

Written evidence from the National Farmers' Union¹ (SIT 14)

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

Summary

- Both the House of Commons and the House of Lords should be engaged more substantively in the process of objective setting, negotiation oversight, and the scrutiny and ratification of international treaties such as new Free Trade Agreements (FTAs).
- Current arrangements for scrutiny of international agreements such as FTAs are weak. For many deals other than the most high-profile, scrutiny is conducted primarily by the House of Lords International Agreements Committee, which is only involved at the end of the negotiating period once a trade deal has already been agreed.
- Even when the committee recommends that a trade deal should be debated on the floor of the House, this often does not take place, or otherwise takes place after the treaty has been formally ratified, nor does the government always respond to questions raised in committee reports on FTAs.
- The NFU conducted an assessment of the trade agreements signed between the UK and other countries or trade blocs between January 2019 and March 2021, of which there are 33, to look at how our trade scrutiny arrangements have operated in practice. Out of these 33 agreements only one has been considered and reported by a House of Commons Committee, namely the UK-Japan Agreement, which was also subsequently debated by the House. The House of Lords has, through its committees, looked at all of these agreements, but only 10 have been debated. A further 4 were not debated despite recommendations that they should be. Under the Constitutional Reform and Governance Act 2010, only the House of Commons can delay ratification of treaties, which makes its lack of activity in scrutinising recent trade agreements a concern.
- The NFU believes there are a number of measures that should be introduced to improve the scrutiny of trade deals and accountability to Parliament:
 - Parliament should have a “yes/no” vote following debate once a finalised Treaty has been agreed by the UK government to decide whether that treaty as drafted should be ratified or not. Furthermore, Parliament should agree to the negotiating mandate before negotiations commence and should be kept updated and consulted throughout the negotiations.
 - The devolved administrations should also be consulted throughout the negotiating process, including with respect to draft texts of agreements.

¹ The National Farmers' Union represents 55,000 members across England and Wales. In addition, we have 20,000 NFU Countryside members with an interest in farming and rural life.

- Stakeholder engagement should involve a higher degree of information sharing, under Non-Disclosure Agreements only where necessary, to ensure proper two-way communication throughout negotiations prior to trade deals being signed.
- Comprehensive economic impact assessment should be published prior to negotiations starting.

1. The relationship between Parliament and government

Part 2 of the Constitutional Reform and Governance Act 2010 (CRAG)² defines the role of the Parliament in the ratification of treaties. In the UK, the government negotiates, signs, ratifies, and withdraws from treaties under the royal prerogative, and Parliament currently has a limited role in overseeing this. Parliament does not have a statutory or formal role in setting the negotiating objectives for an agreement, monitoring the progress of negotiations, or overseeing treaty implementation.

In terms of Parliamentary scrutiny, we believe the government should introduce legislative powers formalising the role of Parliament in scrutinising and ratifying trade agreements. This should include a requirement for parliamentary approval of both the UK's negotiating mandate, without which the government would be unable to start formal negotiations, and the final text of any agreement, without which it would not come into force. Given talks are already underway with a number of trade partners, specific consideration will have to be given to providing effective scrutiny of these negotiations.

Parliament should be given an active and formal role during the negotiating process while recognising the need to maintain confidentiality and avoid unnecessarily hindering the work of government negotiators. This could be achieved through a requirement for regular updates to Parliament, for instance via select committee hearings held in confidence where required. This would ensure that negotiators have greater clarity of Parliament's views on the state and progress of negotiations and the likely outcomes, and so ensure that any final, negotiated deal has a high likelihood of being to the satisfaction of Parliament.

This approach would need to be strengthened by providing Parliament with a clear vote on whether to ratify the final deal. At present, neither MPs or Peers are guaranteed a vote on the final form of any trade agreements signed by the UK with other countries and so cannot exercise any influence should there be concerns about the impact of these deals on UK voters. The NFU supports the view expressed in Parliament by Lord Goldsmith on 2nd March 2021, that 'International agreements and treaties affect us all, they can affect important aspects of our lives: the economy, goods and services, our security, and our rights. Scrutiny by Parliament must therefore be not an afterthought but an integral part of the overall treaty-making process'³.

2. CRAG 2010

Under CRAG, once Parliament is presented with the finalised version of a treaty (which includes trade agreements) by the government, both Houses have 21 sitting days within which to scrutinise the treaty, during which either House can agree a motion that the treaty

² [Constitutional Reform and Governance Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

³ [House of Lords Hansard, 2nd March 2021](#)

should not be ratified. In the case of the House of Lords agreeing such a motion, the government can effectively ignore it by making a statement that the treaty should nevertheless be ratified. If the House of Commons does so, then the government can make such a statement and commence a further 21 sitting day period in which the Commons again may resolve that the treaty is not ratified. This recurring 21 day process can then be repeated indefinitely.

In the absence of any resolution from either House, the treaty is ratified at the culmination of the 21 day period. Furthermore, CRAG also allows ministers to override the provisions outlined above in exceptional circumstances and ratify a treaty without allowing Parliament to resolve against it.

Neither House is yet to produce a motion stating that a treaty should not be ratified. However, on two occasions since 2018 the House of Lords has tabled non-fatal motions to object to treaties, those with Morocco⁴ and the Swiss Confederation⁵. However, the accompanying debate occurred after the 21 sitting day period had expired. Both treaties were therefore ratified before the Lord's views could be heard, demonstrating the weakness of the current provisions. The treaty with Morocco was opposed by Peers on the grounds that the 'government failed to consult adequately with the people of Western Sahara, to ensure a trade agreement conforms to international law'. For the UK–Switzerland roll over agreement the Lords felt it differed significantly from its precursors (i.e. the EU-Switzerland agreements on which the UK deal was based). Despite Parliament raising these legitimate concerns, both treaties were automatically ratified without them being given proper consideration.

3. When should Parliament be consulted?

The NFU believes that early and ongoing engagement on trade negotiations between government and Parliament is crucial in concluding trade agreements with widespread support and a high degree of legitimacy. One of the lessons of the debates over the recent EU referendum is that the UK public have felt excluded from those making political decisions on issues that affect their day-to-day lives - hence the resonance of the message that Brexit means "taking back control". The exclusion of Parliamentarians from the process of negotiating trade deals that can have a big impact on people's lives risks further exacerbating these concerns if future trade deals impact negatively on some sections of society.

It is vital that Parliament is involved at the outset of negotiations through the setting of negotiating mandates and objectives; is involved during negotiations through regular updates and engagement with government ministers and negotiators; and has a final say through a "yes/no" vote at the culmination of negotiations.

The current system falls short on all three of these areas. This leads to a perverse situation where specific concerns over elements of an agreement can only be dealt with through seeking to use CRAG to hold-up the agreement in its entirety at the very end of the process. As Lord Stevenson of Balmacara stated during debate on the UK-Morocco agreement, Parliament is "constitutionally unable to do anything, short of the nuclear option of voting down the treaty as a whole"⁶.

⁴ [House of Lords Hansard, 9th March 2020](#)

⁵ [House of Lords Hansard, 1st May 2019](#)

⁶ [House of Lords Hansard, 9 March 2020](#)

However, all other less prominent trade deals have been ratified over the last few years without debate. It has been argued that these were largely continuity deals, and therefore involved few changes that require scrutiny. This is of course a circular argument, as only with scrutiny could it be confirmed that there were indeed only few or minor changes. Indeed, it is interesting to note that the House of Lords did raise concerns with some of the continuity deals. For example, in its report on the deal with the Faroe Islands, the House of Lords European Union Committee noted that the deal potentially altered the important links between fishing and trade between the UK and the Faroe Islands¹⁰. Nevertheless, this point was apparently never noted or debated by MPs in the House of Commons, despite its potential importance for the fishing industry in particular and those MPs representing northern and Scottish fishing constituencies.

The UK government has recently committed to providing significantly longer periods of scrutiny for Parliament than is provided for in law. In a letter to the Chair of the International Trade Select Committee on 6th July 2021, the Secretary of State for International Trade stated, in reference to the forthcoming Australia/UK FTA, that she anticipated “a period of at least three months between the publication of the signed FTA and it being laid in Parliament for the purposes of CRAg.”¹¹ This is a welcome commitment, although it is not binding, does not make any commitment with regard to other future FTAs, and does not require a debate or vote in the House of Commons prior to ratification. The NFU remains of the view that the statutory 21 sitting day period is insufficient for proper scrutiny of trade deals. Given the suggestion that the government believes 3 months a more reasonable timeframe, we believe the law should be amended to put this on a statutory footing.

5. The need for proper Parliamentary debate

The NFU has looked at the trade agreements signed between the UK and other countries or trade blocs between January 2019 and March 2021 to assess how our trade scrutiny arrangements have operated in practice (there have been 4 additional trade agreements signed since March, and one Agreement in Principle, with Australia). There were 33 trade deals signed (Treaties on Trade, Free Trade and Partnership Agreements) between the UK and other countries/trading blocs over that time.

Out of these only one has been considered and reported by a House of Commons Committee, the UK-Japan Agreement, which was also subsequently debated by the House. It is worth noting that this was considered distinct from most of the other treaties examined as it included novel elements that distinguish it as a “new” trade deal, rather than a “roll-over” deal (see section 10 below on roll-over deals).

In the House of Lords, all 33 treaties have been considered and reported for information by a committee. fourteen of which were drawn to the special attention of the House. Of these, four were not provided time for a Parliamentary debate, involving the agreements with Korea, Canada, Singapore, and Israel. Ten treaties were debated, but six of these took place after the 21 sitting day period had expired.

¹⁰ [European Union Committee, Treaties considered on 26 February 2019](#)

¹¹ [Letter to Chair of the ITC, 6th July 2021](#)

Only four agreements were debated in the Lords before the treaties were ratified: those with Japan, Faroe Islands, Eastern and Southern African States, and Chile, the latter three all being discussed in a single debate by way of a motion tabled to extend the scrutiny period. In practice, this means that of the 33 trade deals we looked at, only the Japan/UK trade deal was provided time by government for debate within the scrutiny period under the normal procedures.

Treaties considered by House of Lords, Jan 2019- March 2021.

Treaties: Jan 2019 - March 2020	Drawn to the special attention of the House	House of Lords debate on a treaty <u>after</u> 21 sitting days	House of Lords debate on a treaty <u>within</u> 21 sitting days	House of Lords Committee Motion to take note of the treaty not observed
33	14	6	4	4

These figures demonstrate two things. Firstly, the House of Commons has taken an extremely light touch approach to scrutinising trade deals. Secondly, while the House of Lords has taken a more rigorous and systematic approach, including the establishment of the International Agreements Committee, the government has often ignored its recommendations to provide the opportunity to debate the details of trade deals further following the identification of important matters meriting further discussion.

There is a risk that poorly scrutinised trade deals will lead to a loss of confidence in government trade policy. Trade deals can improve the welfare of society, but if poorly constructed they can also damage some sectors of society and the economy while failing to secure sufficient benefits to offset those losses. If such impacts become apparent in the years ahead, public support for free trade may suffer, which will be exacerbated if it is accompanied by a sense that democratic oversight of the process has been insufficient. The government should guard against this by providing a statutory basis for proper Parliamentary scrutiny of all negotiated trade deals, guaranteeing time for debate where recommended by Parliamentary committees, in both Houses.

6. Should Parliament be allowed to vote on the passing of treaties?

Currently MPs do not have the opportunity to vote for or against trade deals under the current scrutiny arrangements. While CRAG does provide a mechanism for the House of Commons to delay ratification of a trade deal, it is archaic and cumbersome. The NFU strongly believes that Parliament should be required to give its assent to the ratification of any trade agreement. Some have argued that such a process fetters the discretion of negotiators. However, such an approach is more likely to strengthen UK negotiators' hands, allowing them to credibly set out what will and will not be acceptable in terms of the concessions they offer and secure during the negotiations. This would also be reinforced by involving Parliament in agreeing

the mandate before negotiations are commenced and involving Parliament more actively throughout the process.

7. Should non-parliamentary stakeholders be included more?

The NFU agrees with other trade bodies that there is currently a lack of democracy, transparency, and inclusiveness of stakeholders. This can be shown by the fact that out of the thirty-three trade deals mentioned previously, only Japan had a public consultation, although we accept that these deals were primarily continuity deals where speed of conclusion was much more of a consideration than is the case with conventional trade deals.

Stakeholders should be actively consulted and kept abreast of developments prior to the commencement of, and throughout, any negotiations. The government has established a number of forums for stakeholder engagement, including Trade Advisory Groups. The NFU welcomes these important bodies, but is yet to be convinced that they achieve the degree of engagement and co-operation between government and stakeholders that is required, and that is often the norm in other countries around the world. The recent Australia/UK Agreement in Principle provides a case-in-point, where the details of the significant tariff concessions conceded by the UK government had not been properly shared, tested or interrogated for their impact by affected domestic stakeholders before they were announced as part of a largely “done deal”. Indeed, the details of these concessions were first encountered by UK organisations such as the NFU when they were published by the Australian government.

The International Agreement Committee recommended that the government should communicate pro-actively with the Committee and other interested parties on issues that unexpectedly arise in relation to agreements.’ For example, when agreeing the current UK-Canada FTA, Canada had a public consultation, but the UK did not. The NFU agrees with the Food and Drink Federation (FDF) that there is perceived lack of transparency with UK businesses by the UK government, compared to the Canadian government who have been more open with businesses about the risks¹².

8. What is the Role of The Trade and Agricultural Commission?

The NFU welcomed the creation of the Trade and Agricultural Commission (TAC) to scrutinise trade deals, and to provide Parliament with an assessment of how those deals would impact our farming sector in relation to certain production standards. The TAC should not hamper the ability of the government to negotiate the terms of those trade deals but will hopefully support MPs with useful information in scrutinising them and in making sure they work for their constituents. The TAC is not a parliamentary body, and the work can only supplement parliamentary scrutiny rather than replace it. We believe the work of the TAC would be significantly strengthened if the statutory measures to improve Parliamentary scrutiny as set out above were introduced - namely explicit Parliamentary agreement for the negotiating mandate of any trade deals prior to commencement of negotiations, regular and detailed engagement between Parliament and negotiators throughout the talks, and a final “yes/no” vote at the culmination of negotiations.

In March 2021, the initial TAC submitted a report¹³ to government which contained twenty-two recommendations on how to manage a liberalising trade policy that maintains high food

¹² [International Agreements Committee, First Report](#)

and farming standards and supports UK agricultural and food businesses. It is concerning that we are yet to see a response from the government on which recommendations they are going to take on board, and how they apply to the current ongoing FTA negotiations.

9. What role is there for the devolved governments and legislatures?

The NFU would stress the importance of maintaining good lines of communication between the UK and the devolved governments with respect to UK negotiations, not least because many of the obligations that a concluded trade deal will give rise to will need to be delivered, implemented and overseen at a devolved level. This is particularly true in relation to agricultural and environmental matters. The UK economy is not of course homogenous. For example, the Welsh economy differs from the wider UK economy in that trade with the EU accounts for 61% of its exports, compared to 43% of the UK's exports in 2019¹⁴. Ensuring that devolved interests inform the UK negotiating position should help identify, avert, and minimise negative impacts that could stem from proposed trade deals as regards their impact on regions of the UK.

Whilst the UK government is responsible for international relations and treaty making, the devolved administrations (DAs) and legislatures are likely to have at least some responsibility for the application, administration, scrutiny, and oversight of the obligations that trade agreements give rise to. It is NFU Cymru's view that the Welsh Government and the Senedd ought to have an appropriate degree of involvement by being sighted of relevant documents ahead of such agreements being entered into, as well as the development and approval of implementing legislation which underpins concluded trade agreements. Trade deals "must be fully transparent, subject to proper scrutiny, and respect the devolution settlements"¹⁵. NFU Cymru also advocates a role for Welsh Government and the National Assembly for Wales in developing the UK's negotiating mandate, and the scrutiny of trade negotiations. By extension, this approach should be reflected across the constituent parts of the UK.

CRAG does not state how the devolved administrations should be consulted on agreements. Currently the Exploratory Memorandum (EM) which accompanies treaties is used by the government to set out what engagement has taken place. For instance, the EM of the UK-Singapore FTA 2020 mentions regular engagement between Ministers and officials with their counterparts in the DAs, sharing progress and inviting them to highlight issues of importance or concern¹⁶. However, it doesn't state what concerns the DAs may have had and how they had been addressed, a shortcoming raised by the International Agreement Committee many times, such as in agreements with Canada, Singapore, Albania, and North Macedonia¹⁷.

10. Are Roll-Over Agreements being scrutinised by Parliament?

The United Kingdom was part of around 40 free trade agreements while a member of the EU, covering more than 70 countries. On the 1st January 2021, the UK had successfully concluded and signed agreements with 48 countries through "roll-over" agreements, accounting for £110 billion of UK trade in 2018. As set out above, most of these treaties received little scrutiny in Parliament, and almost none in the House of Commons.

¹³ [Trade and Agriculture Commission, Final Report, March 2021](#)

¹⁴ [House of Commons Briefing Paper 7851](#)

¹⁵ [Vision for the future of farming - NFU Cymru \(nfu-cymru.org.uk\)](#)

¹⁶ [UK/Singapore: Free Trade Agreement \[CS Singapore No.1/2020\] - GOV.UK \(www.gov.uk\)](#)

¹⁷ [House of Lords - First Report - International Agreements Committee \(parliament.uk\)](#)

The government has argued it has a “mandate of continuity” with regard to these agreements, which allows it to replicate as far as possible the pre-existing trade agreements. Draft texts of rollover agreements are not currently shared with DAs prior to signature, something the House of Lords EU Select Committee found “puzzling”, for example with the Faroe Islands agreement, that concerns the Scottish Government’s fishing interests¹⁸.

There have also been concerns raised that these roll-over treaties are not quite the “cut and paste” exercises some have made out. For instance, during the debate on the UK/Swiss agreement, Lord Whitty highlighted a number of discrepancies with the pre-existing EU/Swiss arrangements.¹⁹ Despite these concerns, roll-over agreements have been ratified in significant numbers over recent years since the EU referendum in 2016 with very limited Parliamentary scrutiny. This must change as new trade agreements are signed in the months ahead.

We are now on the verge of securing new trade deals with a large number of significant trading nations, including Australia, New Zealand, USA, India, Canada and Mexico, as well as acceding to the 11-member trans-Pacific Partnership regional trade agreement. The potential impact of these deals is enormous, and it is vital that the UK government takes note of the lessons of the past - that the UK public and UK businesses do not like decisions that affect their lives and their livelihoods being taken without the close and direct involvement and oversight of the UK Parliament.

August 2021

¹⁸ [House of Lords Hansard, 13 March 2019](#)

¹⁹ [House of Lords Hansard, 1st May 2019](#)