



# Briefing: Analysis of current free trade agreement scrutiny commitments

2 September 2022

## Summary

This briefing assesses existing scrutiny arrangements for trade deals in light of the processes followed for scrutinising the UK-Australia FTA, which were inadequate, particularly post-signature.

We hope that for future FTAs, there will be much greater clarity and transparency with regard to the timings of the post-signature processes, particularly the commencement of the CRaG period, a more functional relationship between the government and the International Trade Committee, a meaningful recognition of the importance of parliamentary debate, ensuring that a Commons debate is held in Parliamentary time, and the guarantee of a vote for MPs on the content of the deal.

We hope that existing structures, such as the lack of meaningful opportunities for Parliament to shape agreements, can be reformed. Broadly, frontloading scrutiny and meaningful engagement, rather than delaying any scrutiny point until the end of a negotiation process, would allow support to be built and controversial issues to be resolved as they arise.

Many of the concerns raised below in response to the government's previous commitments on trade scrutiny could be at least partially addressed through a clearly defined overarching trade strategy, and through more concrete guarantees around opportunities for public and parliamentary scrutiny of trade deals.

The relevant select committees, including the International Agreements Committee (IAC), the International Trade Committee (ITC) and the Environment, Food and Rural Affairs (EFRA) Committee, have specifically recommended the government develop a clear trade strategy following our departure from the European Union.<sup>1</sup> The strategy should set out an overall framework for the negotiation of future FTAs and outline how environmental and animal welfare considerations will be addressed in the negotiations process.

The government's explicit commitments to date are largely aimed at parliamentary scrutiny. Where relevant, we have also included reflections and recommendations below on improving transparency and scrutiny opportunities for a wider set of stakeholders and the public.

## Commitments from Lord Grimstone

On 19 May 2022, Lord Grimstone set out the following consolidated transparency and scrutiny commitments on FTAs.<sup>2</sup>

### Pre-Negotiations:

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<sup>1</sup> International Agreements Committee, [Scrutiny of international agreement: UK-Australia free trade agreement](#), June 2022. International Trade Committee, [UK trade negotiations: Agreement with Australia](#), July 2022. Environment, Food and Rural Affairs Committee, [Australia FTA: Food and Agriculture](#), June 2022.

<sup>2</sup> [Letter from Baroness Hayter to Lord Grimstone](#), 19 May 2022

- 1. For new FTA negotiations the Government will undertake a public consultation or call for input. This further includes a commitment to publish its response to the consultation/call for input. Similarly, the Government will publish its negotiation objectives as well as a scoping assessment before the start of negotiations.**

These are welcome commitments, and to date, the government has indeed undertaken consultations on all FTAs prior to negotiations, including Australia. However, the consultations have been quite narrow, technical and restrictive. Furthermore, Parliament has not been engaged ahead of time in considering the mandate for negotiations. And public negotiating objectives have only been published subsequent to the consultation period. Frequently the public negotiating objectives are published on the day that negotiations are launched, rather than allowing any time for assessment, analysis and feedback.

Parliament should be fully involved in setting the mandate for the negotiations, and negotiations should not begin until Parliament has authorised their commencement. Parliament should make recommendations to the Government regarding the policy areas that should be included in the negotiations, any red lines that must not be crossed, and the principles that should underpin negotiations.

- 2. Should the IAC, or the ITC publish a report on those objectives, the Government will gladly consider that report and, should it be requested, facilitate a debate on the objectives, subject to the parliamentary time available.**

These commitments should be strengthened. The government should go further and commit to engaging parliament in mandate-setting, and fully consulting on - and, if necessary, revising - draft negotiating objectives before negotiations begin. This happens in other countries and trade blocs such as the EU. Negotiating objectives should be presented to Parliament and subject to a guaranteed debate on an amendable motion in government time.

#### **During Negotiations:**

- 1. During new FTA negotiations the Government will publish regular updates – usually after each substantive negotiating round. Where there are no standard negotiating rounds, it will publish updates at regular intervals.**

While these are welcome commitments, and throughout the Australia negotiations updates were provided to Parliament in the form of written statements following each of the five rounds of negotiations, in practice these were: too high level for stakeholders, including Parliamentarians, to adequately engage on the substance of negotiations; were often not published in a timely manner and; offered no opportunity for discussion on the floor of the House. Updates provided via stakeholder groups did not offer a significantly increased level of detail to members and provided little feedback on the ways in which stakeholder engagement impacted upon negotiations.

Both Parliament and the public should have access to regular, meaningful updates and information about the progress of negotiations. This information should be provided with sufficient time for Parliament to analyse and respond to the update and for Parliament's response to be taken into account in the next stage of negotiations. The government

should regularly and meaningfully consult stakeholders, including civil society organisations.

It is entirely possible to increase transparency and stakeholder input while maintaining confidentiality. The government should publish its own initial text proposals. By this we do not mean information about fallback positions, red lines and other things that there may be good reason to keep confidential. Initial proposals are already known by the other parties in the negotiations, and there is no reason for Parliament and the public not to see what their government representatives are proposing. For more confidential information, MPs and selected advisory groups should be able to read and respond to confidential texts in secure environments, subject to rules on non-disclosure.

At least once each year the government should lay before Parliament a report containing a summary of progress made in ongoing FTA negotiations and an assessment of the issues likely to arise during the future stages of the negotiations that may affect UK producers, consumers or legislative standards (for example regarding food safety, the environment and animal welfare). Parliament should have the right to make recommendations to the government on any draft texts that have been proposed and on the UK's position during future stages of the negotiations.

Government should also strengthen engagement with devolved administrations and legislatures to ensure that they have effective opportunities to contribute to and influence the process. Trade deals impact on many policy areas that are devolved, while devolved administrations and legislatures also have useful expertise to draw upon. During the Australia process, there were many concerns raised from devolved administrations which were not adequately considered. The Welsh Government in their assessment of UK-Australia expressed concern that there was poor information sharing on reserved issues and market access during negotiations, stating *"meaningful engagement is limited"* despite these areas such as agrifood imports having a *"disproportionate impact on Welsh producers"*.<sup>3</sup>

The Scottish Government also wrote to the UK Government expressing *"deep concerns"* on the negative impact of the UK-New Zealand FTA on Scottish producers and asking for *"a full role for the Scottish Government in all areas of FTAs including those on tariffs and quotas"*.<sup>4</sup>

**2. The Government is committed to undertaking close engagement with the relevant Select Committees, including providing oral and written evidence in public and private. The Chief Negotiator will usually provide private and public evidence, and the Government will make relevant Senior level Civil Service experts available to brief the committees on the technical detail of negotiations, where necessary, in private.**

This is a welcome commitment. However, unfortunately it was inadequately and unevenly put into practice throughout and following negotiations with Australia. The Secretary of State did send written updates to the International Trade Committee during negotiations, however these were communicated on the same day that the updates were provided to

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<sup>3</sup> Welsh Government, [UK-Australia Free Trade Agreement: A Welsh Government Perspective](#), 2022

<sup>4</sup> Scottish Government, [Free Trade Agreements: letter to UK Government](#), March 2022

the whole House, rather than ahead of time, and included little additional detail beyond what was shared with the House.

The Trade Secretary appeared in front of the ITC during negotiations, but only twice between the opening of negotiations in July 2020 and the signing of the Agreement in Principle in June 2021, and neither of these evidence sessions focused specifically on the Australia negotiations. Vivien Life, chief negotiator on the Australia deal, only appeared before the committee publicly once, and this was after the Agreement in Principle was signed. The Secretary of State also only appeared once in front of the Lords International Agreements Committee over this period, however this session focused on trade discussions with the US and Japan.

### **Post Signature:**

- 1. In the case of new FTAs the Government will publish the FTA, alongside explanatory material and an independently scrutinised Impact Assessment which will cover the economic and environmental impacts of the agreement as soon as reasonably practicable following signature.**

This commitment should be strengthened. The UK government published an initial impact assessment as part of the FTA information pack alongside public consultation in July 2018. The potential impacts of the deal on workers, the environment and 'wider social impacts' were all covered in 562 words – slightly less than one page. A second impact assessment was published on 16 December 2021, following the conclusion of negotiations – the environment this time covering 9 pages of the 90-page assessment. The Regulatory Policy Committee raised concerns about the objectivity, accuracy and uncertainties of the Australia-UK Impact Assessment which resulted in government modifications to achieve a fit for purpose rating.<sup>5</sup> The government should be required to conduct and publish environmental impact assessments (EIAs) during the negotiating process, before a deal is signed, to inform the development of FTAs. EIAs should include assessments of broader human rights and sustainability implications of FTAs and should also be conducted periodically once deals are ratified to determine any modifications needed or implications for future deals.

The government should also be required to more fully consider issues like cumulative environmental impacts, transport related emissions and the potential for increased carbon leakage or an expansion of environmental footprint in its impact assessment model. While these issues were touched on in the government's analysis, the UK-Australia FTA impact assessment itself states, "the quantitative assessment does not capture changes in consumption patterns, the emission intensity, or emissions associated with greater transport activity that could result from the implementation of the agreement."<sup>6</sup>

This results in an incomplete picture which can obscure the true risk of offshoring climate and environmental impacts as a result of trade agreements.

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<sup>5</sup> [RPC gives evidence to the International Trade Committee](#), March 2022

<sup>6</sup> Department for International Trade, [Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia](#), May 2022

**2. The Government will also endeavour to share the signed FTA, explanatory material and an independently scrutinised Impact Assessment with the IAC and ITC, in confidence, prior to publication, where time allows.**

This commitment should be strengthened. The ITC was only provided with a copy of the treaty text on the day it was made public, on 16 December 2021.<sup>7</sup> The government should guarantee select committees will have sight of final text, impact assessments, and related explanatory material prior to signature.

**3. Should the IAC or ITC produce a report on a new FTA and as part of this request a debate, the Government will seek to facilitate this subject to available Parliamentary time.**

As we saw during the Australia process, this commitment is not strong enough and does not ensure that Members of Parliament will have an opportunity to debate a trade agreement. Both Houses should be guaranteed a debate and a meaningful vote prior to ratification.

Despite a request from the International Trade Committee, several requests from parliamentarians during an Urgent Question on the subject, and the prior commitment of the Secretary of State, no time was found for a debate. When pushed to explain the reason for this, the Secretary of State suggested that this was a decision for the parliamentary business managers. This both underplays the power available to ministers to secure adequate parliamentary time to ensure full scrutiny, where there is the political will to do so, and the fact that parliamentary business managers are also part of government and as such should be equally committed to finding time for such an important debate.

**4. The Government will ensure that the relevant select committees have a reasonable amount of time to scrutinise new FTAs and produce any reports on them that they may wish to prior to the start of the CRaG period.**

This did not happen during the Australia process, the CRaG period was triggered before the ITC was able to finalise its report on the FTA, and before the Secretary of State appeared before the Committee to give evidence. This came in spite of repeated requests from the International Trade Committee to guarantee 15 sitting days between the publication of the Section 42 Report and the start of CRaG.

While the Government has justified their decision to refuse this request on the basis that there were six months between signature and CRaG, it is unacceptable that the government obfuscated on the triggering of CRaG, only giving the ITC one day's notice.<sup>8</sup> The government should guarantee at least 15 sitting days, but ideally longer, between the publication of their Section 42 report and the start of CRaG.

The lack of clarity about timings impacted the whole scrutiny process and civil society's ability to play a part in it. The lack of clarity resulted in initial select committee inquiry

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<sup>7</sup> [Correspondence from the Secretary of State regarding the intention to sign a free trade agreement with Australia](#), dated 16 December 2021

<sup>8</sup> [Correspondence from the Secretary of State relating to formal pre-ratification scrutiny of the UK-Australia Free Trade Agreement](#), dated 14 June 2022

deadlines which were very short, as they were operating under the assumption they would only have three months to complete the process. Parliamentarians and civil society then also need the time to digest select committee assessments, in this case totalling nearly 300 pages.

**5. In the case of the Australia, New Zealand and CPTPP agreements the Government expects there to be a period of at least 3 months between the publication of the signed FTA and the agreement being laid under Part 2 of the CRaG Act 2010.**

The Chair of the TAC described the three-month period they were granted for the production of their report as 'fine', but 'quite hard work'.<sup>9</sup> This implies that any ambition to trigger CRaG three months post-signature, giving considerably less time for the TAC to complete its report, the government to produce its Section 42 report, and select committees to produce their reports, would be inadequate.

The timeframes for the publication of the TAC report, the publication of the Section 42 report, and the number of sitting days between this publication and the triggering of CRaG should be firmly established, so that there can be no accusations that the government has chosen arbitrary or politically expedient timeframes. **Three months is not adequate for this process, and we suggest that six months would be suitable.**

The chair of the ITC wrote to the Secretary of State eight times requesting clarification of the scrutiny timetable and of the time that would be made available for committee scrutiny at each stage. Replies from the Secretary of State failed to clarify the full timeline or offer needed assurances on multiple occasions, and requests for the SoS to appear before the committee were dealt with slowly. The chair of the IAC also conducted a correspondence with Lord Grimstone over the first part of 2022 regarding the poor levels of implementation of the 'Grimstone Rule', including engagement with committees.

The government should ensure timely engagement with select committee inquiries to avoid the situation during the scrutiny period for the Australia deal where CRaG was triggered before the Secretary of State was able to appear before the International Trade Committee to provide oral evidence.

There remain unanswered questions about why CRaG was triggered when it was, especially given that at the time of writing the parallel Australian ratification process is still some months away. Further, it should be noted that the whole of the six-month period cannot be considered full parliamentary scrutiny. This period consists of evidence gathering based on the text, to inform effective scrutiny, and expert scrutiny and analysis by the TAC, select committees and government responses. Only following this process does the opportunity for wider parliamentary scrutiny commence, where all the relevant outputs can be digested and debated by MPs in view of the needs and concerns of their constituents. It should not be assumed that all of these stages can happen concurrently.

**6. Where applicable, the Government will seek independent advice from the Trade and Agriculture Commission (TAC) in line with the requirements of the Agriculture Act 2020 (as amended by the Trade Act 2021). The Government's request for TAC advice, the TAC advice received, and the Government's own report will be laid**

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<sup>9</sup> International Trade Committee, [Oral evidence: UK trade negotiations: Agreement with Australia](#), April 2022

**before Parliament in line with Section 42 of the Agriculture Act 2020 (the TAC process).**

The UK-Australia FTA contained provisions specified under the Agriculture Act 2020, and therefore advice was indeed requested from the TAC in December 2021. The TAC report was published on 13 April 2022 following a consultation period, with the government's response following on 6 June. However, this process could be strengthened by expanding the remit of the TAC and the scope of the government's report required under Section 42 of the Agriculture Act 2020.

At present both are incredibly narrow, and the TAC also has limited resources to conduct proper scrutiny of larger, more complex negotiations in future. The Chair of the TAC told the EFRA Committee that he needed to use university money to hire a research assistant. Sufficient funding should be made available so that this is not the case.<sup>10</sup>

In this instance, this resulted in several outstanding questions left unanswered, such as how far Australia's less stringent regulation of pesticides could give them an unfair competitive advantage over UK producers. The TAC could also be empowered to inform or comment on negotiations, rather than only examining agreements once they are signed. The TAC should also be tasked to consider the cumulative impacts of trade deals.

Scrutiny of impacts to human health was removed from the remit of the TAC and it took some time for this to be confirmed as the responsibility of the Food Standards Agency (FSA) and Food Standards Scotland (FSS). Subsequently, scrutiny of the impact of the deal on human health was weaker, less transparent and on a different, shorter timetable to the scrutiny arrangements regarding impacts to animal and plant life and health. Furthermore, the scope of the FSA/FSS advice focused too narrowly on food safety statutory protections and did not cover additional areas of concerns such as the potential impact on public health (e.g. pesticide consumption or the increase in antimicrobial resistance) or nutrition. The principles of what is covered and by whom should be set out clearly and there should be clear information on how the UK intends to monitor the short and long-term impact of trade deals on human health.

The Section 42 or TAC scope could also be broadened to include the impact of FTAs on the UK's non statutory provisions, which is a serious limitation of the current scrutiny process. For example, the UK has no statutory provisions on the animal welfare provenance of imported products other than how they are slaughtered. With an expanded scope, it would also be beneficial to expand TAC membership to include additional capacity and expertise in the areas of animal welfare and environmental regulation.

**7. The Government does not envisage a new FTA proceeding to ratification without a debate first having taken place on it, should one have been requested in a timely fashion by the ITC or IAC, subject to available Parliamentary time.**

As we saw during the Australia process, this commitment is not strong enough. It is clear from the correspondence referenced above that both select committees were requesting additional clarity on what 'in a timely fashion' means in practice. The lack of clarity on

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<sup>10</sup> Environment, Food and Rural Affairs Committee, [Oral evidence: Australia FTA: Food and Agriculture](#), May 2022

timings or process for securing a debate meant that, despite repeated requests, no debate was allowed. At a minimum, further clarity is needed as to the specific mechanisms and process under the CRaG Act by which Members of Parliament can table a motion which would trigger a debate and vote on a trade agreement. However, more importantly, Parliament should be guaranteed a debate and a meaningful vote on FTAs prior to ratification.

Parliament should have the right to consent to, amend or reject a trade agreement. This was the position pre-2020 when the UK was a member of the European Union. If the UK Parliament wishes to amend the agreement, the government should place its proposals before the other party/parties to the agreement. If they do not accept Parliament's proposals, Parliament will have to decide whether to accept or reject the trade agreement.

### **Further commitments from the Secretary of State for International Trade**

On 19 July 2022, the Secretary of State for International Trade made the following additional commitments to the International Trade Committee on transparency and scrutiny going forwards.<sup>11</sup>

**1. I intend for there to be at least two weeks between publication of the S42 report and the commencement of CRaG.**

It should be noted that this commitment was made in reference to the process for the UK-New Zealand FTA, but should be strengthened and expanded as the baseline for all FTAs going forwards. Two weeks (10 sitting days) is an inadequate amount of time. The ITC requested a minimum of 15 sitting days between publication of the S42 report and the commencement of CRaG. The Committee should be allowed at least this amount of time, but ideally longer, to consider the government's report, to take evidence from the Secretary of State, and to finalise their report before the start of CRaG. A period of two weeks would also highly constrain the ability of the whole House to review the select committees' final reports before any debate or vote on the FTA in question.

**2. I am happy to commit that within two weeks of signing a new FTA my office will provide you with potential dates to meet and we will not trigger CRaG before those dates.**

This would be a welcome improvement from the process for the UK-Australia agreement, and again would benefit from additional clarity and guarantees. Appropriate potential dates should be offered within the clarified scrutiny timeline and following the publication of the government's Section 42 report, CRaG should not be triggered before the Secretary of State has appeared before the select committee and before all relevant reports have been finalised, as happened this time around.

**3. The IAC requested that dialogue with parliamentary committees take place before mandates are finalised. As I have said before, we are open to reviewing scrutiny arrangements and making improvements where required. I believe this is one such area and I am happy to commit that I will make senior officials and myself available**

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<sup>11</sup> [Correspondence from the Secretary of State relating to 6 July 2022 oral evidence sessions](#), dated 19 July 2022

**to privately discuss prospective negotiations with you (and the IAC) prior to negotiations being launched. I expect this to take place during the public consultation period for any new FTA.**

This is a welcome commitment, which should be further strengthened by providing the same guarantees to the government's official advisory bodies, including the Strategic Trade Advisory Group.

**4. The IAC also asked that all significant amendments to FTAs be notified to them, even where they do not engage the CRaG scrutiny process. I am happy to commit that all significant amendments will be notified to your committee and the IAC in writing. I have also instructed my officials to provide quarterly updates to your clerks on decisions made by committees under a new FTA.**

This is a welcome commitment. For the sake of public transparency, it is important that any amendments to deals are publicly communicated and consulted on so far as they have the potential to change the impacts or workings of the FTA, and that any changes to the text or impacts of deals are thoroughly considered and reported on in regular DIT updates.

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