

The Rt Hon Liz Truss MP  
Secretary of State for International Trade  
3 Whitehall Place,  
London SW1A 2AW

10th November 2020

Dear Liz,

I am writing to raise an important and urgent issue concerning the continuity agreements that need to be ratified by the end of the Brexit transition period, in order to maintain our current free trade with key partners such as Canada, Turkey, Singapore, Vietnam, and Mexico.

I have received advice from the Public Bill office that – if you do not lay all these outstanding agreements before Parliament by the close of business tomorrow – there will not be time to give them the 21 sitting days of scrutiny that are required under law to get them ratified by 31st December.

**Background:**

As we have known since 2016, all existing trade agreements that we have with countries and trade blocs around the world thanks to our membership of the EU must be rolled over on a bilateral basis by the end of the Brexit transition period so that we can continue to enjoy their benefits in the future.

During the calendar year 2019, there was clear momentum behind this process, with 20 continuity agreements successfully delivered, including eight such agreements in the first quarter of 2019 alone, five of them personally agreed and signed by your predecessor, Liam Fox.

In line with the Constitutional Reform and Governance Act 2010 (CRAG), each one of these continuity agreements was laid before Parliament, along with parliamentary reports and explanatory memoranda, allowing scrutiny for the required period of 21 sitting days before their formal ratification.<sup>1</sup>

However, as your department's focus switched in 2020 to the talks on potential new free trade agreements with the United States, Australia, New Zealand and the CPTPP – as well as an enhanced continuity agreement with Japan – last year's momentum appeared to die out.

Not a single additional continuity agreement was secured in the first eight months of 2020, and in their correspondence with the Shadow International Trade team, representatives of countries ranging from Cameroon to Montenegro have reported that no formal talks were even conducted in that period.

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<sup>1</sup> That process was confirmed by the Minister of State for Trade Policy in the House of Commons on 20th July this year, as follows: "*All continuity agreements will be subject to the CRAG ratification procedure. That...provides for a period of 21 sitting days in which agreements, and the parliamentary reports and explanatory memoranda published alongside them, can be scrutinised by parliamentarians before they are formally ratified.*"

On 14th September, following the announcement of an agreement with Japan, I tabled PQs asking what progress you were making to secure the other 18 outstanding continuity agreements before the end of the Brexit transition period. No substantive responses were forthcoming.

Since then, you have announced the agreement of just three more deals: with Ukraine (8th October); with Cote d'Ivoire (15th October); and most recently with Kenya (3rd November).

**The 11th November deadline:**

We have consulted the Public Bill Office, and their advice is that – with the House due to rise for Christmas on 17th December – you will need to lay all outstanding agreements before Parliament by this Wednesday, 11th November at the latest, in order to have them ratified by the end of the year.

The Japan agreement is currently on the sixth day of the 21-day CRAG process, meaning it will be ratified in good time before the House rises. Yesterday, there was also movement to start the CRAG process for the other three agreements secured in the last month:

- The text of the Ukraine agreement, along with a parliamentary report and explanatory memorandum, was published yesterday afternoon (9th November), meaning that the CRAG process will be complete by 15th December;
- A parliamentary report on the Cote d'Ivoire agreement was also published yesterday afternoon, which said at Para 12 that the full text and explanatory memorandum were available, although at the time of writing this letter on the morning of 10th November, that was not yet the case; and
- While none of the relevant documents have so far been published in relation to the Kenya agreement, I am assuming they will follow in due course before tomorrow's deadline.

While the publication of these three agreements should not have been left so late, there will at least be no difficulty completing the CRAG process for them before the House rises on 17th December.

However, of much greater concern are the 15 other outstanding continuity agreements with Canada, Singapore and others, which you have little over 24 hours to finalise and publish if they are to receive the full 21 sitting days of scrutiny required under the CRAG process to enable ratification.

Moreover, you will recall that on 12th October, you made a commitment in a written statement to Parliament that – starting with the Japan deal – future trade agreements would be shared confidentially with the Commons International Trade Committee and the Lords International Agreements Sub-Committee at least ten sitting days in advance of being laid in Parliament under the CRAG process.

Tomorrow's deadline makes it impossible to honour that commitment in respect of the 15 outstanding continuity agreements due to be signed before the end of the year, and as far as I know, the commitment has already been broken in respect of the agreements with Ukraine, Cote d'Ivoire and Kenya.

What makes this abysmal and shambolic state of affairs all the worse is that – when we look at the length of time your department has had to get these agreements in place, ensure proper parliamentary scrutiny, and protect our continued free trade – it has been so totally avoidable.

In many cases, your department has had more than 4 years since the Brexit referendum to secure the 15 outstanding continuity agreements. The most recent of the EU deals still waiting to be rolled over – the Free Trade Agreement with Vietnam – was signed in June 2019.

Given that time frame, it beggars belief that it will soon be too late for you to meet either your statutory obligations to allow 21 sitting days for proper parliamentary scrutiny, or your personal commitments to the Commons and Lords committees to give them 10 extra sitting days of advance sight.

### **Options to circumvent CRAG:**

While questions must rightly be asked about how we have ended up at this sorry pass, the more important and immediate issue is what you plan to do to rectify the situation in the time available. With that in mind, I am fully aware that you have the option to invoke either:

- The ‘exceptional cases’ provision in s22 of the CRAG Act, enabling you to move straight ahead with the ratification of any continuity agreements without the 21-day scrutiny period, albeit with the requirements to publish each agreement before – or as soon as practicable after – doing so, and to provide a written statement to parliament explaining your decision; or
- The ‘provisional application’ of any continuity agreements, whereby existing trading arrangements would continue to apply pending the completion of the CRAG process, albeit – unlike the ‘exceptional cases’ provision – it would not require you either to explain your decision to Parliament or publish the relevant agreement as soon as practicable.

Your predecessor made a written statement to Parliament on 21st February 2019 explaining that – if the UK was obliged to leave the EU without a deal (or a transition period) on 29th March 2019 – the ‘provisional application’ option would be considered to maintain continuity of trade with non-EU countries, if the formal agreements to do so could not be ratified in time.<sup>2</sup>

However, it was clear from his statement that the ‘provisional application’ option was being considered only in the unlikely and unplanned circumstances whereby the UK would crash out of the EU just over five weeks’ later, while the ‘exceptional cases’ option was apparently not considered at all.

It would therefore be very regrettable if you had to resort to either of these options to maintain continuity of trade with non-EU countries beyond 31st December, simply because your department has failed to secure the relevant agreements and complete the CRAG process in time. Those provisions exist to cater for unusual circumstances, not to cover for entirely avoidable incompetence.

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<sup>2</sup> <https://questions-statements.parliament.uk/written-statements/detail/2019-02-21/HCWS1352>

Furthermore, given the dissatisfaction with CRAG that already exists across Parliament as a mechanism for scrutinising, debating and voting on the UK's trade agreements, it would be deeply concerning if you felt obliged to take steps to circumvent even that inadequate process.

**Next Steps:**

Obviously, if you have not done so by the time you receive this letter, you should publish the texts of the continuity agreements with Cote d'Ivoire and Kenya without further delay – alongside their accompanying parliamentary reports and explanatory memoranda – so that the CRAG processes for those agreements can begin today, alongside those already underway for Ukraine and Japan.

If other continuity agreements are close to being finalised, they should clearly be given maximum priority in the next 48 hours to try and get them signed and laid before Parliament by tomorrow's deadline, thereby allowing the full 21 sitting days of scrutiny required under the CRAG process.

Beyond that, I would respectfully ask you to come to the House at the earliest opportunity and explain how you plan to secure the other comprehensive continuity agreements we need, allow them the full parliamentary scrutiny required in law, and get them ratified in time before the end of the year.

We should never have reached the stage where those three objectives could become mutually inconsistent, but I stand ready to work with you constructively to prevent that from happening, if you can come to the House with coherent and effective proposals to that end.

Given the importance of the issues I have raised for all those interested in parliamentary scrutiny of trade policy, I am copying this letter to Mr Speaker's office, to the Chairs of the House of Commons International Trade Select Committee and the House of Lords International Agreements Sub-Committee, to the trade spokespeople of the other opposition parties, and to Jonathan Djanogly MP.

I look forward to hearing from you.

Yours sincerely,

**The Rt. Hon Emily Thornberry MP**

**Shadow Secretary of State for International Trade**