

Written evidence from RSPCA (SIT 17)

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

Introduction

1. The RSPCA welcomes the opportunity to set out the scrutiny arrangements and implications for animal welfare as the UK Government negotiates its first Free Trade Agreements (FTAs) as an independent trading nation.
2. The RSPCA is the oldest and largest animal welfare organisation in the world and has been working on trade issues for 25 years, attending World Trade Organisation (WTO) Ministerial meetings and advising the European Commission on six FTAs that the EU has negotiated or is negotiating that include animal welfare elements (Chile, South Korea, Canada, Japan, Mercosur and Mexico). The organisation sets the standards for the UK's only higher-welfare farm assurance and food labelling scheme, RSPCA Assured, which has over 3,000 members. We support FTAs with other countries that maintain the principle of not lowering our animal welfare standards - ensuring we do not import products produced to standards that would be prohibited in the UK.

Role and purpose of international treaties/agreements: what roles and functions do they perform in the 21st century

3. With increasing globalisation and a requirement to tackle global issues impacting on animal welfare such as climate change, trade in endangered species or FTAs international treaties and agreements are becoming increasingly important to the future of the UK's animal welfare standards. Unconditional liberalisation of trade in products particularly agri-food in FTAs could result in a standards race to the bottom and the offshoring of the UK's farm animal welfare standards built up over the past five decades.
4. As a member of the EU, which had competence in trade and environmental issues, the EU-28 bloc worked as one on agreeing positions at UN international agreement meetings such as CITES, which manages the trade in endangered species, and voting as a bloc on those positions. This also occurred in other international fora such as the International Animal Health Organisation (OIE) which sets the global guidelines on animal welfare and on trade issues such as in the WTO or agreeing FTAs with other countries.
5. With the UK's exit from the EU on 31 December 2020, the UK regained its independent voice at these international agreements. For instance the UK regained its

WTO seat as an independent nation on February 3 2020 and can negotiate and agree FTAs. Since then it has negotiated 32 roll over FTAs with 63 countries that it inherited as a member of the EU and started seven different new FTA negotiations with other countries (Australia, Canada, CPTPP, India, Mexico, New Zealand, and USA).

6. The UK will have to decide which countries it wishes to ally with in the WTO and other international fora but its lack of a trade policy means at present this is too early to assess.

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**
7. Animal welfare, the issue that the RSPCA concentrates on, is by and large devolved and so the responsibility of the devolved Governments whereas trade policy is reserved and the responsibility of the UK Government. Parliaments scrutinise and decide the level of animal welfare standard they wish to impose on their country but it is the UK Government alone that decides the trade policy. Indeed as seen by the recent confusion over the UK Government position over the Australian-UK FTA in principle deal, and specifically the offer of a zero tariff deal over 15 years, it is the Department for International Trade (DiT) that is responsible for negotiating the principles behind a deal before it comes before Cabinet and is agreed by the UK Government. As there are no specific strategic goals established at a UK Government level before negotiations open, this places a lot of responsibility and power into one department, which has consequences over the power given to devolved Governments to set their animal welfare standards. This includes what products are allowed to enter the UK market even though, particularly for agri-food trade, this could have potentially catastrophic consequences for animal welfare standards that exist or could be commercially viable. This creates a tension that has yet to be resolved.
 8. One example highlights this concentration of power. If the UK has offered Australia 0 tariffs phased in over 15 years on exported beef products (although this is unknown as negotiation texts are not shared until many months after the FTA has been signed) these imports which may not meet the UK's beef standards, could undercut Welsh or Scottish producers who have to farm beef to standards agreed in their Parliaments. Australia's Trade Commission will be producing a report on the trade deal which will

go to Parliamentarians for inspection and a vote and the UK should follow the lead of Australia.

9. Finally the internal trade in agri-food products is not devolved, but subject to the Internal Market Act 2020¹. Under the 2020 Act, 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. Under the non-discrimination principle (Section 5), any goods produced in one part of the UK must be able to ‘travel’ to another part of the UK and cannot be placed at a commercial disadvantage (Section 8). The only defence open to Wales or Scotland would be to argue that the product in question is not ‘like’ other products e.g. beef from Australia is the same as beef produced in Wales. This would be a high threshold to cross, because the Scottish FSA and the Welsh authorities would have to prove that the English FSA was wrong if it had permitted the sale of the product in England, on the grounds that it was not safe or a threat to animal health.
10. In essence, this means the options for the Welsh or Scottish Governments to not allow the sale of imported products derived from a FTA negotiated at a central Government level, or even provide consumer information on these, are almost non-existent. A Government in Wales or Scotland which did not permit the production or marketing of food such as pigmeat from sow stalls, illegal in those countries since 1999, could still be mandated to allow those products for sale without mandatory labelling if they are imported as a result of a negotiated FTA.

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?**
11. At present, Parliament has no oversight of the negotiations or a real role in ratifying any FTAs. The Constitutional Reform and Governance Act 2010² lays down the process for Parliament when a FTA has been agreed but crucially does not give it a ratification veto. This lack of transparency and oversight has been criticised by

¹ [United Kingdom Internal Market Act 2020](#)

² [Constitutional Reform and Governance Act 2010](#)

various Select Committees³. The Government publishes its negotiating mandate, but this can be generic and not specific on crucial issues such as tariff reductions. The UK Government does not update Parliament on progress on the negotiations and does not allow Parliament to formally ratify the FTA. This is in contrast to jurisdictions such as the USA and the EU where there is a ratification process for the national and European Parliaments.

12. Although the UK Government did change the process under the Trade Act 2021⁴ so that they will have to deliver a report as to how the new FTA does not undermine animal welfare standards before it is debated in Parliament, there is no obligation for a debate in Parliament within the 2021 legislation. Even if a debate occurs and the House of Commons votes against the FTA, this only delays the ratification of the FTA by 21 days as the FTA can be presented again by the Government to Parliament.
13. The Constitutional Reform and Governance Act 2010 was implemented at a time when the UK was a member of the EU. Trade was a reserved policy to the European Commission. However the EU's ratification of a FTA permitted more scrutiny and was more transparent than is the case now the UK is no longer a member. The European Commission published its mandate before a FTA was started. It then holds regular update meetings with business and civil society on progress. Finally the FTA is presented to the European Parliament and each of the Member States for ratification. This ratification is not a given procedure as shown by the delayed ratification of the CETA (Canada-EU) FTA by the devolved Parliament of Wallonia, the rejection of TTIP (EU-US FTA) and the possible rejection of the EU-Mercosur FTA.
14. It is important that there is a democratic process for approving trade deals. This would ensure there was a Parliamentary vote before negotiations on the mandate, report back on how the new deal complies with animal welfare standards and enable a final vote for Parliament before the FTA is ratified.
15. The UK Government has yet to respond to the Trade and Agriculture Commission's 22 recommendations on future trade policy on agri-food or set up the permanent Commission which will have an important role in drawing up its own independent report on the implications of any trade deal on the UK's farm animal welfare standards.
16. The UK Government has yet to set up the permanent statutory Trade and Agriculture Commission and in September announced in a letter to Efra that they would not be in a position to set this up before the Australia FTA can be assessed. DiT now plan to set up an interim body and announce this by the beginning of October. This will be a non

³ House of Commons International Trade Committee, [UK Trade Policy Transparency and Scrutiny](#), Sixth report of session 2017-2019, HC1043, December 2018

⁴ [Trade Act 2021](#)

statutory body and it remains unclear if this body in scrutinising the terms of the Australia FTA for Parliament, satisfies the legal requirements of the Articles 8 and 9 of the Trade Act 2021, and Article 42 of the Agriculture Act 2020 namely that the Secretary of State for International Trade must lay an independent report from the TAC before Parliament on how the measures in a FTA are consistent with the minimum legal animal welfare requirements in the UK. The TAC must be a statutory body (Article 10 Trade Act 2021).

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?**

17. Trade policy impacts citizens and it is therefore important to create mechanisms that will allow for effective involvement of the devolved and UK Parliaments throughout the trade negotiations and during implementation. At the moment, the most advanced trade policy in that field is the EU's. The UK should ensure draft mandates for negotiations are made public and are discussed and agreed in Parliament, allowing for feedback from stakeholders. During negotiations, it should apply full transparency and update the UK Parliament on a regular basis, publishing proposals they make to partners. Once the agreement is concluded, the ratification process should include parliamentary consent. This approach will ensure the UK trade policy is fair and inclusive, reflecting the wishes of its citizens. It will thus be better understood and supported more fully.

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?**

18. The UK Government has given an unofficial role to the two committees in each House: the International Trade Select Committee in the House of Commons and the International Agreements Committee in the House of Lords. However this role or process is not laid down in legislation, so it is unclear at what stage each Committee will be given the first copy of the final Australia-UK FTA for any report. It is also unclear what powers each committee has - it appears that only the House of Lords Committee can ask for a vote on their report and so on the FTA whereas the House of Commons Committee can only ask for a debate on their report rather than a vote on the floor of the House. This only exacerbates the confusion over process and parliamentary oversight. Clarity is required. The House of Lords is conducting a

report into the UK-Australia FTA and the CPTPP at present but this is without any text or even framework for the deal⁵. Indeed the Chair has had to write to Lord Grimstone at DiT to get clarity on what the Government's strategy and red lines are on the deal⁶. This is in stark contrast to the EU and USA procedures whereby members of Congress and appointed representatives of the European Parliament and national governments are permitted to read texts of the FTA during the negotiation process and before they are published for ratification. The UK Government should share information with appointed representatives of the UK and devolved Parliaments during and at the end of the negotiations. The UK Government has already shared negotiated texts with members of the Board of Trade under NDAs and such a system seems sensible for representatives from Parliament.

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⁵ <https://committees.parliament.uk/work/458/australia-trade-negotiations/>

⁶ <https://committees.parliament.uk/publications/6272/documents/69170/default/>