

- prohibition on introducing quantitative restrictions on imports or measures having an equivalent effect and abolition of existing quantitative restrictions on imports and charges having equivalent effect,
- exceptions permitting prohibitions/restrictions on imports, exports or goods in transit justified on the grounds, *inter alia*, of public morality, law and order or public security, protection of the life and health of humans,
- a number of protocols which, *inter alia*, set out the tariff treatment and arrangements for certain fish and fishery products and for certain products obtained by processing agricultural products, lay down special provisions applicable to imports of certain agricultural products and include provisions on mutual assistance between administrative authorities in customs matters.

13.3 Sovereign Base Areas of the UK in Cyprus

13.3.1 Introduction and Background

Article 299(6)(b) (now Article 355(5)(b)) (as amended by the Cyprus Act of Accession 2004) provided that the TEC shall not apply to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus. Whilst, prior to Cyprus's accession to the EU, the SBAs were totally outside the scope of EU law, since Cyprus's accession in 2004, the relationship between the SBAs and the EU has been modified somewhat. Now, parts of EU law apply to the SBAs as stipulated in Protocol No. 3 to the Cyprus Accession Act, for example provisions relating to agricultural policy.

The former exclusion of the SBAs from the EU was definitive and made sense given the non-economic nature of British presence on the island. EU Member States agreed in a Declaration annexed to the UK Accession Act, to define relations between the EU and these zones in the context of any future association agreement between the Community and the Republic of Cyprus.¹⁴ The latter took place in the context of Cyprus's accession, hence the new provisions in the Treaty.

13.3.2 Overview of the SBAs

The SBAs of Akrotiri and Dhekelia are two UK administered areas on the island of Cyprus that comprise the SBAs of the United Kingdom. The bases were retained by the UK following the transition of Cyprus's status from a colony in the British

¹⁴ Joint Declaration on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, UK Accession Act, OJ Special Edition, 27 March 1972, p. 194.

Empire. The United Kingdom retained the bases because of the strategic location of Cyprus in the Mediterranean Sea.

Unlike other British overseas territories, they were not listed as Overseas Countries and Territories under the Treaty of Rome and their inhabitants (who are entitled to British Overseas Territories Citizenship) have never been entitled to British citizenship.

Prior to Cypriot accession to the EU in 2004, EU law did not apply to the SBAs (Article 299(6) (b)). This position was changed by the Cypriot accession treaty and EU law, while still not applying in principle, applies to the extent necessary to implement a Protocol attached to that treaty. In practice this Protocol applies a substantial portion of EU law to the SBAs including provisions relative to agricultural policy, customs and indirect taxation. The UK also agreed in the Protocol to keep enough control of the external (i.e. off-island and northern Cyprus) borders of the sovereign bases to ensure that the border between the sovereign bases and the Republic of Cyprus can remain fully open and will not have to be policed as an external EU border. Consequently the sovereign bases will become a *de facto* part of the Schengen Area if and when Cyprus implements it.

Geography: Cyprus is the third largest island in the Mediterranean, situated some 40 miles south of Turkey, 60 miles west of the Syrian coast and 220 miles north of Port Said in Egypt. It has a land area of 9,251 square kilometres and a total population of about 790,000.

Akrotiri and Dhekelia cover 3% of the land area of Cyprus, a total of 98 square miles (47.5 at Akrotiri and 50.5 at Dhekelia). 60% of the land is privately owned, either by British or Cypriot citizens. The other 40% is owned by the Ministry of Defence, or is classed as Crown land. In addition to Akrotiri and Dhekelia themselves, the Treaty of Establishment (see further under “History”) also provides for the continued use by the British Government of certain facilities within Cyprus, known as *Retained Sites*.

Akrotiri is located in the south of the island, near the city of Limassol. Dhekelia is in the southeast, near Larnaca. Both of these areas include military bases, as well as farmland and some residential land. Akrotiri is surrounded by territory controlled by the Republic of Cyprus, but Dhekelia also borders on the UN buffer zone and the Turkish-occupied part of the island.

Around 14,000 people live in the bases. Around 7,000 native Cypriots live in the bases, who either work in the bases themselves, or on farmland within the boundaries of the bases. The British military and their families make up the rest of the population.

Economy: there are no economic statistics gathered for Akrotiri and Dhekelia. The main economic activities are the provision of services to the military, as well as limited agriculture. On 1 January 2008 Akrotiri and Dhekelia adopted the euro along with the rest of Cyprus.

History: the SBAs were created in 1960 by the Treaty of Establishment, when Cyprus, a colony within the British Empire, was granted independence. The SBAs of Akrotiri and Dhekelia, usually referred to as Western Sovereign Base Area (WSBA) and Eastern Sovereign Base Area (ESBA), are those parts of the island

which have remained under British jurisdiction since the creation of an independent Republic of Cyprus in 1960. Under the 1960 Treaty of Establishment, the UK retained sovereignty over the SBAs. The United Kingdom wished to retain sovereignty over these areas, as this guaranteed the use of UK military bases in Cyprus and a garrison of the British Army. The importance of the bases to the British is based on the strategic location of Cyprus, at the eastern edge of the Mediterranean, close to the Suez Canal and the Middle East, the ability to use the RAF base as staging post for military aircraft and for general training purposes.

Following an attempted coup in 1974, the island was and remains divided with Turkey occupying the northern part of the island. Since 1974, the island has been divided by a United Nations buffer zone known as the 'Green Line'. The UK recognizes only the Government of the Republic of Cyprus, which administers the southern two-thirds of the island, but not the so-called 'Turkish Republic of Northern Cyprus' (recognised as such only by Turkey). The coup and division of the island did not affect the military bases.

13.3.3 Constitutional Relations with the United Kingdom

The SBAs are retained as military bases—not “colonial” territories. This is the basic philosophy of their administration as stated by the UK Government in 1960 in the policy declaration usually known as 'Appendix O'.¹⁵ This stated that the policy objectives for the administration of the areas were to be:

- Effective use of the SBAs as military bases,
- Full co-operation with the Republic of Cyprus,
- Protection of the interests of those resident or working in the SBAs.

Under the Treaty of Establishment, the Bases remain Sovereign British Territory under the Crown until the Government of the United Kingdom, in view of changes in their military requirements, at any time decides to divest themselves of the sovereignty or effective control over the SBAs or any part thereof. There are no plans to withdraw from the SBAs as the military requirement still exists.

Because the SBAs are primarily required as military bases and not ordinary dependent territories, the Administration reports to the Ministry of Defence in London. It has no formal connection with the Foreign and Commonwealth Office or the British High Commission in Nicosia, although there are close informal links with both offices on policy matter.

The bases have their own legal system, distinct from the UK and Cyprus. This consists of the laws of the Colony of Cyprus as at August 1960, amended as

¹⁵ Appendix O to the 1960 Treaty of Establishment : Declaration by Her Majesty's Government regarding the administration of the sovereign base area http://www.sba.mod.uk/web_pages/appdx-o.htm.

necessary. The laws of Akrotiri and Dhekelia are kept, as far as possible, the same as the laws of Cyprus. However, the SBA legal system and SBA law are entirely separate from those of the Republic of Cyprus and the United Kingdom. The Administration has its own court system to deal with civil and criminal matters. SBA legislation is enacted by the Administrator. Under Appendix O to the Treaty of Establishment the intention was declared on behalf of the UK Government that: “The laws applicable to the Cypriot population will be as far as possible the same as the laws of the Republic.”

13.3.4 Developments Since UK Accession

13.3.4.1 2004: Accession of Cyprus to the EU

The accession of Cyprus to the EU necessitated a review of relations between the SBAs and the EU. This was because the Joint Declaration on the SBAs annexed to the UK Accession Act provided that the arrangements applicable to relations between the EU and the SBAs would be defined within the context of any agreement between the Community and the Republic of Cyprus. These special arrangements are set out in Protocol No. 3 on the SBAs and Protocol No. 10 on Cyprus of the Accession Act of Cyprus to the EU.¹⁶ In particular, the intention was to maintain the special arrangements agreed between the UK and Cyprus under the 1960 Treaty of Establishment and to ensure that Cypriots living and working in the SBAs should have the same treatment for certain EU policies as those living and working in the Republic of Cyprus.

Protocol No. 3 amends Article 299(6)(b) (Article 355(5)(b) TFEU) to reaffirm that the TEC shall not apply to the SBAs except for the special arrangements set out in the Protocol. Briefly, Protocol No. 3 makes certain adjustments in the relationship between the SBAs and Cyprus in the light of Cyprus’s accession. Thus, the Protocol provides that for certain areas—customs, indirect taxes, social security, agriculture—the SBAs will fall within the Treaties. The Protocol also deals with border control and administrative matters between the SBAs and Cyprus.

The Accession Treaty which the Republic of Cyprus signed with the EU shall not apply to the British SBAs in Cyprus, except to the extent necessary to ensure the implementation of agreed arrangements. These arrangements relate to the conditions of accession of the Republic of Cyprus and the other nine countries, who signed the Accession Treaty with the EU.

The Protocol on the SBAs in Cyprus stipulates that the arrangements provided for in this Protocol shall have the sole purpose of regulating the particular situation

¹⁶ See Annexes XVIII and XIX *infra* Protocol No. 3 and Protocol No. 10 Cyprus Act of Accession 2004 (SBAs).

of the SBAs in Cyprus and shall not apply to any other territory of the Community, nor serve as a precedent, whole or in part, for any other special arrangements which either already exist or which might be set up in another European territory provided for in Article 299 of the Treaty.

According to the Protocol persons resident or employed in the territory of the SBAs, who are subject to the social security legislation of the Republic of Cyprus, shall be treated as if they were resident or employed in the territory of the Republic of Cyprus.

The Protocol notes that the Republic of Cyprus shall not be required to carry out checks on persons crossing their land and sea boundaries with the SBAs and any Community restrictions on the crossing of external borders shall not apply in relation to such persons and the United Kingdom shall exercise controls on persons crossing the external borders of the SBAs.

The European Council had repeatedly underlined its strong preference for accession by a reunited Cyprus to the EU. However, the UN plan for a comprehensive settlement of the Cyprus problem failed to gain the necessary support at the simultaneous referenda held in Cyprus on 24 April 2004. While the Turkish Cypriots approved it by a margin of 2:1, Greek Cypriots rejected it by a margin of 3:1. Thus, Cyprus acceded to the EU, as a *de facto* divided island on 1 May 2004.

In the light of Protocol No. 10 of the 2003 Accession Treaty Cyprus as a whole entered the EU, whereas the *acquis* is suspended in the northern part of the island ("areas not under effective control of the Government of the Republic of Cyprus"). This means *inter alia* that these areas are outside the customs and fiscal territory of the EU. The suspension has territorial effect, but does not concern the personal rights of Turkish Cypriots as EU citizens, as they are considered as citizens of the Member State Republic of Cyprus.

The Protocol states that in the event of a political settlement, the European Council, acting unanimously on the basis of a proposal from the Commission, shall decide on the adaptations to the terms concerning the accession of Cyprus to the European Union with regard to the Turkish Cypriot community.

It notes that nothing in the Protocol shall preclude measures with a view to promoting the economic development of the areas the Government does not exercise effective control of and that such measures shall not affect the application of the *acquis* under the conditions set out in the Accession Treaty in any other part of the Republic of Cyprus.

The Protocol underlines that the EU is ready to accommodate the terms of a settlement in line with the principles on which the EU is founded and expresses the Union's desire that the accession of Cyprus should benefit all Cypriot citizens.

The contracting parties reaffirm, in the protocol, their commitment to a comprehensive settlement of the Cyprus problem, consistent with relevant UN Security Council resolutions and their strong support for the efforts of the UN Secretary General to that end.

Thus, although the entire island of Cyprus became part of the EU on 1 May 2004, the Treaties apply only to the Greek (southern) party of the island (i.e. the Republic of Cyprus). EU legislation is suspended in the Turkish Republic of

Northern Cyprus, after a referendum on reunion failed in the south. Nationals of the Republic of Cyprus living there are nonetheless fully European citizens.

13.3.4.2 2007: Lisbon Treaty Amendments

Article 299(6)(b) became Article 355(5)(b) in the Lisbon Treaty. The Lisbon Treaty does not amend in substance this provision.

13.4 Channel Islands, Isle of Man

13.4.1 Introduction and Background

Rather than stating, as in the case of the Faroe Islands and the UK SBAs in Cyprus, that the TEC does not apply to the Channel Islands, the third subparagraph of Article 299 (6) (c) (now Article 355(5)(c)) rather cryptically provided that the Treaty shall apply to the Channel Islands and Isle of Man but only “to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.” These “arrangements” are set out in Protocol No. 3 to the UK Accession Act.¹⁷ In a nutshell, Protocol No. 3 provides that only EU rules on customs and free movement of goods and certain aspects of the CAP are applicable to the islands. For the rest, the islands are not part of the EU.

At the time of the United Kingdom accession negotiations to the EU, Article 299 (4) (ex Article 227 (4)) of the Treaty provided: “The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible.”

Normally, this would have meant that the Islands, as “European territories for whose external relations a Member State is responsible” would automatically have become fully part of the EU upon the United Kingdom’s accession. As the Islands were not independent States they did not have the option of entering into an association agreement with the EU under Article 310 (ex Article 238) of the Treaty.

The Islands were concerned that full EU membership would have serious consequences for their economies, specifically, in respect of their then main industries, including tourism. In addition, of course, full EU membership would have considerably encroached upon the Islands’ autonomy regarding internal matters.

(a) *Finance*: at the time of the United Kingdom accession negotiations, the Channel Islands’ finance industries had not advanced to a point where EU membership would have been considered as a threat to those industries. The long term

¹⁷ See Annex XX *infra*, Protocol No. 3 UK Act of Accession 1972 (Channel Islands and Isle of Man).