

## **Trade Justice Coalition Scotland**

### **UK Trade Bill 2020 Legislative Consent Memorandum**

The Trade Justice Scotland Coalition is an alliance of 22 Scottish organisations – including trade unions, NGOs and local activist groups representing hundreds of thousands of Scottish citizens. The coalition first came together in 2015, as part of the Europe-wide movement that opposed the EU-US trade deal TTIP, and continues now to focus on post-Brexit trade deals and in particular ensuring that there is a transparent and democratic process for scrutinising and approving those trade deals.

We have two main areas of concern that we would like to highlight to the committee:

1. The lack of transparency and scrutiny of trade deals
2. The interaction between the provisions of the Trade Bill and those contained in the UK Government White Paper proposals for the UK Internal Market.

#### **Scrutiny and transparency of trade deals;**

In our evidence to this committee in February 2018, we were of the firm view that members of the UK parliaments and the legislatures of the devolved nations should have a formal role in the scrutiny and passing of international trade deals. Our view on this remains the same.

Modern international trade deals have impacts beyond tariffs and quotas, with their effects extending into the realm of public policy through regulatory harmonisation and coherence, through mutual recognition of differing standards, through the increased use of investor state dispute settlement mechanisms to challenge public policy making and the resulting regulatory ‘chill’, and through their impact on public services, the environment, public health, workers’ rights, procurement and intellectual property. The impacts of trade deals are felt across society and in all parts of the United Kingdom.

These areas of public policy would normally be expected to be subject to parliamentary scrutiny and debate, in Westminster in the case of reserved policy areas or in the Scottish parliament in the case of devolved policy areas. As such, it is critically important that both parliaments have a significant scrutiny role in the development of trade agreements.

The UK’s procedures for agreeing trade agreements have not been updated for decades and provide a far lower level of scrutiny than that in many major trading partners such as the EU or US. At present:

- Before negotiations, there is no role for Parliament in the decision on who to negotiate with nor on the objectives, priorities and red lines for a negotiation.
- During negotiations, there is no guaranteed Parliamentary scrutiny role.
- At the end of negotiations, Parliament is not guaranteed a debate or vote before a trade agreement is signed.
- There is no role for the devolved administrations in scrutiny of trade agreements, even though such agreements frequently affect devolved issues.

The role of parliamentarians is currently limited to ratification (by Westminster only). At this stage the UK has already made commitments in international law by signing the agreement. Ratification procedures are set out in the Constitutional Reform and Governance Act 2012 (CRAG). It is a negative procedure, meaning no debate or vote is required, and it can at best repeatedly delay ratification. These procedures are inadequate and also too late. For scrutiny to be meaningful and effective, it needs to be front-loaded.

The UK Government highlights that implementing legislation will be scrutinised separately. But many aspects of a trade deal will not need implementing legislation. Investor state dispute settlement (ISDS) is one example. Equally trade deals will have profound effects aside from legislative changes, which Parliaments should be able to consider.

In the evidence we submitted to the Finance and Constitution Committee's inquiry into the Trade Bill in February 2018, we highlighted the current democratic deficit and suggested that the previous Trade Bill needed to be amended to rectify that. Our recommendations for this new Trade Bill of 2020 remain the same and we have been calling for the bill to be amended to ensure the following:

Comprehensive, independently produced impact assessments that include environmental, human rights, gender, labour, social and economic impacts to be carried out and published. It is important that impact assessments are done for all parts of the UK and that MPs, MSPs and the public have access to them.

The UK government's negotiating objectives and mandate be published and receive parliamentary scrutiny in Westminster and by the Scottish parliament before negotiations begin.

Westminster and Holyrood be given the opportunity to agree the UK's priorities and 'red lines' for negotiations, and if the UK government wants to change this as negotiations progress then they must seek further consent.

- A joint ministerial committee on trade to be set up, and meet regularly, to strengthen Scottish ministers' oversight of UK trade policy.
- Consultation bodies outside parliament be set up, and include civil society representatives.
- During negotiations, texts should be made accessible to elected politicians of the UK parliament and the Scottish parliament (and the public where appropriate).
- Scrutiny of on-going trade agreements, and the final texts, to be allowed by committees in the UK parliament and the Scottish parliament.
- The final text of any trade deal must be subject to parliamentary debate and approval in Westminster and in Holyrood, using affirmative procedures in both cases.

The Trade Bill provides an opportunity to put in place a modern framework for scrutiny of trade negotiations and agreements. It appears to be the only opportunity which the UK or devolved parliaments will have to do this.

The Trade Bill focuses on the replacement of EU external trade deals, in order to provide continuity after Brexit, and the UK government has chosen not to include 'new' trade deals in the bill, although the formal scope of the bill includes all international trade agreements. This has been used as a rationale for why scrutiny questions are unimportant in the bill, because in effect continuity deals will replicate the current situation.

We reject this rationale for a number of reasons. Firstly, it is clear that the replacement deals themselves are not identical to the EU deals, they are replacing and the changes are not as simple as replacing EU with UK. In deals signed so far there have been changes including to tariff price mechanisms, tariff rate quotas, rules of origin, geographical indications, replacing or not replacing various joint committees and incorporating various protocols and joint declarations – or not doing so. A few specific examples are excluding provisions on social security for migrants with Israel, excluding provisions related to the Single Market with Andean countries and not including food safety and plant or animal health regulations (SPS) or other technical regulations (TBT) with Norway and Iceland because of their close alignment with EU regulations. There are reasons for all of these changes, but that does not mean it might not have been worthwhile to scrutinise them before the agreements were signed.

Secondly, if scrutiny of 'new' trade deals is not addressed in this bill, when is it going to be dealt with? When the previous Trade Bill was going through the UK parliament, the UK government gave assurances around a scrutiny regime for 'new' trade deals, but has not delivered any legislation on this, nor any plans for it.

Over a year ago, the government did publish a command paper on *Processes for making free trade agreements after the United Kingdom has left the European Union*. This makes certain proposals on scrutiny, some of which are welcome in themselves such as a commitment to publish negotiating objectives. However this is inadequate for three reasons:

- The proposals are voluntary. If the government considers these proposals are good practice, they should be put on a legislative basis
- They do not go far enough and leave a major democratic deficit:
  - MPs would not be able to vote on the objectives or have the power to guide a Government's negotiating strategy
  - MPs would not be guaranteed a vote or debate on the signed deal. The proposals allow a scrutiny committee(s) to recommend a debate on a final deal, but leave it to the discretion of the Government whether to actually hold one
  - Trade deals would continue to be negotiated in secret, even though trade deals are matters of public policy
  - MPs would have no right to see negotiating texts. Some material would be shared with a scrutiny committee(s) but limited to what the Government agrees to provide

- The role given to devolved administrations would amount to no more than regular discussions

It is not clear what the status of this command paper is with a new government and parliament. Proposals such as those to establish a scrutiny committee have not been implemented in the time since. In the meantime, negotiations for 'new' trade deals with the US, Japan, Australia and New Zealand are already underway. Negotiations with the US have been especially controversial, yet six rounds of preparatory talks and three rounds of formal negotiations have already taken place without any adequate process in place for scrutiny and accountability.

During the previous bill process, five parliamentary committees published reports criticising current scrutiny processes for trade agreements and other treaties: the [International Trade Committee](#), the [Constitution Committee](#), the [Scottish Affairs Committee](#), the [Lords EU Committee](#) and the [Joint Committee on Human Rights](#).

The Scottish Affairs Committee recommended that "The Scottish Government must have a meaningful role in future trade negotiations including in the setting of negotiating mandates and participation in the negotiations themselves."

In the legislative consent memorandum for the Trade Bill, the Scottish government points out that an amendment that covered scrutiny of trade deals by parliament and consultation with the Scottish government, was added into the previous Trade Bill, and suggests that the UK government should bring forward a similar or stronger amendment for this Trade Bill. The bill has now been passed by the House of Commons and has moved to the Lords for further scrutiny. All amendments on the proper scrutiny of trade deals by parliament and devolved administrations were voted down in the House of Commons.

*The Trade Bill is the only legislative process where a scrutiny framework for trade policy can be introduced, something that should be standard in a modern democracy.*

*In our evidence to this committee in February 2018 on the Trade Bill 2017, we suggested that the Scottish parliament withheld consent for the bill on the grounds of the lack of a process for transparency, scrutiny and accountability in relation to international trade deals. Since the same fundamental issues apply to the Trade Bill 2020, our recommendation is that the Scottish parliament withhold consent for this bill on those same grounds.*

The interaction between the provisions of the Trade Bill and those contained in the UK Government White Paper proposals for the UK Internal Market

The UK currently has high standards, particularly in the important areas of the environment, food, agriculture and public health - and in some policy areas Scotland and the other devolved nations have gone further still. It is crucial that this continues – with the aim being for standards with the highest possible effectiveness, stringency

and ambition – and for the devolved nations to continue to be able to go further, where they see fit, in order to protect the environment and the public. The UK internal market must not restrict this ability or in any way result in a race to the bottom.

As the UK negotiates trade agreements with other countries, there is an additional risk that the pressure to harmonise rules and regulations with the third party country could put a downward pressure on standards set by the UK and the devolved nations in the important areas listed above.

The proposal in the Internal Market bill to enshrine the principle of mutual recognition in law, coupled with this pressure to harmonise with a third party country in negotiating a trade deal, represents a very real threat to both the UK's current high standards and the ability of the devolved nations to set and keep their own standards – and to set them higher should they choose. Trade policy objectives must not be allowed to override objectives on the environment and public health.

A lack of scrutiny and accountability in setting trade policy, and negotiating and passing trade deals, as well as widespread public scepticism about trade deals such as the US-UK trade deal, mean that the current proposals for the UK internal market may not command the confidence of parliamentarians or the public. A more transparent, democratic and accountable system must be set up for negotiating and passing trade deals, that includes parliamentarians, the devolved nations and the public.<sup>i</sup>

---

<sup>i</sup> *Securing democracy in UK trade policy,*

[https://www.tjm.org.uk/documents/briefings/0870\\_TJM\\_SECURING\\_DEMOCRACY\\_2019\\_PR1.pdf](https://www.tjm.org.uk/documents/briefings/0870_TJM_SECURING_DEMOCRACY_2019_PR1.pdf)