

## Committee stage of the Trade Bill: Briefing for Peers on amendments supported by Greener UK

Days 1 to 4: 21, 23 and 30 January 2019 and an unconfirmed date in February

### Summary

Greener UK welcomes the UK government's commitment to putting sustainability at the heart of its future approach to trade<sup>1</sup> and being “at the forefront of global efforts to protect and improve the natural world, driving the international community to adopt higher standards”.<sup>2</sup>

Trade arrangements can lead to significant environmental harm, intensifying unsustainable patterns of production and consumption, and increasing competition from imports produced with lower environmental controls, creating pressure to reduce standards. However, trade agreements also have the potential to support improvements in environmental protections and sustainable livelihoods when backed by robust governance provisions and enforcement mechanisms.

In order to ensure that trade agreements work with, rather than against, environmental protection, Greener UK believes the Trade Bill must be amended in order to set us on the path towards an inclusive, transparent, and democratically accountable framework for addressing sustainability issues within the UK's future international trading relationships. It must also lock in environmental safeguards and support high quality, effective regulation into the future.

We understand that this bill was originally introduced with a narrow primary purpose of setting out a mechanism to ‘roll over’ existing EU trade agreements post-Brexit. However, with exit day rapidly approaching and no further trade legislation expected in the near future, Greener UK feels it is important that the bill should also inform the emerging negotiations relating to new UK trading arrangements.

### Greener UK supports the following amendments

#### 1. Publication of trade policy framework

**Greener UK supports amendments that would require the UK government to publish draft legislation that will create a binding framework for the UK's future trade relations.**

Draft legislation should be published before the UK commences negotiations in relation to, ratifies or implements, any new trade agreements.

As well as transitioning existing EU-third country trade agreements, the UK government intends to agree new trade deals with countries such as the USA and

Brazil. Greener UK believes that it is critical that the negotiation and agreement of these new trade deals are guided by a comprehensive trade policy grounded in high standards and international commitments. Trade has the potential to affect environmental protections and standards both positively and adversely. Therefore, Greener UK believes that the UK must commit to a trade policy framework that will not jeopardise our natural world or result in an unacceptable sustainability footprint.

The UK's new trade policy must be developed and enacted in primary legislation before negotiations commence. It must, amongst other things:

- Set out a clear set of steps for ensuring robust and transparent democratic scrutiny and oversight of future trade negotiations, including:
  - the publication and approval by Parliament of a draft negotiating mandate at the outset, following meaningful public consultation; and
  - independent assessment of environmental impacts of the proposed international trade agreement in the UK and its trading partners.
- Require that all future trade agreements have environmental concerns at their core. To do this, they must:
  - incorporate binding and enforceable commitments to high environmental standards. Such commitments are essential in order to ensure that trade liberalisation does not lead to downward pressure on domestic standards or an increase in the global environmental footprint associated with international trade flows;
  - ensure that the results of environmental impact assessments conducted during the life of the agreement meaningfully influence its application and allow for the future suspension or termination of an agreement where necessary;
  - include a list of key environmental principles; and
  - exclude provisions for Investor State Dispute Settlement (ISDS) or other similar mechanisms

The bill should be amended to enable Parliament to engage in developing a future UK trade policy which supports environmental and human health, provides the public with certainty of direction of travel, and makes certain that environmental considerations are not simply noted but acted upon.

## **2. UK participation in the European Chemicals Agency**

### **Greener UK supports amendment 44 laid by Lord Grantchester and Lord Fox and amendment 70 laid by Lord Stevenson of Balmacara.**

These amendments in broad terms would require the UK government to seek continued participation in the European Chemicals Agency (ECHA), the REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) regime and other EU legislation related to chemicals regulation.

The REACH regime is the most advanced in the world. It protects people and the environment from tens of thousands of potentially harmful chemicals. Attempting to create a UK equivalent to REACH would be enormously expensive and time consuming, and it would be very hard to maintain the same standards as REACH

as the UK would not have access to the EU's database on chemicals safety and health. Even staying close to REACH by maintaining its registration rules or copying its decisions could make the UK vulnerable to legal challenges from businesses wanting to use dangerous chemicals because the UK would not have full access to chemical safety information to defend controls. If accepted, this amendment would make it more likely that the future UK-EU partnership agreement will make provision for the UK's continued participation in ECHA and REACH.

There is extensive consensus amongst experts and stakeholders that securing continued participation in ECHA and maintaining REACH is the best approach. As such, this must be the UK Government's objective when negotiating with the EU in relation to chemicals policy.

The UK government published a draft statutory instrument on 9 January to create a UK version of the REACH regime. The plans would significantly reduce public participation in chemicals control by assigning HSE as the new UK agency, replacing ECHA and replacing its committees and associated stakeholder engagement with only an obligation for HSE to seek external advice. There is no commitment to mirror EU outcomes on chemical regulation post-Brexit, which we are concerned could lead to rapid regulatory divergence from the EU's high standards of protection for human health and the environment.

### **3. Non-regression**

#### **Greener UK supports Amendment 15 laid by Baroness Jones of Moulsecoomb.**

International trade agreements have the potential to undermine or weaken essential environmental law standards and safeguards. The UK's approach to trade must not subordinate environmental protections to trade relations or potential economic gain.

All international trade agreements implemented pursuant to the Trade Bill must incorporate this principle. Existing agreements that do not currently reflect non-regression must be renegotiated to include it prior to their implementation in domestic law. A meaningful commitment to non-regression would provide a useful safety net.

Non-regression commitments are common in existing trade agreements, but need to be widened in scope and strengthened in enforceability if they are to help deliver the government's promises to improve the state of the environment. The version presented here builds on emerging norms from international environmental law.

**Greener UK also supports amendments highlighted by Trade Justice Movement which they have highlighted in their briefing [here](#).**

**Greener UK does not support the following amendment:**

**Amendment 56 on Investor Protection**, laid by Baroness Kramer

This amendment proposes the use of investment tribunals and appellate mechanisms for the resolution of investment disputes. These mechanisms are often established separately to the usual dispute mechanisms of trade agreement and raise particular procedural concerns. Existing ISDS mechanisms enable private hearings which lack rule of law safeguards. They can effectively subordinate domestic judicial processes, establish procedures which result in significant and concerning deficits in transparency and public participation and have significant detrimental impacts upon environmental regulation around the world.

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## Endnotes

1 UK Government, Department for International Trade., Policy paper Preparing for our future UK trade policy (9 October 2017) available at <https://www.gov.uk/government/publications/preparing-for-our-future-uk-trade-policy>

2 HM Government, 'A Green Future: Our 25 Year Plan to Improve the Environment' (11 January 2018), 117.

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