

Agriculture Bill Commons consideration of Lords amendments in lieu: Briefing for MPs

23 October 2020

Summary

This briefing outlines the rationale for the Greener UK coalition and Wildlife and Countryside Link's support for:

- Lords amendment in lieu 16B on securing legal safeguards on food standards in trade deals
- Lords amendment in lieu 18B on improving stakeholder scrutiny of changes to food standards

Amendment 16B on import standards

In order to increase the resilience and sustainability of UK food and farming, and achieve environmental and animal welfare goals, it is vital that farmers in the UK are not undercut by imported food produced to lower standards. In some cases, imported products may have been produced in ways which would be illegal in the UK, creating unfair competition and limiting the capacity of UK farmers to deliver public goods such as healthy soil and climate change mitigation.

The 2019 Conservative manifesto promised that the government would not compromise on the UK's high environmental protection, animal welfare and food standards in trade negotiations, and ministers have since repeated these assurances on several occasions. However, there has been no detail on how this commitment will be upheld in practice.

Free Trade Agreements are about liberalising trade in a way that reflects a country's values. Amendment 16B would give Parliament a say on how we lower trade barriers for agri-food goods in relation to UK domestic food standards.

During the Commons consideration of Lords amendments debate, several Conservative MPs voted for Lords amendment 16, but it was ultimately rejected by MPs. This rejection reflected concerns that such an amendment would unduly restrict trade with developing countries and countries with which we have signed rollover deals. Concerns that UK production standards are not applicable to farmers in different ecosystems were also raised. Amendment 16B deals with these objections in a considered way by:

- Containing important exemptions for rollover deals and new agreements with least developed countries
- Placing a duty on government to seek equivalence on agri-food product standards relating to animal health and welfare; protection of the environment; food safety, hygiene and traceability; and plant health. In trade terminology, two countries' standards are considered equivalent if a similar level of protection is reached, regardless of the methods used to reach it. This allows for variation in regulatory approach between trading partners
- Requiring the Secretary of State to report to Parliament on how this condition of equivalence is met and, if not, why it hasn't on a product-by-product basis. This gives

government some flexibility to allow imports of lower standards in special circumstances

- Giving Parliament a vote on whether to accept the relevant chapters of said deals before ratification based on the Secretary of State's report.

We urge the government to accept this amendment for the following reasons:

The need for a legal safeguard on standards

A series of official reports and comments from representatives of trading partners reveals other countries are demanding the UK lower its food standards. For example, the United States Trade Representative told US Congress "we'll either have fair access for agriculture or we won't have a deal with either [the UK or the EU]".¹ The USA's UK negotiation objectives state they are seeking "regulatory co-operation", "to remove expeditiously unwarranted barriers that block the export of U.S. food and agricultural products", and "rules that further encourage the adoption" of lower food standards.²

As it currently stands, future changes to food standards, or authorisation of currently banned foods, will come into law without a vote in Parliament. During Lords report stage of the Agriculture Bill, Defra minister Lord Gardiner made the following commitment: "Any decisions by Ministers to authorise regulated products will require a negative resolution SI in each of the four UK countries to give legal effect to the authorisation."³

Parliamentarians can only vote retroactively on negative resolution SIs within 40 days, and only to reject the entire SI (which could contain other favourable regulations). Changes are to SIs are easily made, such as the recent deletion of hundreds of standards governing antibiotic use in farm animals, and are rarely rejected.⁴

Moreover, under current proposals, trade agreements will be negotiated behind closed doors, with no opportunities for the public or parliamentarians to influence the provisions they contain. The CRAG Act (2010), containing the UK's treaty ratification process, only gives MPs a vote to delay, not reject, trade agreements over 21 day periods and requires government to offer parliamentary time or the opposition to use their limited number of days for debate.

Overwhelming public support for high standards in law

Upholding high standards for food and agriculture products is clearly supported by an overwhelming majority of the public. A recent poll found 95 per cent felt it is important to uphold standards in a deal with the USA.⁵ Over one million members of the British public have signed a petition calling on the government to put into law rules that prevent food being imported to the UK which is produced in ways that would be illegal here.⁶

Compatible with WTO rules

Contrary to some claims, the implementation of this amendment need not go against WTO rules. The WTO provides a baseline for settling trade disputes in the absence of a bilateral or multilateral trade agreement. Trade agreements can build on WTO rules and the UK government should use these to agree bespoke approaches to regulating imports. Amendment 16B is narrowly focussed only on imports that result from new free trade agreements and would not apply universally.

Furthermore, WTO rules contain important freedoms and exemptions that allow countries to set certain import restrictions based on high standards as long as they are scientifically reasoned, consistently applied to imports and domestic goods, and are necessary to

achieve a legitimate policy objective.⁷ A carefully designed and justified system of standards, with legal standing in primary legislation through amendment 16B, would allow the UK to lead the world in tackling climate change and nature's decline, in addition to animal welfare and public health challenges. Many other countries apply import restrictions on this basis using standards above the international minimum.

Amendment 18B on an improved Trade and Agriculture Commission

Amendment 18B complements amendment 16B and would provide important additional scrutiny. After MPs were denied a vote on upgrading the existing Trade and Agriculture Commission, amendment 18B opens up a new avenue for stakeholders to scrutinise changes to food standards in trade deals by:

- Requiring the Secretary of State to transparently consult a broad range of interests to produce a report ahead of the ratification of any new trade deal that assesses its impact on the government's ability to maintain high standards. The report must also contain a register of all products allowed to be imported under the deal that are produced to a lower standard than domestically permitted
- Giving the government the option to establish a Trade and Agriculture Commission to produce the report
- Requiring the report to be considered formally in each house before the ratification of said trade deal.

The Department for International Trade's current 'Trade and Agriculture Commission' falls well short of what is required, and its weak nature and make-up has acted as a strong disincentive for environmental NGOs in the Greener UK coalition to engage with it because:

- There is no clarity on how ongoing monitoring and review of import standards will be undertaken beyond the lifespan of the Commission. It will only exist for six months and lacks ties to legislation or specific negotiations, disconnecting it from the processes it is meant to inform
- It is advisory only, with no requirement for the government to even respond to its recommendations
- The expertise of its commissioners is far too narrow, lacking representation for environmental, animal welfare and consumer groups
- Without a statutory basis, the Commission may struggle to secure the authority it needs to command public confidence.

Given the importance of the functions outlined in the amendment, the urgency for scrutiny of new trade deals which are already being negotiated, and the relatively modest resources needed for the enhanced Commission to fulfil the functions outlined, there should be no barriers to this amendment being accepted. We urge the government to accept this amendment and create a Trade and Agriculture Commission that has the independence and legitimacy it needs in order to scrutinise trade agreements and make recommendations on how the manifesto commitment to uphold standards can be achieved in practice.

For more information on behalf of Greener UK and Wildlife and Countryside Link, please contact:

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Endnotes

¹ Ambassador Lighthizer testimony to US Congress, 17 June 2020, <https://twitter.com/faisalislam/status/1273364932722130945?s=20>

² United States-United Kingdom Negotiations: Summary of Specific Negotiation Objectives, USTR, February 2019, p2 https://ustr.gov/sites/default/files/Summary_of_U.S.-UK_Negotiating_Objectives.pdf

³ <https://hansard.parliament.uk/Lords/2020-09-22/debates/1A030753-AD32-4AEA-A626-93299698C2EC/AgricultureBill#contribution-D2CEAEA9-0208-47E6-BA98-D96F2DCADF5C>

⁴ <https://www.dailymail.co.uk/news/article-8631683/Restrictions-use-antibiotics-UK-farm-animals-watered-help-trade-deal.html>;
<https://www.instituteforgovernment.org.uk/sites/default/files/publications/trade-and-regulation-after-brexite.pdf>

⁵ <https://www.itv.com/news/2020-06-25/majority-of-britons-oppose-weakening-of-food-standards-under-uk-us-trade-deal>

⁶ <https://www.nfuonline.com/news/latest-news/food-standards-petition/>

⁷ The WTO [GATT Article XX](#) allow countries to put in place certain import restriction measures designed to protect 'public morals', human, plant or animal health, or a limited natural resource. These exemptions could be used, for example, to defend the UK's world-leading animal welfare standards such as the ban on chlorinated chicken.

[The SPS agreement](#) respects the freedom of each country to set a level of protection that country deems necessary, including import restrictions based on high standards, as long as the same standards are applied domestically and the restrictions are scientifically justified. This allowance could be utilised to maintain, for example, UK pesticide standards.

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