Trade Bill
HL Bill 128 of 2019–21

On 8 September 2020, the second reading of the Trade Bill is scheduled to take place in the House of Lords.

The bill introduces measures to support the UK in implementing an independent trade policy, having left the European Union. It would:

- enable the UK to implement obligations arising from acceding to the international Agreement on Government Procurement in its own right;
- enable the UK to implement in domestic law obligations arising under international trade agreements the UK signs with countries that had an existing international trade agreement with the EU;
- formally establish a new Trade Remedies Authority;
- enable HM Revenue and Customs (HMRC) to collect information on the number of exporters in the UK; and
- enable data sharing between HMRC and other private and public sector bodies to fulfil public functions relating to trade.

The bill's provisions implementing international trade agreements relate to what the Government calls "continuity agreements" that seek to replicate the UK's existing trading relationships with the EU's partner countries. The bill does not contain powers to implement any agreement the UK reaches with the EU about their future trading relationship or any new free trade agreements the UK might make with countries that do not currently have a free trade agreement with the EU.

The Government amended the bill at report stage in the House of Commons to add new clauses to enable data sharing between HMRC and other bodies. Four non-government amendments were defeated on division. These related to:

- parliamentary approval of trade agreements;
- food standards for imported agricultural goods after the end of the Brexit transition period;
- excluding the NHS and publicly funded health and care services from trade agreements; and
- the consent of the devolved administration to regulations made by the UK Government under the bill in areas of devolved competence.

A very similar, but not identical, Trade Bill was introduced by Theresa May's Government in the 2017–19 parliament. This bill fell when Parliament was dissolved for the 2019 general election.

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1. Introduction

The Trade Bill had its first reading in the House of Lords on 21 July 2020 and is due to have its second reading on 8 September 2020. The bill was introduced in the House of Commons on 19 March 2020. It completed its parliamentary stages in the Commons on 20 July 2020.

The bill sets out measures to support the UK in implementing an independent trade policy, having left the European Union. It contains provisions in the following areas:

- **Agreement on Government Procurement**: The UK is set to join this international agreement after the end of the transition period, having previously been covered through its EU membership. The bill would create powers to implement its provisions in domestic law.
- **Implementing trade agreements**: The bill would create powers to implement in domestic law obligations arising under international trade agreements the UK signs with countries that had an international trade agreement with the EU on 30 January 2020.
- **Trade Remedies Authority**: The bill would formally establish a new Trade Remedies Authority to deliver a new trade remedies policy.
- **Trade information**: The bill would enable HM Revenue and Customs (HMRC) to collect information on the number of exporters in the UK.
- **Data sharing**: The bill would enable data sharing between HMRC and other private and public sector bodies to fulfil public functions relating to trade.

The bill's measures on implementing international trade agreements relate to what the Government calls "continuity agreements", agreements between the UK and partner countries based on those countries' existing arrangements with the EU. The bill's provisions do not relate to implementing any agreement the UK reaches with the EU about their future trading relationship. Equally, its provisions do not cover any new free trade agreements the UK might make with countries that do not currently have a free trade agreement with the EU, such as the United States.

A very similar, but not identical, Trade Bill was introduced by Theresa May's Government in the 2017–19 parliament. It went through both the Commons and the Lords and was amended in both Houses. However, it was not given parliamentary time in the Commons for consideration of Lords amendments, which would have been the next stage in proceedings. This bill fell when Parliament was dissolved for the 2019 general election.

The House of Lords Delegated Powers and Regulatory Reform Committee reported on the present bill in July 2020.[1] The committee stated there was nothing in this bill it wished to draw to the attention of the House.

2. Agreement on Government Procurement (clause 1)

2.1 Background

The Agreement on Government Procurement, also known as the Government Procurement Agreement or GPA, is a plurilateral agreement within the framework of the World Trade Organisation (WTO).[2] The GPA consists of 20 parties covering 48 WTO members.[3] The EU and its member states, all of which are covered by the GPA, are counted as one party. The WTO explains the purpose of the GPA as follows:

> The fundamental aim of the GPA is to mutually open government procurement markets among its parties. As a result of several rounds of negotiation, the GPA parties have opened procurement activities worth an estimated US$1.7 trillion annually to international competition (ie to suppliers from GPA parties offering goods, services or construction services).
>
> The GPA is composed mainly of two parts: the text of the Agreement and parties' market access schedules of commitments.
>
> The text of the Agreement establishes rules requiring that open, fair and transparent conditions of competition be ensured in government procurement. However, these rules do not automatically apply to all procurement activities of each party. Rather, the coverage schedules play a critical role in determining whether a procurement activity is covered by the Agreement or not. Only those procurement activities that are carried out by covered entities purchasing listed goods, services or construction services of a value exceeding specified threshold values are covered by the Agreement.[4]

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[1] House of Lords Delegated Powers and Regulatory Reform Committee, *Domestic Abuse Bill, Parliamentary Constituencies Bill and Trade Bill*, 29 July 2020, HL Paper 117 of session 2019–21, p 4.

[2] World Trade Organisation, 'Agreement on Government Procurement', accessed 6 August 2020. In WTO terms, a plurilateral agreement is one involving some WTO members, whereas a multilateral agreement is one which involves all WTO members.

[3] World Trade Organisation, 'Agreement on Government Procurement: Parties, Observers and Accessions', accessed 6 August 2020. In addition to the EU and the UK, the other parties to the GPA are: Armenia, Australia, Canada, Hong Kong, Iceland, Israel, Japan, South Korea, Liechtenstein, Moldova, Montenegro, Netherlands with respect to Aruba, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, Ukraine and the United States.

[4] World Trade Organisation, 'Agreement on Government Procurement', accessed 6 August 2020.

The GPA was originally signed in 1994 and came into force in 1996; this is known as the 1994 GPA.[5] A revised GPA came into force in 2014. Switzerland is party only to the 1994 GPA, but all other parties are covered by both the 1994 GPA and the revised GPA.[6]

The UK has been a party to the GPA through its membership of the EU. During the transition period, the UK remains covered by the GPA under the EU's coverage schedules.[7]

The UK expects to join the GPA in its own right at the end of the transition period, on substantially the same terms.[8] The Government has stated that it may take up to 30 days to come into force after 31 December 2020.

The other parties to the GPA agreed in February 2019 to the UK's accession.[9] The Government laid the GPA before Parliament in February 2019, in line with the requirement under the Constitutional Reform and Governance Act 2010 (CRAG) for treaties to be laid before Parliament before they can be ratified.[10] The Government (then led by Theresa May) said in February 2019 that remaining in the GPA would mean that businesses would be able to continue bidding for public sector contracts overseas:

> Overseas businesses will be able to bid for £67 billion worth of public sector contracts in the UK every year. In return, British suppliers will be able to bid for £1.3 trillion worth of government contracts overseas in a wide range of sectors from large infrastructure to professional and business services.
>
> It will also ensure that British taxpayers and public sector organisations, including government departments, continue to benefit from increased choice and value for money on contracts which are open to international competition.[11]

The UK has already passed domestic legislation to implement EU directives on procurement that enable EU member states to fulfil obligations under the

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[5] World Trade Organisation, 'Agreement on Government Procurement', accessed 6 August 2020.
[6] World Trade Organisation, 'Agreement on Government Procurement: Parties, Observers and Accessions', accessed 6 August 2020.
[7] Explanatory Notes, p 4.
[8] GOV.UK, 'Bidding for overseas contracts: What to expect from 1 January 2021', 16 August 2019.
[9] House of Commons, 'Written Statement: The UK's accession to the Agreement on Government Procurement (GPA)', 28 February 2019, HCWS1365.
[10] UK Parliament, 'Revised Agreement, done at Geneva on 30 March 2012, on Government Procurement', 18 February 2019.
[11] Department for International Trade, 'WTO agreement secures £1.3 trillion market for British contractors', 27 February 2019.

GPA.[12] This domestic legislation will become part of retained EU law at the end of the transition period by virtue of the European Union (Withdrawal) Act 2018 (EUWA 2018), as amended by the European Union (Withdrawal Agreement) Act 2020. This preserves the implementation of the UK's existing obligations under the GPA.

The bill would create powers to enable the UK to implement obligations in future arising from its independent membership of the GPA, or to respond to another party joining or leaving the GPA.

2.2 Bill provisions

Clause 1(1) of the Trade Bill would enable the UK Government and the devolved authorities to make regulations to:[13]

- Implement the GPA, for example to amend existing secondary legislation to refer to the version of the GPA that reflects the UK as an independent member and includes the UK's coverage schedules.[14]
- Reflect new parties joining the GPA or existing parties withdrawing from it. For example, this power could be used to extend rights and remedies to suppliers from a new party to the GPA.
- Enforce the UK's rights under the GPA in the event of a dispute between the UK and another party, for example by suspending another party's rights to access UK markets.
- Respond to changes made by another party to their market access schedules. For example, this power could be used to extend market access to suppliers from a new EU member state, if another country joined the EU.
- Reflect any changes to the list of UK government bodies in the UK's coverage schedule.

Clause 1(3) specifies that regulations made under clause 1(1) could modify retained direct principal EU legislation. Retained direct principal EU legislation is defined in section 7 of EUWA 2018. It is a type of retained

[12] The Public Contracts Regulations 2015, the Utilities Contracts Regulations 2015 and the Concessions Contracts Regulations 2016 implement the relevant EU directives in England, Wales and Northern Ireland. The Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 and the Concession Contracts (Scotland) Regulations 2016 implement the relevant EU directives in Scotland. The relevant EU directives are: 2014/24/EU, 2014/25/EU, 2014/23/EU, 89/665/EEC and 92/13/EEC (Explanatory Notes, p 7).

[13] Explanatory Notes, pp 7–8.

[14] The coverage schedules set out which purchasing entities are covered and which procurement activities fall within the scope of the GPA.

EU law that can be modified by:

- primary legislation, or
- secondary legislation if made under a power that specifically allows it to modify retained direct principal EU legislation.

Schedule 2 provides that regulations made under this clause would be subject to the negative procedure.

3. Implementation of international trade agreements (clause 2)

3.1 Background

Trade policy and continuity agreements

While the UK was a member of the EU, it entered into trade agreements with third countries (non-EU member states) through its membership of the EU. Trade policy is an exclusive EU competence, meaning that the EU legislates on trade matters and concludes international agreements on behalf of its member states. [15] The UK did not have an independent trade policy and could not negotiate its own trade agreements.

Under the withdrawal agreement between the UK and the EU, the UK has agreed to continue to be bound by obligations stemming from international agreements concluded by the EU during the transition period, which will last until 31 December 2020.[16] The EU has asked the other, non-EU, parties to these agreements to continue to treat the UK as though it were an EU member state during the transition period.

The withdrawal agreement allows the UK to negotiate, sign and ratify international agreements in its own right in areas of exclusive EU competence (which includes trade) during the transition period, as long as they do not enter into force or apply during the transition period without the EU's authorisation.

The Government has cited the ability for the UK to control its own trade policy, set its own tariffs and do its own trade deals as one of the benefits of Brexit.[17] However, the Government is also seeking continuity after the end of the transition period in the UK's existing trade relationships with third countries that have a trade agreement with the EU. It has been working to

[15] Council of the European Union, 'EU Trade Policy', 14 March 2018.
[16] HM Government, *Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, 19 October 2019, Article 129.
[17] Conservative Party, *Manifesto 2019*, November 2019, p 5.

establish a UK trade agreement with each existing partner country "based, as closely as possible, on maintaining the effects of the trade agreement that that country already has with the EU".[18] These are referred to as 'continuity agreements', or sometimes as 'roll-over agreements'.

To date, the Government has signed continuity agreements with the following countries and trading blocs:[19]

- Andean countries (Columbia, Ecuador and Peru)
- CARIFORUM trade bloc (Antigua and Barbuda, Barbados, Belize, Bahamas, Dominica, the Dominican Republic, Grenada, Guyana, Jamaica, St Christopher and Nevis, St Lucia, St Vincent and the Grenadines, and Trinidad and Tobago; Suriname has approved in principle)
- Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama)
- Chile
- Eastern and Southern Africa (ESA) trade bloc (Madagascar, Mauritius, Seychelles, Zimbabwe)
- Faroe Islands
- Georgia
- Israel
- Jordan
- Kosovo
- Lebanon
- Liechtenstein
- Morocco
- Pacific States (Fiji and Papua New Guinea)
- Palestinian Authority
- South Korea
- Southern African Customs Union and Mozambique (SACUM) trade bloc (Botswana, Eswatini, Lesotho, Namibia, South Africa and Mozambique)
- Switzerland
- Tunisia

These agreements are expected to come into effect on 1 January 2021. Greg Hands, the Minister of State for Trade Policy, said that trade with the countries covered by these agreements had accounted for £110 billion of

[18] Explanatory Notes, p 9.
[19] Department for International Trade, 'Existing UK trade agreements with non-EU countries', 6 August 2020.

UK trade in 2018.[20] He said this represented 74% of the trade with countries with which the UK was seeking continuity agreements.

Regarding other countries, the UK has said it will continue discussions with Iceland and Norway to determine the most effective way of maintaining and strengthening trade with them beyond the transition period.[21] The UK's future relationship with these countries is influenced by their relationship with the EU, as they are members of the European Economic Area. Although the UK signed a trade agreement in goods with Norway and Iceland on 2 April 2019, this was part of preparations for a potential 'no deal' Brexit. It will not enter into force.

The Government is still in discussion with the following countries where there are existing EU trade agreements in place:[22]

- Albania (Western Balkans)
- Algeria
- Bosnia and Herzegovina (Western Balkans)
- Cameroon (Central Africa)
- Canada
- Cote d'Ivoire
- East African Community (EAC) (Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda)
- Egypt
- Ghana (Western Africa)
- Mexico
- Moldova
- Montenegro (Western Balkans)
- North Macedonia (Western Balkans)
- Serbia (Western Balkans)
- Singapore
- Turkey
- Ukraine
- Vietnam

In addition, the Government has agreed to negotiate a new bilateral agreement using the existing EU-Japan agreement as a base but going beyond this in some areas.[23]

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[20] HC *Hansard*, 20 July 2020, col 1888.
[21] Department for International Trade, 'Existing UK trade agreements with non-EU countries', 6 August 2020.
[22] ibid.
[23] ibid.

This process of negotiating continuity agreements is separate from the UK's ongoing talks with the EU about the future trading relationship that will apply between them when the transition period has finished. It is also separate from the UK's attempts to negotiate trade deals with countries with which the EU does not currently have a trade agreement. In this category, the UK is prioritising negotiations with the US, Australia and New Zealand.[24]

Implementing international agreements in domestic law

The UK is a dualist state. This means that international agreements do not automatically become part of domestic law. UK courts have no power to enforce treaty rights and obligations unless legislation is passed to implement the relevant treaty provisions into domestic law.

In most cases, because the continuity agreements are seeking to replicate existing trading relationships, the UK's obligations arising under continuity agreements will already have been provided for in domestic law or in EU law that will remain part of domestic law after the transition period through the EUWA 2018. However, the Government has said it needs the ability to make further changes to domestic law to implement its international obligations because:[25]

- Not all obligations in EU-partner trade country agreements will have been fully implemented by the EU in EU law, or by the UK implementing EU obligations into UK law, by the end of the transition period.
- Adjustments may be required to ensure that the continuity agreements work outside the original EU context.
- Changes may be made to the agreements in future to ensure they remain operable and up to date. Changes may need to be implemented in domestic law. For example, the Government states it may need to implement the results of an arbitration/alternative dispute resolution decision under a continuity agreement.

3.2 Bill provisions

Clause 2(1) would enable the UK Government and the devolved authorities to make regulations they considered appropriate to implement an international trade agreement to which the UK was a signatory. Clause 2(2) defines 'international trade agreement' as covering both free trade agreements and other international agreements that relate mainly to trade.

[24] Department for International Trade, 'The UK's trade agreements', 17 June 2020.
[25] Explanatory Notes, p 9.

This could include procurement agreements and mutual recognition agreements on product conformity assessment.[26]

However, this power could be used to implement agreements only with countries that had a free trade agreement or an international trade agreement with the EU immediately before exit day, 31 January 2020 (clauses 2(3) and 2(4)). The bill does not specify that the new agreement between the UK and a partner country must replicate or be similar to the original EU agreement.

The EU does not have a free trade agreement with the US, so the powers in clause 2 could not be used to implement a free trade agreement between the UK and the US, for example.[27] However, the EU does have a mutual recognition agreement with the US, covering electromagnetic compatibility, telecommunications equipment and marine equipment.[28] The powers in clause 2 could be used to implement a mutual recognition agreement with the US.[29]

The regulations could only be used to implement non-tariff provisions of a free trade agreement or international trade agreement. Clause 2(5) specifically prohibits the making of regulations that could be made under section 9 of the Taxation (Cross-border Trade) Act. That is the legislation that allows preferential customs duties to be charged on imports from countries with which the UK has an agreement. Non-tariff provisions are those that do not relate to taxes or duties.

The Government has explained it would expect to use the power in clause 2 primarily to implement obligations relating to procurement, to mutual recognition agreements or in respect of enforcement or compensation provisions if any disputes arise with partner countries.[30]

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[26] Explanatory Notes, p 10. Under a mutual recognition agreement on conformity assessment, the signatories recognise that a designated testing body (a 'conformity assessment body' (CAB)) in state A (the export country) can perform testing on the basis of technical requirements of state B (the import country), and vice versa. That allows a product produced and certified in state A to be exported to state B without undergoing further testing in state B, to assess whether the product meets state B's technical requirements—thus reducing barriers to trade (UK in a Changing Europe, 'Mutual recognition agreements (MRAs): All you need to know', 18 May 2020). Traditional MRAs do not require countries to harmonise their rules and have the same standards, or to recognise each other's requirements as equivalent. The EU currently has mutual recognition agreements with Australia, Canada, Israel, Japan, New Zealand, Switzerland and the USA (European Commission, 'Mutual recognition agreements', accessed 7 August 2020).
[27] Explanatory Notes, p 4.
[28] European Commission, 'Mutual recognition agreements', accessed 7 August 2020.
[29] Department for International Trade, *Impact Assessment: Trade Bill—Existing International Trade and other Related Agreements*, 21 January 2020, p 15.
[30] Explanatory Notes, p 9.

Clause 2(6) specifies that the power could be used to:

- modify retained direct EU principal legislation or primary legislation that is retained EU law;
- confer function on the secretary of state or any other person;
- delegate functions;
- create civil penalties for failing to comply with the regulations.

Regulations made under clause 2(1) would be subject to the affirmative procedure (part 3 of schedule 2). The original version of the 2017–19 Trade Bill proposed this power should be exercisable by the negative procedure. This was changed to the affirmative procedure by government amendments at report stage in the House of Commons on the 2017–19 bill and has been retained in the new bill.[31]

Clauses 2(7) and (8) are sunset provisions. Regulations could continue to be made for five years after the end of the transition period. This could be extended for further periods of up to five years at a time with the approval of both Houses of Parliament (paragraph 6 of schedule 2).

The original version of the 2017–19 Trade Bill also contained this five-year renewable sunset period. It was shortened to three years by a government amendment agreed to at report stage in the Commons on the 2017–19 bill.[32] The 2020 version of the bill has set the sunset period back to five years.

4. Powers of devolved authorities (clauses 1, 2 and 3 and schedules 1, 2 and 3)

4.1 Background

In the UK devolution settlements, international relations—including making treaties—is a reserved matter (or an excepted matter in the case of Northern Ireland). The UK Government negotiates and enters into international agreements on behalf of the whole UK. There is no formal role for the devolved authorities in negotiating or approving trade agreements.

However, the devolved authorities do have responsibility for implementing international obligations where they relate to devolved matters. The bill would give the devolved authorities in Scotland, Wales and Northern Ireland powers to make regulations under clause 1(1) and clause 2(1) in areas of devolved competence (subject to some restrictions as explained in section 4.2 of this briefing).

[31] HC *Hansard*, 17 July 2018, cols 294–5 and 300–1.
[32] HC *Hansard*, 17 July 2018, col 356.

The bill gives rise to issues relating to devolved consent in two ways: the passage of the bill itself and the making of regulations under powers in the bill.

The UK Parliament does not normally legislate on matters that are within the legislative competence of the Scottish Parliament, the Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned—this is commonly referred to as the Sewel Convention.

It is also the UK Government's practice to seek the consent of the devolved legislatures for provisions that would alter the competence of those legislatures or of the devolved administrations in Scotland, Wales or Northern Ireland.[33] The Government has stated its intention to seek legislative consent for the provisions in the Trade Bill concerning the power to implement the GPA (clause 1) and the power to implement qualifying international trade agreements (clause 2).[34]

The Sewel Convention applies to primary legislation, but not to secondary legislation. While the bill gives powers to the devolved authorities to make regulations under clauses 1(1) and 2(1) in areas of devolved competence, it does not restrict UK ministers from using these powers to make regulations in areas of devolved competence. Nor does it require UK ministers to consult the devolved administrations or obtain their consent before doing so.

In its legislative consent memorandum on the bill, the Welsh Government stated that: "We accept there may be instances when it makes sense for the UK Parliament to legislate on devolved areas, but this should only be with the consent of the devolved governments".[35] It recommended the Senedd Cymru should consent to the Trade Bill, on the basis that the UK Government had agreed to restate commitments it made during proceedings on the 2017–19 Trade Bill about the exercise of powers under the bill. These included that the UK Government will:[36]

- not normally use concurrent powers to legislate in devolved areas without the consent of the devolved governments, and never without consulting them;
- not use the powers to introduce new policies in devolved areas and that administrative efficiency will be the primary driver; and
- engage with devolved governments before extending the period during which clause 2 powers can be used under the bill.

[33] Explanatory Notes, p 5.
[34] ibid.
[35] Welsh Government, *Legislative Consent Memorandum: Trade Bill*, April 2020, p 3.
[36] ibid.

In its legislative consent memorandum, the Scottish Government recommended the Scottish Parliament should consent to the bill.[37] It said there was "potential significant risk to businesses in Scotland of disruption to existing trading relationships and access to current and future procurement markets" if it recommended against consent to the bill. However, the memorandum also set out the Scottish Government's ongoing concerns about the bill, including:

(1) the constraint on the ability of the Scottish ministers to exercise the powers set out in clauses 1 and 2 of the bill in devolved areas in certain circumstances by virtue of the need to consult the UK Government; and
(2) the UK Government's refusal to commit, via statute, not to exercise the concurrent regulation making powers which clauses 1 and 2 of the bill provide for in devolved areas without first consulting and ideally obtaining the consent of the Scottish ministers.[38]

During the Commons report stage on the present bill, the SNP tabled an amendment that would have prevented the UK Government from making regulations under clause 2 in areas of devolved competence without first obtaining the consent of the relevant devolved authority. This was defeated (see section 8.4 of this briefing for further details).

The recommendation that the Scottish Parliament consent to the bill represents a change from the Scottish Government's position on the 2017–19 Trade Bill. In its legislative consent memorandum on the earlier bill, the Scottish Government stated that it could not recommend giving legislative consent.[39] Its primary objection to the previous bill was the way it would have restricted Scottish ministers from using the powers under clauses 1 and 2 to modify certain types of retained EU law.[40] This restriction does not appear in the current bill.

The Northern Ireland Executive has not yet published a legislative consent memorandum on the bill. It did not publish a memorandum on the 2017–19 Trade Bill as the Northern Ireland Assembly was suspended at the time.

4.2 Bill provisions

Clause 4 specifies that the devolved authorities—Scottish ministers, Welsh ministers and Northern Ireland departments—are 'appropriate authorities'

[37] Scottish Government, *Legislative Consent Memorandum: Trade Bill*, 18 August 2020, p 6.
[38] ibid, p 5.
[39] Scottish Government, *Legislative Consent Memorandum: Trade Bill*, December 2017, p 5.
[40] Scottish Government, *Legislative Consent Memorandum: Trade Bill*, 18 August 2020, p 4.

that can make regulations under clause 1(1) to implement the GPA and under clause 2(1) to implement a qualifying international trade agreement.[41] When making such regulations, the devolved authorities would be subject to the same restrictions as UK ministers outlined earlier in this briefing, but would also be subject to additional restrictions outlined in schedule 1. Clause 3 of the bill gives effect to schedule 1.

Paragraph 1 of schedule 1 provides that the devolved authorities could only make regulations that fall within their devolved competence. Paragraphs 6 to 8 set out a definition of devolved competence for each devolved authority.

Paragraph 2 of schedule 1 would require the devolved authorities to consult with a Minister of the Crown before making any regulations under clauses 1 or 2 that would:

- come into force before the end of the transition period; or
- make provision about quota arrangements (arrangements to divide up between different areas of the UK any rights/benefits arising from international obligations) or would be incompatible with quota arrangements.

The remainder of schedule 1 specifies that, when making a provision under clause 1 or 2, if the devolved authority would normally have to obtain consent from, legislate jointly with or consult with the UK Government when making the provision under other powers, those requirements would continue to apply.

The 2017–19 version of the Trade Bill contained restrictions that would have prevented the devolved authorities from using the powers in clauses 1 and 2 to modify certain categories of retained EU law. The current version of the Trade Bill does not contain these restrictions.

5. Trade Remedies Authority (clauses 5 and 6 and schedules 4 and 5)

5.1 Background

Trade remedies are measures designed to protect domestic industries against injury caused by unfair trading practices such as dumping[42] or

[41] For the purposes of schedule 1, a Northern Ireland devolved authority is defined in paragraph 9 as: the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland minister or a Northern Ireland department.

[42] The World Trade Organisation defines dumping, in general, as "a situation of international price discrimination, where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country" (World Trade Organisation, 'Technical Information on anti-dumping', accessed 26 August 2020).

subsidies, or from unforeseen surges in imports.[43]

The Trade Remedies Authority (TRA) would be established by the bill as a non-departmental public body with responsibility for conducting trade remedies investigations. It would do so under a statutory framework provided by the Taxation (Cross-border Trade) Act 2018. The TRA would also make impartial recommendations to the secretary of state and provide advice, support and assistance to the secretary of state in relation to the conduct of international disputes.[44]

The Government originally intended that the TRA would have been established under the Trade Bill 2017–19. The explanatory notes to the Trade Bill 2017–19 stated that "since the implementation of trade remedies measures impacts upon the financial privilege of the House of Commons, the TRA's functions in relation to trade remedies cases will be conferred by provisions in the Taxation (Cross-Border Trade) Bill".[45] That bill was introduced in the Commons on 20 November 2017 and received royal assent as the Taxation (Cross-border Trade) Act 2018 on 13 September 2018.

Trade Remedies Investigations Directorate

The Trade Remedies Investigations Directorate (TRID) is part of the Department for International Trade. TRID will become the TRA once the Trade Bill becomes law.[46]

At present, TRID is carrying out 'transition reviews' in which it examines existing EU trade remedies and assesses their suitability for the UK to continue:

> As part of the work needed to create a UK-specific trade remedies system outside the European Union, we will undertake transition reviews into existing EU trade remedy measures which affect UK industries. Our reviews will test if the measures in place are right for the UK or what changes might be needed.[47]

The Department for International Trade has explained that at the end of the transition period, when the UK leaves the EU's common external tariff, the Government will choose to maintain some existing trade remedy measures:

> The Department for International Trade first identified which

[43] Explanatory Notes, p 4.
[44] ibid, p 3.
[45] Explanatory Notes to the Trade Bill 2017–19, p 4.
[46] Trade Remedies Investigations Directorate, 'About Us', accessed 6 August 2020.
[47] ibid.

> measures may be of interest to the UK following a call for evidence. For each of these measures, the secretary of state will publish a determination notice, giving effect to the corresponding EU trade remedies measure, and allowing us to conduct transition reviews to determine if these measures should be varied or revoked in the UK.
>
> We will then conduct reviews to assess each of these measures and determine whether they should be maintained, varied, or revoked. Our approach will be similar to the process we use in an expiry review and you can find more details on this in our guidance.[48]

5.2 Bill provisions

The provisions in the Trade Bill remain largely the same as the provisions in the 2017–19 bill.

Clause 5 would establish the TRA as a non-departmental public body and would give effect to schedules 4 and 5.[49] Provisions in schedule 4 include provisions related to the establishment of the TRA and to its running. Schedule 5 would provide for a staff transfer scheme from the secretary of state to the TRA.

Schedule 4 includes provisions in the following areas:

- The membership and composition of the TRA.
- Terms of appointment and tenure of its members.
- Remuneration of members.
- The appointment of a chief executive.
- Staffing of the TRA, including the ability to appoint employees.
- The establishment of committees within the TRA.
- Powers to enable the TRA to determine its own procedures.
- The delegation of the TRA's functions to a member, an authorised employee or other member of staff or a TRA committee.
- Funding of the TRA.
- The keeping of accounts and the audit of these accounts.
- The production of an annual report.
- The requirement for the TRA to have regard to guidance published by the secretary of state.

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[48] Department for International Trade, 'How we carry out transition reviews into EU measures', 29 July 2020.
[49] Explanatory Notes, p 12.

On the membership and composition of the TRA, paragraph 2 of schedule 4 requires that the TRA is to consist of:

(a) a chair appointed by the secretary of state;
(b) other non-executive members appointed by the secretary of state;
(c) a chief executive appointed by the chair with the approval of the secretary of state or, if the first chair has not been appointed, by the secretary of state; and
(d) other executive members appointed by the chair.

Under paragraph 2(2), the total number of members would be restricted to nine. The secretary of state would have to consult the chair before appointing the other non-executive members. Both the secretary of state and the chair would have to ensure "so far as practicable" that the number of non-executive members was, at all times, greater than the number of executive members.[50]

Paragraphs 3 to 10 concern the appointment and tenure of TRA members and would allow the secretary of state to set terms and conditions of appointment within the provisions of the schedule. These would include, among other things, the period of appointment, the person's eligibility for reappointment and the circumstances under which a person's membership could be suspended.[51] Paragraph 9 would allow the secretary of state to remove a person from their office as a non-executive member who, in the opinion of the secretary of state, is "unable or unfit to carry out the functions of the office". Similar powers would be granted to the chair for executive members.[52]

Paragraphs 11 to 16 make provisions for the remuneration of members. This would include the TRA paying, or the making of provision for paying, executive and non-executive members sums in respect of pensions, allowances, expenses and gratuities.[53] In the case of non-executive members these would be determined by the secretary of state. In the case of executive members, the chair would determine these, but with the approval of the secretary of state. Paragraphs 15 and 16 would provide for the paying of compensation to non-executive and executive members on the ceasing of their appointments, in certain circumstances.

Other provisions include a requirement that the TRA must have regard to guidance published by the secretary of state in exercising its functions.[54] The

[50] Schedule 4, para 2(4).
[51] ibid, para 6.
[52] ibid, para 10.
[53] ibid, paras 13 and 14.
[54] ibid, para 34.

secretary of state must consult the TRA and have regard to its expertise before publishing such guidance. Regard must also be taken of the need to protect the TRA's operational independence and its ability to make impartial assessments when performing its functions. The secretary of state could not publish guidance in relation to a specific trade remedies investigation.

Paragraph 37 would amend part 2 of schedule 1 to the House of Commons Disqualification Act 1975, adding the TRA as a body MPs would be barred from being members of. Paragraph 38 would amend part 2 of schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which members are disqualified), adding the TRA as a body which members of the legislative assembly would be barred from being members of.

Schedule 5 would provide for a scheme to transfer staff from the secretary of state to the TRA. The explanatory notes explain that these provisions would provide for a scheme which is "the same as, or similar to, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations)", which would enable the TRA to be fully staffed and operational for the end of the transition period.[55]

Clause 6 contains provisions on the providing of advice, support and assistance by the TRA. The explanatory notes explain that these provisions set out "the circumstances in which the TRA can apply its expertise more widely in relation to international trade and trade remedies".[56]

On request from the secretary of state, the TRA would have to provide such advice, support and assistance as requested in connection with:

(a) the conduct of an international trade dispute;
(b) functions of the secretary of state relating to trade; and
(c) functions of the TRA.[57]

Clause 6(2) provides the following examples of the kinds of advice and support the TRA might be asked to provide to the secretary of state:

(a) analysis of trade remedy measures imposed in countries or territories other than the United Kingdom; and
(b) analysis of the impact of such measures on producers and exporters in the United Kingdom.

However, before making a request under clause 6(1), the secretary of state

[55] Explanatory Notes, p 18.
[56] ibid, p 12.
[57] Clause 6(1).

would have to consult the TRA and have regard to its expertise.[58] Regard would also have to be taken of the need to protect the TRA's operational independence and its ability to make impartial assessments when performing its functions. Otherwise, the TRA could provide such advice, support and assistance as it considered appropriate in relation to international trade and trade remedies.[59]

6. Trade Information (clauses 7–10)

Clause 7 would enable Her Majesty's Revenue and Customs (HMRC) to collect information about UK exporters. Clause 7(1) would allow HMRC to request any person to provide information to assist the Government in establishing the number and identity of those exporting goods and services from the UK in the course of a business, trade, or profession. The Government has suggested that it could use this information for trade promotion purposes.[60] The bill makes no provision to compel people to provide this information and would not impose any penalties for failing to do so. The explanatory notes state that "compliance with such a request would be entirely voluntary".[61]

Clause 7(3) would enable HM Treasury to make regulations to specify the types of information that could be requested, and how the information should be provided. Clause 7(4) provides that this power could be used to modify primary legislation, making it a Henry VIII power.[62] The Government has stated that this is necessary so that amendments could be made to tax legislation to allow corporation and personal tax returns to be amended to include the request for exporter information.[63] Clauses 7(5) and (6) provide that regulations made under clause 7(3) would be subject to the affirmative procedure if they amended or repealed an Act of Parliament, but would otherwise be subject to the negative procedure.

Clause 8 sets out circumstances in which HMRC could lawfully share information with other bodies. The explanatory notes to the bill set out why this provision is needed:

> After leaving the EU, several bodies will need to have access to HMRC data to enable them to carry out functions relating to trade which are currently fulfilled by the European Commission. For example, information will be required by the Department for International

[58] Clause 6(3).
[59] Clause 6(4).
[60] Explanatory Notes, p 13.
[61] ibid.
[62] Henry VIII powers enable ministers to amend or repeal provisions in an Act of Parliament using secondary legislation, which is subject to less parliamentary scrutiny than an Act of Parliament.
[63] Explanatory Notes, p 13.

> Trade and the TRA to conduct trade disputes on behalf of the UK or impose trade remedies. Access to the information will also be required in order to produce trade statistics and for trade research and analysis purposes which can both inform the development of evidence-based trade policy and be used to monitor and evaluate its effectiveness […]
>
> This provision is needed in addition to the disclosure of information power in section 25 of the Taxation (Cross-border Trade) Act because that power is limited to matters related to customs duty purposes, which does not cover the full scope of the Government's activities.[64]

Clause 8(1) would allow HMRC to share information with public or private bodies to facilitate their public functions relating to trade. This would include sharing information with international organisations. Clause 8(2) gives examples of such functions:

- the analysis of the flow of traffic, goods and services into and out of the UK;
- the analysis of the impact, or likely impact of measures or practices relating to imports, exports, border security and transport on such flow;
- the design, implementation and operation of such measures or practices.

Clause 8(3) provides that anyone receiving such information could only use it for the purposes set out in clause 8(1) and could not further disclose the information without permission from HMRC. If information was passed on without authorisation in such a way that allowed an individual to be identified, section 19 of the Commissioners for Revenue and Customs Act 2005, which deals with the offence of wrongful disclosure, would apply (clause 8(4)). This provides for a maximum penalty of two years' imprisonment for such an offence.

New clauses

Clauses 9 and 10 are new clauses added to the bill at report stage in the Commons by government amendments agreed to without division.

The Government has stated that post-Brexit, government departments with trade functions, particularly the Department for International Trade and the Cabinet Office, will need to have access to data held by other public authorities to help them carry out their functions relating to trade.[65]

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[64] Explanatory Notes, p 13.
[65] ibid, p 14.

Clause 9 would enable the secretary of state, the Minister for the Cabinet Office, strategic highways companies and port health authorities to disclose information for the purposes of facilitating government functions relating to trade. Clause 9(2) lists examples of such functions as:

- the analysis of the flow of traffic, goods and services into and out of the UK;
- the analysis of the impact, or likely impact, of measures or practices relating to imports, exports, border security and transport on such flow;
- the design, implementation and operation of such measures or practices.

The Government has indicated that the border and protocol delivery group in the Cabinet Office could use such information to analyse and promote efficiencies in the flow of traffic, goods and services in and out of the UK.[66]

The list of public authorities allowed to disclose such information could be changed by regulations made using the affirmative procedure (clause 9(9) and (10)). Public authorities would not be allowed to disclose information in breach of existing data protection legislation (clause 9(8)).

Under clause 10, it would be an offence to disclose data in contravention of clause 9 that enabled the identification of an individual.

7. General provisions (clauses 3, 4, 11, 12, 13 and 14)

Clause 3 provides that regulations under clause 1(1) or clause 2(1) could make different provision for different purposes or areas; make specific or general provision; and could make incidental, supplementary, consequential, transitional, transitory or saving provision.

Clauses 4 and 11 contain definitions of terms used in the bill. Clause 12 provides that the bill would extend to England and Wales, Scotland and Northern Ireland. Clause 13 would enable all the other clauses to be brought into force by commencement regulations. Different days could be appointed for different purposes. Clause 14 sets out the bill's short title.

[66] Explanatory Notes, p 14.

8. Commons stages

8.1 Second reading

The bill's second reading took place on 20 May 2020.[67]

The opposition moved an amendment recognising the need for trade legislation but declining to give this bill a second reading on the grounds of lack of parliamentary scrutiny procedures, lack of protection for existing UK standards and rights, and lack of accountability for the new Trade Remedies Authority.

This was defeated by 352 votes to 262, a majority of 90.[68] The bill received its second reading by 355 votes to 254, a majority of 101.[69]

8.2 Committee stage

The House of Commons committee stage took place over eight sittings of a public bill committee between 16 and 25 June 2020. The bill was not amended at this stage.

Debate at committee stage covered transparency and parliamentary scrutiny of trade agreements, the role of devolved governments in trade and concerns over the implications of a trade deal with the US.

For a summary of the committee stage debate, see the House of Commons Library briefing *Trade Bill 2019–21: Committee Stage Report* (15 July 2020).

8.3 Report stage: Amendments made

Disclosure of information (NC5, NC6 and amendments 6–9)

The Government's new clauses 5 and 6 were added to the bill at report stage without division.[70] These now appear in the Lords version of the bill as clauses 9 and 10. New clause 5 (clause 9) allows the secretary of state, the Minister for the Cabinet Office, strategic highways companies and port health authorities to disclose information for the purposes of facilitating government functions relating to trade. New clause 6 (clause 10) would make it an offence to unlawfully disclose any personal data shared under new clause 5 (clause 9).

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[67] HC *Hansard*, 20 May 2020, cols 611–65.
[68] ibid, cols 657–60.
[69] ibid, cols 662–5.
[70] HC *Hansard*, 20 July 2020, cols 1938–9.

Speaking to the new clauses at report stage, Greg Hands, Minister of State for Trade Policy, said they would allow the Government to "unlock[…] the full potential" of data it already held without placing any additional burden on businesses.[71] He said these provisions would:

> […] create a new legal gateway so that government data can be used, first to ensure continuity of trade by safeguarding existing trading relationships in countries both in the EU and in the rest of the world so they are not frustrated by friction at the border for goods and services at the end of the transition period; secondly, to provide better services to UK businesses and consumers by supporting the effective management of the end-to-end border process; and, thirdly, to underpin the delivery of a world-leading border—protecting the UK, protecting revenue and growing international trade.[72]

He explained that the clauses were drafted so that no new data would be collected; only data relating to trade functions could be shared, and only in accordance with existing data protection obligations. He said that no data would be made available to third parties outside government, and it would not be used to monitor citizens or business or target individuals to be stopped at the border.

Government amendments 6 to 9 were also made without division.[73] These amended clause 8 to enable HMRC data to be shared with the Cabinet Office for purposes relating to trade functions. Clause 8 was previously drafted to allow data to be shared with the secretary of state, which would have meant it could not be shared with the Cabinet Office as it is not headed by a secretary of state.

8.4 Report stage: Amendments defeated

No non-government amendments were made to the bill.

Divisions were held on amendments concerning: parliamentary approval of trade agreements; food standards for imported agricultural goods after the end of the Brexit transition period; excluding publicly funded health and care services from trade agreements; and the consent of the devolved administration to regulations made by the UK Government under clause 2 in areas of devolved competence. All these amendments were defeated in votes.

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[71] HC *Hansard*, 20 July 2020, col 1886.
[72] ibid, col 1887.
[73] ibid, cols 1958–9.

Parliamentary approval of trade agreements (NC4)

One of the main themes during the report stage debate was the level of parliamentary scrutiny that should apply to international trade agreements.

New clause 4

Jonathan Djanogly (Conservative MP for Huntingdon) moved new clause 4, which would have created a statutory framework for Parliament's role in approving trade agreements. Under the new clause, before starting free trade negotiations, the Government would have had to:

- Obtain the approval of both Houses of Parliament for its negotiating objectives.
- Consult the devolved authorities on the content of the negotiating objectives.
- Produce a sustainability impact assessment covering the impact of the negotiating objectives on food safety, health, the environment and animal welfare.

Similarly, before signing a free trade agreement, the Government would have had to:

- Obtain the approval of both Houses of Parliament for the agreement in draft.
- Consult the devolved authorities on the content of the proposed agreement before laying it before Parliament for approval.
- Produce a report assessing the compliance of the proposed agreement with UK standards on food safety, health, the environment and animal welfare.

Lords amendment to 2017–19 Trade Bill

This new clause was similar to an amendment made to the 2017–19 version of the Trade Bill at report stage in the House of Lords, agreed to on division by a majority of 47.[74] That amendment was tabled by Lord Stevenson of Balmacara (Labour), Lord Hannay of Chiswick (Crossbench) and Lord Purvis of Tweed (Liberal Democrat). Lord Hannay said they were putting it forward because the Government's proposals for the scrutiny of new free trade agreements, set out in a command paper published in February 2019, "[fell] short of providing a proper role for Parliament in three important

[74] HL *Hansard*, 6 March 2019, cols 665–81.

respects", namely:[75]

- The commitments in the white paper were voluntary rather than being set out in the bill.
- There was no provision in the white paper for parliamentary bodies to mandate the Government ahead of negotiations, or to provide oversight during the negotiations.
- The CRAG procedure was "inadequate for the very complex and sensitive issues that free trade agreements now entail".

This Lords amendment was not retained when the new Trade Bill was reintroduced in 2020.

Debate on new clause 4

Speaking to Mr Djanogly's new clause 4, Greg Hands, Minister of State for Trade Policy, argued that there were already sufficient scrutiny measures in place both for continuity agreements and for new trade agreements with countries that do not currently have an agreement with the EU.

For continuity agreements, Mr Hands said that the Government will continue to publish a parliamentary report when it lays a copy of the signed agreement before Parliament.[76] The parliamentary report sets out any significant changes between the UK's continuity agreement with a partner country and the original EU agreement. Publishing the parliamentary reports is a voluntary commitment on the part of the Government, not a statutory requirement. Theresa May's Government added new clauses to the 2017–19 version of the Trade Bill at its Commons report stage that placed a duty on the Government to produce such a report.[77] However, these clauses have not been retained in the current version of the bill.

Mr Hands also pointed out that any regulations made under clause 2 to implement continuity agreements would be subject to the affirmative procedure.[78] When the 2017–19 version of the Trade Bill was first introduced, such regulations would have been subject to the negative procedure. Theresa May's Government introduced amendments at the previous bill's report stage in the Commons to upgrade this to the affirmative procedure, saying it would "further enhance parliamentary scrutiny".[79] As Mr Hands remarked, the requirement for the affirmative

[75] HL *Hansard*, 6 March 2019, cols 663–4. The command paper is: Department for International Trade, *Processes for Making Free Trade Agreements after the United Kingdom Has Left the European Union*, February 2019, CP 63.
[76] HC *Hansard*, 20 July 2020, col 1888.
[77] See House of Lords Library, *Trade Bill*, 30 August 2018, pp 11–12 for further details.
[78] HC *Hansard*, 20 July 2020, col 1889.
[79] HC *Hansard*, 17 July 2018, col 266.

procedure has been retained in the current version of the bill.[80]

Mr Hands also noted that all continuity agreements are subject to the procedures in the Constitutional Reform and Governance Act 2010 (CRAG) for scrutinising treaties before they can be ratified. Under CRAG, the Government must lay a copy of a new treaty before Parliament and a period of 21 sitting days must elapse without either House resolving against ratifying the treaty.[81] This can be repeated indefinitely in theory if the Commons keeps resolving against the treaty. The Lords does not have the same power as the Commons to delay ratification. If the Lords resolves against ratification but the Commons has not done so, then a treaty may still be ratified if a Minister of the Crown has laid a statement before Parliament indicating that the treaty should nevertheless be ratified and explaining why.

Mr Hands argued that the 20 continuity agreements made so far demonstrated that the Government had "not strayed beyond our mandate to deliver continuity".[82] He said none of these agreements had resulted in new or enhanced trading obligations, reduced standards or changes in the UK's right to choose how to deliver public services. He rejected suggestions that the continuity agreements still to be agreed, for example with Singapore and Canada, would go beyond continuity and would therefore require a more comprehensive scrutiny process. However, he accepted that Japan was an exception, as that would be an "enhanced agreement" compared to the existing EU-Japan deal. He said the Government had therefore committed to additional scrutiny arrangements for any deal reached with Japan.

Mr Hands also set out the scrutiny arrangements that would apply to new trade agreements with countries that do not currently have an agreement with the EU. These would also be subject to the CRAG procedure, which Mr Hands described as providing "rigorous checks and balances on the Government's power to negotiate and ratify new agreements".[83] He said the Government had committed to publishing comprehensive information before entering into negotiations with partner countries, and had already done so for the US, Australia, New Zealand and Japan.[84] He said the Government had also committed to laying final impact assessments once negotiations had concluded, and to providing regular updates to Parliament on the progress of the negotiations.[85]

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[80] HC *Hansard*, 20 July 2020, col 1889.
[81] This requirement is contained in section 20 of CRAG. It can be disapplied using the provisions of section 22 of CRAG if a Minister of the Crown is of the opinion that, exceptionally, the treaty should be ratified without the requirements of section 20 having been met.
[82] HC *Hansard*, 20 July 2020, col 1890.
[83] ibid, col 1891.
[84] See Department for International Trade, 'The UK's Trade Agreements' for policy papers setting out the Government's approach to negotiations with the US, Australia, New Zealand and Japan, and the outcome of public consultations on these potential future trade deals.
[85] HC *Hansard*, 20 July 2020, cols 1891–2.

Mr Hands said the Government would work closely with the relevant scrutiny committees in both Houses throughout the negotiations, including providing confidential briefings as appropriate.[86] The Government would also work with the relevant select committee to ensure, where practical, there was time for the committee to report on the final agreement before it was laid in Parliament under CRAG. He said the Government "would consider […] subject to parliamentary timetabling" any request from a committee for a debate on an agreement prior to ratification. One of the shortcomings that has been identified by critics of the CRAG process is that there is no guarantee that time will be made available in the House of Commons for a debate or a vote on a treaty if one is sought.[87] If parliamentary time is not allocated, the Commons cannot resolve against a treaty being ratified.

Greg Hands' final point about scrutiny of new free trade agreements was that any changes to UK legislation needed as the result of such an agreement would be scrutinised by Parliament in the normal way.[88]

Mr Hands explained the Government's objections to the terms of new clause 4. He said it would give Parliament veto rights over the Government's negotiating objectives, when negotiating and entering into international agreements is a prerogative power of the executive.[89] He quoted a House of Lords Constitution Committee report that said that requiring prior parliamentary approval of negotiating objectives would "impinge inappropriately on the Government's prerogative power and limit the Government's flexibility in the negotiations".[90]

Mr Hands' other objection to the terms of new clause 4 was that it did not distinguish between continuity agreements and new trade agreements.[91] He argued that continuity agreements did not need to be subject to the same level of scrutiny as new ones, since they were replicating trade terms that had already been subject to scrutiny by the EU and the UK.

Bill Esterson, Shadow Minister for International Trade, argued that reaching agreements with some of the EU's existing free trade agreement partners, such as Switzerland, South Korea, Turkey, Japan and Canada, was "not the simple [matter] of continuity that the minister would have us believe".[92] In his view, some of them would be "completely new" and therefore needed "proper scrutiny". He suggested that there was a "lack of accountability" in the bill, as such agreements could be implemented by making regulations

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[86] HC *Hansard*, 20 July 2020, col 1892.
[87] House of Lords Constitution Committee, *Parliamentary Scrutiny of Treaties*, 30 April 2019, HL Paper 345 of session 2017–19, p 10.
[88] HC *Hansard*, 20 July 2020, col 1892.
[89] ibid, col 1891.
[90] House of Lords Constitution Committee, *Parliamentary Scrutiny of Treaties*, 30 April 2019, HL Paper 345 of session 2017–19, p 21.
[91] HC *Hansard*, 20 July 2020, col 1892.
[92] ibid, col 1896.

subject to a maximum 90-minute debate in a delegated legislation committee. He also argued that in the previous parliament the Government had not always granted the Opposition a debate on a treaty during the 21-day period under CRAG. He endorsed new clause 4, saying that it had "many elements of good scrutiny practice" that should be adopted.[93]

Speaking to his new clause, Jonathan Djanogly argued the Government was proposing the UK would have less scrutiny of free trade agreements than it had before Brexit.[94] He said that for the past 40 years, the EU had negotiated trade deals on the UK's behalf, and these deals were subject to the EU scrutiny process, including a yes/no vote by the European Parliament on the draft agreement prior to signature.

He argued that the important point about a parliamentary veto was to encourage the executive to seek consensus on the negotiating mandate. He said the bill needed a statutory framework to encourage the Government to consult with stakeholders throughout the course of trade negotiations.[95]

Mr Djanogly also disputed the minister's assertion that the CRAG process was adequate.[96] He cited a House of Lords Constitution Committee report that described it as "anachronistic and inadequate".[97]

He was supportive of the minister's proposal for the House of Commons International Trade Committee to be involved in treaty scrutiny, but was critical that the Government had not yet made any arrangements with the committee for this to happen.[98]

Mr Djanogly argued that "proper scrutiny means that we need legislation that provides for Parliament to approve FTAs on a yes or no basis before they are signed".

New clause 4 was defeated by 326 votes to 263, a majority of 63.[99]

Import of agricultural goods after IP completion day (NC11)

Another key theme of the report stage debate was about maintaining existing UK standards in future trade agreements in areas such as food safety, animal welfare and the environment.

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[93] HC *Hansard*, 20 July 2020, col 1897.
[94] ibid, col 1917.
[95] ibid, col 1918.
[96] ibid.
[97] House of Lords Constitution Committee, *Parliamentary Scrutiny of Treaties*, 30 April 2019, HL Paper 345 of session 2017–19, p 1.
[98] HC *Hansard*, 20 July 2020, col 1918.
[99] ibid, cols 1940–3.

The version of the Trade Bill introduced in the 2017–19 parliament was amended in the House of Lords to include some such protections. At third reading, the Lords agreed without division to government amendments that provided any regulations made under clause 2 to implement trade agreements would have to be consistent with existing statutory protections on:[100]

- the protection of human health, animal or plant life or health;
- animal welfare;
- environmental protection; and
- employment and labour.

This would only have applied to implementing continuity agreements; the amendment did not apply to new trade agreements between the UK and countries that do not have a trade agreement with the EU, such as the US. These amendments were not retained in the version of the Trade Bill introduced in 2020.

At Commons report stage on the present bill, Labour moved new clause 11. If agreed, this would have provided that after the end of the Brexit transition period agricultural goods could only be imported into the UK under a free trade agreement if they were produced to standards as high as, or higher than, UK domestic standards on:

- animal health and welfare;
- protection of the environment;
- food safety, hygiene and traceability; and
- plant health.

Some have raised concerns that the terms of a post-Brexit trade deal might allow the import of foods that are not produced to the same standards as those that apply to producers in the UK.

Such concerns have particularly centred around products from the US. The US negotiating objectives for a trade deal with the UK include establishing "a mechanism to remove expeditiously unwarranted barriers that block the export of US food and agricultural products to obtain more open, equitable and reciprocal market access".[101] In the US, for instance, chicken meat is generally washed in chlorine or other disinfectants to remove bacteria.[102] This practice was banned by the EU in 1997. While evidence suggests that

[100] HL *Hansard*, 20 March 2019, cols 1439–48.
[101] Office of the United States Trade Representative, *United States-United Kingdom Negotiations: Summary of Specific Negotiating Objectives*, February 2019, p 2.
[102] Rachel Schraer and Tom Edgington, 'Chlorinated chicken: How safe is it?', BBC News, 5 March 2019.

the chlorine wash itself is not harmful, the concern is that treating meat in this way allows poorer hygiene elsewhere in the production process. Similarly, hormone-treated beef is permitted in the US, but cannot be imported into the UK. At least one of the hormones routinely used in US beef production has been judged to be a significant cancer risk by the EU.[103]

The Conservatives made a manifesto commitment at the 2019 election that: "In all of our trade negotiations, we will not compromise on our high environmental protection, animal welfare and food standards".[104]

The UK's negotiating objectives for a trade agreement with the US include seeking "to reduce technical barriers to trade by removing and preventing trade-restrictive measures in goods markets, while upholding the safety and quality of products on the UK market", and to upholding the UK's "high levels of public, animal, and plant health, including food safety".[105]

The Government announced in June 2020 that it was establishing a Trade and Agriculture Commission.[106] Part of its remit is to advise the Government on what trade policies to adopt to secure export opportunities for UK farmers while ensuring the sector remains competitive and that animal welfare standards in food production are not undermined.[107]

During the debate on Labour's proposed new clause 11, Greg Hands, Minister of State for Trade Policy, stated that the Government would "not be diluting standards in any area or in any way, following the UK's departure from the EU".[108] He said that the UK had "exceptionally high standards of domestic production, domestic products and import controls", which it would maintain.[109]

He said the UK would influence its trading partners, but he could not accept an amendment like new clause 11, which would oblige trading partners to "dynamically align" to the UK's methods of production.[110] Mr Hands said this would be "impractical" and would "render inoperable most of our existing trade agreements. For example, he suggested that products from developing countries might not be produced to the same environmental and labour

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[103] Erik Millstone and Tim Lang, 'Hormone-treated beef: Should Britain accept it after Brexit?', Centre for Food Policy, September 2018.
[104] Conservative Party, *Manifesto 2019*, November 2019, p 57.
[105] Department for International Trade, *UK-US Free Trade Agreement*, 2 March 2020, p 9.
[106] Liz Truss, 'Personal Twitter Account', 29 June 2020.
[107] Department for International Trade, 'Trade and Agriculture Commission membership announced', 10 July 2020.
[108] HC *Hansard*, 20 July 2020, col 1894.
[109] ibid, col 1895.
[110] "Dynamic alignment" would mean that if the UK changed its production standards, other countries would have to follow suit for any agricultural goods that they wanted to export to the UK.

standards that apply to UK-based producers.[111] He also suggested that a requirement for dynamic alignment to UK production standards might make it impossible to reach a future trade agreement with the EU.[112]

Bill Esterson, Shadow Minister for International Trade, argued that food production and animal welfare standards were "matters of enormous concern to farmers and consumers alike".[113]

He expressed fears that if free trade agreements permitted food to be imported that had been produced abroad to lower production and animal welfare standards, British producers would be undercut and would go out of business.[114] He argued that when the UK had banned the use of sow stalls (individual pig stalls which are too narrow for the sow to turn around in) but continued to import pork from countries that still allowed their use, many British pig farmers went bust. He suggested the same could happen to the domestic poultry industry if imports of chemical-washed chicken were allowed.

Mr Esterson said that the new Trade and Agriculture Commission would not be able to stop changes to food standards if the Government agreed them in a trade deal with the US. This, he said, was because the commission is "advisory, not regulatory", "has no teeth", does not report to Parliament and is only due to exist for six months.[115] He questioned why, if the Government was committed to maintaining existing standards as it said, it objected to putting this commitment in primary legislation in the bill.[116]

Some MPs referred to an earlier debate on trade deals and food standards that had taken place during proceedings on the Agriculture Bill. Neil Parish (Conservative MP for Tiverton and Honiton), chair of the Commons Environment, Food and Rural Affairs Committee, tabled an amendment to the Agriculture Bill that would have prevented any trade agreement from being laid before Parliament unless the secretary of state confirmed it would not allow the import of food products that did not match UK standards.[117] That amendment was defeated by 328 votes to 277, a majority of 51.[118]

Speaking during the Trade Bill report stage, Mr Parish welcomed the establishment of the Trade and Agriculture Commission.[119]

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[111] HC *Hansard*, 20 July 2020, col 1937.
[112] ibid, col 1895.
[113] ibid.
[114] ibid, col 1900.
[115] ibid.
[116] ibid, col 1901.
[117] See House of Lords Library, *Agriculture Bill*, 22 May 2020, pp 12–14 for a summary of this debate.
[118] HC *Hansard*, 13 May 2020, cols 339–43.
[119] HC *Hansard*, 20 July 2020, col 1922.

Deidre Brock, the Scottish National Party (SNP) spokesperson on environment, food and rural affairs, expressed frustration that the Government had said during the Agriculture Bill debate that that was a domestic bill, not about trade, but was equally unwilling to enshrine in the Trade Bill any provisions on the quality of imported food.[120]

New clause 11 was defeated by 337 votes to 251, a majority of 86.[121]

International trade agreements: health or care services (NC17)

A third theme of the report stage debate was the possible impact of trade deals on the NHS and the provision of public services.

The prospect of a trade agreement with the US in particular has raised concerns about what impact future trade terms might have on the NHS.[122] During his state visit to the UK in June 2019, President Trump said the NHS would be "on the table" in trade talks. He later appeared to backtrack, explaining that although "everything's up for negotiation", the NHS was not something he would "consider being part of trade".

Private companies can already bid for contracts to provide services in the NHS in England, and some US-owned companies have won such contracts. Some campaigners fear that the terms of a trade deal with the US would allow investors to claim compensation if they lost access to the NHS market, and that this would prevent any policy changes in future to reduce the current level of privatisation within the NHS. Similar concerns arose during the failed Transatlantic Trade and Investment Partnership (TTIP) talks between the EU and the US. There have been calls, for example from the British Medical Association, for the Government to specifically exclude the NHS from future trade deals and from investor protection mechanisms.[123]

Drug pricing is another issue that could arise during trade talks with the US. Donald Trump has blamed countries with socialised healthcare systems for negotiating "unreasonably low" prices from US drug makers, which he argues pushes up the price of prescription drugs for American patients.[124] US negotiating objectives for a future trade deal with the UK, published in February 2019, said the US would seek to ensure transparent government reimbursement regimes for pharmaceuticals that would provide full market access for US products.[125]

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[120] HC *Hansard*, 20 July 2020, col 1931.
[121] ibid, cols 1945–8.
[122] For further background on this issue, see: House of Lords Library, *NHS and Future Trade Deals*, 27 June 2019.
[123] British Medical Association, *Trade Bill*, 20 May 2020.
[124] White House, 'Remarks by President Trump on lowering drug prices', 11 May 2018.
[125] Office of the United States Trade Representative, *United States-United Kingdom Negotiations: Summary of Specific Negotiating Objectives*, February 2019.

In their manifesto for the 2019 general election, the Conservatives stated that:

> The NHS is not on the table. The price the NHS pays for drugs is not on the table. The services the NHS provides are not on the table.[126]

This statement was repeated in the UK's negotiating objectives for a trade deal with the US.[127]

At report stage on the Trade Bill, Labour tabled new clause 17. This would have allowed regulations to be made under clause 2 to implement a trade agreement only if certain conditions were met. These conditions sought to ensure that no provision in an international trade agreement could affect the UK's ability to:

- deliver comprehensive publicly funded health services free at the point of delivery;
- regulate the quality and safety of health and care services;
- regulate and control pricing and reimbursement mechanisms; and
- protect health-related data.

The conditions would also have prevented clause 2 being used to implement a trade agreement that:

- applied to publicly funded health or care services;
- or that included investor-state dispute settlement (ISDS), negative listing, standstill or ratchet clauses relating to the delivery of public services, health care, care or public health.[128]

Bill Esterson said that the "threat to our NHS" was "right at the top of the

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[126] Conservative Party, *Manifesto 2019*, November 2019, p 57.
[127] Department for International Trade, *UK-US Free Trade Agreement*, 2 March 2020, p 9.
[128] Investor-state dispute settlement (ISDS) provisions allow investors to bring proceedings against a foreign government that is party to the agreement in tribunals outside the domestic legal system. See House of Commons Library, *The Transatlantic Trade and Investment Partnership*, 4 December 2015, for further information about why these provisions were controversial during the TTIP negotiations. 'Negative listing' means that all sectors and subsectors are by default open to foreign service suppliers under the same conditions as those that apply to domestic suppliers unless they are specifically listed as excluded or subject to restrictions for foreign suppliers (European Commission, *Services and Investment in EU Trade Deals*, April 2016). A 'standstill' clause means that, after the conclusion of a trade agreement, if a party decides to further open up its market and subsequently decides to fall back to a more restrictive framework, that framework may never fall below the level of openness committed to in the agreement (ibid). A 'ratchet' clause is a provision through which the parties commit that if they unilaterally decided in the future to further open up their respective markets in one specific sector, such opening would be 'locked in'—ie there can be no step backwards (ibid).

list" of concerns addressed in amendments tabled to the bill.[129] He argued that "statements alone are worthless", saying that "when ministers tell us not to worry about the NHS, it simply will not wash". He said that "the detailed text of all agreements must include cast-iron commitments" to prevent the "hand over [of] our NHS to the healthcare corporations".

Similarly, Stewart Hosie, the SNP trade spokesperson, said there was "absolutely no practical reason why protections for the NHS demanded by the public should not be included in the bill".[130]

Speaking for the Government, Greg Hands repeated that the NHS "remains protected and will never be on the table at any trade deal", including drug pricing.[131]

New clause 17 was defeated by 340 votes to 251, a majority of 89.[132]

Devolved consent for regulations under clause 2(1) (Amendment 10)

The SNP tabled amendment 10, which would have prevented the UK Government from making regulations under clause 2 in areas of devolved competence without first obtaining the consent of the relevant devolved authority.

Stewart Hosie, the SNP's trade spokesperson, said:

> It strikes me as fundamental that if we are to genuinely respect the devolved settlement in the UK, ministers must self-evidently gain the consent of the devolved administration before making changes to regulations that directly affect them, possibly in a negative way, or in a way that runs counter to those governments' policy objectives.[133]

Mr Hosie referred to non-legislative commitments the Government had made about the bill to the devolved administrations. These were originally made during the passage of the Trade Bill 2017–19. The Government restated its commitment in a letter to the Scottish Trade Minister Ivan McKee in March and at the present bill's committee stage in the Commons.[134]

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[129] HC *Hansard*, 20 July 2020, col 1899.
[130] ibid, cols 1905–6.
[131] ibid, col 1938.
[132] ibid, cols 1950–3.
[133] ibid, col 1901.
[134] Department for International Trade, 'Letter from Conor Burns to Ivan McKee', 18 March 2020 and Public Bill Committee, *Trade Bill*, 23 June 2020, session 2019–20, sixth sitting, col 240.

The commitments included that the UK Government will:[135]

- not normally use the powers conferred by the bill in devolved areas without devolved ministers' consent, and never without consulting them; and
- consult the devolved administrations before extending the period during which clause 2 powers can be used under the bill.

Mr Hosie said these commitments were "genuinely very welcome".[136] Nevertheless, he maintained that giving the UK Government powers without a statutory requirement to seek devolved consent was "not observing the devolved settlement".

Ben Lake, the Plaid Cymru spokesperson for the constitution and Welsh affairs, said his party supported amendment 10.[137] He called for the Government to guarantee the democratic rights of the devolved administrations in the bill.

In response, Greg Hands said the Government had been clear that it would not normally legislate in devolved areas without the consent of the devolved authorities and never without consulting them.[138] He argued that if it was "more convenient" for the UK to legislate on behalf of all four nations, then that would be a "a sensible thing".

Amendment 10 was defeated by 345 votes to 244, a majority of 101.[139]

8.5 Third reading

Third reading took place as a formal stage immediately after the report stage. There was no debate. The bill received its third reading by 335 votes to 243, a majority of 92.[140]

[135] Public Bill Committee, *Trade Bill*, 23 June 2020, session 2019–20, 6th sitting, col 238.
[136] HC *Hansard*, 20 July 2020, col 1902.
[137] ibid, col 1913.
[138] ibid, col 1937.
[139] ibid, cols 1955–8.
[140] ibid, cols 1960–3.

9. Read more

Trade Bill

- House of Commons Library, *Trade Bill 2019–21*, 18 May 2020 and *Trade Bill 2019–21: Committee Stage Report*, 15 July 2020

Trade agreements

- House of Commons Library, *Trade Agreements: A Reading List*, 21 July 2020
- House of Lords Library, *NHS and Future Trade Deals*, 27 June 2019

Parliamentary scrutiny of international agreements

- House of Lords Library, 'Parliamentary scrutiny of treaties', 19 August 2020
- House of Lords European Union Committee, *Treaty Scrutiny: Working Practices*, 10 July 2020, HL Paper 97 of session 2019–21
- House of Lords European Union Committee, *Scrutiny of International Agreements: Lessons Learned*, 27 June 2019, HL Paper 387 of session 2017–19
- House of Lords Constitution Committee, *Parliamentary Scrutiny of Treaties*, 30 April 2019, HL Paper 345 of session 2017–19
- House of Commons Library, *Brexit: Parliamentary Scrutiny of UK Replacement Treaties*, 17 July 2019
- Department for International Trade, *Processes for Making Free Trade Agreements after the United Kingdom Has Left the European Union*, February 2019, CP 63

Trade Remedies Authority

- House of Commons International Trade Committee, *UK Trade Remedies Authority*, 10 May 2018, HC 743 of session 2017–19; and *UK Trade Remedies Authority: Government Response to the Committee's Third Report*, 17 July 2018, HC 1424 of session 2017–19.

Note: The report was published prior to the UK's withdrawal from the EU. In its report, the Committee discussed issues related to both the establishment of the TRA itself, under what was expected at that point to be the Trade Bill 2017–19, and its operation through the provisions of Taxation (Cross-border Trade) Bill. The report was published before the latter completed its stages in the Commons and the Lords. The Committee took further oral evidence on the establishment of the TRA in January 2019.