

## **Written evidence from The Trade and Animal Welfare Coalition (SIT 16)**

### **Public Administration and Constitutional Affairs Committee**

### **The Scrutiny of International Treaties and other international agreements in the 21st century inquiry**

#### **Introduction**

TAWC welcomes the opportunity to set out the scrutiny arrangements of international treaties and agreements with the implications for agriculture and animal welfare, particularly as the UK Government has negotiated its first Free Trade Agreement (FTA) with Australia setting the outline for future FTAs. The UK has also negotiated 32 roll over FTAs with 63 countries that it inherited as a member of the EU, and, in addition to Australia, it has started to negotiate 6 new FTAs (with Canada, countries of the CPTPP, India, Mexico, New Zealand, and the USA).

#### **1. Role and purpose of international treaties/agreements in the 21st century**

International Treaties can directly affect the public. The UK now has a seat as an independent nation at the WTO and the government has already been negotiating trade agreements with other major economies that will affect jobs, services, and the price and availability of goods in shops. These agreements can impact animals, the environment and people's livelihood. Apart from trade-related agreements, the UK also regained its independent voice on other international agreements such as CITES and the World Organisation for International Animal Health Organisation (OIE) following the EU exit on 31 December 2020.

The importance of promoting high animal welfare standards and addressing environmental issues, such as climate change but also biodiversity loss has been underlined by the UK government. It is also reflected in the Government's vision for the UK to become a global "Force for Good", a leader in the promotion of such high standards as the nation moves forward post EU membership.

Encouraged by public opinion, the Government has reiterated that the UK trade policy should prevent any degradation of animal welfare standards and, in fact, seek to lift animal welfare alongside sustainability and the tackling of climate change. This means that the UK must address the impact of international treaties and agreements on animal welfare, notably the negative impact of unconditional liberalisation of the trade in animal products. Such an unconditional liberalisation is likely to lead to the fuelling of unsustainable practices abroad, as well as to a standards race to the bottom.

No state can act in isolation and nations are becoming more reliant on each other for cohesive development of environmental and sustainability policies and practices meaning the importance and use of international agreements in framing policy and national commitments have increased. Now that the UK is separate from the EU, it will need to choose countries with which to align and agree positions that maintain and improve standards relating to animal welfare and the sustainability in trade. This should come from the formation and

agreement of UK trade policy and will be vitally important in meeting the objectives set by an elected Government on behalf of its citizens.

## **2. Constitutional relationships**

- **Where should the balance lie between Parliament and Government in developing, agreeing and implementing international treaties?**
- **To what extent is there a tension between the sovereignty of Parliament and the ability of the Government to sign treaties that require or constrain future legislative changes, and what can be done to resolve any such tension?**
- **What role should devolved governments and legislatures, Crown Dependencies and Overseas Territories have in relation to international treaties and arrangements**

The UK Government defines UK trade policy and the Department for International Trade (DiT) is responsible for negotiating the trade agreements. These agreements are then agreed by the UK Government. This places a huge responsibility and significant power into one department (DiT) while these agreements have an impact on many other high priority policy areas. One could argue that it would be more effective to involve other significantly impacted departments in the negotiations, such as DEFRA.

Once the Government has approved the agreement, it is sent to Parliament, which can have a debate on the text. Yet, the Parliament has no right to veto the future agreement. This procedure means that no space is left for debates around the far-reaching implications such deals can have. In many other countries, Free Trade Agreements (FTAs) are both debated and then voted upon, which helps increase the public acceptance of such texts. This is the case in the US and also in the EU, where at least the consent of the European Parliament is required.

A role should be granted to Parliament before negotiations, so that it enables MPs to state their position and provide some level of safeguard on sensitive areas at those early stages. For example, the Common's approval was sought on the negotiating mandate for the Maastricht Treaty before going into negotiations and in the U.S, Congress has legal rights to see objectives prior to negotiations and votes on those objectives which is also the case for the European Parliament. More broadly, ahead of any negotiations, the Government should involve the Parliament in setting the agenda and agreeing its general trade policy, clearly outlining the UK's objectives and priorities which will be at the forefront of negotiations and any international agreements. In this process, there should also be consultations with key stakeholders and with the general public.

In the U.S. congress they also get a vote post negotiation. Again enabling this within the UK system would ensure transparency and a role for Parliament along the entire negotiations. Importantly, it will be possible to foresee whether signing an international agreement will imply a legislative change, and to assess whether this is the path Parliament wants to take. The current lack of significant role of Parliament in the ratification of trade deals conflicts with the position that parliament scrutinises and decides the level of animal welfare standards they wish to impose on their country, as it does not give them the same opportunity to ensure those standards are reflected within trade agreements.

The devolved Governments set their own animal welfare standards and this can create a significant tension as they have no formal influence over the negotiation of trade deals. The internal trade in agri-food products is not devolved, but subject to the Internal Market Act 2020 meaning that governments in Scotland and Wales have very limited powers to stop the internal trade in a product from another GB country, or even to discriminate against the import of products by labelling these. The options for the Welsh or Scottish Governments to not allow the sale of imported products - the volume of which can significantly increase once an FTA is concluded- or even provide consumer information on these products, are almost non-existent.

To provide a concrete example, the UK has offered Australia a trade deal granting significant trade preferences to Australian beef and sheep meat, and the devolved Parliaments have not had any sight of negotiation texts. They were therefore unable to assess whether such an offer could have a significant impact on their market, and possibly undercut Welsh or Scottish producers who produce beef to standards agreed by their Governments, or on their consumers. If Welsh and Scottish governments were to progress on animal welfare, and impose such standards to imports, they would face the challenge that such lower welfare imports could still enter through England. It is thus important for the Government to involve the devolved administrations from the start and allow them to debate the outline objectives at the start of each negotiation and put forward any concerns formally as well as enabling a formal consideration of the results of negotiations so that their decisions on devolved matters relating to impacted sectors can be informed. Additionally their views can be taken into account by Parliament if a vote was enabled on the final agreement.

#### **Effectiveness of current scrutiny mechanisms**

- **Does Part 2 of the Constitutional Reform and Governance Act 2010 (CRAG) enable effective parliamentary scrutiny of international treaties and other agreements?**
- **How effectively are constitutional conventions, such as remaining aspects of the Ponsonby rule on making time for treaty debates, and informing Parliament of non-treaty international agreements, operating alongside CRAG? Do these conventions need to be formalised?**
- **Should scrutiny of treaty making be more integrated with scrutiny of corresponding implementing legislation?**
- **How effectively is the implementation of international treaties, including the decisions of new decision-making bodies, being scrutinised?**

The Constitutional Reform and Governance Act 2010 (CRAG)<sup>1</sup> lays down the process for Parliament when a FTA has been agreed but crucially does not give it a ratification veto. This means Parliament has no oversight of the negotiations or a real role in ratifying any FTAs and the Government can publish its negotiating mandate with no specificity on crucial issues like tariff reductions. The Trade Act 2021<sup>2</sup> sets out that the Government will have to deliver a report as to how the new FTA does not undermine animal welfare standards before it is debated in Parliament, but there is no obligation for such a debate. In the USA and the EU, there is a ratification process involving at least the European Parliament, and in case the treaty covers competencies shared between the EU and the Member States, relevant national parliaments as well. The EU's ratification process of FTAs allows for more scrutiny and

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<sup>1</sup> [Constitutional Reform and Governance Act 2010](#)

<sup>2</sup> [Trade Act 2021](#)

more transparency than is the case now the UK is no longer a member. As we have seen via the Australia deal, the UK does not have to seek any ratification of an FTA with Parliament.

Parliament's role is defined by the Ponsonby rule enshrined in the CRAG which gives Parliament a weak form of sign off at the end of the process. This does not allow for effective input or to use the broad skills in both the House of Commons and House of Lords to get the best outcomes. Parliamentary select committees including the Lords Constitution Committee, the Joint Committee on Human Rights, and the Commons International Trade Committee, have recently opined on how Parliament should carry out the crucial function of scrutiny, and all agree that major changes are needed to improve Parliament's 'inadequate' system of treaty scrutiny. Additionally It has been observed that the lack of formal parliamentary involvement in treaty-making distinguishes the British Parliament from most other national legislatures which is disappointing considering the thrust of Brexit was around taking back control and ensuring a more transparent form of democracy and clarity over the UK's role on the international stage.

The UK needs to ensure a formal mechanism that performs thorough Parliamentary scrutiny on international treaties whether it is within the existing Select Committees or a new body. It is also important that this enables engagement with industry, NGOs and devolved nations. Alongside, this and in relation to agreements which impact agriculture and animal welfare, the Government has committed to the Trade & Agricultural Commission being a permanent entity and it is vital that this is in place and empowered to provide a level of expert scrutiny into any agreements before sign off, however FTAs have been agreed without the TAC operating.

The key benefit of a form of scrutiny involving Parliament means that wider policy work can be interwoven into agreements that are then able to remain relevant long-term and not act as a barrier to progress. It will also improve the level of public support for trade agreements.

### **Role of the House of Commons**

- **What role should Parliament, and the House of Commons in particular, have at different stages of the treaty making and implementation process?**
- **What role should Parliament, and the House of Commons in particular, have in relation to different types of treaties, and on what basis?**
- **Given that international agreements affect people's lives, how can the House of Commons increase the democratic accountability of international agreements?**

As aforementioned, the House of Commons should see the outline objectives ahead of the start of the negotiation process and vote on the general objectives. Ahead of this the Government should ensure draft mandates for negotiations are made public within Parliament and are discussed and agreed within the Parliament entities like Select Committees which hold the right framework for scrutiny allowing for feedback from stakeholders. This feedback process via consultation and inquiries increases the democratic accountability of international agreements. Understanding some parts will need to be kept confidential, during negotiations, the Government should provide general updates to the UK Parliament on a regular basis. They should organise update sessions with civil society too. Once the agreement is concluded, the Commons should then have a debate and a vote on the outcomes so that the ratification process includes parliamentary consent. Currently the Lords Trade Committee can request a vote on a draft agreement but this seems incongruous with the fact the Commons committee cannot do this when it directly represents the electorate. The House of Commons therefore needs to have the leading role in scrutiny and agreeing the outline of

any agreement before giving consent in any international agreement. That will improve the democratic accountability.

### **Information and resourcing requirements**

- **How, and at what stages of the treaty making process, should the Government share information with Parliament?**
- **Should Parliament have access to confidential information and, if so, what mechanisms might assure the continued confidentiality of that information?**

The Commons and Lords should be given access to the proposals within an FTA at the start of the negotiation process, as is the case in the EU and US, and certainly well in advance of ratification. That information should also be shared with devolved Parliaments at the same time.

Whilst the International Trade Select Committee has been told it will be given the final Australia/UK FTA, this is past the key stages of negotiation and it is not a formal process. It also misses the expertise of other members on the EFRA Select Committee, who can identify the impact on agricultural and environmental areas as well as aligning it to domestic policy development. Both Select Committees should be given information during the negotiation process and consideration should be given to joint enquiries by the relevant Select Committees when for example focusing on the agri-food and environmental elements of agreements.

Under the Processes for making free trade agreements after the United Kingdom has left the European Union document<sup>3</sup> published in February 2019 by the Secretary of State for Trade, it is stated that “in order to ensure effective scrutiny and two-way dialogue, we propose that the committee(s) could have access to sensitive information that is not suitable for wider publication and could receive private briefings from negotiating teams.” It goes on to outline that sessions could be a mixture of public and private evidence from Ministers and negotiators on the progress of negotiations. It is standard practice that Parliament is privy to confidential information to help develop understanding around measures which involve commercial elements or sensitive negotiations, and Select Committee members should commit to maintaining confidentiality. Codes of Conduct can be in place to control member’s actions in relation to confidential information.

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