1. This evidence is provided by David Henig, Director of the UK Trade Policy Project at the think tank ECIPE (European Centre for the International Political Economy). All opinions are my own, based on my experience working in trade policy, in particular of spending over three years working on the Transatlantic Trade and Investment Partnership (TTIP), where public controversy led to increased transparency.

2. The 2018 ECIPE report, ‘Assessing UK Trade Policy Readiness’, stated that “Trade policy always has the potential for controversy. Domestic and international interests ask for the protection or promotion of their interests, and this is not fully possible, not least given some are contradictory. Successfully managing these trade-offs is at the heart of effective trade policy.”

3. To manage these trade-offs I proposed in the report six pillars of successful trade policy, namely consensus, clarity, transparency, fairness, futuristic, and implementation. It is my opinion that the consensus on manging the trade-offs relies on a degree of transparency and reliance on the process being seen as fair. This is one reason for good stakeholder and parliamentary consultation mechanisms, to ensure that trade agreements have sufficient support for them to progress. For success clear objectives are also required, and these also rely on effective stakeholder engagement.

4. The current parliamentary processes and powers under the Constitutional Reform and Governance Act 2010 are inadequate for major international agreements such as Free Trade Agreements and the EU Withdrawal Agreement which can contain commitments with far reaching effect. This can be as significant as staying members of a Customs Union, but more typically will relate to regulations and rules which we will bind under international treaty. These matters must be subject to ongoing scrutiny, to avoid a situation where agreement is reached with the other party and Parliament is not content.

5. In summary:

   a. Successful trade policy relies on effective stakeholder consultation, to ensure trade agreements reflect business and other stakeholder priorities;
   b. Trade agreements always have the potential to be controversial, and this is another reason for strong stakeholder engagement, to

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1 http://ecipe.org/publications/assessing-uk-trade-policy-readiness/
demonstrate that extensive and fair consultation lies behind the choices made;
c. Parliament’s power on trade policy derives from the expectation that they will have to vote to approve trade agreements. This means that Governments should work closely with the Parliament throughout the process, to ensure there will be a majority – particularly if there may be a change of government during negotiations;
d. Government should publish a trade strategy on a regular basis, and objectives for trade agreements ahead of negotiations, to allow for scrutiny;
e. Parliament and stakeholders do not necessarily need to see the text of agreements as they are developed, but need to be informed.

6. The following sections are extracted from written evidence provided to the House of Commons International Trade Committee relating to transparency and scrutiny of trade agreements.

**What level of access should Parliament and the devolved administrations and legislatures have to trade policy documents, including trade negotiation texts?**

7. The most significant role of Parliament and the devolved assemblies is to democratically endorse the final agreement, and to do this they must be satisfied that the agreement meets the demands and needs of the public. As outlined above, trade agreements may be controversial, in that there are trade-offs which will create winners and losers, at the very least relatively, and possibly in absolute terms. The losers are likely to raise concerns and may try to stop the agreement by appealing to individual members.

8. MPs and Peers in particular should therefore play a crucial role in trade negotiations, as a key intermediary between the public and the government. To ensure that this happens, and particularly bearing in mind that trade negotiations will often take longer than one parliament to complete, they should be in contact with the negotiators throughout the negotiation to provide political advice on what the agreement should look like, and what might not be acceptable. This should be based on input they receive from their constituents, who will be businesses and civil society groups. They should be able to reassure those with concerns that the agreement will be positive, and to do this I would recommend either that all MPs, or possibly a subset, are able to see texts.

9. As an example, during TTIP negotiations MPs and Peers received numerous letters from concerned residents as part of a coordinated campaign by NGOs. Although the government responded when asked,
the fact that MPs could not see text inevitably meant concerns increased. It was in response to this situation across Member States that the European Commission agreed to open reading rooms to view draft texts.

10. One model that could be considered drawing upon the European Parliament is that major parties appoint one of their MPs per agreement as the lead, who has access to negotiators and texts, and is able to discuss issues with other MPs from their party. This would also allow negotiators to communicate confidentially with a small group of interested MPs.

11. The role of devolved administrations and legislatures is in theory the same, to provide consent for the agreement, particularly for matters which touch on devolved competence. I would expect negotiators to have regular discussions with officials in devolved authorities, to build the ground for this consent. Some of these officials should also have sight of the relevant parts of text, and the same is likely to be the case for devolved legislatures.

12. Given that sensitivity of draft negotiating texts I would recommend that texts are shared under controlled condition such as reading rooms. This will inevitably be seen as less than transparent by some campaign groups but strikes a reasonable balance between transparency and negotiation progression.

What role should Parliament and devolved administrations and legislatures have in drafting and/or approving the UK’s negotiating mandate for trade negotiations?

13. Given that Parliament and devolved administrations will need to vote to approve a Free Trade Agreement there are those who argue that they should also have to approve a mandate for talks. I do not agree that this is necessary. Government should publish their aims for talks, and MPs, Peers and devolved assemblies should have a chance to debate this, and emphasise important points, but ultimately the government should be the ones setting out what they aim to achieve, to be voted on by MPs at the end of the process.

14. In setting out their mandate the government should pay particular attention to the need to secure cross-party agreement given the possibility that talks will last for longer than the lifetime of a single parliament. It would be a waste of UK negotiating effort should incoming governments cancel the negotiations of previous administrations. For this reason basic two-party compacts could be considered like that reached in the US in 2007².
What procedures should be in place for the UK Parliament and devolved administrations/legislatures to scrutinise trade agreements as they are being negotiated?

15. In addition to the issues of text availability and access to negotiators covered above I would also expect to see debates in parliament and devolved assemblies on the proposed agreements, potentially informed by regular written reports issued by the government. Some have suggested that a committee in Parliament, in the Commons or Lords, could be formed specifically to scrutinise the progress on individual trade agreements. I do not have a view as to the mechanics of how MPs and Peers should be organised to scrutinise trade agreements, only that this should happen in the most appropriate way.

What powers should Parliament and the devolved administrations and legislatures have over the ratification and implementing legislation of UK trade agreements?

16. As discussed above I would expect Parliament to debate and vote on the ratification of a trade agreement. However as it the practice for example in the United States I would not expect Parliament to be able to amend a trade agreement, as this would risk unravelling the whole agreement. Hence the government should have discussed details with Members of Parliament ahead of the votes. I would expect the same to hold in devolved legislatures.

4 December 2018

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