



Department for
International Trade

Processes for making free trade agreements after the United Kingdom has left the European Union

February 2019



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Presented to Parliament
by the Secretary of State for the Department for International Trade and
President of the Board of Trade
by Command of Her Majesty

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PROCESSES FOR MAKING FREE TRADE AGREEMENTS AFTER THE UNITED KINGDOM HAS LEFT THE EUROPEAN UNION

Introduction

The United Kingdom has a long and proud history of championing free and fair trade as a driver of economic prosperity, global stability and international cooperation. As we leave the European Union we will have, for the first time in over 40 years, the ability to negotiate and enter into our own free trade agreements (FTAs).

In seizing this opportunity, the Government is clear that we must have a transparent and inclusive future trade policy that delivers for all parts of the United Kingdom.

In July 2018 we set out initial proposals on how we would achieve this ambition¹. Since then there has been considerable interest in this issue. The Government has listened carefully to the views that have been put forward, in particular those of parliamentarians, the devolved administrations and respondents to our recent public consultations on potential FTAs with Australia, New Zealand and the United States and potential accession to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP)². This paper sets out further details of our approach, including to public transparency and the role of Parliament and the devolved administrations.

The House of Commons International Trade Committee (ITC) published a report on “*UK trade policy and transparency and scrutiny*” in December 2018³. We would like to particularly thank the ITC for this report which has informed much of the Government’s thinking.

Scope of these proposals

The proposals in this paper apply to future FTAs. In the first instance this would be our proposed new agreements with Australia, New Zealand, the US and potential accession to CPTPP. These proposals do not apply to other international negotiations and treaties, including negotiations on the future relationship with the EU.

These proposals do not apply to existing agreements that the UK is party to via its EU membership, which we are seeking to roll over under the Trade Agreement Continuity programme. The programme is a technical exercise to ensure continuity in trading relationships that we currently benefit from as an EU member. Most of the existing EU agreements have been subject to Parliamentary scrutiny through the EU Scrutiny Committees and many have also undergone the process set out in the Constitutional Reform and Governance Act (CRaG). Each new transitioned Agreement currently going through the CRaG will be laid before Parliament with an Explanatory Memorandum as required by CRaG and an additional Parliamentary report which details any significant differences from the original EU agreement.

¹ <https://hansard.parliament.uk/commons/2018-07-16/debates/4BBDA637-F594-4A20-A333-97E1E88CFD15/TradePolicy>

² <https://www.gov.uk/government/news/have-your-say-on-the-uks-future-trade-negotiations>

³ <https://publications.parliament.uk/pa/cm201719/cmselect/cmintrade/1043/104302.htm>

The role of Parliament in free trade agreements

The Government is clear that there must be a strong and effective role for Parliament in scrutinising our trade policy and free trade agreements.

Our departure from the EU does not change the fundamental constitutional principles that underpin the negotiation of international treaties, including FTAs. The making, amending and withdrawing from treaties are functions of the executive which are carried out in exercise of the Royal Prerogative. However, it has long been recognised that Parliament should have the opportunity to scrutinise treaties that are subject to ratification and we remain committed to that principle in relation to FTAs.

In July 2018 we set out that Parliament would have the opportunity to consider our approach to negotiations. On Thursday 21 February we held a general debate in the House of Commons on the recent FTA consultations on potential trade negotiations with the United States, Australia, New Zealand and on the UK's potential accession to CPTPP. We also committed to providing updates to Parliament throughout negotiations and confirmed that at the end of the process Parliament would scrutinise the agreements under CRaG.

We recognise that the best free trade agreements will be those that draw on the extensive expertise and experience of both the House of Commons and House of Lords and have its full support. Since July we have listened carefully to the wide range of views from both parliamentarians and the public on this issue and this section sets out more detailed proposals for Parliament's role in future FTAs at the beginning, throughout and end of negotiations.

At the start of negotiations the Government will publish its Outline Approach which, as described above, will include our negotiating objectives and be accompanied by a scoping assessment which will be informed by economic modelling, setting out the potential economic impacts of any agreement. We will ensure that Parliament has a role in scrutinising these documents so that we can take its views into account before commencing negotiations.

The Government further proposes that it should draw on the expertise of Parliament throughout negotiations via a close relationship with a specific parliamentary committee in each House. We propose to work with the House Authorities to establish which committee(s) – including the possibility of creating a new one(s) – would be the most appropriate to take responsibility for scrutiny of future FTAs. We are clear that the chosen structure must ensure that both Houses play a role in the scrutiny of FTAs. While the membership of committees is a question for the House itself we would hope that there would be scope to ensure that we could draw on specific expertise in relation to critical issues.

In order to ensure effective scrutiny and two-way dialogue, we propose that the committee(s) could have access to sensitive information that is not suitable for wider publication and could receive private briefings from negotiating teams. This would need to be on an understanding of confidentiality, and we envisage that the committee would need to take a mixture of public and private evidence from Ministers and negotiators on the progress of negotiations. This would ensure that the committee(s)

was able to follow negotiations closely, provide views throughout the process and take a comprehensive and informed position on the final agreement. The detail of what would be shared and on what basis would be a matter for discussion between the Department for International Trade and the committee(s).

As with all parliamentary committees, the committee(s) would have the power to produce a detailed report on the agreement that had been reached. This would ensure there was a report, independent of the Government, to assist parliamentarians and the public in understanding the agreement and its potential implications. The Government would commit to ensuring that there was sufficient time between finalising a new FTA and laying it before Parliament under the CRaG procedure so that the committee(s) could make such a report.

Where the Committee(s) indicated that the agreement should be subject to a debate prior to the commencement of parliamentary scrutiny under CRaG, the Government would consider and seek to meet such requests where those requests are made within a reasonable timeframe and subject to parliamentary timetables.

Free trade agreements cannot of themselves change domestic law. Until we know the content of a proposed FTA, we cannot say exactly which implementing measures will be required. However, in practice a comprehensive and deep new FTA may require a combination of legislation as well as some non-statutory measures, for instance dialogue between regulators.

It is the practice of the UK Government always to implement treaties before ratification. Changes to secondary legislation would be made in the usual way. If changes to primary legislation are necessary, we will bring forward a bespoke Bill for the FTA. For each new FTA there will therefore be an opportunity to scrutinise all the legislative changes necessary to implement it before the FTA is ratified.

The Government continues to believe that the legislative framework set by CRaG is appropriate and provides sufficient flexibility to permit Parliament to undertake scrutiny in the manner of its choosing, including for FTAs, prior to ratification. The framework set out reflects the fact that any implementing legislation to modify domestic law will be subject to separate Parliamentary scrutiny in the normal way before any treaty can enter into force. It also reflects the fact that the Government and Parliament have different roles in treaties: the Government must have the flexibility to negotiate effectively, while Parliament must be able to scrutinise its work and have the power to pass implementing legislation and scrutinise treaties prior to ratification. This long-standing constitutional framework was recently reviewed, including through a public consultation, and confirmed by Parliament when CRaG was passed in 2010.

International Comparators

During debates on the role of Parliament, many have drawn comparisons to international examples of treaty-making. The Government has considered international practices, in particular the models of other Westminster-style parliaments in Australia, New Zealand and Canada, as well as the models used in the US and the EU. We have drawn on best practice, for example in our intention to publish reports of negotiating rounds as is the practice with the EU and Australia, and our intention to

publish an annual report on trade negotiations in a similar model to that of the United States.

However, it is also important to note that no international model can be replicated precisely for the UK. The systems used by the EU are appropriate for the EU with its unique supranational structure; while we have drawn lessons from those systems, they are not always appropriate for the UK operating as an independent sovereign trading nation. The Government wants to achieve the right structures and mechanisms for the UK, taking into account its unique constitutional and democratic structures.

Devolved administrations and legislatures

The Government is committed to working closely with the devolved administrations to deliver a future trade policy that works for the whole of the UK. It is important that we do this within the context of the current constitutional make-up of the UK, recognising that international treaties are a reserved matter but that the devolved governments have a strong and legitimate interest where they intersect with areas of devolved competence.

The UK Government, in partnership with the devolved administrations, is currently undertaking a review of intergovernmental relations (the IGR Review). As part of this wider work, in summer 2018 the Department for International Trade held a deep dive on trade policy with the devolved administrations. Following this we jointly agreed that we would regularise our engagement on trade policy and have now put in place:

- regular Senior Officials' Groups, held every six weeks;
- an ongoing programme of monthly round-tables on technical policy areas.

We are also continuing to discuss with the devolved administrations their role in future FTAs with a view to agreeing new arrangements in the coming months. These arrangements will complement the existing Memorandum of Understanding for devolution⁴.

As part of this work we have recently announced our intention to form a new Ministerial Forum for international trade. This will ensure there is a regular and formal structure to support discussion and engagement between the UK Government and the devolved administrations on trade agreements. The operational arrangements for the frequency and terms of reference for this forum are subject to ongoing discussion with the devolved administrations. Our clear intention is that the Forum will be a flexible mechanism to enable Ministerial discussion at the key points during trade negotiations. There will also continue to be a programme of official-level technical engagement between the Department for International Trade and the devolved administrations to underpin the Ministerial Forum. Together, these processes will ensure that the priorities and expertise of the devolved administrations can shape and inform the development of the UK Government's international trade policy and negotiating positions.

The devolved administrations will continue to be responsible for observing and implementing international obligations in areas of devolved competence. Where a new

⁴ <https://www.gov.uk/government/publications/devolution-memorandum-of-understanding-and-supplementary-agreement>

FTA requires legislation in order to implement it, the UK Government will continue to respect the devolution settlements and work with the devolved administrations to secure legislative consent for UK-wide legislation where appropriate.

We recognise that the devolved legislatures also have a strong and legitimate interest in future trade agreements. It will be for each devolved legislature to determine how it will scrutinise their respective Governments as part of the ongoing process. Equally, the means by which our Parliament in Westminster works with its devolved counterparts is a matter for the legislatures themselves, in line with their existing inter-parliamentary ways of working. Where appropriate UK Government ministers may engage directly with the devolved legislatures, as the Minister for Trade Policy has done in appearing before the Scottish Parliament⁵ and National Assembly for Wales⁶ to discuss the Trade Bill.

Transparency and public consultation

The Government recognises that there is a high level of public interest in trade negotiations. We are committed to transparency and recognise that this is critical to securing parliamentary and public support for trade negotiations. At the same time, we must ensure that we protect sensitive negotiating positions and market sensitive information and uphold the prerogative power of the government to enter into treaties. It would be neither responsible nor sensible for the Government to release information that would undermine our ability to negotiate effectively and secure the best outcomes for the UK.

With this balance in mind, the Government will publish information at the beginning, end and throughout negotiations. This will ensure that Parliament and the public can understand and inform our negotiations and are kept updated on progress. In particular:

- **Prior to negotiations** commencing we will publish and lay before Parliament our Outline Approach to each proposed negotiation. This will include the scope of the agreement and our negotiating objectives and be accompanied by a scoping assessment providing an economic analysis of the proposed trade agreement.
- **During negotiations** we will publish and lay before Parliament a Round Report following each substantive round of negotiations. This will provide an outline of talks by policy area. We will also publish an Annual Trade Report covering progress across the full programme of negotiations.
- **At the end of negotiations** we will lay the full treaty text before Parliament and publish an Explanatory Memorandum. We will also publish a full Impact Assessment.

Our initial scoping assessments will differ from full, final impact assessments as they will be carried out before we know the content of any FTA, and so cannot include an assessment of the impacts of a final agreement. However, they will:

⁵ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11644>

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11642>

⁶ <http://record.assembly.wales/Committee/5053>

- Communicate the rationale for the free trade agreement with the partner country, both strategic and economic, drawing upon evidence of trade and trade barriers from a range of sources;
- Present the results of economic (CGE) modelling, giving an indication of the potential impacts on the UK and partner country's macroeconomy, UK sectoral output and employment, impacts on UK consumers and businesses and impacts on countries not party to the agreement, including developing countries;
- Provide preliminary assessments of the potential implications for UK nations and English regions, small and medium-sized enterprises, environmental protections, different groups of the labour market and specifically whether there are any disproportionate impacts on groups with protected characteristics.

As well as ensuring that the public has access to information on trade negotiations, we are clear that the best trade agreements will be ones that have benefited from full and deep consultation with businesses, civil society, the general public and other stakeholders throughout the UK. To deliver this we are putting in place formal mechanisms to ensure all stakeholders have the opportunity to inform trade policy at key stages, including:

- Open **public consultations** in the pre-negotiation phase to inform our overall approach and the development of negotiating objectives;
- Creating a **Strategic Trade Advisory Group (STAG)** to seek expert insight and views on relevant trade policy matters. The group, will be composed of core members representing a diverse range of interests and expertise from business to trade unions, consumers and non-governmental organisations (NGOs) amongst others; and
- Creating **expert trade advisory groups (ETAGs)**, which will be working level sector/thematic groups bringing together stakeholders with relevant expertise in particular industries or sectors, to contribute to our policy development at a detailed technical level.

In July 2018 we launched comprehensive consultation exercises on our proposed future FTAs with Australia, New Zealand, the US and potential accession to CPTPP. The consultations were open for 14 weeks, two weeks longer than the EU affords, to ensure the greatest possible opportunity for the public, businesses, NGOs, civil society groups and other stakeholders to respond. As part of the consultation exercise the Department for International Trade also ran consultation events in each devolved nation and English region in partnership with local trade or business representative bodies (for example CBI Wales in Cardiff). The Minister for Trade Policy also hosted an online webinar. This comprehensive and multi-channel approach resulted in over 600,000 responses, making this one of the largest ever government consultation exercises undertaken in the UK. We will be publishing our initial government response to the consultation in due course.

We are currently in the final stages of appointing the members of the STAG having launched an open competitive appointment process last year. The STAG will bring together a wide range of stakeholders from across the UK representing a diverse

range of interests and expertise from business to trade unions, consumers, civil society groups and non-governmental organisations (NGOs) and will have reserved places for business representatives of each of the devolved nations. We intend for the STAG to be a dynamic and flexible body to ensure the Government is able to draw on the right expertise at the right time.

Next steps

The Government is setting out these proposals in response to a resolution of the House of Lords of 21 January 2019.⁷ However, the Government understands that the structures within which Parliament conducts its scrutiny work are rightly a matter for Parliament itself. There will now need to be a period of discussion with both Houses which we expect would include, but not be limited to, the Procedure Committees and Liaison Committees in both Houses, as well as the International Trade Committee and the Constitution Committee.

Both before setting out our initial proposals in July and more recently we have considered whether it is necessary to set out any of the arrangements described above in statute. The Government does not believe that any of the proposals set out above require legislation, and, as we embark on our first independent trade negotiations for more than 40 years, we also do not believe that the rigidity of a system set out in statute would be the best approach. In this context we would note that the scrutiny arrangements which exist between the European Scrutiny Committee in the House of Commons and the EU Select Committee in the House of Lords are not set out in statute but in resolutions of each House. As negotiations progress, we would expect that arrangements will develop through dialogue with the relevant committee(s). It also appears highly likely that the committee(s) would report on the effectiveness of arrangements after the first FTA was complete.

⁷ House of Lords Official Report, 21 January 2019, column 506

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