

1) **Summary**

1. A framework for scrutiny and accountability is needed in the Trade Bill, reflecting the importance of Parliamentary sovereignty as a principle of the UK's constitution. The current Trade Bill is the appropriate place for this to be introduced.
2. Such a framework should ensure that in the process of developing a trade agreement:

Before negotiations start

- Impact assessments are carried out
- Public consultation is carried out
- Parliament's consent to objectives for the negotiations is secured
- A role for the devolved administrations is established in this consent process

During negotiations

- Transparency is presumed
- Parliamentary Scrutiny committee is established
- Joint Ministerial Committee with the devolved administrations is established
- Civil society engagement is facilitated

At the end of negotiations

- Parliament is guaranteed a debate and vote, with input from the devolved administrations
- Any proposals for compensatory measures for groups expected to lose out are passed at the same time

After negotiations

- Review every five years is carried out

2) **Introduction**

3. The Trade Justice Movement (TJM) welcomes the opportunity to submit evidence on the Trade Bill. TJM is a UK coalition of nearly seventy civil society organisations calling for trade rules that work for people and planet. Our members include trade unions, development, environment, social justice and human rights groups and Fair Trade organisations.
4. Our comments relate to the aim of the bill to make provision for the implementation of trade agreements.

3) **Scrutiny and accountability**

5. The main element of the Trade Bill, according to the Queen's speech, was to put in place a legislative framework to allow the UK to operate its own independent trade policy upon exit from the EU.¹ An essential element of this is a updated democratic framework for parliamentary scrutiny and accountability. At present however, the bill contains no such framework. We consider that such a framework needs to be added to the bill.

¹ Prime Minister's Office, *The Queen's Speech and associated background briefing, on the occasion of the opening of Parliament on Wednesday 21 June 2017*. June 2017, p12 & p20, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/620838/Queens_speech_2017_background_notes.pdf

3.1) *Why is this needed*

6. Modern trade deals impact on a wide range of policy making and legislation on domestic and international issues – from food standards to health to environment to job creation to inequality and beyond. While tariffs are still important for certain economic sectors, the major focus of negotiations is on standards and regulations and the extent to which these can be seen as barriers to trade (non-tariff barriers). This impact on areas that have traditionally been the field of domestic policy means that it is vital for trade agreements to have similar scrutiny to domestic legislation.
7. The UK's procedures for trade policy have not been updated for decades. At present there is no role for Parliament in the decision on who to negotiate with or the objectives and priorities for a negotiation. There is no Parliamentary scrutiny role during negotiations and Parliament does not get a vote before a trade agreement is signed.
8. The Westminster Parliament's only role is at ratification, but this is merely a negative procedure.² The trade agreement is laid before Parliament, and if no objections are raised within 21 sitting days the agreement is ratified. There is no guarantee of debate. It is not absolutely clear how an objection could be made, but it would have to either be in government time (if the government was prepared to provide this opportunity), opposition time (if an opposition day debate is scheduled within the 21 days) or a delegated legislation committee.³ If an objection is made, the government can provide an explanation of why the agreement should nevertheless be ratified and the process repeats. It is therefore not technically possible for Parliament to outright reject a trade agreement if the government wishes to persist.
9. There is no role for the devolved administrations in scrutiny of trade agreements, even though such agreements frequently affect devolved issues.
10. Comparison with similar procedures in the EU, other European countries, the US and elsewhere⁴ reveals a range of practices that the UK could easily adopt, and indeed build upon, to put in place an effective modern framework for our trade policy.

3.2) *What is a 'new' trade agreement?*

11. The government has argued that issues of scrutiny do not need to be addressed in the Trade Bill because it deals with replacing existing EU trade agreements with other countries with equivalent UK agreements with those countries. It does not address potential future agreements with countries with which the EU does not currently have trade agreements, which the government refers to as 'new'.
12. The argument is that the replacement deals will be like for like, and thus the scrutiny process that was gone through in negotiating the EU deal can apply to the replacement UK deal.
13. TJM believes this is not sufficient, for several reasons:
 - 1) In practice it is unlikely that the replacement UK deals will actually be like for like. Provisions will end up being changed, and not just on small technicalities. This has been acknowledged, including in the explanatory notes for the Trade Bill (para 53).⁵ They will effectively be new agreements themselves.

² Ratification is under the *Constitutional Reform and Governance Act 2010*, section 20, <https://www.legislation.gov.uk/ukpga/2010/25/section/20>

³ House of Commons Library, *Parliament's role in ratifying treaties*. House of Commons, 2017, pp12-13, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05855>

⁴ For such a comparison, see Trade Justice Movement, *Securing democracy in UK trade policy*. TJM, 2017 http://tjm.org.uk/documents/reports/TJM_SecuringDemocracyInUKTradePolicy_2017_web.pdf

⁵ *Trade Bill: explanatory notes*. House of Commons, 2017, p10 <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0122/en/18122ennew.pdf>

- 2) In addition, some of the most recent EU agreements have not actually completed the scrutiny and ratification processes, while others such as EPAs have been controversial and contested.
- 3) The Dept of International Trade is already preparing for potential trade agreements with countries other than those with which that the EU has existing agreements. It has set up fourteen working groups with 21 countries so far. A scrutiny and accountability framework needs to already be being put in place so that it can be incorporated as routine practice in the preparations.
- 4) The government has not currently committed to any future comprehensive legislation on trade that would put in place such a scrutiny framework. There has been mention of vehicles for individual future agreements and proposals for consultation but not of overarching legislation.

14. Therefore we consider that the current Trade Bill is the only place to establish the framework that is needed.

4) **What would a framework for scrutiny and accountability look like?**

15. TJM considers that an appropriate framework for scrutiny and accountability would contain the following elements. We consider that amendments should be introduced to the Trade Bill to enact these elements.

4.1) *Before negotiating a trade agreement*

16. 1) The government should follow a transparent procedure for scoping potential trade agreements before starting negotiations, as is done in the EU. This should involve impact assessments looking at social (including health and education), economic, human rights, environmental, labour and gender impacts both in the UK (including a regional breakdown) and in developing countries. These must be commissioned and carried out independently and must be published, with the findings communicated in non-technical language. These findings must be taken into account in a decision whether to go ahead and how the trade negotiations should be shaped.
17. 2) The government should carry out a public consultation on the potential trade agreement, as is required in the US. The consultation should be informed by the impact assessments. Efforts must be made to actively reach out and encourage submissions from a wide range of groups, particularly any groups that the impact assessments indicate will be strongly affected by the potential deal. The outcome of the consultation must be taken into account in a decision whether to go ahead and how the said trade negotiations should be shaped.
18. 3) Parliament's consent should be secured for the trade negotiations to begin, including on objectives, principles and boundaries of the negotiations. This is similar to processes in Denmark and other European countries where Parliament sets a mandate for its representatives to the EU.
19. 4) There should be a remit for the devolved administrations to input into the consent process, insofar as their powers and territories will be affected by a trade deal.

4.2) *During negotiations*

20. 5) Transparency should be the norm during trade negotiations, so that the presumption is that material can be made public unless there is a specific and convincing reason against. In particular the UK should release its text proposals ahead of each negotiating round, and the consolidated text, showing the current state of agreement between the parties, should be released after each negotiating round. This reflects the trend for increasing transparency in EU and WTO negotiations, as well as common practice in other areas of international negotiations such as on climate change.

21. 6) A Parliamentary committee should be established to be fully involved in scrutinising any trade negotiations and providing guidance and direction. This committee should have full access to all negotiating documents. This could be similar to the UK's EU Scrutiny Committee or the role of EU parliamentary committees.
 22. 7) A Joint Ministerial Committee on International Trade should be established to facilitate engagement between the Dept for International Trade and devolved administrations on trade deals.
 23. 8) A civil society consultation body should be established. Civil society should be able to decide who participates in the consultation body, and participants should not have restrictions placed upon them as to what they can communicate throughout this process.
- 4.3) *At the end of negotiations*
24. 9) Parliament should have an automatic debate and vote on a trade agreement before it is implemented, using a super-affirmative procedure. The EU Parliament and US Congress are both ensured a vote on trade agreements. The devolved administrations should have input into this.
 25. 10) The government should be required to legislate for any promised compensation processes and funds for those who will lose out as a result of a trade agreement, at the same time as the agreement itself.
- 4.4) *After negotiations*
26. 11) Trade agreements should include review clauses for the agreement to be assessed every five years and reviewed by Parliament, who should have the power to propose changes or even withdraw from the agreement if necessary.
- 5) **Content of trade agreements**
27. In addition to a framework for scrutiny and accountability, TJM also believes that certain principles should be respected in the content of trade agreements.
 28. 1) Trade agreements should be subject to the UK government's international obligations, including those in treaties on human rights, labour rights, women's rights and the environment.
 29. 2) Trade agreements should be coherent with the principle of sustainable development.
 30. 3) Trade agreements should exempt public services from their scope, including when such services are contracted out.
 31. 4) Investor State Dispute Settlement provisions or an Investment Court System should not be included in trade agreements.
- 6) **Conclusion**
32. TJM believes that if the Trade Bill is amended to incorporate the aspects outlined here, this will lead to improved functioning of trade negotiations. Ultimately it could help the UK develop trade agreements that are better able to support efforts to build a decent life for all across the world, end inequality and restore the environment, complying with our international commitments to pursue sustainable development goals.

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