

## TRADE BILL

### Briefing ahead of Second Reading, House of Lords - 08.09.20

#### Introduction

UK farmers are keen to grow their exports all around the world and the NFU is supportive of the government's aim to "make the most of new opportunities that come from having an independent trade policy after Brexit". With the right trade strategy framework in place we can increase the efficiency, productivity and profitability of the UK farming sector whilst meeting the needs and expectations of the British public, both in terms of the food they eat and the public goods they value.

However, there are also significant challenges for our trade negotiators, which should not be underestimated and if not approached with care could easily outweigh any potential gains that new export market opportunities might bring.

The NFU believes that to enable and support a thriving British agriculture sector it is crucial that the UK's future trade policy respects domestic production standards. To do otherwise would contradict the government's own stated commitment to upholding our high animal welfare and environmental standards and would undermine British farmers. Overseas farmers, in many of the countries that the UK government is actively negotiating with, have access to significant cost of production advantages over UK farmers due to lower regulatory requirements.

The NFU welcomes the recent establishment of a Trade and Agriculture Standards Commission and awaits its recommendations to government and Parliament on the policy strategy needed to ensure balanced, reciprocal and fair deals with trading partners around the world that uphold UK standards of production. The NFU continues to seek demonstratable assurances that future trade policy decisions will not result in a flood of sub-standard imports on to the UK market.

The Trade Bill is a key part of the government's trade policy strategy, and as such it must provide the right legislative platform on which future trade deals are negotiated. During its passage through the House of Lords, the NFU urges Peers to ensure stronger approaches to trade governance and parliamentary scrutiny are provided for within the Bill. At Report Stage in the Commons, the NFU supported NC4 as tabled by Jonathan Djanogly MP and hope that Peers will find consensus around the need for a similar amendment.

#### Trade governance and scrutiny

Parliament should be given an active and formal role in the process, significantly more than is currently provided for by under UK constitutional arrangements through the Constitutional Reform and Governance Act 2010 (CRAG). At present, MPs are not guaranteed a vote on the final form of any trade agreements signed by the UK with other countries and so may not be able to exercise any influence should there be concerns about the impact of these deals on their constituents. This makes the UK an outlier compared to most countries around the world, and in particular those with which it is currently negotiating trade deals.

The NFU believes that Parliament should be given formal powers with respect to mandating, negotiating and approving future trade agreements. This should include a requirement for parliamentary approval of both the UK's negotiating mandate, without which the government would be unable to start formal negotiations, and the final text of any agreement, without which it would not come into force. Formal mechanisms to allow Parliament to remain updated during negotiations and to express any concerns (or indeed approval) with the progress of those negotiations should also be established. This could include arrangements to allow the executive to share sensitive information with Parliament in confidence if necessary. Given talks are already underway with a number of trade partners, specific consideration will have to be given to providing effective scrutiny of these negotiations.

#### The voice of British farming

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Stakeholders should also be actively consulted and kept abreast of developments prior to the commencement of, and throughout, any negotiations. We welcome the recent establishment of Trade Advisory Groups to allow business to liaise with negotiators as deals progress, and will wait to see how effective these forums are. We would welcome further clarity from government on its plans to keep stakeholders informed as trade talks progress, including under what circumstances government can withhold the publication of relevant documents, and the structures that are established to ensure all organisations representing relevant interests are properly involved.

The government has a manifesto commitment to have 80% of trade covered by Free Trade Agreements (FTAs) within three years. These FTAs will have a huge potential impact on local economies and communities across the UK, for better or for worse. There seems little convincing argument to retain the weak and obscure arrangements under the CRAG, and a number of Parliamentary select committees have examined the issue recently and concluded the process for scrutinising trade deals is in need of reform<sup>1</sup>. The NFU believes new and clear arrangements that improve Parliamentary oversight and democratic accountability are critical as we “take back control” of our independent trade policy.

### Role for devolved administrations

Whilst the UK government is responsible for international relations and treaty making, the devolved administrations and legislatures are likely to have at least some responsibility for the application, administration and oversight of the obligations that trade agreements give rise to. It is NFU Cymru’s view that the Welsh Government and the National Assembly ought to have an appropriate degree of involvement by being sighted of relevant documents ahead of such agreements being entered into, as well as the development and approval of implementing legislation which underpins concluded trade agreements. NFU Cymru also advocates a role for Welsh Government and the National Assembly for Wales in developing the UK’s negotiating mandate, and the scrutiny of trade negotiations. By extension, this approach should be reflected across the constituent parts of the UK.

### Commons Report Stage: Amendment NC4 - “Parliamentary approval of trade agreements”

The House of Commons International Trade Committee inquiry into UK trade policy transparency and scrutiny in 2018 found that the *“current processes for treaty ratification under the CRAG 2010 are insufficient.”*

At Report Stage in the House of Commons, Jonathan Djanogly MP tabled amendment NC4 which sort to address many of the deficiencies of the CRAG procedures and increase the role for Parliament in scrutinising the process of negotiating, signing and ratifying Free Trade Agreements. The NFU supported this amendment at Report Stage and were disappointed that it was defeated in the Commons. However, the NFU hopes that the main aims of NC4 will be revisited and supported in the Lords.

If adopted, NC4 would enhance the role of Parliament by requiring a resolution of both Houses endorsing the government’s draft negotiating mandate for future trade agreements, and agreeing to the final text of any agreements before they are signed. NC4 would also extend the scope to include all free trade agreements not already in effect, including agreements that the UK was party to when members of the EU, but is still seeking Trade Continuity Agreements with, for example Mexico, Canada and Egypt. The NFU believes this is a sensible approach that improves democratic accountability for UK trade policy, while allowing freedom and flexibility to the executive in negotiating the details of individual trade agreements.

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<sup>1</sup> House of Commons International Trade Committee, [UK trade policy transparency and scrutiny](#)  
House of Lords Constitution Committee Report, [Parliamentary Scrutiny of Committees](#)  
House of Lords EU Committee, [Treaty Scrutiny working practices](#)  
House of Lords EU Committee, [Scrutiny of international agreements lessons learned](#)

The government has committed to publishing scoping assessments ahead of negotiating objectives being published. In reality these two separate steps have been conducted at the same time for negotiations with the US, Australia and New Zealand, leaving no opportunity for MPs to reflect on whether the negotiating mandate correctly identifies the potential opportunities and threats arising from the FTA negotiation outcomes. Ahead of negotiations commencing the NFU believes that there should be clear assent from Parliament that the UK government has correctly identified all the critical negotiating objectives and that these represent the interests of all parts of the UK, respecting the Devolution Settlements.

NC4 would also include an important requirement for a sustainability impact assessment which provides rigorous assessment of issues such as environmental effect, impact on animal welfare and health concerns. This is to fully understand the breadth of effect significant new international trade treaties would have on the UK economy, environment and wider societal considerations. NC4 would also provide a further safety net for UK standards by requiring an assessment of draft agreements to consider compliance with current food safety standards. This is vital. The basis for UK Food Safety Law is EU derived legislation that has already been implemented under UK law or was carried across through new Statutory Instruments under the European Union (Withdrawal) Act (2018). In either case, the parliamentary procedures for scrutinising, modifying or ceasing will largely be done through secondary legislation, and therefore provide a limited opportunity for parliamentary scrutiny. Some examples of this are as follows:

1. **Substances having a hormonal or thyrostatic action and  $\beta$ -agonists – for example, hormones in beef production and Ractopamine use in pork production**

The use of growth hormones and other substances to enhance performance in animals is prohibited by virtue of Directive 96/22/EC, and this is implemented in England under the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015 (the 2015 Regulations). This statutory instrument was made using powers in the Food Safety Act 1990, which contains wide provisions enabling the Secretary of State to make regulations in relation to substances used in food.

EU directives (such as 96/22/EC) are already implemented in UK law, and can therefore be revoked or amended by existing procedures for secondary legislation. In this instance, the 2015 Regulations can be modified or revoked under the powers available in the Food Safety Act 1990 and are subject to **negative resolution procedure**.

2. **“Chlorine-washed chicken” and other anti-microbial treatments for poultry meat**

Currently Article 3 of Regulation (EC) 853/2004 states that products of animal origin can only be washed with potable water unless another substance has been approved by the Commission.

As directly applicable EU law, under the European Union (Withdrawal) Act 2018 (the 2018 Act) this provision will be saved and will now form part of domestic law. The 2018 Act states that EU Regulations cannot be modified by secondary legislation other than for the purposes of dealing with failures or deficiencies in the way the Regulation works in the UK, or for certain consequential, transitional, transitory and saving provisions. This means that the substantive text of Regulation 853/2004 cannot be changed by statutory instrument.

However, the actual text of Article 3 will be changed on ‘IP completion day’ (31 December 2020 at 11pm) under The Specific Food Hygiene (Regulation (EC) No. 853/2004) (Amendment) (EU Exit) Regulations 2019 which have been made for the purpose of correcting a deficiency with the Regulation, as permitted under the 2018 Act. On IP completion day, Article 3(2) will read as follows:

*“Food business operators must not use any substance other than potable water—or, when [Regulation \(EC\) No 852/2004](#) or this Regulation permits its use, clean water—to remove surface contamination from*

*products of animal origin, unless use of the substance has been prescribed by the appropriate authority. Food business operators must comply with any conditions of use that may be prescribed by the appropriate authority. The use of a prescribed substance does not affect the food business operator's duty to comply with the requirements of this Regulation.”*

The fact that other substances can be used if they have been ‘prescribed by the appropriate authority’, leaves open the possibility that the government could simply prescribe an alternative substance (e.g. chlorine or another anti-microbial wash such as peracetic acid) and still be in compliance with this legislation. Specifying other substances in this way would be subject to **negative resolution procedures**.

#### **NFU Contact Details for Further Information:**

Nick von Westenholz  
Director of EU Exit & International Trade  
T: 024 7685 6630  
E: [Nick.vonWestenholz@nfu.org.uk](mailto:Nick.vonWestenholz@nfu.org.uk)