

Parliamentary Briefing: Trade (Australia and New Zealand) Bill Second Reading (September 2022)

Summary

- The [Trade \(Australia and New Zealand\) Bill](#) is the only piece of primary legislation necessary for the ratification of the UK-Australia and UK-New Zealand Free Trade Agreements (FTAs), providing for the implementation of the procurement chapters of both agreements.
- Though the UK-New Zealand FTA must still be laid before Parliament, the UK-Australia Agreement was effectively given consent by Parliament on Wednesday 20th July at the conclusion of the 21-day CRaG period, during which Parliament is theoretically given the opportunity to scrutinise FTAs. This legislation is therefore the only remaining opportunity to debate the content of the UK-Australia Agreement on the floor of the House.
- In contrast, with respect to the UK-New Zealand Agreement, parliamentarians are being asked to debate legislation needed to implement an Agreement to which they haven't yet given consent.
- The UK-Australia Agreement in particular has significant implications in a number of domestic policy areas, including food, animal welfare and environmental standards, procurement, services, digital and more. However, opportunities for parliamentary scrutiny have been utterly inadequate.
- Despite extensive calls from [across Parliament](#), the Government granted no time for a debate on the content of the Australian Agreement in the House of Commons during CRaG. The Government's behaviour was widely condemned, with MPs from all parties criticising the Government during an [Urgent Question](#) secured by Anthony Mangnall MP, and the Secretary of State being accused by the Trade Committee and others of [disrespecting Parliament](#).
- While we do not believe that the passage of a very narrow piece of implementing legislation provides an adequate opportunity to debate the UK-Australia Agreement in the round, it has now become an important moment for parliamentarians to raise concerns about the scrutiny process this FTA (and indeed future FTAs) has been subject to.

Background

The UK-Australia Free Trade Agreement is the UK's first Post-Brexit FTA negotiated from scratch, and has significant implications in many important policy areas, including food standards, animal welfare, climate and the environment, procurement, digital and data, and much else besides. This debate is therefore an important opportunity to reflect on the precedent this agreement sets for future negotiations, and on how the process can be improved.

There is no doubt that the Agreement raises a number of contentious issues. This deal provides Australian industries with preferential access for a range of products with [no conditionality](#) on environmental and animal welfare standards. It exposes British farmers and consumers to imported goods produced to these lower standards, for example by increasing competition with products produced with lower standards on [pesticide usage](#), and was negotiated with the country which has the [worst record](#) on climate of any wealthy nation and burns more coal per head than anywhere else in the world. It was also concluded just five months prior to elections which changed the political leadership of Australia, which could create an opportunity for further negotiation, particularly on climate commitments. Meaningful scrutiny, therefore, should have been seen as imperative.

However, despite criticism from five parliamentary committees, academics and campaigners, the UK is yet to introduce a transparent and democratic process for parliamentary scrutiny of trade agreements.

MPs have no say over negotiating objectives, no access to negotiation texts and no guaranteed votes or debates over the signed deal.

Before a treaty can be ratified, all that is required under the current procedure codified in the Constitutional Reform and Governance Act (CRaG) is for a copy to be laid for 21 sitting days. This in theory allows MPs and peers to see and scrutinise what has been negotiated, and, if desired, pass a resolution against it. However, there is no mechanism provided for passing a resolution, and debates and votes are not guaranteed.

UK-Australia FTA scrutiny

The inadequacy of the current scrutiny arrangements were vividly exposed during the passage of the UK-Australia FTA. The Government [laid](#) the Agreement before Parliament on June 15th 2022 and triggered CRaG with little to no advance notice for relevant committees, Parliament, the devolved administrations or civil society, and without any explanation as to why this date was chosen. It was especially unclear why the Government felt the need to commence this ratification process in the UK so abruptly when the Australian parliamentary timetable ensured that they wouldn't complete their equivalent procedure until late Autumn 2022 at the earliest.

In addition, this served as a direct rebuke to the International Trade Committee, who had [frequently requested](#) that the Government allow 15 sitting days between the publication of their final '[Section 42 Report](#)' on the Trade Agreement and the commencement of the CRaG period to produce their own report. In doing so, the Secretary of State was [accused](#) of disrespecting Parliament. During the CRaG period, the Secretary of State [pulled out](#) of a scheduled evidence session in front of the Committee at short notice, further depriving the Committee of time to complete their report, having previously not made herself available to the committee despite [eight requests](#). The International Trade Committee subsequently [called for](#) the Government to urgently extend the 21-day CRaG period so that they could conclude their report, and so that parliamentarians had sufficient time to properly scrutinise this Agreement. At the very least, they called on the Government to ensure that they schedule time for MPs to debate the Agreement within the CRaG period. Neither ask was met.

Conservative MP and International Trade Committee member Anthony Mangnall was able to secure an [Urgent Question](#) on UK-Australia scrutiny on the penultimate day of the CRaG period, during which MPs from all parties expressed their frustration at the way in which the process had been handled, but this was the only opportunity MPs had to discuss this landmark, wide-reaching FTA, which effectively sleepwalked its way to parliamentary approval.

The failures in the scrutiny process have extended to civil society engagement. Communication of the details of negotiations was poor. Throughout the process, stakeholders found that it was easier to access more information from the Australian government's website than from the UK's. Most stakeholders and parliamentarians were also only able to review the details of the deal after it had already been signed. A group of organisations, including WWF, Green Alliance, Greenpeace, Compassion in World Farming, Sustain, Trade Justice Movement, Soil Association and Tenant Farmers' Association, [commenced a legal challenge](#) on the basis that the lack of adequate consultation risks breaching the UK's international obligations under the Aarhus Convention, which is supposed to ensure public participation in legislation that has environmental impacts.

UK-New Zealand scrutiny

In contrast, the UK-New Zealand FTA has not yet been subject to the CRaG period. The Government's '[Section 42 Report](#)' was published on 21st July 2022, and there has as yet been no clarity about when the Government seeks to lay the Agreement before Parliament. This raises questions about how the Government intends for implementing legislation to interact with CRaG for future agreements; Parliament is being asked to debate legislation needed to implement an Agreement to which it has not yet agreed.

This legislation

Now that the CRaG process has concluded, the passage of the implementing legislation is the final process to be undertaken before the UK-Australia FTA is formally ratified. The Trade (Australia and New Zealand) Bill is the only item of primary legislation that is required to implement this Agreement. While being questioned on the failures of the UK-Australia scrutiny process by the International Trade Committee on July 6th 2022, the Secretary of State [said](#) that the passage of this implementing legislation would be an 'opportunity to look into the UK-Australia FTA in detail'. We disagree that this is an advisable or sensible way to conduct the scrutiny process; a debate on narrow implementing legislation relating specifically to procurement, taking place after the conclusion of the CRaG period, is not an appropriate moment to be discussing 'constituency or sectoral interests' around the UK-Australia FTA as a whole. However, the passage of this legislation is now the only remaining opportunity for parliamentarians to debate the Agreement, and as such, is a valuable moment to raise some of the criticisms of the ways in which the scrutiny process has failed. These failures must be addressed ahead of future trade deals, such as with India and the Gulf Cooperation Council, which will come before Parliament in the coming months.

Suggested questions to the Minister

In addition to asking [questions about the content](#) of the Agreement, we would encourage MPs to put questions to the Minister that there should have been opportunity to ask during the CRaG period regarding parliamentary scrutiny:

- Can the Secretary of State explain why the International Trade Committee was not granted sufficient information in a timely manner to produce their report ahead of the CRaG period?
- Can the Secretary of State explain why the Government did not allow parliamentary time for a debate on the UK's first post-Brexit trade deal and why MPs have not been granted a vote?
- Does the Secretary of State intend that future UK FTAs, including those currently being negotiated with India, the Gulf states, and Mexico will also be subject to this lack of scrutiny?

Recommendations for reform

During the Second Reading debate, please call for:

- A published trade policy, setting out the overarching approach to trade, subject to regular reviews by Parliament, and consulted upon with the public.
- A parliamentary vote and public consultation on negotiating objectives for individual trade deals.
- Greater transparency in the process of negotiations, including publishing UK negotiating texts.
- Strengthening the role for Select Committees during the process of negotiations.
- A guaranteed debate and decisive vote for Parliament on any final deal(s).