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WWF Briefing – Public and parliamentary scrutiny of free trade agreements

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SUMMARY

- The **processes for public and parliamentary scrutiny of trade agreements are currently inadequate**. They undermine public trust in trade policy, and weaken the power of the legislature relative to the executive.
- **Enabling scrutiny prior to, during, and after negotiations would create a stronger, more inclusive trade policy**, and ensure that no aspect of environmental policy is missed when establishing a trade policy and negotiating new trade agreements.
- As trade agreements have significant impacts on environmental policy, they should be publicly consulted upon to meet the requirements of the Aarhus Convention. **The Aarhus Convention requires legislation with environmental impacts should receive meaningful public consultation, while “options are still open” to change the contents of such legislation. Current scrutiny arrangements may put the Government in breach of their international commitments under the Aarhus Convention.**
- WWF recommends a significantly enhanced scrutiny process to improve environmental outcomes of trade agreements. At a minimum this could include:
 - o A published trade policy, setting out the overarching approach to trade, subject to regular reviews by Parliament, and consulted upon with the public.
 - o A parliamentary vote and public consultation on negotiating objectives for individual trade deals.
 - o Greater transparency in the process of negotiations, including publishing draft UK negotiating texts.
 - o Strengthening the role for Select Committees during the process of negotiations.
 - o Providing for public input on the direction of negotiations, for example through a citizens’ advisory group, alongside strengthened stakeholder engagement.
 - o Increased involvement for devolved administrations throughout the process.
 - o A guaranteed debate and decisive vote for Parliament on the final deal.

BACKGROUND

Trade agreements can have significant impacts on environmental policy, cutting across areas such as climate, agriculture and industrial policy – the reduction of tariff and non-tariff barriers to trade will have direct and indirect impacts on the UK’s environmental standards. WWF’s Living Planet Report (2020) shows that globally, the current food and farming system produces 29% of GHG emissions and drives 70% of terrestrial and 50% of freshwater biodiversity loss. Trade is a key part of a problem, but can be part of the solution.

The UK’s approach to trade in food should reflect our values: food should be produced in ways that keep us and the animals in the food system healthy and safe, it should seek to reduce our global environmental footprint, and support high standard producers – at home and abroad – who can care for the countryside and create the resilient and sustainable farms we need to meet our net zero and nature restoration commitments.

The system of parliamentary scrutiny and public consultation in the UK needs reform if it is to build public confidence that trade agreements will achieve these objectives – levelling-up the country while protecting and enhancing our environment. The [large-scale protests against the Transatlantic Trade and Investment Partnership](#), which ultimately led to that agreement being abandoned, are exemplary of what can happen when the public loses trust in trade negotiations.

As the UK Government negotiates significant new trade deals in the coming years, there must be clear legislative and policy checks and balances that ensure public concern about the environment is adequately reflected in the government’s overarching trade policy and in individual trade agreements.

CURRENT ARRANGEMENTS

Prior to negotiations

- To date, DIT has conducted a public consultation on a trade agreement before negotiations begin. It later publishes negotiating objectives for the agreement, alongside a response to the public consultation and a scoping assessment of the impact of the deal.
- **The negotiating objectives tend to be at a high level of generality, and provide neither red lines nor a clear statement of what the government hopes to achieve from the deal.**
- There is no formal role for Select Committees to scrutinise negotiating objectives, though government has **committed** to facilitate a debate should a request be made, subject to parliamentary time.

During negotiations

- DIT has **committed** to provide regular updates about the process of negotiations through Written Ministerial Statements. However, these **updates tend to provide very little detail**, often being little more than a list of topics discussed.
- By contrast, EU and US parliamentarians have a high level of access to information during trade negotiations, including to confidential negotiating texts.
- DIT runs several stakeholder engagement groups, including the Strategic Trade Advisory Group, Trade Advisory Groups, and Thematic Working Groups. However, the effectiveness of this stakeholder engagement is limited. In 2021, a number of business [TAG members complained publicly](#) about the inadequate information being shared.
- **There is no requirement to involve the public during negotiations.**
- By way of comparison, the US has 28 advisory committees, with a total membership of around 700 citizen advisors, who are involved throughout the negotiating process. These advisory committees write reports, which are submitted to Congress for consideration before ratification of a deal.

After negotiations

- A free trade agreement is subject to ratification under the process set out in the Constitutional Reform and Governance (CRAG) Act 2010. **The CRAG process is a poor tool for scrutiny as it guarantees neither a debate nor a vote in Parliament at the end of the process.**
- Under Section 21 of the CRAG Act Government must lay a new treaty, such as an FTA, before Parliament for 21 sitting days prior to ratification. Government time may be used for a debate and vote on ratification, however this is neither required nor guaranteed by the CRAG Act. Should Government fail to make time, an Opposition Day could be used, but there is no guarantee an Opposition Day would be provided for in the 21-day period.

- During the passage of the Trade Act 2021, the Government made an informal commitment to provide parliamentary time for a debate in the House of Lords should the International Agreements Committee request one – the ‘Grimstone Rule’.
- **When Parliament reviews the final text of a deal, it has very little influence on it. This is very different from the processes in the US and the EU, where the legislature debates and votes on the final deal.** The fact that parliamentary approval is necessary for the deal to be ratified influences the rest of the process of negotiations – the US Congress and the EU parliament are kept much more informed about the deal throughout the process, in order to avoid an agreement being derailed at the very end.
- Alongside publishing the final treaty text, the government produces an Impact Assessment of the deal. The methodology of these assessments is critical to their usefulness: the Impact Assessment for the [Australia trade deal has been criticised](#) for not sufficiently considering the environmental impacts of the deal in Australia, such as the risk of deforestation and associated GHG emissions.

Several committees participate in reviewing a trade agreement:

- Before launching the CRAG process, a report from the Trade and Agriculture Commission is produced assessing whether, or to what extent, measures in the FTA are consistent with UK levels of statutory protection in relation to: human, animal or plant life or health; animal welfare; and the environment.
- The Secretary of State also lays a report before Parliament summarising their position on the impact on levels of statutory protection, in compliance with Section 42 of the Agriculture Act.
- Relevant Select Committees review and produce reports on the agreement, taking into consideration the TAC report.

As the recent **TAC report on the Australia deal** shows, there is **limited scope for assessing the indirect, long-term impacts of increased agricultural trade with countries that have lower environmental standards** than the UK. There is also no scope for determining what the cumulative environmental impact of successive trade deals would be if the precedent set by the Australia and New Zealand deals is followed.

WWF RECOMMENDATIONS

To improve environmental outcomes of trade agreements WWF recommends a significantly enhanced scrutiny process

Prior to negotiations

- Government should **publish a Trade Policy**, setting out an overarching and coherent approach to negotiating new trade deals. This should be reviewed by Parliament and subject to public consultation.
- The Trade Policy should set out objectives for trade over a five-year period, and how those objectives relate to other policy goals, such as environmental policy or industrial strategy. We recommend bringing forward legislation to establish a framework for the enactment and regular review of the Trade Policy.
- A **Citizens’ Assembly** approach would present a tried and tested method for effective public consultation, ensuring well-informed and deliberated public opinion underpins the UK’s approach to trade.
- A Trade Policy with clear public support and red lines would strengthen negotiators’ hands as new trade agreements are developed.
- Draft negotiating objectives and a robust scoping impact assessment should be published before negotiations begin. **Negotiating objectives should be subject to**

public consultation and be revised if necessary, before being presented to parliament for debate on an amendable motion in Government time.

During negotiations

Parliament and the public should have access to regular updates and information about the progress of negotiations, and transparent means to influence the process. It is entirely possible to increase transparency while maintaining confidentiality of documents that may require it. The government should explore:

- Publishing draft negotiating texts.
- Allowing MPs and selected advisory groups to read and respond to confidential texts in secure environments, subject to rules on non-disclosure.
- Clarifying and formalising the role of Select Committees in scrutinising trade agreements, with guaranteed timelines for review and the publication of reports.
- Regularly and meaningfully consulting stakeholders, including civil society organisations – for example, the Economic Community of West African States (ECOWAS) included private sector and civil society representatives in its negotiating teams when negotiating its Economic Partnership Agreement with the EU.
- Strengthening engagement with devolved administrations and legislatures to ensure that they have effective opportunities to influence the process.
- Enhancing public consultation during negotiations – for example through a citizen’s advisory group.

After negotiations

Processes for scrutiny of a final deal should be enhanced and placed on a statutory footing.

- Select Committees, advisory groups, and the Trade and Agriculture Commission should be given time to review the final deal and report to Parliament with their findings and recommendations. This would mirror the existing practice for advisory groups in the US.
- **There should be a guaranteed debate and vote to approve ratification of a trade agreement in Government time in the House of Commons.**
- The House of Lords “Grimstone rule” should be formalised to provide time for a debate on negotiating objectives, and a final deal prior to ratification, if requested by a Select Committee.

Collectively, these requirements would strengthen the hand of UK negotiators – making it clear that only a deal with public and parliamentary support could be ratified. UK negotiators could adopt the well-known practice of their US counterparts of referring to the need to secure domestic approval for a trade deal to support their red lines.

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