



House of Commons  
International Trade Committee

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# **UK trade policy transparency and scrutiny**

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**Sixth Report of Session 2017–19**





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*Report, together with formal minutes relating  
to the report*

*Ordered by the House of Commons  
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## International Trade Committee

The International Trade Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for International Trade and its associated public bodies.

### Current membership

[Angus Brendan MacNeil MP](#) (*Scottish National Party, Na h-Eileanan an Iar*) (Chair)

[Mr Nigel Evans MP](#) (*Conservative, Ribble Valley*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Sir Mark Hendrick MP](#) (*Labour (Co-op), Preston*)

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[Mr Chris Leslie MP](#) (*Labour (Co-op), Nottingham East*)

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[Julia Lopez MP](#) (*Conservative, Hornchurch and Upminster*)

[Faisal Rashid MP](#) (*Labour, Warrington South*)

[Catherine West MP](#) (*Labour, Hornsey and Wood Green*)

[Matt Western MP](#) (*Labour, Warwick and Leamington*)

### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No. 152. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

Committee reports are published on the [Committee's website](#) and in print by Order of the House. Evidence relating to this Report is published on the [inquiry publications page](#) of the Committee's website.

### Committee staff

The current staff of the Committee are Jake Barker (Committee Specialist), Hannah Barlow (Committee Assistant), Faten Hussein (Committee Specialist), Matthew Chappell (Committee Assistant), Sean Kinsey (Second Clerk), Ben Shave (Media Officer), Dr Gabriel Siles-Brügge (ESRC IAA/POST Parliamentary Academic Fellow), Anna Sydorak-Tomczyk (Committee Specialist), David Turner (Committee Specialist), Andrew Wallace (Senior Committee Assistant) and Joanna Welham (Clerk).

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## Summary

As a result of leaving the EU, the UK will be developing its own independent trade policy for the first time in over 40 years. We felt that it was important for us to consider how the Government would involve others in trade policy development. Specifically, we were interested in the role that Parliament, the devolved administrations, local government, and businesses and civil society would have in the process. We were also keen to hear about the levels of transparency that the Government should commit to. We found that there are examples of good practice used throughout the world, and that the UK has an opportunity to learn from these when developing its own, unique processes.

During the course of our inquiry, a number of key principles emerged. We consider that these essential principles, taken together, should be a central part of any future arrangements concerning transparency and scrutiny in UK trade policy. The Government must accept these principles as central tenets of how it should develop UK trade policy. These principles are:

- (1) Conducting trade negotiations is the prerogative of the executive, but there must be a meaningful role for Parliament in the trade policy process.
- (2) Trade policy must be open and inclusive, and maximise benefit throughout the UK.
- (3) Government must operate from a presumption of transparency.
- (4) Consultative processes must be formalised.

There is currently huge public interest in the UK's future trade policy and trade agreements, and if the Government wishes to increase public trust in UK trade policy, it should operate with a presumption of transparency. All documentation relating to trade negotiations should be made available, unless there is a genuine and reasonable justification for keeping specific documents confidential.

Allowing Parliament to engage fully with future trade agreements will improve trade policy outcomes. Parliament should be given an opportunity to debate the Government's Outline Approach on an amendable, substantive motion, before the mandate is set and negotiations commence. We also found that current processes for treaty ratification under the Constitutional Reform and Governance Act 2010 are insufficient and determined that the House of Commons should have a final yes / no vote on the ratification of trade agreements. The House of Commons should be provided with updates on negotiations, through general statements to the whole House.

A parliamentary committee should be charged with the detailed scrutiny that will be required for future trade negotiations, and we feel that, at present, the most suitable Committee is our own. We should have full access to all negotiating documents, on a confidential basis when required, and should receive regular updates, in private, from ministers and civil servants who are involved in ongoing trade negotiations.

We must be provided with the power to scrutinise negotiating mandates, and the final text of agreements, before they are presented to Parliament for debate. We would expect

to make a report to the House on the final text of agreements before a vote on ratification takes place, and the Government should ensure that, where possible, there is sufficient time between a final text being agreed and it being presented to Parliament to allow us to do this.

We also considered the role of the devolved administrations and determined that it is crucial that the Government take account of the views of each nation and region within the United Kingdom when formulating UK trade policy. Current structures are not sufficiently robust to provide for structured engagement and extensive consultation, and so we are calling on the Government to form a statutory UK intergovernmental international trade committee. The UK Government should have a duty to: consult the committee on the mandate for future trade negotiations; regularly update the committee on progress with negotiations; and consult the committee on the final text of an agreement prior to ratification. We also call on the Government to include a representative from each of the devolved administrations and the Local Government Association on the Strategic Trade Advisory Group, to allow the Government to consult with them in detail throughout the negotiation process—in addition to the intergovernmental committee.

Our report also considers the role that business and civil society should play in assisting in the formulation and oversight of trade policy. The Government should adopt a number of the consultation mechanisms used at the EU level—such as regular, open dialogues. It should also learn from practices in other jurisdictions, including Canada and the USA. It should be under a statutory requirement to engage in open and inclusive consultation with business, civil society, and the public, on the mandate for, and scope of, future trade agreements. The Government should hold open, accessible and regular meetings for all interested businesses, organisations and individuals.

We believe that the Government’s proposals for the Strategic Trade Advisory Group (STAG) are a step in the right direction, but the current membership of STAG is imbalanced between business and civil society, and does not allow for the breadth and depth of representation necessary for effective consultation during trade negotiations. As such, the Government should redress the imbalance between big business, small and medium-sized enterprises, civil society, trade unions and consumer groups, and further create sub-committees for each of these representative categories within STAG. This will allow the Government to efficiently receive confidential feedback from an increased pool of expertise. STAG should act as a “room next door” during negotiations, and its members and sub-committees should consist of vetted advisors with full access to negotiating documents. The membership and application processes for these groups should be transparent, and the balance and membership of its stakeholder groups should be reviewed and changed at regular intervals.

Finally, we considered the impact of trade policy on local government, and noted how the latter’s areas of competence are directly affected by national trade policy decisions. In addition, local government is well placed to understand the effects of trade policy on the individuals and organisations whose interests it represents. Local authorities are, therefore, well placed to be involved in the development and scrutiny of trade policy. Local government should have a voice in all aspects of the trade policy process, and

the Government, in its response to this report, should set out how it plans to facilitate this. The Government should consider whether it would be appropriate to include local government representation on STAG.



# 1 Introduction and core principles

1. As a result of leaving the EU, the UK will be developing its own independent trade policy for the first time in over 40 years. We felt that it was important for us to consider how the Government would involve others in trade policy development to ensure that such decisions are made fairly, with full knowledge of the possible impacts. Specifically, we were interested in the role that Parliament, the devolved administrations, local government, and businesses and civil society would have in the process. We were also keen to hear about the levels of transparency that the Government should commit to in terms of publicly stating its objectives for future trade negotiations and publishing other relevant documentation.

2. We considered that it was crucial to hold this inquiry now, given that the UK is scheduled to exit the EU in a matter of months. We will soon be able to negotiate new trade agreements, yet the Government's position on how it will involve the aforementioned bodies and groups is still to be fully determined. We are currently awaiting purportedly imminent updates on the composition of the Strategic Trade Advisory Group (STAG—see Chapter 5) and the arrangements for involvement of the devolved administrations in future trade policy (see Chapter 4).<sup>1</sup>

3. There is also currently huge public interest in the UK's future trade policy and agreements. The Secretary of State, Dr Liam Fox, told us earlier this month that 600,000 responses had been received by the Department for International Trade (DIT) for its recent consultations on trade agreements with the US, Australia and New Zealand, and accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.<sup>2</sup>

4. This inquiry, and, therefore, this report, have intentionally focused on the approach taken to concluding new Free Trade Agreements (FTAs) following the UK's withdrawal from the European Union. We do not consider the Government's overall trade strategy, which we hope to return to in future work. As part of evidence-gathering for this inquiry, we heard from 21 witnesses and received 38 pieces of written evidence. We are grateful to everyone who took the time to provide us with their views, which were very helpful.<sup>3</sup> An overview of our proposals is given in Annex 1.

## Core principles

5. During our inquiry, a number of key principles emerged. We consider that these essential principles, taken together, should be a central part of any future arrangements concerning the transparency and scrutiny of UK trade policy. The evidence supporting these principles, and further findings, are set out in the remaining chapters of this report: Chapter 2 focuses on public trust and transparency; and Chapters 3, 4, 5 and 6 consider the roles that Parliament, the devolved administrations, business and civil society, and local government, respectively, should have in the formulation of trade policy.

1 [Q244](#)

2 Oral evidence taken on [5 December 2018](#), HC (2017–19) Q471

3 All evidence can be viewed on the [International Trade Committee website](#).

6. The following are clear, binding principles that have emerged from the evidence to our inquiry. *The Government must accept these principles as central tenets of how it should develop UK trade policy.*

*Conducting trade negotiations is the prerogative of the executive, but there must be a meaningful role for Parliament in the trade policy process.*

Conducting trade policy negotiations with third parties is the prerogative of the executive, but as the UK develops its own independent trade policy, it is essential that Parliament has a meaningful role throughout the process. This will result in fairer trade outcomes, due to clear and direct input from Parliament, with its Members representing the views of those that stand to be affected.

*Trade policy must be open and inclusive, and maximise benefit throughout the UK*

Trade deals involve more than just tariffs, and regulatory change can positively or negatively impact consumers, businesses and workers. It is, therefore, essential that there is a fair and broad representation of interests in trade policy formulation across all nations within the UK, and that this involves a wide range of stakeholder groups. This will lead to a more inclusive and effective trade policy.

*Government must operate from a presumption of transparency*

The levels of public trust in trade policy are low. To address this, the Government should work with a presumption of transparency, rather than of secrecy, regarding the publication of documentation relating to trade policy and negotiations. We accept that certain documents are sensitive and must remain confidential to avoid undermining negotiations, but the Government should only keep documents secret on this basis when absolutely necessary.

*Consultative processes must be formalised*

To achieve the best trade policy outcomes, it is vital that all parties who stand to be affected understand how the process works, and when and how they can contribute to it. Certain elements of consultation and oversight should be made statutory, to ensure that the system inspires the trust of stakeholders and mitigates concerns about unchecked executive power over trade policy. These processes should be put in place as soon as possible, in order to provide proper oversight and scrutiny of future trade agreements, negotiation of which could begin as early as April 2019.

## 2 Trade, trust and transparency

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### Drivers of transparency

7. We received multiple pieces of evidence setting out why transparency is important in relation to trade policy and negotiations.<sup>4</sup> War on Want told us:

Trade negotiations are matters of public policy, not commercial contracts, and should be subject to the standards of transparency and scrutiny expected of public policy documents. Modern trade deals affect a wide range of areas of public policy, from food safety to the environment to workers' rights. The public has a right to know what is being included in these deals which will have not just economic but also social, cultural, and environmental impacts.<sup>5</sup>

8. Nick Dearden, Director of Global Justice Now, also argued that trade policy addresses a range of policy areas beyond tariffs, including consumer and environmental protections.<sup>6</sup> Anna Fielder, Senior Policy Adviser for the Transatlantic Consumer Dialogue, argued that negotiation of trade agreements “goes on in secret chambers” and suggested that this was “a driver of why the public does not trust them anymore.”<sup>7</sup>

### Transparency at the EU level

9. The Transatlantic Trade and Investment Partnership (TTIP) negotiations between the EU and the US were criticised for their lack of transparency, leading to a considerable backlash from stakeholder groups.<sup>8</sup> We were told that, subsequently, “all EU institutional actors radically changed their transparency procedures”.<sup>9</sup> In its “Trade for All” strategy, published in 2015, the European Commission said it would “invite the Council to disclose all FTA negotiating directives [also known as ‘mandates’] immediately after their adoption”;<sup>10</sup> “extend TTIP practices of publishing EU [negotiation proposal] texts online for all trade and investment negotiations”; and “after finalising negotiations, publish the text of the agreement immediately, as it stands, without waiting for the legal revision to be completed.”<sup>11</sup>

10. Dr Elaine Fahey, Professor of Law & Associate Dean at City University, told us:

It is highly advisable that the UK Parliament and devolved nations learn also from the EU on best practice as to provision of documents in international trade negotiations [...] The UK should be mindful of the broader trajectory

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4 For example: Trade Justice Movement ([UTP0005](#)), Amnesty International UK ([UTP0003](#)).

5 War on Want ([UTP0027](#))

6 [Q93](#)

7 [Q93](#)

8 See, for example: [Q93](#) [Nick Dearden].

9 Professor Elaine Fahey ([UTP0012](#))

10 In the EU, the European Commission is authorised to negotiate trade agreements by a “mandate” approved by the Council of Ministers (composed of Member State representatives). The European Commission produces the draft mandate considered by the Council.

11 European Commission, “[Trade for all - Towards a more responsible trade and investment policy](#)”, (2015)

of law and governance in the negotiation of international trade in the digital era which has shifted radically towards transparency at all levels of law-making and practice.<sup>12</sup>

## The UK's approach to transparency

11. In its July White paper, *Preparing our future UK Trade Policy*, the Government committed itself to a “transparent and inclusive” trade policy.<sup>13</sup> In evidence to our Committee, the Minister for Trade Policy, George Hollingbery, told us that the Government had considered the EU’s experience in relation to TTIP and had:

reached the conclusion that we have to anticipate problems of that sort early on. The best way to do that is to be transparent so people know what we are doing at every stage.<sup>14</sup>

12. The Government has committed itself to publishing an “Outline Approach” for future trade negotiations, “setting out the high-level objectives and scope of that negotiation.” The Government has also stated that this document will be accompanied by a scoping assessment, but has not provided detail of what will be included in such an assessment.<sup>15</sup>

13. Despite these statements from the Government, David Henig, UK Director at the European Centre for International Political Economy, referred to “a culture of secrecy”,<sup>16</sup> and Nick Dearden, from Global Justice Now, suggested that “we are in a situation where we do not really know what their [DIT’s] strategy on trade is or what their objectives are.”<sup>17</sup> He also said that the Department had a poor track record of openness and transparency, noting:

statistics that were published by the Government [...] showed that the Department for International Trade have granted less than 27% of the [Freedom of Information] requests they have received in full. They have turned down 48% of all requests they have received in full and they are the worst Department in terms of responding late without acceptable reasons; about 34% of responses fall into that category.<sup>18</sup>

## Proposals for increased transparency

### *Presumption of transparency*

14. A document entitled *A Trade Model That Works for Everyone* sets out the preferred approach to transparency of a range of business and civil society groups, including the British Chambers of Commerce, the Confederation of British Industry (CBI), the EEF, the Federation of Small Businesses (FSB), the Institute of Export and International Trade,

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12 Professor Elaine Fahey ([UTP0012](#))

13 Department for International Trade, [Preparing for our future UK trade policy](#), Cm 9470, October 2017

14 [Q226](#)

15 Department for International Trade, [“Liam Fox delivers Parliament and the public a central role in post-Brexit UK trade agreements”](#), 16 July 2018

16 [Q202](#)

17 [Q94](#)

18 [Q94](#)

the Institute of Directors (IoD), the International Chamber of Commerce (ICC) UK, the Trades Union Congress (TUC), Unite, Which?, and over 85 other organisations. It calls for:

A presumption of transparency for all negotiating texts—with clear and detailed explanation for anything that’s been withheld. All texts to be open to MPs. One element should be the publication of offers made to counterparties [*i.e.* those being negotiated with], with explanatory memoranda to give relevant context, as soon as possible after they are tabled, understanding that it may be necessary to preserve negotiating room to wait to publish until after the negotiating round where the offer is made.<sup>19</sup>

15. Mr Dearden, of Global Justice Now, told us that “it should be about the Government having to make a clear argument about why something should be kept confidential, rather than the other way round.”<sup>20</sup>

16. Derek Wyatt QC, Emeritus Professor of Law at St Edmund Hall, University of Oxford, similarly told us:

If a document enables Parliament and public to understand the impact of future trade negotiations in the UK, the document should be published, unless publication would undermine the negotiating position of the UK Government, or breach the confidentiality of a third party.

He also pointed out that:

Confidentiality agreements between the UK and a foreign country concerning trade negotiations have the potential to limit the publication of documents, and such agreements should be subject to rigorous scrutiny.<sup>21</sup>

### **Statutory transparency requirements**

17. The Institute for Government (IfG) has called for DIT to have “statutory transparency requirements” that include the requirement to publish:

- i) a trade strategy
- ii) the negotiating objectives for each bilateral, plurilateral or multilateral negotiation
- iii) the impact assessments conducted prior to negotiations
- iv) the legal text of FTAs, once negotiations are concluded but before the agreement is signed
- v) evaluations of trade agreements after they have come into force—although if, as per the above recommendation, the UK adopts an independent advisory body, then this organisation should be responsible

[ ... ]<sup>22</sup>

19 [A Trade Model That Works for Everyone](#), August 2018

20 [Q100](#)

21 Derrick Wyatt QC ([UTP0002](#))

22 Oliver Illott, Ines Stelk, Jill Rutter, [Taking back control of trade policy](#), Institute for Government, May 2017

18. Regarding the publication of negotiating mandates (or directives), the IfG argued that:

Government ministers must be disabused of their view—often repeated, but never correct—that published mandates approved by ministerial and parliamentary colleagues make negotiators’ jobs more difficult. The opposite is true. Mandates give negotiators direction, limit their ability for concession and force governments to be realistic about potential negotiating outcomes.<sup>23</sup>

## Public engagement

19. War on Want argued that access to documents is important for public understanding and debate, and that this can provide “background and context” for formal, specific consultations.<sup>24</sup> Public consultations are discussed in Chapter 5.

20. *If the Government wishes to increase public trust in UK trade policy, it should operate with a presumption of transparency. All documentation relating to trade negotiations should be made available unless there is a genuine and reasonable justification for keeping specific documents confidential, such as the risk of undermining the UK’s negotiating position. The Government must, as a minimum, publish trade policy documentation equivalent to that which is published at the EU level. The EU’s transparency commitments have been developed in direct response to public and stakeholder concerns raised during the TTIP negotiations. To deliver anything less would risk undermining public trust in UK trade policy from the outset.*

21. We welcome the Government’s commitment to publishing an Outline Approach for each negotiation—but note that it has provided limited information about what will be included in this document. *This Outline Approach should be equivalent to EU trade negotiating mandates, setting out clear instructions for UK negotiators. The Government should ensure that such a mandate includes no less information than the EU provides—notably, for instance, in the recently approved mandates for negotiations with Australia and New Zealand.*

22. *All information published by the Government relating to each trade negotiation should be available on a single page on the gov.uk website. It should be presented in a clear and easily navigable way, and jargon should be avoided where possible. The Government should also publish accessible summaries or factsheets in relation to negotiating documents.*

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23 Oliver Illott, Ines Stelk, Jill Rutter, *Taking back control of trade policy*, Institute for Government, May 2017

24 War on Want ([UTP0027](#))

## 3 Parliament's role in trade policy

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### Current UK parliamentary oversight of trade policy

23. Currently, Parliament scrutinises EU legislation and policy through the Commons European Scrutiny Committee (ESC), and the House of Lords EU Select Committee and its Sub-Committees. Further detail about the role and work of these Committees is available on their websites.<sup>25</sup>

24. Parliament's role in the ratification of EU treaties, including EU FTAs, is laid down in the Constitutional Reform and Governance Act 2010 (CRAG). Under CRAG, the Government has a statutory requirement to lay before Parliament any treaty that is subject to ratification or its equivalent. CRAG also gives Parliament a statutory role regarding treaty ratification, including a power for the Commons to block ratification by indefinitely passing motions that state that a treaty should not be ratified. The Act does not, though, provide Parliament with a yes / no vote on treaty ratification.<sup>26</sup>

25. The Trade Justice Movement has raised concerns about the procedure under CRAG, saying that it:

gives the Government broad powers to negotiate trade agreements in secret and to ratify these agreements without a vote in Parliament [...] There is no guarantee of debate. It is not absolutely clear how an objection could be made, but it would have to either be in government time (if the government was prepared to provide this opportunity), opposition time (if an opposition day debate is scheduled within the 21 days) or a delegated legislation committee. If an objection is made, the government can provide an explanation as to why the agreement should nevertheless be ratified and the process repeats. It is therefore not technically possible for Parliament to outright reject a trade agreement if the government wishes to persist.<sup>27</sup>

26. Despite Parliament not currently having the power to vote against the ratification of a treaty under CRAG, since the UK is a “dualist” state<sup>28</sup> it could stop a treaty being implemented in domestic law, given that, as the House Commons Library notes: “for a treaty provision to become part of domestic law, the relevant legislature must explicitly incorporate it into domestic law.”<sup>29</sup> This was made clear in the Supreme Court's January 2017 judgment in the Miller case, where the majority judgment stated that the Government cannot make or withdraw from a treaty that amounts to a “major change to UK constitutional arrangements” without an Act of Parliament.<sup>30</sup>

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25 [European Scrutiny Committee](#) (Commons); [EU Select Committee](#) (Lords)

26 [Parliament's role in ratifying treaties](#), Standard Note [SN05855](#), [House](#) of Commons Library, February 2017

27 [Trade Justice Movement](#) ([UTP0005](#))

28 In a dualist state, domestic law is not automatically changed as a result of the Government ratifying a treaty; domestic law can only be altered in accordance with a treaty by means of legislation being passed specifically for that purpose. States where this is not the case are known as “monist” states.

29 [Parliament's role in ratifying treaties](#), Standard Note [SN05855](#), House of Commons Library, February 2017

30 The Supreme Court, [R \(on the application of Miller and another\) \(Respondents\) v Secretary of State for Exiting the European Union \(Appellant\) Judgment](#), 24 January 2017

## Government proposals for parliamentary involvement in future trade policy

27. The Government announced the following proposals with respect to parliamentary involvement in trade policy in July 2018:

As negotiations progress, the Government will keep Parliament closely involved with regular Ministerial statements and updates to the International Trade Committee. The Government will - before entering formal negotiations - publish an “Outline Approach” to each negotiation, setting out the high-level objectives and scope of that negotiation. This document will be accompanied by a scoping assessment.

[...]

Once a free trade agreement is finalised, if it changes existing UK laws, and where necessary legislation doesn’t already exist, then new primary legislation will be introduced. Parliament will also be provided with comprehensive analysis of its effects. Importantly, Parliament will be able to scrutinise any new legislation in the usual way, as well as the ratification of all agreements through the usual procedures (the Constitutional Reform and Governance Act).<sup>31</sup>

28. Maddy Thimont Jack, from the IfG, argued that these proposals are “extremely vague”, saying “there is not much detail and we don’t know how they envisage any of this working.”<sup>32</sup>

## Parliamentary committee

29. In evidence to us, the Minister for Trade Policy, George Hollingbery, stated:

We are going to make sure that Parliament is informed and Parliament has its input. At every stage of the negotiation we are in a position, perhaps after each round of negotiation, for example, to bring a report—perhaps to this Committee—we will be doing that.<sup>33</sup>

30. This accords with evidence to our inquiry, which suggested that a parliamentary committee “could play a vital role in scrutinising trade treaty negotiations and could act as a focal point for interested parties to contribute to that scrutiny.”<sup>34</sup> *A Trade Model That Works for Everyone* notes how this could work in practice:

This could be a role for the existing International Trade Committee or for a new parallel trade scrutiny committee—whichever seems most appropriate for parliamentary procedure. The committee could build upon the role of the existing EU Scrutiny Committee.<sup>35</sup>

31 Department for International Trade, [“Liam Fox delivers Parliament and the public a central role in post-Brexit UK trade agreements”](#), 16 July 2018

32 [Q191](#)

33 [Q229](#)

34 Ewan Smith and Eirik Bjorge ([UTP0020](#))

35 [A Trade Model That Works for Everyone](#), August 2018

31. Evidence from Ewan Smith, a Junior Research Fellow at Jesus College, Oxford, outlines the potential models for such a Committee:

Parliament could give existing Committees new powers in relation to treaties, or establish ad hoc committees for particularly important or controversial treaties. Or it could set up a new Treaty Committee in either House or as a Joint Committee, to sift, scrutinise, inquire into and report on proposed treaties. A Commons Committee would have greater perceived democratic legitimacy; a Lords Committee might be more able to find time on the floor of the House, and might contain greater expertise. A Joint Committee would combine these respective advantages.<sup>36</sup>

32. Dr Brigid Fowler, of the Hansard Society, informed us that there would be a need to bring in expertise across different committees, and so a cross-committee approach could be effective.<sup>37</sup> We note that the House’s recent approval of changes to Standing Order No. 137A, on powers to work with other committees, could facilitate this.<sup>38</sup>

33. Various proposals for a parliamentary committee, and the House as a whole, to have a role at various points during trade agreement negotiations are set out below.

## Negotiating mandate and priorities

34. The Government’s proposals, outlined above, do not provide for Parliament to have a role in approving a negotiating mandate. The Secretary of State, Dr Fox, told us that he was “very keen that we consult”, and said:

We are awaiting a debate in the House of Commons at the moment on the consultation of the four trade agreements before the Government move on to the next stage. It is very important that Parliament has its say.<sup>39</sup>

Mr Hollingbery, did, however, signal that there was Government support for Parliament to have a debate on the Outline Approach—while stating that he felt Parliament having a vote would not be “right”:

We have an ambition to allow Parliament to debate the outline approach that has been taken by Cabinet. It would be fair to say at that stage the outline will be set, so at a Cabinet level, which is a reflection of the Government of the day [...] I do not think it can be right and the constitutional settlement that we have, that Parliament should be given a binding vote on whether or not the mandate is as it should be, that is not how we have done things up to this point. I personally do not believe that is right. But I do believe that Parliament should be able to opine upon the outline approach.<sup>40</sup>

36 Ewan Smith and Eirik Bjorge ([UTP0020](#))

37 [Q205](#)

38 Standing Order No. 137A, [amended 27 November 2018](#), now contains the following provision: “to invite members of any other committee to which this order applies to attend any meeting and, at the discretion of the Chair, ask questions of witnesses or otherwise participate in its proceedings; but no member of another committee so invited may move any motion or amendment, vote or count towards the quorum.” For background to the change, see: Liaison Committee, First Report of Session 2017–19, [Changing committee practice and procedure: enhancing effective working](#), HC 922, para 6

39 Oral evidence taken on [5 December 2018](#), HC (2017–19) Q505

40 [Qq231](#), [232](#)

35. Others have suggested Parliament’s role should involve a guaranteed vote. The organisations that have developed *A Trade Model That Works for Everyone* call for:

A mandate agreed by parliament in advance of negotiations—setting out the guidelines and red lines for trade talks, which are publicly available and which require amendment by parliament to materially change.<sup>41</sup>

36. Ms Thimont Jack, from the IfG, told us that she felt the debate, rather than a vote, was most important:

I am not sure that you need to have a formal vote on a mandate but I think that a debate in the House would be a sensible approach because it allows MPs to express their views. The Government can then take that into account or at least explain to MPs why they have chosen to take the approach they have.<sup>42</sup>

37. David Henig spoke positively of the European Parliament’s way of expressing a view on negotiation mandates:

I think the system they have come up with in the European Parliament works quite well. The European Parliament gets to pass advisory motions. They are not necessarily binding on the Commission but they give a sense of feeling and that works quite well in allowing a pressure valve for views without it having to become a big conflict.<sup>43</sup>

In relation to the UK Parliament having a formal approval role in respect of negotiation mandates, Jude Kirton-Darling MEP told us “that that is something that certainly you should be pushing for.”<sup>44</sup>

38. Both Global Justice Now and War on Want suggested that a parliamentary committee should be involved at an early stage of the process by approving negotiating mandates, pointing to the processes in place at the Danish Parliament as an example.<sup>45</sup>

39. In relation to scrutiny of a mandate, the Minister for Trade Policy stated that:

As to a further role of the Committee or Parliament in closer scrutiny of the actual negotiating mandates, we have not absolutely decided whether to or not engage in that.<sup>46</sup>

## Ongoing parliamentary involvement during trade negotiations

40. Global Justice Now argued that:

In the current system, not only is the UK parliament effectively cut out of the process of negotiation entirely, but MPs, Lords and members of the devolved

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41 [A Trade Model That Works for Everyone](#), August 2018

42 [Q198](#)

43 [Q202](#)

44 [Q272](#)

45 War on Want ([UTP0027](#)), Global Justice Now ([UTP0026](#))

46 [Q233](#)

assemblies have effectively no access to negotiation documentation. This makes any meaningful parliamentary oversight of trade agreements before they are finalised nearly impossible.<sup>47</sup>

It proposed to us that Parliament should therefore “be allowed full access to negotiating texts”.<sup>48</sup>

41. Global Justice Now also argued that Parliament “should have a meaningful role during the negotiation phase itself.”<sup>49</sup> David Henig, however, stated that providing to the House a “running commentary” on negotiations might not be a practical or efficient means of involving Parliament as a whole. He did suggest, however, that more general reports to the House may be desirable:

there could be a regular report from the Government on each negotiation that it is going through, not necessarily in great detail but enough to say, “We are currently negotiating with X country. We have had three rounds. We have gone through these. We are covering these sort of general issues”, to provide information.<sup>50</sup>

The Equality and Human Rights Commission also stated in their evidence that Parliament should have regular formal updates on negotiations.<sup>51</sup>

42. Ms Kirton-Darling described the role of the European Parliament Committee on International Trade (INTA) during the negotiations:

Throughout the negotiations, we have a monitoring group, which is chaired by the rapporteur, inside the INTA Committee. The Commission negotiators responsible for the trade negotiations, and anybody else that the Parliament wants to have there, come to report to that monitoring group. The work of that monitoring group, in most cases, is done behind closed doors. It is a space to ask detailed questions of the negotiators.<sup>52</sup>

43. In relation to scrutiny of ongoing negotiations, the Minister for Trade Policy stated that: “there is a role for the Committee to receive the reports on any stage negotiations or when the Government wish to report back.”<sup>53</sup>

44. In relation to the role that a Parliamentary Committee should play in scrutinising texts which are the subject of ongoing negotiations, Mr Henig suggested:

I think you probably should have the power to see, at least in private, the latest state of play, to have a full report on what is happening to scrutinise in that way. I don’t think there should be a veto. Similarly, we have not mentioned yet the publication of texts.<sup>54</sup>

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47 Global Justice Now ([UTP0026](#))

48 Global Justice Now ([UTP0026](#))

49 Global Justice Now ([UTP0026](#))

50 [Q198](#)

51 Equality and Human Rights Commission ([UTP0025](#))

52 [Q254](#)

53 [Q233](#)

54 [Q209](#)

## Ratification

45. In its report, *Taking back control of trade policy*, the IfG compares the CRAG arrangements relating to ratification of treaties to the powers that other executives hold over their legislatures:

On paper, these arrangements mean that the UK Parliament will exercise a significantly weaker form of legislative constraint on negotiators than in Australia, the EU, New Zealand or the USA. In each of these, the legislature is guaranteed a vote on the deal: one in which a single rejection will collapse the talks, or send negotiators back to the table (rather than in the UK, where an ongoing series of votes is required).<sup>55</sup>

46. Ms Kirton-Darling told us how the European Parliament is involved in the ratification of trade agreements:

With the Lisbon Treaty, the European Parliament was given a blunt power of consent over international treaties and international trade agreements [...] basically a blunt yes or no to international treaties and trade treaties.<sup>56</sup>

She also noted the European Parliament's informal powers over trade policy, whereby "the European Parliament would informally set out its position on the negotiations [before these begin]. There would be a resolution."<sup>57</sup>

47. The IfG report acknowledges that Parliament could constrain the Government's negotiations through withholding consent to domestic legislation. It suggests that failing to give Parliament a vote on a final deal could weaken the UK's negotiating position, given a lack of internal oversight on potential concessions and may also cause parliamentary opposition to trade deals to find other outlets.<sup>58</sup> These risks could be reduced, the IfG argue, by giving Parliament a role in ratification.<sup>59</sup>

48. *A Trade Model That Works for Everyone* calls for a "guaranteed debate and vote to ratify the deal—in both UK parliamentary chambers after the agreement is finalised and without which it may not enter into force."<sup>60</sup>

49. Mr Hollingbery stated that, while CRAG could theoretically allow Parliament to halt trade agreements coming into force:

It would be disingenuous of me to agree absolutely that Parliament can indefinitely delay. Yes, theoretically it can but it would have [to] stay organised for quite a long time. Not absolutely definitely, but very probably, [Parliament] will have a legal way of blocking any future trade deal because it is almost certain that any trade deal that is sufficiently contentious for

55 Oliver Illott, Ines Stelk, Jill Rutter, *Taking back control of trade policy*, Institute for Government, May 2017

56 [Q251](#)

57 [Q254](#)

58 Oliver Illott, Ines Stelk, Jill Rutter, *Taking back control of trade policy*, Institute for Government, May 2017

59 Oliver Illott, Ines Stelk, Jill Rutter, *Taking back control of trade policy*, Institute for Government, May 2017

60 *A Trade Model That Works for Everyone*, August 2018. War on Want ([UTP0027](#)) suggests that this could use the "superaffirmative" procedure. This involves an additional stage of scrutiny where Parliament considers a proposal for a statutory instrument before the statutory instrument is formally presented ("laid"). This procedure is used for statutory instruments that are considered to need a particularly high level of scrutiny. For more information see: UK Parliament, "[MPs' Guide to Procedure: Super-affirmative procedure](#)".

Parliament to wish to block will require primary legislation to enact it. That, Parliament can certainly do, in which case it will make the free trade deal inoperable from our end and that clearly would be a problem. I do not think on that basis it is absolutely necessary for Parliament to have a binding vote. It would be a huge constitutional change.<sup>61</sup>

50. An October 2017 poll, conducted by Dod’s research for the Fairtrade Foundation and the Trade Justice Movement, found that 86% of MPs surveyed agreed that Parliament should have a role in the scrutiny and approval of new trade and investment deals.<sup>62</sup>

51. Ms Thimont Jack, from the IfG, suggested that a parliamentary committee with oversight of trade policy, as mentioned above, could have privileged access to information relating to trade negotiations and could report on such negotiations prior to a vote on ratification:

It might be that when you come to the end of the negotiations, it is up to that committee to report to Parliament and tell Parliament what it thinks about how the process has gone because it has access to more information.<sup>63</sup>

52. Ms Kirton-Darling also made a comparison with the role of the European Parliament’s INTA Committee in reporting to a plenary session of the Parliament a recommendation for a vote on ratification:

The first report is a very short report, a consent report. It says, “Parliament recommends to adopt—or reject—this agreement”. The second report is a non-binding report that sets out the reasoning for the position of the Parliament, so a set of recommendations or a set of concerns, things from the agreement that we recognise and welcome. That report goes through the parliamentary system, INTA vote, into the plenary, and the plenary votes on the recommendation from the committee responsible. At any point, however, in the INTA Committee or in the plenary, there can be a motion to amend the consent resolution, which would lead to the rejection of the deal.<sup>64</sup>

53. In relation to the notion of Parliament having the power to recommend a vote on the floor of the House, Dr Brigid Fowler noted that this was challenging because:

Putting limits on what the Government may do internationally is, as we all know, very constitutionally sensitive when it is using prerogative powers [...] You can’t impinge on the prerogative.<sup>65</sup>

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61 [Q234](#)

62 [Fairtrade Foundation Briefing – Trade & Customs Bills, 2nd Reading](#)

63 [Q197](#)

64 [Q254](#)

65 [Q210](#)

However, she also stated that:

there is nothing to stop you creating a system in which a committee got guaranteed time on the Floor of the House before an agreement was signed and able to move a substantive motion saying, “This should not be signed”.<sup>66</sup>

54. *Parliament should be given an opportunity to debate the Government’s Outline Approach on a substantive motion before the mandate is set and negotiations commence. We welcome the indications to us that it is the Government’s aim to provide for a debate on the Outline Approach, but the Government should confirm that such a debate would be on an amendable, substantive motion. The motion, and debate, will provide an opportunity for Parliament to express any concerns and objections regarding the proposed mandate, and allow the Government to modify it if necessary.*

55. *Current processes for treaty ratification under the Constitutional Reform and Governance Act 2010 are insufficient. While Parliament can theoretically block indefinitely the ratification of a treaty, or decline to legislate its provisions into domestic law, doing so in practice would be a difficult and unsatisfactory means of rejecting a trade agreement which does not have the support of Parliament. The House of Commons should have a final yes / no vote on the ratification of trade agreements.*

56. *A parliamentary committee should be charged with the detailed scrutiny that will be required for future trade negotiations. At present, the most suitable committee to take this responsibility is ours. We could draw on the experience of other Committees, such as the European Scrutiny Committee, in carrying out this task. We should have full access to all negotiating documents, on a confidential basis when required, and should receive regular updates, in private, from ministers and civil servants who are involved in ongoing trade negotiations. We must be provided with the power to scrutinise negotiating mandates, and the final text of agreements, before they are presented to Parliament for debate. The International Trade Committee would expect to make a report to the House on the final text of agreements before a vote on ratification takes place, and the Government should ensure that, where possible, there is sufficient time between a final text being agreed and it being presented to Parliament to allow us to do this.*

57. *In addition to private updates to this Committee, the House should be provided with updates on negotiations, through general statements to the whole House.*

## 4 Devolved administrations

### Involvement of the devolved administrations in UK trade policy

58. The memorandum of understanding (MoU) on devolution sets out an overarching agreement between the UK Government and the three devolved administrations on principles and protocols regarding inter-governmental relations.<sup>67</sup> The role that the devolved administrations currently play in respect of treaties is set out in five supporting concordats. The MoU establishes a Joint Ministerial Committee (JMC), which has the following responsibilities:

[to] consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities; where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom; to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and to consider disputes between the administrations.<sup>68</sup>

59. In the Government's July White Paper, Dr Fox stated that the devolved administrations and legislatures would "have the opportunity to engage with and contribute to our trade policy".<sup>69</sup> In July, the Secretary of State told the House that the Government would "run events in all regions and nations of the UK to seek their views on how prospective trade agreements could support prosperity and growth", and would conduct "a series of collaborative policy roundtables with Devolved Administrations recognising the close interaction between trade policy and devolved policy areas."<sup>70</sup>

60. As the House of Commons Library notes, the provisions for oversight and scrutiny of trade agreements in CRAG are limited in relation to the devolved administrations: "There is no legal requirement to consult the devolved executives and legislatures, which have very limited involvement in treaties."<sup>71</sup>

61. Mr Hollingbery set out to us recent interactions the Government has had with the devolved administrations, stating: "As far as I am concerned, there is a genuine and real uptake in the amount of engagement we are having."<sup>72</sup>

62. The Law Society of Scotland told us that "UK withdrawal from the EU offers an opportunity to review the procedures in place for negotiation of international trade agreements [...]".<sup>73</sup> The Scottish Government's submission to our inquiry stated that Brexit will "fundamentally change the nature of the UK as a state, and impact on the UK's current constitutional arrangements [...]". As such:

67 Scottish Government, [Devolution: memorandum of understanding and supplementary agreements](#), October 2013

68 Scottish Government, [Devolution: memorandum of understanding and supplementary agreements](#), October 2013

69 Department for International Trade, [Preparing for our future UK trade policy](#), Cm 9470, October 2017

70 Department for International Trade, ["Liam Fox delivers Parliament and the public a central role in post-Brexit UK trade agreements"](#), 16 July 2018

71 Parliament's role in ratifying treaties, Standard Note [SN05855](#), House of Commons Library, February 2017

72 [Q243](#)

73 The Law Society of Scotland ([UTP0018](#))

The way in which the UK and devolved administrations approach international trade policy and agreements will have to change radically to reflect a very different, and more challenging, context.<sup>74</sup>

The Scottish Government continues to argue that current practices in relation to the devolved administrations are inadequate, out of date, and in need of “an urgent and substantial overhaul”:<sup>75</sup>

63. Ivan McKee MSP, Scotland’s Minister for Trade, Investment and Innovation, told us in oral evidence that, because of the complexity and policy coverage of modern trade agreements:

our clear position is that all the devolved administrations should be involved in all aspects of trade negotiations right from the very beginning. That is deciding what countries you want to go into trade deals with, right through the process of defining your objectives, selecting a negotiating team, putting them in place, monitoring negotiations, through to scrutiny, ratification and implementation. A formal statutory structure should be put in place at a UK level to enable that to happen.<sup>76</sup>

64. The Scottish Government has stated that its proposals for increasing interaction with UK trade policy, detailed in this chapter, should be formalised through legislation.<sup>77</sup>

65. Sally Jones, Global Brexit Insight Lead at Deloitte, noted the importance of having the support of the devolved administrations from a business perspective:

It would be very difficult from a practical perspective to agree a national-level free trade agreement that did not have the support of the devolved assemblies that are ultimately going to have to create the legislation under their competence that would enact it. I would entirely think that involving the devolved assemblies and the regions is critical.<sup>78</sup>

## Intergovernmental trade committee

66. The Scottish Government proposed a statutory intergovernmental international trade committee to facilitate effective trade policy dialogue between the devolved administrations and the UK Government, which

would pull in the different devolved Administrations and the UK Government right at the very start of that process so they were involved right from defining who we are going to do trade deals with, what we are trying to get out of them, what the negotiation stance is, what the roadmap for the negotiation is, what happens to the negotiations, what happens at the scrutiny process and what happens at ratification and implementation. Right through that process the strength would come from having the devolved Administrations there and firmly involved in the process.<sup>79</sup>

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74 Scottish Government ([UTP0030](#))

75 Scottish Government ([UTP0030](#))

76 [Q121](#)

77 Scottish Government ([UTP0030](#))

78 [Q86](#)

79 [Q112](#)

Mr McKee saw the:

JMC structure at the moment as not being robust enough in total and not robust enough to deal with trade policy and trade negotiations. [...] [I]t may well be that a beefed-up JMC on trade may work if it is developed.<sup>80</sup>

67. This is supported by the Welsh Government, which has stated that a Joint Ministerial Committee on International Trade would:

enable timely and comprehensive consultation on overall trade policy and individual trade negotiations [...] [and provide] the governance structure needed to allow Ministers from the four administrations to work together to agree on priorities for trade negotiations, particularly in respect of areas of devolved competence.<sup>81</sup>

## Involvement at different stages of the process

### *Mandate*

68. The Scottish Government told us that competing interests are best balanced before “reaching the negotiating table”.<sup>82</sup> Global Justice Now argued that the JMC could:

reach a consensus on any draft negotiating mandate before it proceeds to the UK and Scottish parliaments and the Welsh and NI assemblies, and should be revisited if the mandate changes during negotiations.<sup>83</sup>

69. The Welsh Government agreed, noting that the JMC could:

provide the governance structure needed to allow Ministers from the four administrations to scrutinise a negotiating mandate for trade negotiations in a strictly confidential way.<sup>84</sup>

70. Trade Justice Scotland pointed to the role of Canada’s provincial governments in shaping the Canadian mandate for the EU-Canada Comprehensive Economic and Trade Agreement (CETA) as an example of a potential model for sub-national actors’ involvement in trade policy, as “the mandate for the negotiations was drafted with input from the provincial governments [...]”.<sup>85</sup>

### *During negotiations*

71. *A Trade Model That Works for Everyone* proposed that the devolved administrations’ representatives should work alongside negotiators on negotiating teams.<sup>86</sup> Trade Justice Scotland again pointed to the CETA negotiations as an example of such an approach:

80 [Q124](#)

81 Ken Skates AC/AM, Cabinet Secretary for Economy and Transport ([UTP0029](#))

82 Scottish Government ([UTP0030](#))

83 Global Justice Now ([UTP0026](#))

84 Ken Skates AC/AM, Cabinet Secretary for Economy and Transport ([UTP0029](#))

85 Trade Justice Scotland coalition ([UTP0008](#))

86 [A Trade Model That Works for Everyone](#), August 2018

provincial negotiators were present during the bilateral talks with the EU, and they also participated in a pan-Canadian trade committee which worked between negotiations to agree and set the Canadian position for future talks. And all the negotiating documents were made readily accessible to provincial teams.<sup>87</sup>

72. The Welsh Government also called for “Welsh Government officials to be part of the negotiations”, suggesting that this could be “in the room” or “in the room next door”.<sup>88</sup>

73. Others have pointed to other ways to involve devolved administrations through negotiations. Ms Thimont Jack, of the IfG, argued that engagement through the JMC throughout negotiations would be a way in which the UK Government could have “extensive consultation” with the devolved administrations during negotiations.<sup>89</sup>

74. Mr McKee told us that the Strategic Trade Advisory Group, which has been put in place to advise Government throughout future negotiations (discussed in detail in Chapter 5), provides “no real role for the devolved administrations [...] [T]here is an absence of any willingness to involve devolved authorities in any of those processes and structures.”<sup>90</sup>

### Ratification

75. The Scottish Government has stated that new trade agreements with:

otherwise devolved content, or which touch on devolved issues, must be agreed by the Scottish Government and Scottish Parliament. Given the scope of modern trade agreements, in practice, this would almost certainly mean all such agreements.<sup>91</sup>

76. Global Justice Now argues for a “full debate and binding vote on the ratification of all future trade agreements” for the devolved administrations,<sup>92</sup> while War on Want argues that the consent of the devolved legislatures should be secured using the current legislative consent process.<sup>93</sup>

77. Ms Thimont Jack told us that:

I think the challenge for the UK is the way that our constitutional settlement works. With Canada you have a clear division of powers at the provincial and federal levels. We have the challenge in the UK of the UK Government acting for England and we also have the Welsh, Scottish and Northern Irish Governments, when there is one. That is the way the devolution settlement works and it makes it quite challenging to give a proper veto to the devolved Parliaments.<sup>94</sup>

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87 Trade Justice Scotland coalition ([UTP0008](#))

88 Ken Skates AC/AM, Cabinet Secretary for Economy and Transport ([UTP0029](#))

89 [Q218](#)

90 [Q123](#)

91 Scottish Government, [Scotland’s role in the development of future UK trade arrangements](#), August 2018

92 Global Justice Now ([UTP0026](#))

93 War on Want ([UTP0027](#))

94 [Q219](#)

## Access to texts

78. The arguments for increased transparency relating to trade documentation, and our conclusions and recommendations in this respect, are set out in Chapter 2. Specifically regarding access by devolved administrations, the Minister for Trade, Investment and Innovation in the Scottish Government told us that:

there is absolutely no reason why we should not see documents that relate to negotiations. That is different from what is potentially in the public domain.<sup>95</sup>

79. The Law Society of Scotland argued:

At a minimum, trade policy documents, including negotiation texts, should be made available to parliamentarians, both in Westminster and the devolved administrations and legislatures, to enhance transparency, facilitate scrutiny and strengthen democratic accountability.<sup>96</sup>

80. Trade Justice Scotland coalition put forward the example of documents being made available to provincial negotiators during CETA negotiations, where “all the negotiating documents were made readily accessible to provincial teams.”<sup>97</sup>

## Limitations of alternative models

81. The Scottish Government has advocated considering the Canadian model in the context of considering how devolved administrations should be involved in trade policy formulation,<sup>98</sup> and the Trade Justice Scotland coalition told us that:

there are many examples of how regional, provincial and state parliaments and their representatives are involved in the negotiation and ratification of trade deals.<sup>99</sup>

82. The Scottish Government did, however, make clear that the UK should not be limited by current models, but should instead build on them, noting that “the circumstances currently facing the UK are unique, and the response must be too.”<sup>100</sup>

**83. It is crucial that the Government take account of the views of each nation and region within the United Kingdom in formulating an independent trade policy. Current structures are not sufficiently robust to provide for structured engagement and extensive consultation.**

**84. *The Government should form a statutory UK intergovernmental international trade committee. The UK Government should have a duty to: consult the committee on the mandate for future trade negotiations; regularly update the committee on progress with negotiations; and consult the committee on the final text of an agreement prior to ratification.***

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95 [Q130](#)

96 [The Law Society of Scotland \(UTP0018\)](#)

97 [Trade Justice Scotland coalition \(UTP0008\)](#)

98 [Scottish Government \(UTP0030\)](#)

99 [Trade Justice Scotland coalition \(UTP0008\)](#)

100 [Scottish Government \(UTP0030\)](#)

***85. A representative from each of the devolved administrations and the Local Government Association should be included on the Strategic Trade Advisory Group (STAG), to allow Government to consult with them in detail throughout the negotiation process—in addition to the intergovernmental committee.***

## 5 Business and civil society

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### Current EU consultation mechanisms

86. The European Commission holds extensive consultations and dialogues to help ensure transparency and receive stakeholders' input in shaping mandates for each negotiation. The Directorate General for Trade runs the Civil Society Dialogue, which:

involves regular, structured meetings to discuss trade policy issues. The European Commissioner for Trade or [Directorate General for] Trade officials attend the meetings and inform participants of the ongoing developments in EU trade policy, and listen to and exchange views with them.<sup>101</sup>

87. The European Commission also consults with business and civil society through the "Expert Group on Trade Agreements" (other Commission expert groups listed as active in the area of trade policy are composed of Member State officials).<sup>102</sup> This group includes representatives from employers' organisations, trade unions, representative associations, socio-economic interest groups and other civil society organisations. A similarly constituted group, the TTIP Advisory Group, was previously set up during the EU-US trade negotiations, but is currently listed as being "on hold".<sup>103</sup>

88. Anna Fielder, of the Transatlantic Consumer Dialogue, told us that, in order to take part in the open Civil Society Dialogue meetings:

you have to be registered in the Commission transparency registers [...] [I]t is a way of counting how many industry lobbyists there are and it makes clear who are the people who go to these meetings.

She added that meetings happen about every three or four months, and "you get the Commission officials coming and informing those registered and present exactly what negotiations have been going on, what the policies are and what stage they are at."<sup>104</sup> She noted that a strength of these groups is that they "did get to see the legal text".<sup>105</sup>

89. Furthermore, since the EU-Republic of Korea FTA, signed in 2009, each EU trade agreement establishes a domestic as well as a transnational forum of civil society actors, known as Domestic Advisory Groups, which:

provide an opportunity for marginalised actors, such as some trade unions in Korea and Colombia, to express their voice on issues relating to trade and labour rights.<sup>106</sup>

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101 European Commission, [Civil Society Dialogue - Objectives](#), March 2014. For information on the workings of these groups during the TTIP negotiations, please see: [Q100](#) and [Q104](#)

102 European Commission, [Expert Groups](#), January 2018

103 European Commission, [Transatlantic Trade and Investment Partnership Stakeholder Advisory Group](#), April 2018

104 [Q102](#)

105 [Q102](#)

106 European Parliament, [TTIP and Labour Standards – study for the EMPL Committee](#), 2016

Rosa Crawford, International Trade Lead for the TUC, told us that these are put in place to “monitor the impact of the sustainable development chapter in place [...] [W]e would look to the Government to replicate that structure in future trade agreements”.<sup>107</sup>

### **UK businesses’ views on their involvement at EU level**

90. Hannah Essex, from the British Chambers of Commerce, informed us of a general feeling at present of distance between the UK business community and the formulation of trade policy at the EU level:

With the trade policies led by the European Union, it can feel quite distant from the day-to-day running of businesses. While organisations like BCC have had the opportunity to be involved, the engagement from the business community more broadly has perhaps not been what it could be.<sup>108</sup>

91. Ms Essex added that there is also a feeling amongst business that current processes for engaging with trade policy at a UK level are characterised by “ad hoc meetings rather than a structured, formal engagement process”.<sup>109</sup>

### **Proposals for engagement with business and civil society**

92. In the Government’s July White Paper, Dr Fox stated that:

Our vision is to build a future trade policy that delivers benefits not only for the UK’s economy, but for businesses, workers and consumers alike [...] Parliament, the devolved administrations, devolved legislatures, local government, business, trade unions, civil society, consumers, employees and the public from every part of the UK will have the opportunity to engage with and contribute to our trade policy, to develop an approach which maximises the benefits felt across UK society and its regions.<sup>110</sup>

93. *A Trade Model That Works for Everyone* stated that:

**All stakeholder groups must be consulted at all stages of the process**—this includes large and small business, unions, NGOs [non-governmental organisations], devolved administrations and civil society

[...]

**Multi-stakeholder forums**—dialogue between representative constituencies is an essential step to building trust, problem solving and decision making. Active effort is needed to include the voices of marginalised groups.<sup>111</sup>

### **Pre-negotiation consultation**

94. In his statement to the Commons in July 2018, Dr Fox gave a commitment that:

107 [Q104](#)

108 [Q49](#)

109 [Q49](#)

110 Department for International Trade, [Preparing for our future UK trade policy](#), Cm 9470, October 2017

111 [A Trade Model That Works for Everyone](#), August 2018

a 14-week consultation will run ahead of any new negotiation, allowing any individual or organisation across the UK to give their view. [T]his is longer than other government consultation periods and longer than the EU runs its own trade consultations for, giving the British public more say over Britain's trading future.<sup>90</sup>

95. The Government is currently participating in a number of trade working groups, attended by a range of representatives from various departments, looking at future trade relationships with new FTA partners.<sup>112</sup>

96. TechUK argues that, for deals to be economically effective:

it is crucial that the Government consults in detail with industry to understand the real barriers and challenges they face, as well the opportunities they identify. Before embarking on negotiations, the Government should consult industry in depth to find the real needs from all sectors in a trade deal.<sup>113</sup>

97. Elaine Fahey, Professor of Law & Associate Dean at City University, London, stated that civil society should also:

be engaged with from the outset as effectively as possible. Clear parameters of how it engages with negotiations should be heavily circumscribed also from the outset.<sup>114</sup>

This was acknowledged by the Secretary of State:

It is a reality of the age in which we live that the public, the consumers, will take far more interest in trade agreements than they did in the past.<sup>115</sup>

### **Consultation methods**

98. Concerns have also been raised that the number and variety of consultative mechanisms make contributing to trade policy difficult for business,<sup>116</sup> and in the case of small and medium-sized enterprises (SMEs) “trying to understand precisely the mechanisms [...] is virtually impossible”.<sup>117</sup>

99. Hannah Essex argued for more online consultation, with a less fixed set of questions, to address the challenges faced by business in relation to contributing to trade policy.<sup>118</sup> Furthermore, she argued that consultation should take place at an earlier point in time, to ensure that “the consultation happens at a time where it is feeding into a live decision rather than feeling like it is going into the ether and not having any purpose”.<sup>119</sup>

100. The Trade Justice Movement suggests that the USA's public consultation system, amended to address issues of public interest, should be put in place in the UK:

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112 See International Trade Committee, First Report of Session 2017–19, [Continuing application of EU trade agreements after Brexit](#), HC 520, Annex 2.

113 techUK ([UTP0033](#))

114 Professor Elaine Fahey ([UTP0012](#))

115 Oral evidence taken on [5 December 2018](#), HC (2017–19) Q 505

116 [Q75](#)

117 [Q68](#)

118 [Q69](#)

119 [Q58](#)

The USA's public consultation system mandates that public consultations must be carried for 90 days prior to the initiation of all trade negotiations. This model could be replicated in the UK in order to guarantee the UK public's right of input. However, in order to redress the disproportionate level of access and influence that business stakeholders have throughout trade negotiations, the Government should ensure that public consultation processes address issues of public interest such as the impact of trade agreements on human rights and labour rights conditions, environmental standards, and public service provisions.<sup>120</sup>

101. The Trade Justice Movement noted that concerns remain about the “disproportionate level of access and influence that business stakeholders have throughout trade negotiations” in the US system.<sup>121</sup>

### **Consultative committees**

102. TechUK notes the value of consultative trade committees as a mechanism for Government to receive advice from industry:

It will be an advantage to the Government to have mechanisms to check potentially problematic clauses with industry, based on non-disclosure agreements to enable this to take place in real time during negotiations. Industry consultation should be done through a system of sectoral and overarching committees, operated on a non-disclosure basis, to ensure frank, open and ongoing discussion before and during negotiations.<sup>122</sup>

103. The Government is taking steps towards this format and is in the process of forming STAG. The group will consist of 14 members representing civil society and business interests, and will include a business organisation, a regional business, an SME, a new entrant business, a Scottish business, a Welsh business, a Northern Irish business, a Think Tank, an academic organisation, two consumer organisations, a development organisation, an NGO, and a trade union. Its “principal purpose will be to advise the government on trade policy before and during the future free trade negotiation cycle, helping to shape our trade policy through high level strategic discussion.”<sup>123</sup>

104. STAG will have the power to:

set up sub-groups for the purpose of examining specific questions on the basis of Terms of Reference defined by the chair. Sub-groups shall report to the group. They shall be dissolved as soon as their mandate is fulfilled. Where appropriate, the chair may ask stakeholder groups which are already operational within government to act as sub-groups. Where this is not possible, sub-group membership shall be determined by public expressions of interest.<sup>124</sup>

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120 Trade Justice Movement ([UTP0005](#))

121 Trade Justice Movement ([UTP0005](#))

122 techUK ([UTP0033](#))

123 Department for International Trade, [Call for expressions of interest in membership of the Strategic Trade Advisory Group](#), July 2018

124 Department for International Trade, [Call for expressions of interest in membership of the Strategic Trade Advisory Group](#), July 2018

Mark Summers, Managing Director of Bristol-based SME AVEP, raised concerns that “the devil is in the detail in terms of the practical aspects”<sup>125</sup> and further that “there is still not total clarity in respect of where the control gates are and how the subcommittees are going to work [...] How you outline a framework for a future trade agreement should have that sort of robustness and approach set out on day one.”<sup>126</sup>

105. Mr Summers also argued that there should be “an appropriate mix of legislators and subject matter experts” on the STAG sub committees,<sup>127</sup> as witnesses suggested that current proposals do not fully allow for the expertise on “practical business problems” of business groups to be utilised during negotiations.<sup>128</sup> It was stated that industry expertise is especially important when discussions move from issues around trade in goods to trade in services:

Those [services] barriers require multiple times more research to even understand what the restrictions are, let alone how you might start to dismantle them, which is not in any way to do down the issues with at-border barriers that goods businesses face. There is just a whole additional level of complexity there, which again needs to be explained clearly in normal language.<sup>129</sup>

106. Sally Jones, of Deloitte, raised concerns about a lack of representation by large business.<sup>130</sup> Mr McKee, Scottish Minister for Trade, Investment and Innovation, noted the lack of devolved administration representation,<sup>131</sup> and Rosa Crawford, of the TUC, noted the presence of only a single trade union representative.<sup>132</sup>

107. Ms Essex, from the British Chambers of Commerce, made clear that STAG should be a conduit for wider business input, and should not be the:

be all and end all of business engagement so that that is a group that oversees all of the evidence that is coming in and that encourages consultation in a much broader sense, rather than just focusing on the people in that group.<sup>133</sup>

108. She also suggested that the STAG should not be the only means of consultation:

We have an opportunity with free trade agreements to start that process and to say that this is what the process is going to look like and this is the role of the strategic advisory group, but these are all the other opportunities to engage in the way that I have described for an online consultation and focus groups and so on. We have an opportunity to be clear upfront about what that process is going to look like and have a high degree of transparency around it.<sup>134</sup>

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125 [Q71](#)

126 [Q65](#)

127 [Q71](#)

128 [Q57](#)

129 [Q58](#)

130 [Q70](#)

131 [Q123](#)

132 [Q96](#)

133 [Q70](#)

134 [Q71](#)

109. David Talbot, Senior Director of International Government Affairs at Eli Lilly and Company, a multinational pharmaceutical company, stated that, while this the case:

The burden upon DIT is going to be enormous. Whatever process is set up has to be as sensible as possible. There has to be an appropriate balance between consultation and getting the work done because you do not have an infinite number of people to do this.<sup>135</sup>

### **Participation in / consultation during negotiations**

110. *A Trade Model That Works for Everyone* proposed that beyond consultative dialogue, civil society and business should be represented on negotiation delegations, “to enable decision making that maximises benefits and minimises unintended consequences including business, unions, NGOs, devolved administrations and civil society.”<sup>136</sup> Mr Summers, of AVPE, said the value in involving business in trade negotiation delegations was that “they understand particular technical or practical constraints”.<sup>137</sup> Furthermore, there should be general consultations after each negotiating round, as there was during the TTIP negotiations at an EU level. Mr Talbot explained how this operated: “As you know, there were many rounds of negotiation that took place in TTIP and I think that there was a lot of time for input. It was very formal and large”.<sup>138</sup>

111. The concept of a “room next door”, used by countries including Chile and Mexico to involve stakeholders in trade negotiations, was raised by Ms Essex. It would mean that:

negotiators can step away and get a rapid response from experts on particular issues so that they go back into the room better informed and better able to move the negotiations forward. That should include business representation.<sup>139</sup>

112. Mr Henig also informed us that:

there is some suspicion if you have a room next door about who is in it and who is not in it. To give the impression of fairness, it is probably more important that there are procedures that are open to all and if you have rooms next door you have to show in trade policy that you are open to both business and civil society. I think whatever you do, you have to start with those principles.<sup>140</sup>

113. The USA’s private sector advisory committee system was established through the Trade Act of 1974. An umbrella body, known as the Advisory Committee for Trade Policy and Negotiations, broadly represents the main interests affected by trade policy, and there are also sectoral / issue-specific committees. The US system was viewed by Mr Talbot as a good example of interacting with stakeholders throughout negotiations:

The US process is setting a set of negotiating objectives and then the end agreement is measured against those negotiating objectives. Updates

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135 [Q71](#)

136 [A Trade Model That Works for Everyone](#), August 2018

137 [Q60](#)

138 [Q53](#)

139 [Q60](#)

140 [Q224](#)

happen throughout the process. The input that needs to happen to the negotiators needs to be in real time, but cannot be at a technical level that no one can understand. The goals the Government set at the beginning of a negotiation need to be the part where the heavy consultation comes in so the interests of the various parties involved in, or concerned about, the negotiation are taken into account at the beginning.<sup>141</sup>

[...]

There is a formal briefing process through a number of different business organisations after every negotiating round. It is not perfect, but there are lots of opportunities for input. When they do have these comment periods, they get tens of thousands of submissions and have to, by law, respond in a timely way to concerns and different inputs that are raised.<sup>142</sup>

114. Ms Fielder, of the Transatlantic Consumer Dialogue, raised concerns that the US had “very secretive, closed advisory groups [...] we would not recommend the US system”.<sup>143</sup>

115. The Trade Justice Movement notes that adapting the US system may help address current perceived weaknesses in the consultation mechanisms:

The USA’s advisory committee system is one of the most consultative mechanisms and consists of 28 advisory committees, enabling approximately 700 citizen advisors to gain access to confidential information and comment on draft agreements. Civil society can provide input into trade policy through this system, but in practice the majority of advisory committee members are from private firms and the recommendations and advice given by civil society representatives are often overlooked.<sup>144</sup>

### **Formal and informal mechanisms**

116. Mr Talbot, from Eli Lilly, stated that formalising the process for business involvement was seen as important, because “it allows people to understand how their voice is going to be heard”.<sup>145</sup> This is part of a broader argument for greater formalisation of consultative mechanisms. A report by the British Chambers of Commerce and the London School of Economics argued for the importance of formal mechanisms in the UK given their general absence at present:

One way to palliate existing deficiencies in engagement mechanisms is through greater institutionalisation. Currently, consultations are based for the most part on ad hoc meetings, which “do not provide clear transparency”, while representation is skewed towards big businesses, which can afford participation costs and thus establish sustained relationships.<sup>146</sup>

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141 [Q58](#)

142 [Q76](#)

143 [Q97](#)

144 Trade Justice Movement ([UTP0005](#))

145 [Q76](#)

146 [UK Trade Policy – Institutions and Procedures for the 21st Century](#) – British Chambers of Commerce / London School of Economics, March 2018

The report did not, however, call for an eradication of informal relations given that formal mechanisms can lead to “tick box exercises”:

Formal mechanisms, though never refuted, are presented as complements to informal, network-based discussions. Finding the right balance that ensures access to discussions and maintain one-to-one negotiation opportunities must be of concern to all parties involved.<sup>147</sup>

117. While it was seen as important to have a “process very clearly defined upfront”, it was also deemed important to keep the processes for involvement under review.<sup>148</sup>

### Transparency relating to consultation

118. DIT has committed to making STAG’s meeting dates and times, membership, agenda and discussion summaries public (unless it is appropriate to keep them confidential).<sup>149</sup> Ms Jones noted that the ability of stakeholders to contribute constructively to the debate has been limited until now due to a lack of transparency from officials:

The largest constraint on our ability to be helpful has been on what the officials can say to us rather than our willingness to engage.<sup>150</sup>

119. It was also suggested that documentation should be available “to people on particular Committees that are signed up to NDAs [Non-Disclosure Agreements] so they have more freedom of access to those documents”.<sup>151</sup> This was supported by Mr Talbot, who pointed to “the system of cleared advisers [...] in the United States [...] [who] see the text. They do not share it [...] [T]hey are simply the technical experts”.<sup>152</sup>

120. Furthermore, War on Want suggested that disclosure of documents should be fair, to avoid concerns about over-representation of private interests:

If documents and information are released on one set of third party stakeholders, they must be released to everyone. There must be transparency about consultation and lobby meetings.<sup>153</sup>

121. The business and civil society representatives on the European Commission’s TTIP Advisory Group, a precursor to the Expert Group on Trade Agreements, also had access to the legal text, and a report on how each trade agreement negotiation round had progressed:

There was one that was quite open and confidential, which the advisory group could see and then it would be scrubbed of any strong remarks and go to the general public as well.<sup>154</sup>

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147 [UK Trade Policy – Institutions and Procedures for the 21st Century](#) – British Chambers of Commerce / London School of Economics

148 [Q77](#)

149 Department for International Trade, [Call for expressions of interest in membership of the Strategic Trade Advisory Group](#), July 2018

150 [Q59](#)

151 [Q81](#)

152 [Qq81–82](#)

153 War on Want ([UTP0027](#))

154 [Q104](#)

122. In order to support the argument for a cleared system of advisers with privileged access to information, Ms Essex argued that the Government should:

have transparency about who those people are and how they are appointed to that group and be very clear that they are appointed as individuals rather than people who are going to go back and discuss things with their representative group or their membership or colleagues. As long as you have transparency about who they are, then it is not unprecedented that the business would have access to non-public documents in that context.<sup>155</sup>

123. Furthermore, Ms Fielder suggested that the Government could share the details of those chapters that relate to regulatory issues, as opposed to chapters concerning market access concessions:

I do not think most civil society colleagues would be interested to see the negotiations on tariffs. They are traditional trade territory, and there might be sensitive information there and so on, but you have chapters that deal with regulatory co-operation and coherence; they deal with agriculture, which is vital, and they deal with various rules of intellectual property and so on. Those are of enormous concerns to all stakeholders, not just industry and not just policymakers. They should be seen—not just the initial offers, but the consolidated text.<sup>156</sup>

## Impact assessments

124. The importance of producing and publishing impact assessments was raised repeatedly in the evidence we received.<sup>157</sup> In respect of such assessments, Ms Crawford, of the TUC, argued that “trade unions and other civil society groups need to be part of their development [...] [This has] unfortunately not been the case in previous trade agreements”.<sup>158</sup>

125. *A Trade Model That Works for Everyone* argues that the evaluation of agreements must be based on up-to-date evidence produced ahead of time and regularly, and take a “holistic approach”:

[the] evaluation of agreements cannot be measured on the net benefit of each agreement in economic terms alone. While the perceived economic benefits are usually the main driver of trade agreements, evaluation should also be made of broader socioeconomic priorities including promoting decently paid jobs, labour and environmental standards, protecting public services, addressing inequality, including gender and regional inequality and international obligations on human rights norms and priorities of society, including International Labour Standards and Sustainable Development Goals.<sup>159</sup>

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155 [Q82](#)

156 [Q99](#)

157 See for example, Global Justice Now ([UTP0026](#))

158 [Q105](#)

159 [A Trade Model That Works for Everyone](#), August 2018

126. The EU currently develops “sustainable impact assessments”, but:

What we saw with TTIP was a sustainable impact assessment where trade unions were not factored into the analysis. It was mostly business that was consulted, and the way the consultation was done was mostly interviewing businesses about the cost of various non-tariff barriers, quantifying those and then giving the Commission a number, and then that analysis was only published a year after the TTIP negotiations had started.<sup>160</sup>

127. In order to improve on the EU Sustainability Impact Assessment system, these assessments should “not just look at the economic impact of a trade agreement, but will also look at environmental, social and human rights impacts”.<sup>161</sup>

128. *To provide appropriate business and civil society engagement in trade policy, the Government should adopt similar mechanisms to those used at EU level, where they are seen to be effective, and either dispense with or refine EU mechanisms where they are ineffective. It should not ignore the valuable lessons regarding consultations that have been learnt by the EU in negotiations such as those over TTIP. It is crucial that systems for engagement are open, accessible and understandable, to ensure that the Government receives a wide range of contributions.*

129. *The Government should be under a statutory requirement to engage in open and inclusive consultation with business, civil society, and the public, on the mandate for, and scope of, future trade deals. The Government should hold regular (at least quarterly) meetings which are open to all interested businesses, organisations and individuals. Government should provide updates on all ongoing trade negotiations and allow attendees to make representations in the presence of negotiators and Department for International Trade officials. The Government should ensure that such a forum, which could in many ways mirror the Civil Society Dialogue at the EU level, is transparent and accessible to all.*

130. The proposals for the STAG are a step in the right direction. The current membership of STAG is imbalanced between business and civil society, and does not allow for the breadth and depth of representation necessary for consultation during trade negotiations, as it does not include all stakeholder groups that should be represented. *The Government should redress the imbalance between big business, small and medium business, civil society, trade unions and consumer groups, and report back to us on how it has done so.*

131. *The Government should create a STAG sub-committee for each representative category in the current STAG proposals. This sub-committee should feed its conclusions upwards through the lead STAG member at points where the Government is seeking feedback on negotiating texts and positions. This will allow Government to efficiently receive confidential feedback from an increased pool of expertise. The Government should create ad-hoc sub-committees where there is a need for additional expertise not currently covered by STAG members—for instance, services or digital trade policy.*

132. *STAG members and sub-committees should be vetted advisors with full access to all negotiating documents to allow them to provide the best advice to Government.*

160 [Q105](#)

161 [Q105](#)

*The membership and application processes to these groups should be publicly available and fully transparent. The balance of stakeholder groups, and the members of each group, should be reviewed and changed at regular intervals, to avoid concerns about preferential treatment of specific businesses or organisations.*

133. *STAG should act as a “room next door” during negotiations, allowing it to provide Government with swift advice and calling on the expertise of its sub-committees when doing so. Where STAG identifies that a change in the negotiating position could have significant impacts not covered in the impact assessment, it should have the power to recommend the production of a new impact assessment, which must be completed before negotiations progress further.*

134. *Business and civil society groups should be involved in the production of impact assessments. These assessments should be produced before negotiations are initiated, as well as following the conclusion of negotiations (before a deal is presented to Parliament). They should use consistent metrics and analyses, and consider economic as well as non-economic impacts.*

## 6 Local government

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### *Benefits of local government involvement in trade policy*

135. Historically, “local government has been seen as less relevant than other institutions to international trade.”<sup>162</sup> However, Dr Michael Strange, a Senior Lecturer from Malmö University, informed us of the changing context for local government involvement in, and awareness of, trade policy. He noted that “it is a problem if the public and local government become increasingly alienated from these processes.”<sup>163</sup> Dr Strange noted the historic absence of a role for local government in trade policy:

International trade has been thought to be something taking place at another level and trade agreements are thought to be too general for the input of local government to be relevant.<sup>164</sup>

136. During our evidence session focused on local government involvement, we heard how local government plays a role in trade facilitation and monitoring trading standards.<sup>165</sup> In its response to the Government’s White Paper on trade policy, the Local Government Association (LGA) highlighted the benefits of involving local authorities in trade policy:

Local authorities leverage their unique proximity to local markets, businesses and investors, as well as their understanding of local assets, investment priorities, and opportunities to cut across trade and investment support services and provide a joined up “one stop shop” approach to investment activities at a local level.<sup>166</sup>

137. In May 2017, six new “Metro mayors” were elected in combined authorities across England. The Metro mayors are responsible for, amongst other things, growing the economies of their respective city regions.<sup>167</sup> We received evidence from the Metro mayors of the Manchester, Liverpool and Sheffield combined authorities, all of whom expressed a desire to have greater involvement in national trade policy.<sup>168</sup> Dan Jarvis, Mayor of the Sheffield City Region, noted that:

Mayors play a central role in the development of UK Trade policy. National policy has to support our own local priorities and for it to do that Mayors must be involved in its oversight nationally as well as at the regional Department for International Trade level [...] Mayors are central to how that trade policy is implemented, with a clear focus on rebalancing the economy and

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162 [Q150](#)

163 [Q173](#)

164 Gabriel Siles-Brügge and Michael Strange, “Municipal Level Trade Contestation: activists and local governments from the MAI to TTIP”, in Jörg Broschek and Patricia Goff (eds), *Multilevel Trade Politics: Configurations, Dynamics, Mechanisms* (University of Toronto Press – forthcoming). Dr Gabriel Siles-Brügge is currently a Parliamentary Academic Fellow who supports the work of the International Trade Committee.

165 [Q156](#)

166 Local Government Association, [HMG white paper on future UK trade policy - LGA Response](#), November 2017

167 Centre for Cities, [“Everything you need to know about metro mayors”](#), June 2016

168 See Dan Jarvis MP, Sheffield City Region Mayoral Combined Authority ([UTP0037](#)), Liverpool City Region Combined Authority ([UTP0038](#)), Greater Manchester Combined Authority ([UTP0039](#))

empowering regions with significant trade potential to be at the forefront of determining appropriate target markets and aligning national government resources to delivering activity in those target markets.<sup>169</sup>

138. Ms Essex, from the British Chambers of Commerce, outlined the benefits of including local government in trade policy, centring around its connection with localised business:

I think where there are concentrations of industry in regions and local areas they should have an input into it in the same way that Scotland would around certain issues, Wales around certain issues and Northern Ireland. Whether that is through local authorities or through their parliamentary representatives, LEP [Local Enterprise Partnership] or whatever the mechanism is, certainly there should be some acknowledgement of any impact on a specific region, whether that is a nation or a region of the UK.<sup>170</sup>

139. Cllr Kevin Bentley, Chair of the LGA's Brexit Taskforce and Deputy Leader of Essex County Council, told us that local government does not "want to swap Brussels for Whitehall".<sup>171</sup> He did, however, tell the Committee of an increased dialogue with DIT.<sup>172</sup>

### Regional impact

140. Earlier this year, the Secretary of State said:

Despite trade increasing prosperity and living standards, some sectors, regions and groups experience the, often more concentrated, adjustment effects of trade.<sup>173</sup>

141. The LGA noted the growing resistance to trade agreements as an important argument for further consultation with local government.<sup>174</sup> Dr Gabriel Siles-Brügge, Associate Professor in Public Policy at Warwick University, and Dr Strange note that TTIP catalysed much resistance because of its potential impact on the public, and that local government had made their opinions known:

Such actions have included the passing of governmental motions criticising the negotiations, going as far (in some cases) as the establishment of "free zones"—formal statements that a municipality is "symbolically" TTIP-(or other agreement)-free and/or otherwise exempt from its provisions.<sup>175</sup>

This included Warwickshire County Council passing a motion:

That Warwickshire County Council calls on the Government to oppose the introduction of the Transatlantic Trade and Investment Partnership

169 Dan Jarvis MP, Sheffield City Region Mayoral Combined Authority ([UTP0037](#))

170 [Q89](#)

171 [Q149](#)

172 [Q157](#)

173 Department for International Trade, "[Liam Fox delivers Parliament and the public a central role in post-Brexit UK trade agreements](#)", 16 July 2018

174 Local Government Association, [HMG white paper on future UK trade policy - LGA Response](#), November 2017

175 Gabriel Siles-Brügge and Michael Strange, "Municipal Level Trade Contestation: activists and local governments from the MAI to TTIP", in Jörg Broschek and Patricia Goff (eds), *Multilevel Trade Politics: Configurations, Dynamics, Mechanisms* (University of Toronto Press – forthcoming).

given that this may lead to the sale of public and local authority assets with consequent impacts on this authority's ability to deliver services at a viable cost.<sup>176</sup>

142. The paper by Dr Siles-Brügge and Dr Strange points out that modern trade agreements include local government within the scope of their application when it comes to, for example, commitments on services and procurement liberalisation or investor protection. They argue, however, that municipalities within the EU have had less access to institutionalised means to resist implementation of trade agreements than other sub-national levels of government, and that they:

do not benefit from the formalised trade policy consultation mechanisms applying to EU Member States in the Council of the EU, and thus rely on making their views known either by pressuring their national governments and parliamentarians or Members of the European Parliament (MEPs) [for example by passing critical motions], or by participating in more informal consultation mechanisms [...]<sup>177</sup>

143. Cllr Bentley pointed that a role for municipalities in trade policy is particularly relevant in current circumstances, given the potential for significant regulatory change as the UK leaves the EU and looks to create new trading arrangements. He noted the potential impact of new trade agreements on environmental health issues, food hygiene standards and other areas relevant to local government.<sup>178</sup> Cllr Bentley called for a statutory role for local government in trade policy.<sup>179</sup>

**144. Local government and its areas of competence are directly affected by national trade policy decisions. In addition, local government is well placed to understand the effects of trade policy on the individuals and organisations whose interests it represents. Local authorities are, therefore, well placed to be involved in the development and scrutiny of trade policy. *Local government should have a voice throughout the trade policy process, and the Government, in its response to this report, should set out how it plans to facilitate this. The Government should consider whether it would be appropriate to include local government representation on STAG.***

176 [Warwickshire County Council, Annual Meeting Minutes](#), 19 May 2015. The motion in question was moved by Matt Western, who has since become a member of the International Trade Committee.

177 Gabriel Siles-Brügge and Michael Strange, "Municipal Level Trade Contestation: activists and local governments from the MAI to TTIP", in Jörg Broschek and Patricia Goff (eds), *Multilevel Trade Politics: Configurations, Dynamics, Mechanisms* (University of Toronto Press – forthcoming).

178 [Q164](#)

179 [Q180](#)

# Conclusions and recommendations

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## Introduction and core principles

1. The following are clear, binding principles that have emerged from the evidence to our inquiry *The Government must accept these principles as central tenets of how it should develop UK trade policy.*

*Conducting trade negotiations is the prerogative of the executive, but there must be a meaningful role for Parliament in the trade policy process.*

Conducting trade policy negotiations with third parties is the prerogative of the executive, but as the UK develops its own independent trade policy, it is essential that Parliament has a meaningful role throughout the process. This will result in fairer trade outcomes, due to clear and direct input from Parliament, with its Members representing the views of those that stand to be affected.

*Trade policy must be open and inclusive, and maximise benefit throughout the UK*

Trade deals involve more than just tariffs, and regulatory change can positively or negatively impact consumers, businesses and workers. It is, therefore, essential that there is a fair and broad representation of interests in trade policy formulation across all nations within the UK, and that this involves a wide range of stakeholder groups. This will lead to a more inclusive and effective trade policy.

*Government must operate from a presumption of transparency*

The levels of public trust in trade policy are low. To address this, the Government should work with a presumption of transparency, rather than of secrecy, regarding the publication of documentation relating to trade policy and negotiations. We accept that certain documents are sensitive and must remain confidential to avoid undermining negotiations, but the Government should only keep documents secret on this basis when absolutely necessary.

*Consultative processes must be formalised*

To achieve the best trade policy outcomes, it is vital that all parties who stand to be affected understand how the process works, and when and how they can contribute to it. Certain elements of consultation and oversight should be made statutory, to ensure that the system inspires the trust of stakeholders and mitigates concerns about unchecked executive power over trade policy. These processes should be put in place as soon as possible, in order to provide proper oversight and scrutiny of future trade agreements, negotiation of which could begin as early as April 2019. (Paragraph 6)

## Trade, trust and transparency

2. *If the Government wishes to increase public trust in UK trade policy, it should operate with a presumption of transparency. All documentation relating to trade negotiations should be made available unless there is a genuine and reasonable justification for*

*keeping specific documents confidential, such as the risk of undermining the UK's negotiating position. The Government must, as a minimum, publish trade policy documentation equivalent to that which is published at the EU level. The EU's transparency commitments have been developed in direct response to public and stakeholder concerns raised during the TTIP negotiations. To deliver anything less would risk undermining public trust in UK trade policy from the outset. (Paragraph 20)*

3. *We welcome the Government's commitment to publishing an Outline Approach for each negotiation—but note that it has provided limited information about what will be included in this document. This Outline Approach should be equivalent to EU trade negotiating mandates, setting out clear instructions for UK negotiators. The Government should ensure that such a mandate includes no less information than the EU provides—notably, for instance, in the recently approved mandates for negotiations with Australia and New Zealand. (Paragraph 21)*
4. *All information published by the Government relating to each trade negotiation should be available on a single page on the gov.uk website. It should be presented in a clear and easily navigable way, and jargon should be avoided where possible. The Government should also publish accessible summaries or factsheets in relation to negotiating documents. (Paragraph 22)*

### Parliament's role in trade policy

5. *Parliament should be given an opportunity to debate the Government's Outline Approach on a substantive motion before the mandate is set and negotiations commence. We welcome the indications to us that it is the Government's aim to provide for a debate on the Outline Approach, but the Government should confirm that such a debate would be on an amendable, substantive motion. The motion, and debate, will provide an opportunity for Parliament to express any concerns and objections regarding the proposed mandate, and allow the Government to modify it if necessary. (Paragraph 54)*
6. *Current processes for treaty ratification under the Constitutional Reform and Governance Act 2010 are insufficient. While Parliament can theoretically block indefinitely the ratification of a treaty, or decline to legislate its provisions into domestic law, doing so in practice would be a difficult and unsatisfactory means of rejecting a trade agreement which does not have the support of Parliament. The House of Commons should have a final yes / no vote on the ratification of trade agreements. (Paragraph 55)*
7. *A parliamentary committee should be charged with the detailed scrutiny that will be required for future trade negotiations. At present, the most suitable committee to take this responsibility is ours. We could draw on the experience of other Committees, such as the European Scrutiny Committee, in carrying out this task. We should have full access to all negotiating documents, on a confidential basis when required, and should receive regular updates, in private, from ministers and civil servants who are involved in ongoing trade negotiations. We must be provided with the power to scrutinise negotiating mandates, and the final text of agreements, before they are presented to Parliament for debate. The International Trade Committee*

would expect to make a report to the House on the final text of agreements before a vote on ratification takes place, and the Government should ensure that, where possible, there is sufficient time between a final text being agreed and it being presented to Parliament to allow us to do this. (Paragraph 56)

8. *In addition to private updates to this Committee, the House should be provided with updates on negotiations, through general statements to the whole House. (Paragraph 57)*

### Devolved administrations

9. It is crucial that the Government take account of the views of each nation and region within the United Kingdom in formulating an independent trade policy. Current structures are not sufficiently robust to provide for structured engagement and extensive consultation. (Paragraph 83)
10. *The Government should form a statutory UK intergovernmental international trade committee. The UK Government should have a duty to: consult the committee on the mandate for future trade negotiations; regularly update the committee on progress with negotiations; and consult the committee on the final text of an agreement prior to ratification. (Paragraph 84)*
11. *A representative from each of the devolved administrations and the Local Government Association should be included on the Strategic Trade Advisory Group (STAG), to allow Government to consult with them in detail throughout the negotiation process—in addition to the intergovernmental committee. (Paragraph 85)*

### Business and civil society

12. *To provide appropriate business and civil society engagement in trade policy, the Government should adopt similar mechanisms to those used at EU level, where they are seen to be effective, and either dispense with or refine EU mechanisms where they are ineffective. It should not ignore the valuable lessons regarding consultations that have been learnt by the EU in negotiations such as those over TTIP. It is crucial that systems for engagement are open, accessible and understandable, to ensure that the Government receives a wide range of contributions. (Paragraph 128)*
13. *The Government should be under a statutory requirement to engage in open and inclusive consultation with business, civil society, and the public, on the mandate for, and scope of, future trade deals. The Government should hold regular (at least quarterly) meetings which are open to all interested businesses, organisations and individuals. Government should provide updates on all ongoing trade negotiations and allow attendees to make representations in the presence of negotiators and Department for International Trade officials. The Government should ensure that such a forum, which could in many ways mirror the Civil Society Dialogue at the EU level, is transparent and accessible to all. (Paragraph 129)*
14. The proposals for the STAG are a step in the right direction. The current membership of STAG is imbalanced between business and civil society, and does not allow for the breadth and depth of representation necessary for consultation during trade

negotiations, as it does not include all stakeholder groups that should be represented. *The Government should redress the imbalance between big business, small and medium business, civil society, trade unions and consumer groups, and report back to us on how it has done so.* (Paragraph 130)

15. *The Government should create a STAG sub-committee for each representative category in the current STAG proposals. This sub-committee should feed its conclusions upwards through the lead STAG member at points where the Government is seeking feedback on negotiating texts and positions. This will allow Government to efficiently receive confidential feedback from an increased pool of expertise. The Government should create ad-hoc sub-committees where there is a need for additional expertise not currently covered by STAG members—for instance, services or digital trade policy.* (Paragraph 131)
16. *STAG members and sub-committees should be vetted advisors with full access to all negotiating documents to allow them to provide the best advice to Government. The membership and application processes to these groups should be publicly available and fully transparent. The balance of stakeholder groups, and the members of each group, should be reviewed and changed at regular intervals, to avoid concerns about preferential treatment of specific businesses or organisations.* (Paragraph 132)
17. *STAG should act as a “room next door” during negotiations, allowing it to provide Government with swift advice and calling on the expertise of its sub-committees when doing so. Where STAG identifies that a change in the negotiating position could have significant impacts not covered in the impact assessment, it should have the power to recommend the production of a new impact assessment, which must be completed before negotiations progress further.* (Paragraph 133)
18. *Business and civil society groups should be involved in the production of impact assessments. These assessments should be produced before negotiations are initiated, as well as following the conclusion of negotiations (before a deal is presented to Parliament). They should use consistent metrics and analyses, and consider economic as well as non-economic impacts.* (Paragraph 134)

### Local government

19. *Local government and its areas of competence are directly affected by national trade policy decisions. In addition, local government is well placed to understand the effects of trade policy on the individuals and organisations whose interests it represents. Local authorities are, therefore, well placed to be involved in the development and scrutiny of trade policy. Local government should have a voice throughout the trade policy process, and the Government, in its response to this report, should set out how it plans to facilitate this. The Government should consider whether it would be appropriate to include local government representation on STAG.* (Paragraph 144)

## Annex 1: Proposed stakeholder engagement and input processes

	Business and civil society	Devolved government	Local government	UK Parliament
<b>Consultation</b>	<ul style="list-style-type: none"> <li>- Broad and open public consultation</li> <li>- Feedback from all registered groups in open dialogue sessions</li> <li>- Consultation and input from the Strategic Trade Advisory Group (STAG)</li> </ul>	Consultation and input from an intergovernmental international trade committee and STAG	<ul style="list-style-type: none"> <li>- Broad and open public consultation</li> <li>- Consultation and input from STAG</li> </ul>	
<b>Mandate (the "Outline Approach")</b>	<ul style="list-style-type: none"> <li>- Specific consultation through STAG, drawing on sub-committees</li> <li>- Feedback from all registered groups in open dialogue sessions</li> <li>- Production of impact assessment</li> </ul>	Formal advisory role through an intergovernmental international trade committee and STAG	Formal advisory role through STAG	Substantive vote on amendable motion to mandate the "Outline Approach"
<b>Throughout negotiations</b>	<ul style="list-style-type: none"> <li>- Formal advisory role through STAG</li> <li>- Feedback from all registered groups in open dialogue sessions</li> </ul>	Formal advisory role through an intergovernmental international trade committee and STAG	Formal advisory role through STAG	<ul style="list-style-type: none"> <li>- Ongoing private briefing by Government to Trade Committee</li> <li>- General updates to Parliament</li> </ul>
<b>Ratification</b>	Production of impact assessment to inform parliamentary vote			Yes / no vote on final deal, informed by International Trade Committee report

## Formal minutes

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**Wednesday 19 December 2018**

Members present

Angus Brendan MacNeil, in the Chair

Nigel Evans	Julia Lopez
Ranil Jayawardena	Faisal Rashid
Chris Leslie	Catherine West
Emma Little Pengelly	Matt Western

Draft Report (*UK trade policy transparency and scrutiny*) proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 144 agreed to.

Annex and Summary agreed to.

*Resolved*, That the Report be the Sixth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 9 January at 9.45 a.m.]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Wednesday 20 June 2018

**Shanker Singham**, Director of the International Trade and Competition Unit, Institute of Economic Affairs, **Sir Lockwood Smith**, International Trade and Competition Unit Advisory Council, **Alan Oxley**, International Trade and Competition Unit Advisory Council, **John Weekes**, International Trade and Competition Unit Advisory Council

[Q1–47](#)

### Wednesday 31 October 2018

**Hannah Essex**, Co-Executive Director of Policy and Campaigns, British Chambers of Commerce, **David Talbot**, Senior Director, International Government Affairs, Eli Lilly and Company, **Mark Summers**, Managing Director, Avon Valley Precision Engineering (AVPE)

[Q48–91](#)

**Sally Jones**, Director of International Trade Policy and Global Brexit Insight Lead, Deloitte LLP, **Nick Dearden**, Director, Global Justice Now, **Rosa Crawford**, International Trade Lead, TUC, **Anna Fielder**, Senior Policy Adviser, Transatlantic Consumer Dialogue

[Q92–108](#)

### Wednesday 14 November 2018

**Noel Lavery**, Permanent Secretary, Department for the Economy, Northern Ireland Executive, **Ivan McKee MSP**, Minister for Trade, Investment and Innovation

[Q109–147](#)

**Councillor David Bentley**, Chairman of the Local Government Association's Brexit Taskforce, **Councillor Philip Atkins OBE**, Leader of Staffordshire County Council, **Michael Strange**, Global Political Studies (International Relations) Department, Malmö University

[Q148–184](#)

### Wednesday 21 November 2018

**Dr Brigid Fowler**, Senior Researcher, Hansard Society, **David Henig**, Director of the UK Trade Policy Project, European Centre for International Political Economy, **Maddy Thimont Jack**, Researcher, Institute for Government

[Q185–225](#)

### Wednesday 28 November 2018

**George Hollingbery MP**, Minister of State for Trade Policy, Department for International Trade

[Q226–248](#)

### Wednesday 28 November 2018

**Jude Kirton-Darling MEP**, Member of the European Parliament for North East England

[Q249–275](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

UTP numbers are generated by the evidence processing system and so may not be complete.

- 1 38 Degrees ([UTP0022](#))
- 2 Amnesty International UK ([UTP0003](#))
- 3 British Chambers of Commerce ([UTP0009](#))
- 4 Compassion in World Farming ([UTP0016](#))
- 5 Dan Jarvis MP, Sheffield City Region Mayoral Combined Authority ([UTP0037](#))
- 6 Dr Maria Garcia ([UTP0015](#))
- 7 Dr Michael Strange ([UTP0011](#))
- 8 Dr Michael Strange ([UTP0036](#))
- 9 Equality and Human Rights Commission ([UTP0025](#))
- 10 Fairtrade Foundation ([UTP0014](#))
- 11 Global Justice Now ([UTP0026](#))
- 12 Greater Manchester Combined Authority ([UTP0039](#))
- 13 International Chamber of Commerce UK ([UTP0031](#))
- 14 Ken Skates ([UTP0029](#))
- 15 Liverpool City Region Combined Authority ([UTP0038](#))
- 16 Mr David Henig ([UTP0017](#))
- 17 National Farmers' Union ([UTP0021](#))
- 18 National Pig Association ([UTP0023](#))
- 19 New Zealand House of Representatives ([UTP0035](#))
- 20 Parliament of the Co-operative Republic of Guyana ([UTP0034](#))
- 21 Professor Derrick Wyatt QC ([UTP0002](#))
- 22 Professor Elaine Fahey ([UTP0012](#))
- 23 Scottish Government ([UTP0030](#))
- 24 Senior Lecturer Emily Lydgate ([UTP0019](#))
- 25 Shaw Foundation Junior Research Fellow, Jesus College, Oxford Ewan Smith ([UTP0020](#))
- 26 Sustain ([UTP0004](#))
- 27 techUK ([UTP0033](#))
- 28 The Investment Association ([UTP0001](#))
- 29 The Law Society ([UTP0032](#))
- 30 The Law Society of Scotland ([UTP0018](#))
- 31 Trade Justice Dundee ([UTP0010](#))
- 32 Trade Justice Movement ([UTP0005](#))
- 33 Trade Justice Scotland coalition ([UTP0008](#))

- 34 Traidcraft ([UTP0013](#))
- 35 War on Want ([UTP0027](#))
- 36 Which? ([UTP0028](#))
- 37 Wine and Spirit Trade Association ([UTP0024](#))
- 38 WWF ([UTP0006](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	Continuing application of EU trade agreements after Brexit	HC 520
Second Report	UK-US Trade Relations	HC 481
Third Report	UK Trade Remedies Authority	HC 743
Fourth Report	UK arms exports during 2016	HC 666
Fifth Report	Trade and the Commonwealth: developing countries	HC 667
First Special Report	UK trade options beyond 2019: Government Response to the Committee's First Report of Session 2016–17	HC 585
Second Special Report	Continuing application of EU trade agreements after Brexit: Government Response to the Committee's First Report	HC 1042
Third Special Report	UK Trade Remedies Authority: Government Response to the Committee's Third Report	HC 1424
Fourth Special Report	UK-US trade relations: Government Response to the Committee's Second Report	HC 1440
Fifth Special Report	UK arms exports during 2016: Government Response to the Committees' First Joint Report	HC 1789