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Public Administration and Constitutional Affairs Committee
The Scrutiny of International Treaties and other international agreements in the 21st century inquiry

Executive Summary

1. Until the late 1980s, trade agreements focused on removing tariffs and other border measures. Negotiations were a matter for the executive and technocrats, attracted little public attention, and were subject to very little debate or scrutiny in national parliaments. In contrast, contemporary trade agreements seek to align regulation between countries and have substantial implications for many areas of economic policy – from farming and food standards, to manufacturing, financial services and accounting, to the regulation of the digital economy, and healthcare. Trade negotiations have become politicised, with citizens and legislatures in many countries taking an active interest in the contents of trade agreements, and calling for more transparent, inclusive, and accountable decision-making.[i]

2. In this submission we examine and evaluate the UK's mechanisms for parliamentary scrutiny of trade agreements, identify shortcomings and propose a series of specific reforms. We compare current processes in the UK with those in the US, EU, Australia, and Canada. Comparison with practices in other jurisidctions suggests that effective parliamenary scrutiny requires Parliament to have guaranteed access to a much higher level of information than it has at present; the opportunity to shape negotiating mandates before negotiations start; more time to scrutinise agreements; and debate and affirmative vote on the final treaty. There are strong grounds for providing devolved administrations with formal rights to participate in the treaty-making process, particularly in aspects of treaties that have an impact on areas of devolved competence, and for ensuring that sub-national legislatures have the opportunity to scrutinise treaties.

3. There are compelling reasons for strengthening Parliament's scrutiny role. Contemporary trade agreements involve policy decisions that affect the everyday lives of citizens. Effective scrutiny would improve the quality of decision-making, provide leverage in negotiations, and reassure negotiating partners any treaty they negotiate with the UK will be ratified and implemented. Properly engaging devolved administrations and legislatures would respect devolution and ensure that all parts of the UK support negotiated outcomes.

4. As we discuss below, the UK Government has taken some steps to improve the scrutiny process but we argue that current practice still falls short of what is required for scrutiny to be effective and relies on the goodwill of Government as the changes are not reflected in statute. Our main recommendations are to:

    - **Provide Parliament with a statutory right to a debate on the draft negotiating objectives for any treaty or treaty action the relevant scrutiny committee identifies as important and meriting such action.** *This would bring the UK in line with the EU and US where parliaments are fully consulted on the negotiating*

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mandate, could provide Government with leverage in the negotiating room, and strengthen the credibility of the Government as a negotiating partner by reassuring other governments that Parliament is on board with the Government's approach.

- **Provide Parliament with a statutory right to timely and substantive information, including regular public and private briefings to relevant scrutiny and subject-specific committees, and access to draft negotiating texts and related documents for all MPs and security-cleared staff, on a confidential basis**. *This would bring the Parliament in line with the US and the EU, where parliamentarians have a high level of access to information, including to confidential negotiating texts.*
- **Require Government to make the treaty text public well before the treaty is tabled in Parliament, to allow sufficient time for examination and scrutiny, and oblige Government to extend the 21 sitting-day period for scrutiny if requested to do so by the relevant scrutiny committee.** *In the US for example, Congress has access to the agreed text 60 days before signature, and access to the final text for 30 days before the treaty is laid before Congress for ratification.*
- **Require Government to publish preliminary impact assessments at the outset of negotiations and full impact assessments when the treaty is laid in Parliament, which evaluate the economic, social, and environmental impacts of a proposed agreement.** *The UK Government has started to publish preliminary impact assessments at the outset of negotiations; this recommendation would formalise and systematise an emerging practice.*
- **Provide that trade agreements shall not be ratified unless Parliament has debated and authorized ratification of the agreement, in cases where the scrutiny committee so decides.** *This would bring the UK in line with the EU and US, where parliaments must approve treaty texts as part of the ratification process. It also reflects the nature of contemporary trade agreements, which have implications for a wide range of public policy areas; would strengthen the quality of decision-making; and could provide the Government with greater leverage during negotiations.*
- **Provide devolved administrations with the statutory right to co-determine the negotiating mandate in areas of devolved competence, and fully participate in negotiations on issues of devolved competence; provide devolved administrations and legislatures with the same level of information as the UK Parliament; and create an interparliamentary mechanism to involve devolved legislatures in treaty scrutiny.** *There are valuable lessons to be learned from Canada, where the Government has found ways to involve Provincial administrations in areas where they have competence, whilst retaining control over the treaty-making process.*

Introduction

5. We are submitting evidence in our capacity as researchers at the Blavatnik School of Government, University of Oxford. The Blavatnik School of Government is committed to improving the quality of government and public policymaking worldwide. In this submission we focus on the scrutiny of international trade agreements, as this is where our expertise lies, and draw on a recently completed working paper on this topic. The full paper can be found here:

https://www.geg.ox.ac.uk/publication/ripe-reform-uk-scrutiny-international-trade-agreements

6. Until the late 1980s, trade agreements focused on removing tariffs and other border measures. Negotiations were a matter for the executive and technocrats, attracted little public attention, and were subject to very little debate or scrutiny in national parliaments. In contrast, contemporary trade agreements seek to align regulation between countries and have substantial implications for many areas of economic policy – from farming and food standards, to manufacturing, financial services and accounting, to the regulation of the digital economy, and healthcare. Trade negotiations have become politicised, with citizens and legislatures in many countries taking an active interest in the contents of trade agreements, and calling for more transparent, inclusive, and accountable decision-making.[ii]

7. In this submission we examine and evaluate the UK's mechanisms for parliamentary scrutiny of trade agreements, identify shortcomings and propose a series of specific reforms. We compare the UK system with scrutiny processes in the US, EU, Canada and Australia. At one end of the spectrum is the US, where the US Congress exerts tight control over the executive. The US Congress sets specific negotiating objectives that the executive must follow, the executive is legally obliged to keep Congress informed throughout negotiations. The European Parliament has fewer formal powers than the US Congress but still exerts substantial influence over the actions of the European Commission. Crucially, the consent of the European Parliament is required for trade agreements to be ratified, which creates incentives for the European Commission to consult and provide a high level of information.

8. At the other end of the spectrum are the UK, Australia, and Canada, where the executive dominates and legislatures have few powers. In all three countries, treaty making is an executive function, and parliaments' main role is to scrutinize any implementing legislation. Parliaments play no role in defining negotiating objectives, have no right to information during the negotiations, and are not guaranteed a binding vote on the final treaty. Governments in all three countries almost always table treaties in their parliaments before ratification (this is a formal obligation in the UK), but Parliaments have little time to scrutinise the text and cannot prevent ratification even if they do not think it reflects national interests.[2] Parliaments scrutinize implementing legislation, but this process occurs too late in the day to change the treaty text and only affects those parts of the agreement where implementation requires changes to primary legislation. In the case of the UK this may place significant policy changes beyond the scope of parliamentary scrutiny.

9. Comparison with practices in other jurisidctions suggests that effective parliamenary scrutiny requires Parliament to have guaranteed access to a much higher level of information than it has at present; the opportunity to shape negotiating mandates before negotiations start; more time to scrutinise agreements; and debate and affirmatively vote on the final treaty. There are strong grounds for providing devolved administrations with formal rights to participate in the treaty-making process, particilarly in aspects of treaties

[2] As we explain in detail below, the UK parliament has the power to delay ratification by 21 days and in theory it can do this repeatedly, but the process is challenging to invoke and has never been used.

that have an impact on areas of devolved competence, and for ensuring that sub-national legislatures have the opportunity to scrutinise treaties.

The rationale for more effective scrutiny

10. A common objection is that increased parliamentary scrutiny would reduce Government's flexibility in the negotiating room and its ability to strike agreements. Yet, there is substantial evidence that having one's hands tied domestically, including through an inflexible negotiating mandate, can confer strength in international negotiations.[iii] US negotiators are renowned for invoking their mandate from Congress as the reason why they cannot make concessions in the negotiating room, while the EU negotiators frequently invoke recalcitrant member states, who set their mandate and must approve the final outcome.[iv] Requiring Parliament to approve a negotiating mandate and empowering Parliament to debate and vote on the final treaty, would provide credible constraints and could provide Government with significant leverage.

11. Consulting with Parliament during the negotiations would also increase the UK's credibility as a negotiating partner. As the Brexit negotiations have shown, when a treaty has major, controversial implications Parliament is likely to find a way to make its voice heard. As Parliament's only opportunity to engage comes at the end of the process, activism at this stage risks derailing years of treaty negotiations. Creating processes for Parliament (and devolved administrations and stakeholder groups) to be properly consulted throughout the negotiating process would reassure negotiating partners that any treaty they conclude with the Government will be ratified and implemented.

12. Greater parliamentary scrutiny could improve the quality of decision-making. Knowing that their decisions will be robustly examined by Parliament would provide additional impetus for Ministers and senior officials to ensure that their decisions can withstand scrutiny. Strengthening Parliament's role may also bolster public confidence. While opinion surveys suggest that the UK public is generally supportive of free trade agreements, they also suggest that on some issues, including food standards, there is a very high level of public concern.[v] Creating a robust system of scrutiny would enhance the legitimacy of the outcome and may help assuage public concerns.

13. Concerns have been raised that providing Parliament with an affirmative vote on trade agreements would undermine the Royal Prerogative. It is instructive that since 2003 Parliament has been asked on several occasions to debate and vote on whether to deploy armed forces (another prerogative power), and in 2011 the Government suggested a convention had emerged which provided the House of Commons with a debate before deployment.[vi] Others argue that the convention goes further and stipulates that the Government would not commit the armed forces to military action without the authorization of the House of Commons.[vii] A similar practice could be legislated for trade agreements with, for instance, Government committing to a debate on a substantive motion on negotiating objectives before formal negotiations start as well as on the final treaty text.

Effectiveness of the UK system for scrutinising trade agreements

14. In the UK, the executive has traditionally dominated international treaty-making, with Parliament playing a limited role. The Government has the authority to sign and ratify

international treaties under the Royal Prerogative. Treaties must be laid before Parliament before they are ratified, but Parliament does not have the power to prevent ratification, only to delay it. Parliament's main role is to scrutinise any implementing legislation that is needed to give effect to treaties in domestic law,[viii] but this provides for limited oversight in practice.

Shortcomings of the CRAG Act

15. Treaties in the UK are ratified in accordance with the Constitutional Reform and Governance (CRAG) Act of 2010. The CRAG Act applies something akin to 'negative procedure' to treaties—the ratification of the treaty does not require Parliament's approval. Codifying an existing convention (the 'Ponsonby Rule'), the CRAG Act stipulates that a treaty may be ratified only if a minister has laid before Parliament a copy of the treaty and within 21 sitting days neither House has resolved to reject it (s 20(1-2) CRAG). If the House of Commons resolves against ratification then it can delay ratification for another 21 sitting-days (and in theory it can pass further such resolutions).[ix]

16. Although in theory the House of Commons can in theory delay ratification of a trade agreement, this process has never been used.[x] The CRAG Act sets out the legal effect of a negative vote but it does not provide any mechanism to ensure that, if a debate and vote are requested by a sufficient number of members, they will take place.[xi] Practically it is hard for backbench MPs to secure time to debate CRAG motions as Parliament's Standing Orders stipulate that Government business takes precedent in the parliamentary timetable, with certain exceptions.[xii] Indeed, it is very rare for treaties to be debated in Government time, and it is possible for the 21 sitting-days to pass without an Opposition Day debate.[xiii] Parliamentarians could use mechanisms such as adjournment debates and topical questions to attempt a debate, but these would not allow for a resolution against ratification.[xiv] Considering all of these factors together, it is unsurprising that neither House has ever rejected ratification under the CRAG Act.[xv]

17. The House of Lords does not have the powers to significantly delay ratification: if it resolves against ratification but the Commons does not, Government may lay a statement before Parliament setting out its reasons why the treaty should nonetheless be ratified and then may proceed to ratify it (S 20 (7-8) CRAG).

Access to information

18. The dominance of the executive also manifests itself in the scarce provision of information to the legislature during the negotiations. Under the CRAG Act, Parliament's engagement starts when a treaty has been signed: there is no requirement for the Government to consult or obtain the consent of Parliament on its negotiating mandate, or even to alert Parliament that it is opening treaty negotiations.[xvi] The Act does not place any obligation on Government to provide information, or otherwise involve Parliament, while negotiations are on-going. When the treaty is laid before Parliament, the CRAG Act stipulates that it must be accompanied by an explanatory memorandum that explains treaty contents, the rationale for ratification, and 'such other matters as the Minister considers appropriate' (s 24 CRAG). This is the only information that the Government is required to provide at any point in the treaty-making process.[xvii] The CRAG Act does not specify what the explanatory memorandum should contain and in practice Committees report that the quality has been highly variable and often poor quality.[xviii]

19. In practice the Government has started to provide more information than the minimum stipulated under the CRAG Act. Under pressure to recalibrate the balance of power between itself and Parliament, the Government has made some moves to increase the

level of information available to Parliament. In 2020, the Government started to publish an 'outline approach' before embarking on each new set of trade negotiations which sets out its overall negotiating objectives. For negotiations with the US, Japan, Australia, New Zealand, and the CPTPP this has been accompanied by a preliminary impact assessment (but not for the EU, even though it is the UK's largest trading partner). The publication of scoping assessments is commenable: the UK is one of the only jurisidictions to publish such an appraisal at the outset of negotiations. In some jurisdictions impact assessments are conducted by arms-length Government bodies or independent third parties to ensure independence of analysis, and this could be considered to ensure analysis is objective.

20. The Government has also provided opportnity for some debate on negotiating objectives. Ministers have made statements to Parliament when outline approaches are published, providing Parliament the opportunity for a short debate on its negotiating objectives.[xix] The Government also committed that, should the International Agreements Committee publish a report on the negotiating objectives for future trade agreements, the it would 'gladly consider that report with interest and, should it be requested, facilitate a debate on the objectives, subject to the parliamentary time available'.[xx] However, for Parliament to have meaningful input on the negotiating objectives, it needs to be consulted on the *draft* negotiating objectives rather than the final version, so that feedback can be incorporated, ideally with sufficient time for the relevant scrutiny committees to solicit input from stakeholders. The negotiating objectives are often only high-level summaries and lack sufficient detail to provide a meaningful basis for consultation. For instance, the UK's outline approach for US negotiations was only 4 pages long while the US summary of its UK negotiating objectives ran to 15 pages [xxi].

21. During the negotiation phase, the UK has no formal mechanism for Government to regularly brief Parliament and MPs. Although scrutiny committees receive fairly regular briefings from ministers and senior civil servants they have no access to negotiating proposals or the consolidated negotiating text, unlike their counterparts in the US Congress and European Parliament (discussed below), and this greatly impedes their ability to closely follow the negotiations. Following the EU's lead, the UK Government published its draft text-based negotiating proposals during UK-EU negotiations, but it has not followed this practice in negotiations with the US or other countries.[xxii]

Time available for treaty scrutiny

22. Concerns have been raised that the 21 sitting-days stipulated under the CRAG Act is insufficient to scrutinise more complex treaties, including international trade agreements.[xxiii] The Government has committed to work with the relevant scrutiny committees in both Houses to ensure that they receive the treaty text and related documents on a confidential basis before these are laid in Parliament, thereby allowing additional time for scrutiny.[xxiv] This was the case for the recent UK-Japan agreement, where the text and draft were provided on a confidential basis ten sitting days before the treaty was laid in Parliament. Despite this additional time and the fact that the UK-Japan agreement was largely a replication of the EU-Japan agreement, the International Trade Committee reported that their ability to scrutinise the document was constrained by "limits of both time and resources".[xxv] This is unsuprising given the length and complexity of contemporary trade agreements, which often run to thousands of pages of dense legal text. Proper scrutiny requires extensive analysis, access to a high level of external expertise, and sufficient time to hold inquiries and hear the views of businesses and other stakeholders on the final treaty text. As discussed below, the US Congress and European Parliament have several months to scrutinise the final texts of trade agreements.

Scrutiny of implementing legislation

23. Parliament's main role is to scrutinise any implementing legislation that trade agreements give rise to, and while this function is important, it is not an effective substitute for scrutiny of the treaty itself. As the UK operates a dualist legal system, Parliament must legislate to give domestic legal effect to any treaty that creates new legal obligations.[xxvi] This gives Parliament an opportunity to consider how treaty rights and obligations will be implemented in domestic law, but it does not give Parliament the power to reject or amend the treaty itself and it comes too late in the day to influence the contents of the treaty. Furthermore, implementing legislation may be secondary legislation, which is not subject to Parliamentary debate. Many treaties — even some with major policy implications — require only minor adjustments to domestic law, or none at all.[xxvii]

24. In addition, many of the commitments that governments make in trade agreements involve obligations not to change legislation in future (or an obligation not to change it in particular ways), in order to provide certainty for trading partners and foreign investors. Entering into such commitments may not require changes to existing legislation but may mean that future legislative changes breach international legal obligations. While the legislative implications of such treaty commitments may be substantial, without changes to the UK's scrutiny processes, they are unlikely to receive detailed examination by Parliament.

The role of devolved administrations and sub-national legislatures

25. Where trade agreements touch on areas of devolved competence, legislation may need to be passed by the devolved legislatures – or at Westminster with their consent – to reflect any new international obligations.[xxviii] Yet the CRAG Act does not provide any role for the devolved administrations in treaty scrutiny, even where treaties impact areas of devolved policy. In 2013, the respective governments agreed guidelines on how devolved administrations would be involved in treaty agreements.[xxix] They committed to exchanging information during the negotiation of treaties and the implementation of treaty obligations, and for devolved ministers to form part of the UK treaty negotiating team when invited by the UK Government.[xxx] A Ministerial Forum for Trade, an inter-governmental mechanism for cooperation on trade, was created in 2020 and met several times during that year.[xxxi] However, devolved administrations have expressed concern that existing consultation mechanisms are not working effectively.[xxxii]

26. The UK's sub-national legislatures do not play a formal role in treaty scrutiny. The informal InterParliamentary Forum on Brexit is the only forum in which the Scottish Parliament, National Assembly for Wales, and Northern Ireland Assembly can engage in scrutiny of inter-governmental policy of any sort.[xxxiii]

Comparison with other jurisdictions – US, EU, Canada, Australia

27. As we explain in this section, the UK's system of treaty scrutiny is broadly comparable to that of Canada and Australia, which have similar parliamentary systems, but is far weaker than in the US and EU (see Annex for a table comparing the different systems). Given the far-recahing nature of contemporary trade agreements there are strong arguments for robust oversight and scrutiny of the executive by the legislature. Analyse of practice in other jurisdictions, particularly the US and EU provides insights on how this might be achieved.

United States

28. The US Congress is extensively involved in the oversight and ratification of trade agreements. The high level of influence stems from the US Constitution which grants Congress the authority to regulate international trade (US Constitution art. 1 para 8). Congress delegates negotiation authority to the President but requires congressional approval of trade agreements and retains a high level of influence throughout the negotiating process.[xxxiv]

29. The US Congress delegates negotiating authority to the executive for a specific period of time (typically five years) through primary legislation - the Trade Promotion Authority (TPA).[xxxv] For instance, the 2015 TPA ran to 118 pages and in it Congress set out an extensive and precise negotiating mandate for the Government to follow in its trade negotiations. This practice constrains what the executive branch can and can't agree to in trade negotiations, a constraint that can be frustrating for Government officials, but also provides the US with leverage as it can credibly argue that it is unable to make concessions in areas that are proscribed by Congress.

30. The TPA also stipulates the procedural steps that the executive must follow. Before negotiations begin, Congress must have a 90-day advance notice of the President's intent to start negotiations, and the President must consult the two Congressional Advisory Groups on Negotiations (one in the House and one in the Senate) on the nature of the intended agreement, and the negotiating objectives (19 USC 4204 (a)(1)).[xxxvi]

31. During the negotiations, the executive must provide timely briefings to these committees and any member of Congress that requests a briefing, and must provide Members and their appropriate staff, as well as appropriate committee staff, access to pertinent documents relating to trade negotiations, including classified materials (19 USC 4203(a)). In practice, Members are able to view draft negotiating texts in secure reading rooms, accompanied by a member of their staff. Members of Congress and staffers can also join the Government's negotiating teams as "designated Congressional advisers" (19 USC 4203(b)).[xxxvii]

32. Once trade negotiations have been concluded Congress has a very substantial time period for scrutiny and both House and Senate have to approve the treaty. The executive is required to give Congress 90 days' notice before signing a treaty and make the text of the treaty public 60 days before signing it (19 USC 4205(a)). After signature, the executive is required to release the final, signed treaty text at least 30 days before the legislation is introduced to Congress, and to make public a full impact assessment carried out by the US International Trade Commission (19 USC 4204(c)). Under the TPA, ratification requires a simple majority in both the House and Senate and the treaty may not be amended. In each chamber, the committees have 45 session days to report back to the floor (19 USC 2191(e)(1)), where debate is limited to 20 hours (19 USC 2191(f)).

33. For the specific period that the TPA is in force (typically five years) Congress only has an up or down vote and cannot amend the treaty text. This so-called 'fast track' was created as a procedural mechanism to enhance the president's credibility in negotiating complex multilateral trade agreements. TPA aims to streamline the congressional approval process in return for enhanced congressional oversight.[xxxviii]

34. The TPA also sets out requirements for the executive to consult industry and other stakeholder groups, as well as the wider public. The TPA requires Government to engage in public consultation, providing detailed information and regulator consultation events during the negotiations, and to publish a series of impact assessments including on the

environment, employment, and labour rights (19 USC 4204(d)). However, Congress does not require the publication of draft texts, and Government follows a practice of strict confidentiality, so the level of publicly available information during negotiations is far lower than in the EU (see below).

The European Union

35. The European Union has a system of multi-level parliaments, with both national parliaments and the European Parliament playing a role in the scrutiny of international trade agreements. In this submission we focus on the role of the European Parliament, which is less powerful than the US Congress but has a far more substantial role than parliaments in the UK, Canada and Australia.

36. Until 2009 the European Parliament had very little oversight over EU trade agreements. This changed with the Lisbon Treaty (TFEU)[xxxix] and the ratification of trade agreements now needs the formal approval of both the European Council and European Parliament. For a trade treaty to be ratified, the European Parliament needs to approve it by simple majority (Art. 218(6) TFEU). For some agreements, domestic ratification by each Member State is also required.[xl]

37. The European Parliament, unlike the US Congress, has no formal role in specifying the negotiating objectives or overseeing the negotiating process, although the European Commission is formally required to keep the European Parliament "immediately and fully informed at all stages of the procedure" (Art. 218(10) of the TFEU).[xli]

38. While the formal rights of the European Parliament are limited, it has proven very capable of using them to leverage its influence across the entire negotiating process. In 2012 the European Parliament rejected the controversial Anti-Counterfeiting Trade Agreement (ACTA) at the ratification stage. During the negotiation of Parliament had little information about the process and the lack of transparency created significant public discontent.[xlii] Following the rejection of ACTA, the European Commission improved the frequency and quality of information provided to the European Parliament and wider public. From 2012, access to the final texts of negotiating directives was provided to security-cleared MEPs and staff, in a secured reading room (codified in the 2014 Interinstitutional Agreement). During the TTIP negotiations, continued requests for earlier availability of negotiating directives led to them being publicly released early in the negotiating rounds.[xliii] The European Parliament has also issued resolutions setting out what it wishes to see in trade deals, including in areas of environment and sustainable development.[xliv] While not binding, these recommendations are taken into account by negotiators, aware that the final treaty text will need Parliament's approval.

39. In its 'Trade for All' strategy, published in 2015, the European Commission committed to increased levels of transparency. This included publishing EU texts online for all trade and investment negotiations, and publishing the text of the agreement immediately after negotiations are concluded, as it stands, without waiting for the legal revision to be completed.[xlv] For example, the EU declassified its negotiating directives for negotiations with Australia before commencing negotiations in July 2018, and published its initial text-based proposals.[xlvi] For documents that remain confidential, including consolidated negotiating texts, which show the position of the different parties on the draft text, a new system was put in place to facilitate access for all MEPs. Meetings between the Committee on International Trade and the and European Commission representatives became much more frequent. Effective scrutiny has required a rapid increase in the

expertise of the Committee on International Trade; it has become much more active in exchanges with other institutions and has gained significant expertise.[xlvii]

40. The European Commission publishes multiple impact assessments of the trade agreement, including a sustainability impact assessment which is conducted by external consultants and analyses the potential economic, social, human rights and environmental impacts of the agreement under negotiation. The Commission publishes its views on the sustainability impact assessment, but is under no formal obligation to follow the report's recommendations and not clear if the findings actually influence the Commission's approach.[xlviii] [xlix]

41. In the recent Trade Policy Review, published in 2021, the EU Commission announced that it will also carry out an ex-post evaluation of the impact of the EU's agreements on key environmental aspects, including the climate. This forms part of a broader effort to deepen the EU's analytical and data collection efforts as regards trade policy.[l]

Canada

42. The Canadian process for treaty negotiation and ratification is similar to that of the UK, and is dominated by the executive. Treaties fall entirely under the competencies of the executive and Parliament's main role is at the implementation stage, when it passes legislation for aspects of the agreement that change domestic law.[li]

43. The balance of power between the legislature and executive has shifted markedly over time. At the beginning of the twentieth century, the Canadian Parliament had extensive powers, but these declined significantly over the course of the century. While parliamentary approval of important treaties in the first half of the twentieth century was standard, this came to an end in the Cold War.[lii]

44. There has been some rebalancing in executive-legislative relations in the new millennium. In 2008, the Federal Government announced a new policy committing to table all treaties in the House of Commons before ratification – later updated in 2020 to allow for broader information sharing during the negotiation of trade agreements.[liii] As per the 2020 'Update to the Policy on Tabling of Treaties in Parliament', the Canadian Government must table in the House of Commons: 'a Notice of Intent to enter into negotiations at least 90 days before those negotiations begin; a description of the objectives of those negotiations at least 30 days before the negotiations begin; and an economic impact assessment that will accompany implementing legislation when it is tabled in the House.'[liv]

45. Following signature, the full text of the treaty is distributed to parliamentarians alongside an explanatory memorandum that outlines the main commitments and rationale for ratification. The House of Commons has 21 sitting-days to consider the treaty and has the power to debate the treaty and to pass a motion recommending action, including ratification. However, such a vote has no legal force: tabling treaties in the House of Commons remains a courtesy on the part of the executive, which retains full authority to decide whether to ratify the treaty after the Parliamentary review.[lv] The policy also provides for exceptions to the process, such as where ratification is urgently required.[lvi]

46. Scrutiny is led by Parliamentary committees, particularly the Standing Committee on International Trade (CIIT) in the House of Commons and the Standing Committee on International Affairs and International Trade (AEFA) in the Senate. Committees may initiate studies on international treaties, or be tasked by the plenary to do so, and they can invite witnesses. Committees can ask Government for a formal response to their reports,

and can request briefings from Government, although such briefings are not a formal right.[lvii] As in the UK and Australia, committee reports are advisory.

47. As Canada, like the UK and Australia, has a dualist system, a treaty that has been signed and ratified by the executive branch still requires incorporation through domestic law to be enforceable at the national level. Where domestic legislation must be put in place in order to implement the terms of an international treaty a bill is drafted and goes through the parliamentary legislative process. However, Canada has traditionally considered that many treaties and agreements, particularly international human rights treaties and foreign investment promotion and protection agreements, do not require implementing legislation. In such cases, Government states that domestic legislation is already consistent with Canada's international obligations or that the object of the treaty does not require new statutory provisions. Thus, ratification can proceed without specific implementing legislation.[lviii]

48. There have been calls for reforms to increase the level of parliamentary scrutiny. A 2017 report by the Senate's Standing Committee on International Affairs and International Trade recommended that Government provide more timely information to Parliament, by reporting to the relevant committees throughout the negotiation process, with strict adherence to in camera rules when information is sensitive. They also asked Government to create a formal process for consulting on the negotiating mandate, and to consult during negotiations, to provide timely updates that are open to all relevant stakeholders, including the public.[lix] In 2017 a private member's bill was tabled, which proposed that Government be required to obtain the approval of Parliament before expressing its consent to be bound by a trade treaty, but it didn't pass.[lx]

Australia

49. The Australian system is similar to that of the UK and Canada, with international trade negotiations heavily dominated by the executive. However, two aspects set Australia apart. It has a more structured scrutiny process, with a joint committee of both houses dedicated to treaty scrutiny. What is striking is that this formal process has proved to be insufficient for increasing the influence of Parliament over the outcomes of negotiations. The scrutiny committee always has a majority of members drawn from the governing political party, limiting its incentive to oppose the executive, and because Parliament itself has no veto powers, the committee's reports are advisory and its recommendations can readily be dismissed by Government. Another striking feature of the Australian process is that, unlike in Canada and the UK, there seems to be little appetite from sub-national authorities to exert influence over trade negotiations.

50. In Australia, the power to enter into treaties is a prerogative power of the executive (s61 of the Australian Constitution).[lxi] While the executive alone has the constitutional power to conclude treaties, Parliament legislates to implement treaties in domestic law (s51(xxix) of the Constitution). Government practice since 1996 has provided Parliament with an active role in treaty scrutiny.[lxii] As in the UK and Canada, Parliament's formal role only starts after a treaty has been signed. It has no formal right to influence the negotiating mandate and no formal right to information while negotiations are on-going. Once a treaty has been signed, it is laid before Parliament for at least 15 joint sitting days before binding treaty action is taken (20 days for major treaties), and Government provides a National Interest Analysis to inform the Parliament's scrutiny work.[lxiii]

51. Parliament examines proposed treaties via the Joint Standing Committee on Treaties (JSCOT).[lxiv] JSCOT was established in 1996 to make the treaty-making process more

open and transparent, and to increase Parliament's involvement. It inquires into whether the proposed treaty action is in Australia's national interest, and reports to Parliament. In its report, JSCOT makes recommendations to Government on whether it should take binding treaty action but its own reports are non-binding. JSCOT routinely takes evidence at public hearings from Government agencies and may invite people who have made written submissions to appear.

52. An inquiry into the treaty-making process by the Foreign Affairs, Defence and Trade References Committee in 2015 found the treaty-making process deficient in many ways. It concluded that Parliament was left to "rubber-stamp agreements that have been negotiated behind closed doors".[lxv] The Committee recommended substantial reforms including that Parliamentarians and advisers be granted access to draft treaty text throughout the negotiating process, under conditions of confidentiality. It recommended ongoing oversight of negotiations by JSCOT, as its practice of only engaging once a treaty had been concluded meant its recommendations arrived too late in the day to be acted upon, undermining its ability to hold Government to account. The Committee also criticised Government for a lack of overall trade strategy and weak consultation with industry and other stakeholders.[lxvi]

53. There are signs that the legislative-executive relationship is changing, albeit slowly. In 2020, the Australian Government established a Ministerial Advisory Council, which brings together a broad cross-section of business, industry and community representatives to help inform Australia's negotiations and policies. Meanwhile, the Department of Foreign Affairs and Trade started a new system of biannual briefings on FTA negotiations for the Trade Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. Government also agreed to make the Australia-EU text available to interested members of Parliament, but only 'around the time of conclusion, under strict confidentiality conditions'.[lxvii] Even with these changes, the level of Parliamentary scrutiny of trade negotiations in Australia remains far more limited than in the EU and US. Australian processes are undergoing further review: in June 2020, JSCOT opened a new inquiry on the role of Parliament in trade negotiations, a review which covers all stages of the negotiations.[lxviii] Neither the Australian Government's response nor the final report of this inquiry have been published as of June 2021.

Conclusion

54. Since 2016, there have been a series of parliamentary inquiries and reports on treaty scrutiny in the UK and all concluded that improvements were urgently needed. The House of Lords Committee on the Constitution, for instance, concluded that the existing mechanisms for treaty ratification are "limited and flawed". It noted that the CRAG Act was enacted in a time where leaving the EU had not been seriously contemplated.[lxix] Meanwhile, the International Trade Committee in the House of Commons concluded that the existing processes are "insufficient" because although Parliament can theoretically block indefinitely the ratification of a treaty, or decline to legislate its provisions into domestic law, doing so in practice would be a difficult and unsatisfactory means of rejecting a trade agreement which does not have the support of Parliament.[lxx]

55. While the UK Government has taken steps to improve the level of information available to Parliament and the wider public, this still falls short of the level needed for effective scrutiny, especially during the negotiation phase. The International Trade Committee recommended that it be granted "full access to all negotiating documents, on a confidential basis when required, and should receive regular updates, in private, from

ministers and civil servants who are involved in ongoing trade negotiations". In addition, regularly briefings should be given to the House.[lxxi] The adoption of such practices would bring the UK closer that of the US and EU, where legislators have full access to classified documents, including negotiating texts. More generally, several reports recommend that Government operate on a principle of transparency, and publish documents related to trade negotiations unless there is a compelling reason not to.[lxxii] This is the approach that the EU has taken in recent years, declassifying and publishing many more documents.

56. Government has provided opportunity for Parliament to debate the Government's published negotiating objectives and the final treaty text. While this is welcome, these commitments fall short of a meaningful consultation that enables Parliament to influence negotiating objectives and Parliament is not guaranteed an opportunity to debate or vote on the final treaty text. The EU Committee of the House of Lords noted that without a vote on the final treaty, "Parliament has no effective veto power to prevent the Government from ratifying agreements that it does not feel are in the national interest".[lxxiii] However, in its most recent report it stopped short of recommending a legislative change at present, seeking first to try and make treaty scrutiny work within the existing framework.[lxxiv] In contrast, the International Trade Committee was unequivocal in its recommendation that "[t]he House of Commons should have a final yes/no vote on the ratification of trade agreements".[lxxv]

57. Outside of Parliament, there have also been calls for improved scrutiny. In a rare show of unity, the UK's leading business organizations, trade unions, consumer groups, and civil society organizations issued a joint report in 2018 calling for greater transparency and increased democratic oversight of trade negotiations. Their recommendations included a presumption of transparency for all negotiating texts, the creation of a scrutiny committee in Parliament, a guaranteed debate and vote on trade agreements, and the full involvement of devolved administrations and legislatures.[lxxvi] These asks were also channelled into advocacy during the passage of the Trade Act, which helped give rise to significant debate on the CRAG procedures and their inadequacy for the scope of current trade agreements.

58. In 2020 amendments to the Trade Act were proposed that would have enabled Parliament to vote on final treaties but these were not passed by the House of Commons. Amendments proposed included: a guaranteed vote for MPs on trade agreements before ratification; or a guaranteed vote for MPs before negotiations begin; a role for devolved authorities; and more transparency in the process. While they received support from Parliamentarians from across the political spectrum, they were rejected during parliamentary ping-pong.

59. The Government offered two minor concessions on scrutiny during the Trade Bill debate, promising a debate in the Lords on the negotiating objectives before negotiations begin, and debates for both Houses after the treaty is signed within the existing 21 sitting day period, where this is requested by relevant committees. However, these are not legal commitments, and they are subject to Parliamentary time.

60. Due to the public's calls for more scrutiny of trade agreements, especially as regards their impact on food standards, the Government agree to place the Trade and Agriculture Commission (TAC) on statutory footing in the Trade Act 2021 (art. 9). In combination with art. 42 of the Agriculture Act, this requires the Secretary of State to produce a report to Parliament stating whether a proposed trade agreement introduces measures that are consistent with maintaining domestic protections of human, animal or plant life or health,

animal welfare, and the environment. In preparing this report, the Secretary of State must request advice from the TAC on these matters, aside from human life or health.

Recommendations

61. Although the UK Government has taken steps to improve the scrutiny process, current practice still falls short of what is required for scrutiny to be effective. Reviewing practices in the UK and other jurisdictions highlights a number of steps that could be taken to strengthen Parliament's scrutiny of trade agreements. Ideally improvements would be made on a statutory basis. Our main recommendations are to:

62. **Provide Parliament with a statutory right to a debate on the draft negotiating objectives for any treaty or treaty action the relevant scrutiny committee identifies as important and meriting such action.** *This would bring the UK in line with the EU and US where parliaments are fully consulted on the negotiating mandate, could provide Government with leverage in the negotiating room, and strengthen the credibility of the Government as a negotiating partner by reassuring other governments that Parliament is on board with the Government's approach.*

63. **Provide Parliament with a statutory right to timely and substantive information, including regular public and private briefings to relevant scrutiny and subject-specific committees, and access to draft negotiating texts and related documents for all MPs and security-cleared staff, on a confidential basis**. *This would bring the Parliament in line with the US and the EU, where parliamentarians have a high level of access to information, including to confidential negotiating texts.*

64. **Require Government to make the treaty text public well before the treaty is tabled in Parliament, to allow sufficient time for examination and scrutiny, and oblige Government to extend the 21 sitting-day period for scrutiny if requested to do so by the relevant scrutiny committee.** *In the US for example, Congress has access to the agreed text 60 days before signature, and access to the final text for 30 days before the treaty is laid before Congress for ratification.*

65. **Require Government to publish preliminary impact assessments at the outset of negotiations and full impact assessments when the treaty is laid in Parliament, which evaluate the economic, social, and environmental impacts of a proposed agreement.** *The UK Government has started to publish preliminary impact assessments at the outset of negotiations; this recommendation would formalise and systematise an emerging practice.*

66. **Provide that trade agreements shall not be ratified unless Parliament has debated and authorized ratification of the agreement, in cases where the scrutiny committee so decides.** *This would bring the UK in line with the EU and US, where parliaments must approve treaty texts as part of the ratification process. It also reflects the nature of contemporary trade agreements, which have implications for a wide range of public policy areas; would strengthen the quality of decision-making; and could provide the Government with greater leverage during negotiations.*

67. **Provide devolved administrations with the statutory right to co-determine the negotiating mandate in areas of devolved competence, and fully participate in negotiations on issues of devolved competence; provide devolved administrations and legislatures with the same level of information as the UK Parliament; and create an interparliamentary mechanism to involve devolved legislatures in treaty scrutiny.**

There are valuable lessons to be learned from Canada, where the Government has found ways to involve Provincial administrations in areas where they have competence, whilst retaining control over the treaty-making process.

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Annex 1 - Parliamentary scrutiny of trade negotiations agreements in the US, EU, UK, Australia, and Canada

	Negotiating Mandate	**Negotiating Process**	**Ratification and Implementation**
US	Congress defines negotiating objectives for all trade agreements in legislation (TPA) Ahead of starting new negotiations, Government must notify Congress (90 days in advance) and consult on negotiating objectives	Legal right to be informed regularly and extensively by Government Legal right to access documents including classified negotiating texts (all members of Congress and some security-cleared staff) Congress has accredited members on US negotiating teams Government required by Congress to extensively consult business and other stakeholders There are several informal channels through which the federal level communicates with the state level on trade policy, but they are widely criticised for being ineffective	Government must notify Congress and publish treaty before signature Parliamentary approval is required for treaty ratification: both House and Senate must approve treaty for it to come into effect, by simple majority vote Government must publish impact assessment and other reports prior to vote
EU	Legal right to be informed of negotiating mandate, but no legal right to set negotiating objectives or be consulted on mandate Informal practice of consulting	Legal right to be informed regularly and extensively during negotiations Informal practice of sharing classified negotiating texts with all MEPs via secure reading room	Parliamentary approval is required for treaty ratification: European Parliament must approve treaty by simple majority vote Member States need to ratify treaty

	parliament on draft mandate; parliament issues non-binding advisory motions to communicate its preferences Impact assessment published before negotiations begin	Parliament regularly updates Commission on its preferences via non-binding resolutions (to avoid problems at ratification stage) Sustainability impact assessment published during negotiations	domestically when it is a "mixed" agreement (one that involves competences shared with or belonging to Member States)
UK	No legal right to be informed of negotiating mandate No legal right to set negotiating objectives or be consulted on mandate; in practice, Government has begun to give statements with short debates on negotiating objectives	No legal right to be informed; no legal right to access documents Informal commitment by Government to regularly brief relevant committees, but no practice of providing access to negotiating texts or other classified documents In practice, Government has started to publish some preliminary impact assessments and negotiating proposals, but on an ad hoc basis Informal guidelines that Government should exchange information with devolved administrations during negotiation	Treaties must be laid before parliament for 21 sitting days before ratification Parliamentary approval is not required for treaty ratification, although Commons can delay ratification. Parliament's main role is to scrutinise any implementing legislation needed to give effect to treaties in domestic law Legal requirement to provide an Explanatory Memorandum when treaty is laid before parliament, but this does not include impact assessment Informal guidelines that Government should exchange information with devolved administrations during

			implementation
Australia	No legal right to be informed of negotiating mandate No legal right to set negotiating objectives or be consulted on mandate	No legal right to be informed; no legal right to access documents Informal commitment by Government to biannual briefing to relevant committees on FTA negotiations; no practice of providing access to negotiating texts or other classified documents The Standing Committee on Treaties (SCOT) serves as a mechanism for consulting subnational authorities on trade negotiations, but in practice it is not influential.	Government has the policy, but no formal obligation, to table a signed treaty before Parliament for 15 sitting days prior to ratification (20 days for major treaties) Parliamentary approval is not required for treaty ratification. Treaty is scrutinised by committee and report is advisory (non-binding) Parliament's main role is to scrutinise any implementing legislation needed to give effect to treaties in domestic law Government provides a National Interest Analysis to inform the parliament's scrutiny work State parliaments are provided with the final text of the agreement and asked to scrutinise the treaty, but this mechanism is not effectively used.
Canada	No legal right to be informed of negotiating mandate	Committees responsible for trade can be briefed, but no legal right	Government has the policy, but no formal obligation, to table a signed treaty before parliament for 21 sitting days prior to

	No legal right to set negotiating objectives or be consulted on mandate	Committees can request briefing meetings, but this is less regular than in the EU The Federal-Provincial Territorial Committee on Trade serves as a mechanism for consulting province and meets on a quarterly basis. Federal Government gives provinces access to draft negotiating documents, on which they submit recommendations. Representatives of provinces can also be members of the Canadian delegation in trade negotiations	ratification Parliamentary approval is not required for treaty ratification. Treaty is scrutinised by committee. Parliament may debate and vote but outcome is advisory (non-binding) Parliament's main role is to scrutinise any implementing legislation needed to give effect to treaties in domestic law Treaties are tabled with brief explanatory memorandum outlining the main commitments and rationale for ratification, but does not include full impact assessment Provincial assemblies have the sole competence to legislate in their areas of competence, and so are crucial for implementing trade agreements

References

[i] Michael Zürn, 'The Politicization of World Politics and Its Effects: Eight Propositions' (2014) 6 European Political Science Review 47; Michael Zürn, Martin Binder and Matthias Ecker-Ehrhardt, 'International Authority and Its Politicization' (2012) 4 International Theory 69.
[ii] Zürn (n 1); Zürn, Binder and Ecker-Ehrhardt (n 1).
[iii] Thomas C Schelling, *The Strategy of Conflict* (Literary Licensing 2011) 19.
[iv] Sophie Meunier, 'What Single Voice? European Institutions and EU-U.S. Trade Negotiations' (2000) 54 International Organization 103, 106.
[v] Department for International Trade, 'Public Attitudes to Trade Tracker: Wave 2 Report (Web Version)' (2020) <https://www.gov.uk/government/publications/public-attitudes-to-trade-tracker-patt-wave-2/public-attitudes-to-trade-tracker-wave-2-report-web-version> accessed 7 September 2020; and see e.g. Connor Ibbetson, 'Can Britain Stomach Chlorinated Chicken?' (*YouGov*, 16 June 2020) <https://yougov.co.uk/topics/food/articles-reports/2020/06/16/britain-chlorinated-chicken-US-trade-deal> accessed 7 September 2020. Chlorinated Chicken?', YouGov, 16 June 2020, https://yougov.co.uk/topics/food/articles-reports/2020/06/16/britain-chlorinated-chicken-US-trade-deal.
[vi] Claire Mills, 'Parliamentary Approval for Military Action' <https://commonslibrary.parliament.uk/research-briefings/cbp-7166/> accessed 7 September 2020.
[vii] Gavin Philipson, 'Gavin Phillipson: "Historic" Commons' Syria Vote: The Constitutional Significance. Part I' (*UK Constitutional Law Association*, 19 September 2013) <https://ukconstitutionallaw.org/2013/09/19/gavin-phillipson-historic-commons-syria-vote-the-constitutional-significance-part-i/> accessed 11 September 2020.
[viii] Select Committee on the Constitution, House of Lords, 'Parliamentary Scrutiny of Treaties' (2019) 20th Report of Session 2017–19 <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/345/345.pdf> accessed 4 September 2020.
[ix] Arabella Lang, 'Parliament's Role in Ratifying Treaties' <https://commonslibrary.parliament.uk/research-briefings/sn05855/> accessed 7 September 2020; Select Committee on the Constitution, House of Lords (n 8).
[x] Select Committee on the Constitution, House of Lords (n 8).
[xi] European Union Committee, House of Lords, 'Scrutiny of International Agreements: Lessons Learned' (2019) 42nd Report of Session 2017-2019 <https://publications.parliament.uk/pa/ld201719/ldselect/ldeucom/387/387.pdf> accessed 4 September 2020.
[xii] Alice Lilly, 'Who Should Control the Parliamentary Timetable?' (Institute for Government 2019) <https://www.instituteforgovernment.org.uk/blog/who-should-control-parliamentary-timetable> accessed 15 September 2020.
[xiii] Lang (n 9).
[xiv] Arabella Lang, 'Parliament and International Treaties', *Parliament : Legislation and Accountability* (Hart Publishing 2016) <http://www.bloomsburycollections.com/book/parliament-legislation-and-accountability> accessed 9 September 2020.
[xv] Ewan Smith, Erik Bjorge and Arabella Lang, 'Treaties, Parliament and the Constitution' [2020] Public Law 508.
[xvi] Select Committee on the Constitution, House of Lords (n 8).
[xvii] ibid.
[xviii] ibid; European Union Committee, House of Lords (n 11).
[xix] See for instance the statement and short debate on the UK's approach to US negotiations House of Commons, UK-US Trade Deal - Hansard 2020.
[xx] 'Trade Bill - Tuesday 23 February 2021 - Hansard - UK Parliament' <https://hansard.parliament.uk/lords/2021-02-23/debates/8F92FB28-D51A-4996-8471-7CCAB472F224/TradeBill> accessed 29 June 2021.
[xxi] UK Department for International Trade, 'UK-US Free Trade Agreement' (2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869592/UK_US_FTA_negotiations.pdf> accessed 4 September 2020; Office of the US Trade Representative, 'United States-United Kingdom Negotiations. Summary of Specific Negotiating Objectives.' (February 2019) <https://ustr.gov/sites/default/files/Summary_of_U.S.-UK_Negotiating_Objectives.pdf> accessed 4 September 2020.
[xxii] For UK proposals on negotiations with the EU, see: Department for International Trade, 'The UK's Approach to Trade Negotiations with the US' (*GOV.UK*, 2 March 2020) <https://www.gov.uk/government/publications/the-uks-approach-to-trade-negotiations-with-the-us> accessed 11 September 2020. For EU proposals see: European Commission, 'Documents Related to the Work of the Task Force for Relations with the United Kingdom' (*European Commission - European Commission*, 2020) <https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/publications-and-news/documents-related-work-task-force-relations-united-kingdom_en> accessed 11 September 2020.

[xxiii] European Union Committee, House of Lords (n 11); Select Committee on the Constitution, House of Lords (n 8).
[xxiv] Elizabeth Truss, 'Transparency and Scrutiny Arrangements for New Free Trade Agreements' (House of Commons, 7 December 2020) <https://questions-statements.parliament.uk/written-statements/detail/2020-12-07/hcws623>.
[xxv] House of Commons International Trade Committee, 'UK-Japan Comprehensive Economic Partnership Agreement: Second Report of Session 2019–21' (House of Commons 2020) <https://committees.parliament.uk/publications/3549/documents/34421/default/>.
[xxvi] European Union Committee, House of Lords (n 11); Paul Craig, 'Constitutional Principle, the Rule of Law and Political Reality: The European Union (Withdrawal) Act 2018' (2019) 82 The Modern Law Review 319.
[xxvii] Lang (n 9).
[xxviii] Institute for Government, 'Institute for Government-Written Evidence' <https://committees.parliament.uk/writtenevidence/6552/html/> accessed 11 September 2020.
[xxix] UK Government, Scottish Ministers, Welsh Ministers, Northern Ireland Executive Committee, 'Memorandum of Understanding and Supplementary Agreements' (October 2013) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf> accessed 4 September 2020.
[xxx] House of Commons Scottish Affairs Committee, 'Scotland, Trade and Brexit', 10 March 2019, https://publications.Parliament.uk/pa/cm201719/cmselect/cmscotaf/903/903.pdf.
[xxxi] Welsh Affairs Committee, 'Brexit and Trade: Implications for Wales - Welsh Affairs Committee - House of Commons', 2020, https://publications.Parliament.uk/pa/cm5801/cmselect/cmwelaf/176/17605.htm.
[xxxii] 'House of Lords - Parliamentary Scrutiny of Treaties - Select Committee on the Constitution' <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/345/34508.htm> accessed 29 June 2021.
[xxxiii] Smith, Bjorge and Lang (n 15) 5.
[xxxiv] Helen V Milner and Dustin H Tingley, *Sailing the Water's Edge: The Domestic Politics of American Foreign Policy* (Princeton University Press 2016) 259 <http://www.vlebooks.com/vleweb/product/openreader?id=none&isbn=9781400873821> accessed 21 October 2020.
[xxxv] Bipartisan Congressional Trade Priorities and Accountability Act of 2015 – often referred to as Trade Promotion Authority (TPA)
[xxxvi] United States Code, Title 19- Customs duties, containing the TPA, accessible at: https://www.govinfo.gov/app/details/USCODE-2015-title19/USCODE-2015-title19-chap27-sec4204
[xxxvii] Ian F Fergusson, 'Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy' 15–17 <https://fas.org/sgp/crs/misc/R43491.pdf>.
[xxxviii] Hal Shapiro and Lael Brainard, 'Fast Track Trade Promotion Authority' (*Brookings*, 30 November 1AD) <https://www.brookings.edu/research/fast-track-trade-promotion-authority/> accessed 29 June 2021.
[xxxix] Treaty for the Functioning of the European Union (Lisbon Treaty, TFEU), accessible at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT
[xl] Eur-Lex, 'International Agreements and the EU's External Competences' (8 April 2020) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:ai0034> accessed 4 September 2020. Valerie J. D'Erman, 'Mixed Competences and "Second Generation" Trade Agreements: A Consideration of EU Disintegration', *Political Research Exchange* 2, no. 1 (1 January 2020): 1806003, https://doi.org/10.1080/2474736X.2020.1806003.
[xli] Roberto Bendini, 'Comparative Study on Access to Documents (and Confidentiality Rules) in International Trade Negotiations' (European Parliament 2015) Study 24 <https://www.europarl.europa.eu/RegData/etudes/STUD/2015/549033/EXPO_STU(2015)549033_EN.pdf> accessed 17 September 2020.
[xlii] Bart Kerremans and others, 'Parliamentary Scrutiny of Trade Policies across the Western World' (March 2019) 17 <https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603477/EXPO_STU(2019)603477_EN.pdf> accessed 23 October 2020.
[xliii] ibid 11; Bendini (n 45) 33.
[xliv] See for example European Parliament, 'European Parliament Resolution of 5 July 2016 on Implementation of the 2010 Recommendations of Parliament on Social and Environmental Standards, Human Rights and Corporate Responsibility' (2016) Resolution <https://www.europarl.europa.eu/doceo/document/TA-8-2016-0298_EN.html?redirect> accessed 14 September 2020.
[xlv] European Commission and Directorate-General for Trade, *Trade for All: Towards a More Responsible Trade and Investment Policy.* (Publications Office 2015).
[xlvi] Available here: https://trade.ec.europa.eu/doclib/press/index.cfm?id=1865

[xlvii] Evelyn Coremans and Katharina Luise Meissner, 'Putting Power into Practice: Administrative and Political Capacity Building in the European Parliament's Committee for International Trade' (2018) 96 Public Administration 561.
[xlviii] Nicolás Brando and others, 'The Impact of EU Trade and Development Policies on Human Rights' (2015) Large-Scale FP7 Collaborative Project GA No 320000 Work Package No. 9 – Deliverable No. 2 <https://repository.gchumanrights.org/bitstream/handle/20.500.11825/95/Deliverable-9.2.pdf?sequence=1&isAllowed=y> accessed 15 September 2020; James Harrison, 'The Use of Impact Assessments by Governments and Businesses: Questioning Purpose and Utility' in Nora Götzmann (ed), *Handbook on Human Rights Impact Assessments* (Edward Elgar Publishing 2019).
[xlix] On the EU-Japan negotiations for instance, see the impact assessment in 2012 before negotiations started, European Commission, 'Impact Assessment Report on EU-Japan Relations' (2012) Commission Staff Working Document <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012SC0209&from=en> accessed 14 September 2020.; the sustainability impact assessment in 2016 European Commission, 'Trade Sustainability Impact Assessment of the Free Trade Agreement between the European Union and Japan' (2016) Final Report <https://trade.ec.europa.eu/doclib/docs/2016/may/tradoc_154522.pdf> accessed 14 September 2020.; and, following the conclusion of negotiations in at the end of 2017, a final impact assessment was published in mid-2018 ahead of the vote in the European Parliament European Commission, 'The Economic Impact of the EU-Japan Economic Partnership Agreement' (2018) <https://trade.ec.europa.eu/doclib/docs/2018/july/tradoc_157115.pdf> accessed 14 September 2020.
[l] EU Commission, 'Trade Policy Review- An Open, Sustainable and Assertive Trade Policy' <https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf>.
[li] Kerremans and others (n 46) 32–33; Laura Barnett, 'Canada's Approach to the Treaty-Making Process' (Library of Parliament 2018) Background Paper 2008-45-E, revised May 2018 <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2008-45-e.pdf> accessed 14 September 2020.
[lii] Kerremans and others (n 46) 34–35.
[liii] Government of Canada, 'Canada Announces Policy to Table International Treaties in House of Commons' (25 January 2008) <https://www.canada.ca/en/news/archive/2008/01/canada-announces-policy-table-international-treaties-house-commons.html> accessed 14 September 2020.
[liv] Barnett (n 55).
[lv] ibid.
[lvi] Global Affairs Canada, 'Policy on Tabling of Treaties in Parliament' (5 June 2014) <https://www.treaty-accord.gc.ca/procedures.aspx> accessed 4 September 2020 para 6.3.
[lvii] Kerremans and others (n 46) 32–33.
[lviii] Barnett (n 55).
[lix] Standing Senate Committee on Foreign Affairs and International Trade, 'Free Trade Agreements: A Tool for Economic Prosperity' (2017) 33–34 <https://sencanada.ca/content/sen/committee/421/AEFA/Reports/FreeTradeReport_e.pdf> accessed 4 September 2020.
[lx] Parliament of Canada, 'Bill C-358 (Historical)', openParliament.ca, 2017, https://openParliament.ca/bills/42-1/C-358/.
[lxi] Australian Constitution, accessible at: https://www.aph.gov.au/about_Parliament/senate/powers_practice_n_procedures/constitution
[lxii] DFAT submission to this inquiry: Australian Government, Department of Foreign Affairs and Trade, 'Submission to Joint Standing Committee on Treaties Inquiry into Certain Aspects of the Treaty-Making Process in Australia' (July 2020) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Treaty-makingProcess/Submissions> accessed 4 September 2020.
[lxiii] This practice is not enshrined in legislation or standing orders. See: Campbell McLachlan, *Foreign Relations Law* (Cambridge University Press 2014) 163 <http://ebooks.cambridge.org/ref/id/CBO9781139034937> accessed 31 July 2020.
[lxiv] Parliament of Australia, 'Resolution of Appointment of the Joint Standing Committee on Treaties' (2019) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Resolution> accessed 4 September 2020.
[lxv] Foreign Affairs, Defence and Trade References Committee, The Senate, 'Blind Agreement: Reforming Australia's Treaty-Making Process' (Commonwealth of Australia 2015) ix <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/Report> accessed 4 September 2020.
[lxvi] Foreign Affairs, Defence and Trade References Committee, The Senate (n 69).

[lxvii] Australian Government, Department of Foreign Affairs and Trade (n 66).
[lxviii] Canberra Parliament of Australia, 'Certain Aspects of the Treaty-Making Process in Australia' (2020) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Treaty-makingProcess> accessed 4 September 2020.
[lxix] Select Committee on the Constitution, House of Lords (n 8).
[lxx] House of Commons International Trade Committee, 'UK Trade Policy Transparency and Scrutiny' (2018) 6th Report of Session 2017-2019 <https://publications.parliament.uk/pa/cm201719/cmselect/cmintrade/1043/1043.pdf> accessed 4 September 2020. ibid.
[lxxi] House of Commons International Trade Committee (n 74). ibid.
[lxxii] House of Commons International Trade Committee (n 74); European Union Committee, House of Lords (n 11).
[lxxiii] European Union Committee, House of Lords, 'Treaty Scrutiny: Working Practices' (2020) 11th Report of Session 2019-2021 6 <https://publications.parliament.uk/pa/ld5801/ldselect/ldeucom/97/97.pdf> accessed 4 September 2020.
[lxxiv] European Union Committee, House of Lords, 27.
[lxxv] House of Commons International Trade Committee (n 74). ibid.
[lxxvi] Trade Justice Movement, 'A Trade Governance Model That Works for Everyone' (28 June 2018) <https://www.tjm.org.uk/resources/briefings/a-trade-governance-model-that-works-for-everyone> accessed 11 September 2020.