

The importance of trade scrutiny for the environment

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Summary

The pursuit of new trading relationships will have implications on almost all spheres of public policy, including the UK's progress towards its landmark net zero goal and ambitions for nature restoration. In order to meet the government's ambitions of international environmental leadership it is vital that Parliament's role in trade deals is strengthened.

Currently, the UK Parliament's role in the negotiation and ratification of Free Trade Agreements (FTAs) is considerably weaker than systems in the US, EU and Japan and was formalised a number of decades ago. Parliamentarians do not have a guaranteed vote on trade agreements or a legal right to see negotiating objectives, and there are no legal requirements on the government to provide updates on negotiations.

In contrast, the US Congress and EU Parliament are able to shape negotiating mandates, have a legal right to be informed at all stages of negotiations, have access to classified negotiating texts, and must approve the final agreement for it to be ratified. As in the US and EU, parliamentary oversight of trade deals would benefit the UK government, as it would provide leverage in negotiations.

These weaknesses in the scrutiny process increase the risks of both environmentally damaging trade agreements being agreed and missed opportunities, such as for example the potential to grow UK low carbon exports. If not carefully managed, new trading relationships could potentially undermine the UK's progress against existing environmental and climate targets and the competitiveness of its industries seeking to innovate in the provision of new low carbon goods and services.

By strengthening the role of Parliament in the formation of trade policy, FTAs can be developed in a way that supports and not hinders measures to address the climate and nature crisis, alongside the government's plans to "deliver a UK and world economy which is stronger, cleaner, more sustainable and more resilient after this [Covid-19] crisis".¹

Why scrutiny matters

Scrutiny is an essential way of involving environmental expertise, as well as businesses, unions, civil society groups and members of the public in decision making. By ensuring parliamentary scrutiny and oversight of FTAs, the government would be held to account in ensuring trade works for the environment and wider society.

This is important as under current precedent, trade deals pose unintended but acute risks, including high UK environmental standards being diluted by provisions to reduce regulatory barriers, the introduction of public interest regulations being challenged

through investment chapters, and the competitiveness of some UK industries being undermined by foreign industries not abiding by similar standards.

However, new FTAs also present opportunities for the UK to promote ambitious environmental standards abroad and strengthen its economic competitiveness through exports of low carbon goods and services. For example it is estimated that the UK low carbon economy could grow by 11% every year to 2030 and that by 2030, the global market for low carbon goods will be worth more than £1 trillion year, representing an increase of seven to 12 times on today.² Long term certainty that the UK's trade policy will be coherent with the net zero emissions target will be essential to keep attracting private investment in essential technologies and services.

Businesses, unions, and environmental organisations agree that the UK government should use best practice to ensure trade policy is truly inclusive and fully benefits from the active participation and expertise of all stakeholders.³

Furthermore, recently published research from consumer group Which? revealed that amongst the public, trade deals are perceived as London-centric and more input and scrutiny from representatives from all parts of society in the regions and devolved nations should be demonstrated and acted upon in order to build a sense of togetherness.⁴

Public participation in policymaking relating to the environment is also enshrined in the United Nations Aarhus Convention, to which the UK is a signatory.⁵ Under the convention, the public must have the opportunities to be involved with policymaking that has environmental implications.

Lack of public trust in trade negotiations outcomes have contributed to the failure of major trade negotiations, including the US-EU trade deal (TTIP).⁶ Public, business and civil society support for trade objectives, demonstrated through open and democratic processes, would also strengthen the hand of trade negotiators.

What is the UK's existing scrutiny process for trade deals?

Currently, Parliament's role in the negotiation and ratification of FTAs is strikingly weak. Under the Constitutional Reform and Governance Act 2010 (CRAG), MPs are not guaranteed a vote on the final form of any trade agreements negotiated by the UK. The government must lay international treaties before both Houses of Parliament for 21 sitting days before ratification. However, trade agreements are only subject to a negative procedure, meaning that consent to ratification is given by default, with no guarantee of a debate or vote.

Parliament is only given a role at the final, pre-ratification stage of the treaty-making process. By this point it is too late to influence the content of the treaties being concluded. Parliament's main role is to scrutinise any implementing legislation that is needed to give effect to treaties in domestic law.⁷ In practice, this is not very meaningful, since implementation of bills can be framed in broad terms, empowering Ministers to implement deals without reference to any particular regulations, and may be passed before trade deals are even published. Furthermore, many environmentally important

provisions of trade agreements do not require implementing legislation, such as the inclusion of Investor-State Dispute Settlement (ISDS), which can be used by investors to challenge important environmental regulations.⁸

The CRAG Act process is inadequate as a pre-ratification process and has been declared unfit for purpose by several parliamentary committees. The House of Lords Constitution Committee found that the “current mechanisms available to scrutinise treaties through CRAG are limited and flawed”, and that “reform is required to enable Parliament to conduct effective scrutiny of the government’s treaty actions”.⁹ The timetable under CRAG has been found by the House of Lords European Union committee to be a “significant impediment, precluding meaningful consultation of stakeholders and limiting the opportunity for committee Members to engage in informed consideration and discussion”.¹⁰

Whilst the government has said¹¹ that it will update Parliament on the progress of negotiations, publish negotiating objectives and make these available to MPs, and has allowed a general debate on the UK-Japan Comprehensive Economic Partnership Agreement (CEPA), it is important to note that these are all voluntary offers and that there are no guarantees in law.

Why is the CRAG process outdated?

When UK was still a member of the EU, the scrutiny of trade agreements fell under EU processes.¹² Members of the European Parliament have access to timely information about negotiations, including access to classified negotiating texts, and a vote on the final outcome. Despite the wide breadth of concerns raised by parliamentarians in relation to future trade deals, especially relating to food, agricultural import standards and the environment, they will not be able to exercise any influence on their agreement without an amendment to the Trade Bill.¹³

Trade deals have also changed radically since the government last had competency in this area nearly 50 years ago. Up until the late 1980s, trade deals attracted little public attention as they were chiefly focussed on removing tariffs and other border measures. In contrast, modern trade agreements impact a vast array of economic and social policy areas, seeking not only to remove tariffs but to align regulation between countries, thus impacting the regulatory landscape of trading partners on agricultural standards, manufacturing, financial services, environmental regulations and healthcare.¹⁴ With trade policy increasingly tied with domestic policy, robust scrutiny processes are essential to ensure that the interests of the public and businesses are well represented.

How can the UK’s scrutiny processes be reformed?

To have a democratic and transparent trade process, Parliament must be given formal powers with respect to mandating, negotiating and approving future trade agreements. This should include:

- Before negotiations: a debate and vote for MPs on the government’s negotiating objectives
- During negotiations: guaranteed updates and privileged access to negotiating texts for relevant select committees tasked with scrutinising deals
- After negotiations: a vote in both Houses on a final deal, prior to ratification

- Mandatory sustainability impact assessments on the impact of the new trade deal on the environment, public health, human rights and global development
- Consultation with devolved authorities

The government has rejected previous attempts to improve scrutiny in the Trade Bill by arguing that the Bill only covers continuity agreements, not those with new partners. However, previous amendments encompassing future agreements have been ruled in scope, despite the Bill relating to continuity agreements, suggesting there is no procedural bar to including such provisions. In fact the government’s own concession on the Agriculture Bill, that will require the government to report to Parliament on the potential impacts of agri-food chapters on food, animal welfare and environmental standards, will be put into statutory footing via the Trade Bill and will apply to new FTAs.

How do scrutiny processes in the UK compare against other countries?

The lack of a formal and active role for Parliament in trade governance makes the UK an outlier compared to some of our key trading partners as described in Figure 1 below. Without an amendment to the Trade Bill, the UK’s future trade deals will receive less scrutiny than those which the UK entered as a member of the EU, and less than those negotiated by the US and other trading partners.

The different processes are set out in the following comparison table created by the Trade Justice Movement.

				
Before negotiations	<ul style="list-style-type: none"> ✗ MPs have legal right to see objectives ✗ MPs votes on general objectives ✗ Objectives published for public consultation 	<ul style="list-style-type: none"> ✓ Congress has legal right to see objectives ✓ Congress votes on general objectives ✓ Objectives published for public consultation 	<ul style="list-style-type: none"> ✓ MEPs have legal right to see objectives ✓ (Some) parliamentary votes on objectives ✓ Objectives published for public consultation ✓ Council votes on objectives 	<ul style="list-style-type: none"> ✗ Guaranteed debate in Diet ✗ Diet votes on general objectives ✗ Objectives published for public consultation
During negotiations	<ul style="list-style-type: none"> ✗ MPs have legal right to regular updates ✗ Public have access to texts 	<ul style="list-style-type: none"> ✗ Congress has legal right to updates ✗ Public have access to texts 	<ul style="list-style-type: none"> ✓ MEPs have legal right to regular updates ✓ Public have access to (some) texts 	<ul style="list-style-type: none"> ✗ Diet has legal right to regular updates ✗ Public have access to texts
After negotiations	<ul style="list-style-type: none"> ✗ Guaranteed debate in Parliament ✗ Guaranteed vote in Parliament ✗ Parliament can reject trade deal outright 	<ul style="list-style-type: none"> ✓ Guaranteed debate in Congress ✓ Guaranteed vote in Congress ✓ Congress can reject trade deal outright 	<ul style="list-style-type: none"> ✓ Guaranteed debate in Parliament ✓ Guaranteed vote in Parliament ✓ Parliament can reject trade deal outright 	<ul style="list-style-type: none"> ✓ Guaranteed debate in Diet ✓ Guaranteed vote in Diet ✓ Diet can reject trade deal outright

Figure 1. Table to compare UK, US, EU and Japan scrutiny provisions, by the Trade Justice Movement

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The [Aldersgate Group](#) is a membership organisation championing an environmentally sustainable economy. It is composed of businesses, leading NGOs, professional institutes, public sector bodies and politicians from across the political spectrum.

Endnotes

¹ Cabinet Office, [Our plan to rebuild: The UK Government's COVID-19 recovery strategy](#), 12 May 2020

² Ricardo Energy & Environment, [UK business opportunities of moving to a low carbon economy](#), March 2017

³ [A Trade Governance Model That Works for Everyone](#), June 2018

⁴ Which?, [National Trade Conversation: What really matters to consumers about future trade deals](#), November 2020

⁵ UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)
<https://www.unece.org/env/pp/treatytext.html>

⁶ Katja Kipping, War on Want, [What I Didn't Read In The TTIP Reading Room](#), February 2016;
Bernd Lange, The Parliament Magazine, [TTIP debate suffering from lack of transparency](#), October 2014

⁷ Arabella Lang, House of Commons Library, [Parliament's Role in Ratifying Treaties](#), 2017

⁸ Ibid.

⁹ House of Lords Constitution Committee, [Parliamentary Scrutiny of Treaties](#), 30 April 2019

¹⁰ House of Lords European Union Committee, [Scrutiny of international agreements: lessons learned](#), 27 June 2019

¹¹ Department for International Trade [written statement](#), Transparency and Scrutiny Arrangements with the International Trade Committee and the International Agreements Sub-Committee for the UK-Japan Comprehensive Economic Partnership Agreement, October 2020

¹² Hansard Society, [Why MPs should back the Djanogly amendments to the Trade Bill on parliamentary scrutiny of trade agreements](#), 20 July 2020

¹³ Emily Jones and Anna Sands, [Ripe for reform: UK scrutiny of international trade agreements](#), September 2020

¹⁴ Ibid.

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