

Written evidence submitted by Global Justice Now (TB06)

Summary

1. Modern trade deals are about far more than tariffs. They touch on a wide range of public policy. As such, politicians must have proper rights to information, and powers to scrutinise, set guidelines, amend and stop trade deals.
2. The Trade Bill provides one of the few chances parliament has to ensure a proper democratic process around trade deals. Unless parliament takes this opportunity, we fear we will miss the chance to set a precedent, and indeed to begin scrutinising trade talks that are already underway, or will commence soon.
3. Failing to amend the Trade Bill would leave us with no process for scrutinising and ratifying trade deals. This lack of democratic scrutiny is almost bound to create a 'TTIP-style' situation, in which a trade deal without sufficient scrutiny and debate leads to a deeply unpopular trade deal.
4. We further contend that the 'replacement' trade deals covered by the bill will be new deals, with few if any 'cut and paste' agreements. Indeed, some of the 'parent' deals have not yet received proper scrutiny in the EU.
5. We propose a world class process for ensuring democracy, accountability and transparency in trade deals. The very minimum we would expect is that MPs would have the powers currently enjoyed by MEPs and members of the US Congress.
6. This includes:
 - a prior, transparent, independent scoping and impact assessment
 - a public consultation
 - a parliamentary mandate for the government and consent for negotiations
 - a presumption of transparency around negotiating texts, and full access for MPs
 - automatic parliamentary debate and vote on a trade deal before implementation
 - a clear consent and scrutiny role for devolved administrations
 - trade deals to include review clauses for assessment every five years
7. We also seek to bring more national consensus to trade deals by suggesting that deals avoid investor protection tribunals, must be subservient to human rights, workers' rights and environmental treaties, and should include strong public service exemptions.

Introduction

8. Global Justice Now is a democratic social justice organisation working to create a more just and equal world. We used to be the World Development Movement. We are submitting evidence because of our long history of campaigning for trade justice. Most recently this has been around the proposed EU-US Transatlantic Trade & Investment Partnership (TTIP) and the EU-Canada Comprehensive Economic and Trade Agreement (CETA). We were particularly concerned about the extent to which EU negotiation and ratification of trade deals lacked adequate scrutiny and accountability by democratic authorities.
9. We are, therefore, especially concerned about the aspect of the Trade Bill which makes provision for the implementation of international trade agreements.

Rationale

10. Modern trade deals are about far more than tariffs. They touch on a wide range of public policy including: regulation and regulatory coherence, how a state should treat investors, public procurement, intellectual property and online and offline services. As such, modern trade deals affect everyone in society, in multiple ways, and politicians must have a proper right to information, and powers to scrutinise, set guidelines, amend and stop trade deals.
11. We understand that, among other things, the Trade Bill focuses on the replacement of EU external trade deals, in order to provide continuity after Brexit. This has been used as a rationale for why scrutiny and accountability questions are unimportant in the Bill, because in effect these deals will replicate the current situation.
12. However, we reject this rationale for a number of reasons. First, the government promised in the Queen's Speech that this Trade Bill would establish a process by which governments could negotiate new post-Brexit trade deals. We urgently need such a process because a number of international trade working groups have already been established to discuss trading relationships. The purpose of these groups is undoubtedly to lay the ground for future trade deals. Yet as things stand, neither MPs nor the public have any right to know what is being discussed, when or with whom. We are regularly finding out that meetings have taken place via the media and parliamentary debate. But we have received no proper response to freedom of information requests. We find it astonishing that webpages don't even exist for these working groups, and that even feedback is not welcome or possible.
13. It cannot be right that a secretary of state is able to discuss trade strategy with multiple countries in secret. In these circumstances it is impossible for parliament and the public to scrutinise this work or to guide it in a democratic fashion. This lack of democratic scrutiny is almost bound to create a 'TTIP-style' situation, in which a trade deal without sufficient scrutiny and debate leads to a deeply unpopular trade deal. We believe it is vitally important that parliament therefore sets a clear precedent in the Trade Bill for how trade deals should be scrutinised.
14. Our second reason for believing the Trade Bill is wholly inadequate, is that the replacement trade deals which the government hopes to agree will themselves be *new deals*. Almost no expert on this issue believes that these deals will be 'cut and pasted'. They will have to be negotiated and changed. The Secretary of State has expressed his support, as one example, for adding e-commerce rules. These then are new deals which parliament should have a right to guide, scrutinise and if necessary stop or amend. Of course parliament can decide to use these powers to the extent it believes is warranted for each case. It need not be an overly lengthy process.
15. We further contend that some of these deals have not been through a proper scrutiny process. For instance, the EU-Japan deal is at a very early stage of ratification, yet under the Trade Bill this could be ratified in the UK without proper ratification taking place at any level, locking us into that deal for many years. We do not have confidence that even the current very limited and outdated UK scrutiny process will be followed, given the current Secretary of State's failure to ensure proper scrutiny of the Comprehensive Economic and Trade Agreement (CETA) with Canada, which was repeatedly requested by parliamentary committee and ignored.

16. Finally, modern trade deals can have a serious impact on devolved powers. For instance, a trade deal allows a government to list, or fail to list, devolved service provision or regulation in its liberalisation or regulatory coherence chapters. What's more, investor protection chapters would cover devolved areas of responsibility. Yet when it comes to the negotiation and ratification of a trade deal, the devolved administrations currently have no power or influence. This means trade deals can be used to override devolved powers.
17. In conclusion, failing to amend the Trade Bill would leave us without an adequate process for scrutinising and ratifying trade deals. This will have serious consequences – for instance, there will be no necessity to properly involve parliament in the EU-UK trade negotiation, and a final deal would see MEPs, national MPs of other European countries, and very likely regional deputies in Wallonia, have more power over that deal than Westminster MPs. The British parliament would have far less democratic input into the formation and ratification of trade deals than either the EU or the US.

What we are proposing

18. Given the explicit focus in the EU referendum campaign on 'taking back control' of policy areas including trade, we support a world class process for ensuring democracy, accountability and transparency in trade deals. The very minimum we would expect is that MPs would have the powers currently enjoyed by MEPs and members of the US Congress. We are pleased to set out here a number of proposals for what this would look like.
19. At the commencement of trade negotiations, the government should conduct independent scoping and impact assessments and make them available to both MPs and the public, as is done in the EU. This should include social, economic, environmental, human rights, labour and gender impacts both across the UK and, where relevant, in developing countries with whom we wish to negotiate an agreement. These findings must be taken into account in any decision as to whether to go ahead and how the trade negotiations should be shaped. The government should carry out a public consultation on the potential trade agreement, as is required in the US. Efforts must be made to actively reach out and encourage submissions from those who would be directly affected by the potential deal.
20. MPs should be able to set a mandate for the government, outlining 'red lines' and priorities. The government must return to parliament if they want to change this mandate. This gives clear consent from parliament for the trade negotiations and is similar to processes in Denmark and other European countries where parliament sets a mandate for its representatives to the EU. Devolved administrations should also be given a consent process, insofar as their powers will be affected.
21. During negotiations, negotiating texts should be transparent wherever possible, unless there is a specific and convincing reason why they should remain secret. Even in these circumstances, it should be possible for MPs to see them. This is now common practice in the EU post-TTIP. Many international negotiation processes, such as the UNFCCC, are far more open.
22. During this time, the government should also establish: a parliamentary scrutiny committee and a joint ministerial committee to involve devolved administrations. These committees should have full access to all negotiating documents.

23. The government should also establish a civil society consultation body.
24. Once concluded, parliament should have an automatic debate and vote on a trade agreement before it is implemented, via super-affirmative procedure. The EU Parliament and US Congress are both guaranteed a vote on trade agreements. In Canada and Belgium, devolved administrations are involved in ratifying trade deals, which we recommend.
25. We also propose that trade deals include review clauses for the agreement to be assessed every five years and reviewed by parliament, who should have the power to propose amendments or even withdraw from deals in extreme circumstances.

Additional comments

26. Dealing with trade deals at this level will be new for the British parliament, and it will take time to develop knowledge of trade policy. We would like to take this opportunity to raise a number of issues that have been widely seen as problematic in trade deals. We hope that taking some of these comments into account could help us to avoid a 'TTIP-style' situation, where a trade deal loses public support while it is being negotiated:

- Trade deals do create losers as well as winners. We suggest that the government should be required to legislate for compensation and investment to help those who could lose out as a result of greater competition.
- Investor protection has been a particularly contentious element of recent trade deals, with Investor State Dispute Settlement (ISDS) mechanisms becoming a target of public concern because of the chilling effect they have on government regulation. We strongly urge that these parallel legal processes are not included in trade deals.
- Trade deals should always be subservient to government commitments towards human rights, workers' rights and environmental protection. We suggest that is clearly written into the trade deal itself. Any such trade agreement should include mechanisms that allow citizens, communities and public interest groups to challenge companies or governments in cases where they consider human rights, labour rights or environmental standards to have been undermined as a result of the trade deal.
- The exclusion of public services in trade deals is a subject of great public concern. We suggest public exclusion clauses are crafted to mimic national security exclusions which we know to be water tight, and that so-called standstill and ratchet clauses are avoided.
- We propose that intellectual property rules are not extended via trade deals (the so-called TRIPS-plus agenda) as these rules can have a devastating impact on the ability of people to access essential medicines.