

Top Lines

- Existing processes for parliamentary scrutiny of trade deals are highly inadequate.
- MPs have no guaranteed debate or vote on new deals, despite the impact they can have on food standards, animal welfare, the environment, digital rights and public health.
- There is cross party concern about post-Brexit trade with regimes that commit human rights abuses, including genocide, and the strategic challenge posed by China. Currently, MPs lack a means of scrutinising these trading relationships and protecting human rights.
- The UK lags far behind allies including the US, EU and Japan, which all provide guaranteed debates and votes on new trade agreements to their legislative representatives.

[Click here for the Marshalled List of amendments \[will appear when page is ready\]](#)

Background

This month, the UK adopted an independent trade policy for the first time in nearly 50 years. The Trade Bill puts in place provisions to give effect to this, including the establishment of a Trade Remedies Authority, and also provides for the 'rolling over' of some 40 trade agreements to which the UK was party through EU membership.

While the Bill does not explicitly set out a framework for the development and scrutiny of trade policy, it is the only piece of trade-relevant legislation proposed by the government. The bill was amended in the Lords to include provisions on Parliamentary scrutiny of new trade deals - further details below.

Parliamentary scrutiny of trade agreements

We encourage MPs to support the cross-party Lords amendment '[Parliamentary Approval of Trade Agreements](#)', which would give MPs a guaranteed debate and vote on all new deals.

The amendment is based on one tabled by Conservative MP Jonathan Djanogly in the Commons stages of the bill, which was supported by MPs from every party. It is supported by the National Farmers' Union, the RSPCA, Sustain Farming Alliance, Greener UK and many other organisations. The CBI, International Chambers of Commerce, Institute of Directors and consumer group Which? have all called for a reformed model of trade governance with thorough parliamentary scrutiny.¹

The amendment provides the following:

1. Before negotiations: a debate and vote for MPs on the government's negotiating objectives
2. During negotiations: additional scrutiny through a dedicated parliamentary committee
3. After negotiations: a vote in both Houses on a final deal, prior to ratification.
4. Mandatory sustainability impact assessments on the impact of the new trade deal on the environment, public health, human rights and global development.
5. Consultation with devolved authorities.

These five provisions offer a considerable improvement on the level of parliamentary scrutiny of trade deals in the UK, whose processes lag behind the US, EU and other countries. The current treaty

¹ [A Trade Model that Works for Everyone](#) - joint briefing, 2018

scrutiny system - as outlined in the Constitutional Reform and Governance (CRAG) Act - is inadequate, and has been criticised by five Parliamentary committees, including the Lords Constitution Committee and the Lords International Agreements Sub-Committee.²

This table compares UK scrutiny processes compared to those of key trading partners:

				
Before negotiations	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> MPs have legal right to see objectives <input checked="" type="checkbox"/> MPs votes on general objectives <input checked="" type="checkbox"/> Objectives published for public consultation 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Congress has legal right to see objectives <input checked="" type="checkbox"/> Congress votes on general objectives <input checked="" type="checkbox"/> Objectives published for public consultation 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> MEPs have legal right to see objectives <input checked="" type="checkbox"/> (Some) parliamentary votes on objectives <input checked="" type="checkbox"/> Objectives published for public consultation <input checked="" type="checkbox"/> Council votes on objectives 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Guaranteed debate in Diet <input checked="" type="checkbox"/> Diet votes on general objectives <input checked="" type="checkbox"/> Objectives published for public consultation
During negotiations	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> MPs have legal right to regular updates <input checked="" type="checkbox"/> Public have access to texts 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Congress has legal right to updates <input checked="" type="checkbox"/> Public have access to texts 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> MEPs have legal right to regular updates <input checked="" type="checkbox"/> Public have access to (some) texts 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Diet has legal right to regular updates <input checked="" type="checkbox"/> Public have access to texts
After negotiations	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Guaranteed debate in Parliament <input checked="" type="checkbox"/> Guaranteed vote in Parliament <input checked="" type="checkbox"/> Parliament can reject trade deal outright 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Guaranteed debate in Congress <input checked="" type="checkbox"/> Guaranteed vote in Congress <input checked="" type="checkbox"/> Congress can reject trade deal outright 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Guaranteed debate in Parliament <input checked="" type="checkbox"/> Guaranteed vote in Parliament <input checked="" type="checkbox"/> Parliament can reject trade deal outright 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Guaranteed debate in Diet <input checked="" type="checkbox"/> Guaranteed vote in Diet <input checked="" type="checkbox"/> Diet can reject trade deal outright

Modern trade agreements affect huge swathes of public policy, including food standards, animal welfare, consumer and workers' rights, environmental protection, health, public services, digital rights and international development. It is therefore critical that trade deals are developed with democratic support, and that MPs have the power to scrutinise and vote on trade agreements.

Human rights and genocide

We encourage MPs to support two amendments passed from the Lords, related to human rights and genocide: 'Free trade agreements: determination on compliance with international obligations and state actions', and 'Agreements with states accused of committing genocide'.

The UK has a unique opportunity to ensure that its independent trade policy is in line with other international obligations, including on genocide and human rights. The UK has a deep and integrated trade and investment relationship with China, and is signatory to a Bilateral Investment Agreement which protects Chinese investors in the UK, including some (such as Huawei and Bytedance) which are accused of complicity in the abuse of Uyghur Muslims in Xinjiang. The amendment on genocide offers a good first step for ensuring that future trade agreements are conditional on meeting minimum criteria for

² See respective reports from the [International Trade Committee](#), the [Constitution Committee](#), the [Scottish Affairs Committee](#), the [Lords EU Committee](#) and the [Joint Committee on Human Rights](#); and a recent letter from the [Lords International Agreements Sub-Committee](#)

human rights protection while also providing for UK courts to make a preliminary genocide determination, a mechanism long campaigned for by human rights groups.

The environment, food standards and animal welfare

We encourage MPs to support the Lords amendment ‘Standards affected by international trade agreements’, which establishes a code of practice designed to ensure that new trade deals do not undermine existing standards on environmental protection, food and animal welfare.

Trade deals can put pressure on food standards and lead to the import of low-standard food. The US administration has made clear that it wants the UK to lower its food and animal welfare standards to allow the export of products currently banned in the UK.

The government has responded to concerns about food standards by proposing a new Trade and Agriculture Commission (TAC) to monitor and assess food-related regulations arising from new trade agreements. While the TAC is welcome, significant improvements are needed to ensure that its scope is widened to include environmental issues, animal welfare and public health, and its membership must reflect this. The TAC must be given teeth to enforce its recommendations, and put on a statutory footing. Finally, the TAC - and indeed the reporting requirements on food regulations arising from the Agriculture Bill - must not be a replacement for thorough parliamentary scrutiny mechanisms.

While we cannot endorse all the trade-related recommendations in the recently published National Food Strategy (part one), we very much welcome the author's call for the government to subject prospective deals to independent scrutiny, with impact assessments, select committee reports and time allocated for parliamentary debate.³ Proper scrutiny will make for trade deals with better provisions on food import standards.

Digital rights and protection against online harms

We encourage MPs to support the Lords amendment ‘Protection of children online’.

This amendment would restrict the government's ability to negotiate terms in any new trade agreements which fail to protect children online to the same degree as those set out in UK domestic legislation and treaty obligations.

Digital trade rules make it harder for governments to regulate e-commerce in the public interest, and they are an increasingly common feature in trade policy. Indeed, the government has repeatedly said that it wants the UK to be a world-leader in digital trade. This amendment would ensure that UK domestic attitudes, legislation and guidance that protect children's safety online are a necessary requirement of any trade agreement and could not be ‘traded away’.

The NHS and public services

We encourage MPs to support the amendment ‘International trade agreements: health, care or publicly funded data processing services and IT systems in connection with the provision of health and care’

Trade deals have the potential to negatively impact on health services. While the Government has repeatedly pledged that the NHS is “not on the table” in trade negotiations, leaked documents detailing conversations between UK and US negotiators revealed that health services had been discussed,

³ See the [National Food Strategy - Part One](#)

including US “probing” on the UK’s “health insurance’ system”,⁴ and the US has made clear its desire for the UK to change its drugs pricing mechanism. The Trade Bill should be amended to protect the NHS. This amendment aims to address the following:

1. Specific carve-out for the NHS, all health-relevant services and regulation: it would be illegal for the government to conclude a trade agreement which altered the way NHS services are provided, liberalised healthcare further, or opened up parts of the NHS to foreign investment.
2. No use of negative listing: these clauses require that all industries are liberalised in trade agreements unless there are specific carve-outs. It is not always easy to define what services count as health services: for instance, digital services may seem irrelevant to health, but NHS data management and GP appointments are increasingly digitised. Negative lists therefore make it harder for governments to regulate and provide health services.
3. No standstill clauses or ratchet clauses: these provisions mean that, after the trade deal has been signed, parties are not allowed to reduce the level of liberalisation beyond what it was at the point of signature. This can make it difficult to reverse NHS privatisation.⁵
4. No ISDS: Investor-State Dispute Settlement (ISDS) clauses in trade agreements allow private investors to challenge government policy when this affects their profits. Failure to abide by these clauses can result in legal challenge from the trade partner, or if there is a separate ISDS clause, challenge from private investors (see [ISDS briefing here](#)).
5. No changes to drugs pricing mechanism: the US has stated that they wish to challenge the NHS’s drugs purchasing model, which keeps prices low. This could also happen through IP and non-patent exclusivities. A trade deal must not be used to facilitate this.
6. Clear provisions on digital trade, where this affects health services. Digital trade rules can restrict the ability of governments to access data and algorithms, even though this may include patient data and other data important for public health. There must be clear exemptions for all health-related technology, as well as more transparency about digital provisions in trade deals.

We would be very happy to discuss any of the issues raised in this briefing in person or on the phone.

**For more information and further briefing please contact:
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⁴ See full leaked documents hosted on [Global Justice Now's website](#)

⁵ See TJM's report '[Trading Up for Health](#)', January 2019