in relation to animal health and import requirements, including health certification.
78. The SPS provisions of the EU-Chile Agreement are set out in Annex IV. Minor, non-substantive changes have been made to Annex IV by Section 8 of the Annex to the UK-Chile Agreement. These changes remove the reference to the definition of “Parties” as defined in the EU-Chile Agreement and include a provision which requires the UK to notify Chile of its competent authorities when the UK-Chile Agreement enters into force. All other provisions regarding regional conditions, equivalence, transparency, certification, import checks, notifications and management committees, including detailed appendices, are maintained and applied *mutatis mutandis* in the UK-Chile Agreement. This will have no impact on the operation of the Agreement.

---

<sup>18</sup> UK and Chilean content will also continue to count as originating in trade between each other.

## **Intellectual property and geographical indications**

79. When the UK leaves the EU it will remain a member of the World Intellectual Property Organisation (“WIPO”) and continue to comply with those WIPO treaties to which it is a party. The UK will also continue to comply with the WTO Agreement on the Trade Related Aspects of Intellectual Property Rights.
80. The UK-Chile Agreement retains the protections provided in the EU-Chile Agreement when the UK ceases to be bound by that Agreement for UK and Chilean geographical indications (“GIs”). The retained protections include those that extend to the territory of both Northern Ireland and the Republic of Ireland, known as ‘transborder GIs’, for Irish Whisky, Irish Whiskey/Uisce Beatha Eireannach and Irish Cream. All other GIs, traditional expressions and protected designations which relate to EU Member States that are not the UK are not incorporated into the UK-Chile Agreement (see Sections 9 and 10 of the Annex to the UK-Chile Agreement). These changes are not expected to have an impact on bilateral trade flows between the UK and Chile.

## **Services**

81. Services chapters in trade agreements set out the treatment and the level of access to the domestic market the parties grant to their respective service suppliers and services. Commitments build upon access and treatment granted to all WTO Members that protects a government’s right to regulate its domestic markets.
82. Amongst EU agreements with third countries, the content of the services chapters and depth of the commitments undertaken vary considerably. The variety of services provisions have in some cases necessitated a bespoke approach to deliver continuity of these commitments between the UK and the third country. Some agreements have not required amendment whilst others have required technical textual modifications to deliver continuity of effect. Where such technical changes have been necessary the effects of the commitments in the relevant EU agreement have been replicated as far as possible.
83. Services chapters in the EU-Chile Agreement are subject to the cross-cutting changes outlined above. In addition, Section 11 of the Annex to the UK-Chile Agreement makes minor changes to Annex VII, amending a reservation requiring that aircraft used by Community air carriers be registered in the EU Member State licensing the air carrier or elsewhere in the Community. For this reservation, the phrase “or elsewhere in the Community” has been removed. References to EU internal waterway arrangements, such as the ‘Rhine-Main-Danube link’, have been removed for the same purpose. Annex VIII also contains a footnote that refers to prudential requirements in other Member States, which has been removed in Section 12 of the Annex to the UK-Chile Agreement for the same reason.
84. Sections 11, 12 and 13 of the Annex to the UK-Chile Agreement also remove the same paragraph in Annexes VII, VIII and X concerning the treatment of branches or agencies of Chilean companies that are established in other EU Member States, as this paragraph was not applicable in a bilateral context. Similarly, Sections 11 and 12 delete a paragraph in the corresponding Annexes of the EU-Chile Agreement regarding Community directives on mutual recognition of diplomas for the same reason.

## **Government procurement**

85. Government procurement commitments in trade agreements provide enforceable rules and standards for a transparent and non-discriminatory framework on government

procurement. They also liberalise specific procurement markets between the parties and provide enforceable market access commitments.

86. The UK-Chile Agreement retains the commitments on public procurement that relate to the UK and Chile.
87. Amendments have been made in Section 14 of Annex XIII of EU-Chile Agreement to reflect the fact that the UK will update its means of publication of procurement notices and contract awards in the UK once such a means of publication has been determined. The UK has agreed to notify Chile of this means of publication on entry into force of the Agreement. Subject to the terms of the final agreement with the EU, this may replace the reference to the information system for European public procurement and the Official Journal of the European Union. These changes are not expected to have an impact.

### **Mutual administrative assistance in customs matters**

88. The UK-Chile Agreement incorporates the Protocol of 13 June 2001 on Mutual Administrative Assistance in Customs Matters between the European Community and the Republic of Chile *mutatis mutandis*, with minor modifications. This Protocol allows for customs cooperation in areas such as the exchange of information and requests for assistance with a view to ensuring the correct application of customs legislation.
89. The UK-Chile Agreement makes minor changes to Articles 13 and 14 of the Protocol, to remove references to the competent services of the European Commission. Article 14(2) is further amended to confirm that arrangements in the UK-Chile Agreement take precedence over any prior bilateral agreement between the UK and Chile on mutual assistance.
90. As the UK and Chile have subsequently ratified the WTO Trade Facilitation Agreement, which entered into force on 22 February 2017, the UK-Chile customs relationship is also governed by international obligations that go beyond the scope of the Protocol, as incorporated into the UK-Chile Agreement.



CCS0219502344

ISBN 978-1-5286-1006-3