

## Written evidence submitted by the Trade Justice Scotland coalition (TB12)

### Trade Justice Scotland Coalition



#### About the Trade Justice Scotland coalition

1. The Trade Justice Scotland Coalition is an alliance of 27 Scottish organisations – including trade unions, NGOs and local activist groups representing hundreds of thousands of Scottish citizens. The coalition first came together in 2015 as part of the Europe-wide movement that opposed TTIP and continues now to focus on post-Brexit trade deals and in particular ensuring that there is a transparent and democratic process for scrutinising and approving those trade deals.

#### Focus of our submission

2. Our submission is focused on the aspects of the Trade Bill that deal with making provision for the implementation of international trade agreements.

#### Summary

3. The campaign against TTIP showed how sceptical the public is of trade deals that are negotiated in secret and not subject to public or parliamentary scrutiny.

4. The Trade Bill inadequately addresses the lack of transparency, parliamentary scrutiny and democratic process that currently exists in the UK in relation to trade deals. It is really important that this is addressed, and amending the Trade Bill offers an immediate and important opportunity to do that.

5. We disagree that 'replacement' deals that the UK is currently part of due to our membership of the EU can be simply transferred on Brexit. We believe that some renegotiation will be necessary and that a democratic process for scrutinising and agreeing changes in those details is vital.

6. This would also then usefully set the precedent for that same process to be used for further post-Brexit trade deals that are negotiated and passed in addition to the ex-EU ones.

7. The scope of modern trade deals and their impacts beyond the customs border is further reason to introduce a democratic process for negotiating and passing them.

8. In the main body of our evidence (para 19) we list some suggestions for specific actions that could be taken to ensure an open and democratic process of scrutiny and ratification of all international trade deals.

9. While trade policy itself is reserved, many areas of policy (and public life) that trade deals can impact on are devolved, eg health, environment, food, farming, public procurement and the provision of public services. As such, we believe that it is vital that the elected representatives of the devolved administrations of the United Kingdom are given a meaningful role in the scrutiny and ratification of international trade deals.

10. In the main body of our evidence (para 23) we list some specific suggestions for how a democratic process around international trade deals could include the devolved administrations.

11. Looking at some other countries with varying federal systems, there are many examples of how regional, provincial and state parliaments and assemblies and their representatives are involved in the negotiation and ratification of trade deals. We give a couple of examples in paras 25 and 26.

12. The Trade Justice Scotland coalition has drafted a set of ten principles that we believe a just and ethical trade system (and the trade deals that are negotiated as part of that) should be based on to ensure that trade deals could play a powerful and genuinely useful role in building a fairer society and protecting the planet.

13. Amending the Trade Bill, to guarantee a democratic and inclusive process for passing international trade deals, is the first step in ensuring that the United Kingdom plays a truly positive and exemplary role in its trading arrangements with other countries around the world.

## **Main body of evidence to committee**

### **Public opposition to international trade deals**

14. The Transatlantic Trade and Investment Partnership (TTIP) faced huge public opposition across Europe and in the US. Lack of transparency and democratic accountability in the negotiation process compounded this. Almost 3.5 million people across Europe signed a petition opposing TTIP and marches of hundreds of thousands of people took place in cities here in the UK and around Europe. TTIP became a politically toxic trade deal due to the strength of public opposition.

15. Post-Brexit trade deals here in the UK are also likely to face public opposition, and that opposition is likely to be increased by the *lack* of transparency, parliamentary scrutiny and democratic process that currently exists here in relation to trade deals. It is really important that this process is changed. The Trade Bill offers an immediate and important opportunity to do that. We urge MPs to amend the Trade Bill accordingly.

## **The case for greater scrutiny and accountability in the implementation of international trade deals**

16. The Queen's speech in June 2017 suggested that the Trade Bill would set an 'international trading framework for the UK outside the European Union'. A fundamental part of that framework must be a democratic process for the development and passing of trade agreements.

17. We disagree with the UK government's view that 'replacement' deals that the UK is currently party to by being a member of the European Union will essentially just be 'cut and pasted' onto the UK statute books, negating the need for democratic scrutiny. It is our understanding that it is very likely that these deals will be subject to some level of change and renegotiation. In this case we would argue that a democratic process is vital, and that the Trade Bill should be amended to introduce that. An additional benefit would be that this would then set the precedent for that same process to be used for further post-Brexit trade deals that are negotiated and passed in addition to the ex-EU ones.

18. The scope of modern trade deals and their impacts beyond the customs border is further reason to introduce a democratic process for negotiating and passing them. Modern international trade deals extend into the realm of public policy, through regulatory harmonisation and coherence, through the increased use of investor state dispute settlement mechanisms to challenge public policy making and the resulting regulatory 'chill', and through their impact on public services, public procurement and intellectual property. The impacts of trade deals are felt across society and in all part of the United Kingdom.

19. As such, we believe that it is vital that there is an open and democratic process of scrutiny and ratification of all international trade deals that includes the following:

- Comprehensive, independently produced impact assessments that include environmental, human rights, gender, labour, social and economic impacts should be carried out and published. It is important that impact assessments are done for all parts of the UK and that MPs, MSPs and the public have access to them (and that versions are produced in plain language to allow full understanding of them).
- The government's negotiating objectives and mandate should be published and receive parliamentary scrutiny in Westminster and by the devolved administrations before negotiations begin.
- Westminster and the devolved administrations should be given the opportunity to agree the UK's priorities and 'red lines' for negotiations, and if the UK government wants to change this as negotiations progress then they must seek further consent.
- Consultation bodies outside parliament should be set up, and include civil society representatives.
- Scrutiny of ongoing trade agreements, and the final texts, should be allowed by committees in the UK parliament and the devolved administrations of the UK.
- The final text should be subject to parliamentary debate in Westminster and the devolved administrations and it should be subject to approval under the super-affirmative procedure.

## **Inclusion of the devolved administrations**

20. As mentioned above, international trade deals have impacts beyond tariffs and quotas, with their effects extending into the realm of public policy (whose objectives can sometimes be at odds with those of trade deals). While trade policy itself is reserved, many areas of policy (and public life) that trade deals can impact on are devolved, eg health, environment, food, farming, public procurement and the provision of public services.

21. Scotland has regularly been the first nation in the UK to bring in stronger public policy legislation, from banning smoking in public places, to the extended moratorium on fracking, to greenhouse gas emissions targets. This, and the fact that if Scotland were to be sued using an investor protection clause in a trade deal, then it would be the UK government who would fight the case – but if the UK government lost then the Scottish government would have to pay the compensation<sup>1</sup> - mean that Scotland is inextricably linked to any international trade deals signed by the UK Government.

22. As such, and given Prime Minister Theresa May’s claim that the four nations of the UK are “equal partners”, we believe that it is vital that the elected representatives of the devolved administrations of the United Kingdom are given a meaningful role in the scrutiny and ratification of international trade deals.

23. We therefore suggest that the Trade Bill should be amended to facilitate the following<sup>2</sup>:

- A joint ministerial committee on trade should be set up to strengthen the devolved administrations’ oversight of UK trade policy.
- Impact assessments relating specifically to Scotland as a nation (taking into account its differing demographic, economic, social and environmental situation) should be independently carried out and published, to allow for scrutiny by MSPs and the public.
- The devolved administrations should be given the opportunity to participate in the formulation of the negotiating mandate for all new UK trade deals.
- Representatives of the devolved administrations should be included in official UK trade negotiating delegations.
- MSPs should be given the same access to negotiating texts as MPs, and the Scottish Parliament should be given a vote on the final trade deal.

## **Examples of inclusion of devolved administrations in other countries**

24. Looking at some other countries with varying federal systems, there are many examples of how regional, provincial and state parliaments and assemblies and their representatives are involved in the negotiation and ratification of trade deals. Here in the UK, we may not choose to emulate any of them completely but they serve as useful examples of how things could be done differently – and by

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<sup>1</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-03-15/31198/>

<sup>2</sup> *Where our suggestions relate specifically to Scotland, and not the other devolved nations, we do so only because that is where our experience and expertise lie, and in doing so we don’t in any way suggest that the other devolved administrations should be excluded*

comparison highlight the extreme lack of involvement in trade deals that the devolved administrations here in the UK currently have.

25. Looking at the example of Canada, and the EU-Canada trade deal (CETA), it's clear that the provinces played an active part. The mandate for the negotiations was drafted with input from the provincial governments, who also nominated their own chief negotiators and representatives who joined the Canadian national delegation. Those provincial negotiators were present during the bilateral talks with the EU, and they also participated in a pan-Canadian trade committee which worked between negotiations to agree and set the Canadian position for future talks. And all the negotiating documents were made readily accessible to provincial teams.

26. In Belgium, all regional governments are guaranteed the right to approve trade agreements under article 67 of the federal constitution. The Belgian government's role is to achieve consensus between the regional governments, meaning a much greater sharing of information and of views on all aspects of international trade deals than we see here in the UK between the UK Government and the devolved administrations.

### **The principles underpinning a just and ethical trading system**

27. The Trade Justice Scotland coalition is opposed to the new wave of trade deals, such as TTIP and CETA as we believe that they grant too much power to corporations and weaken democracy and the ability of governments to protect people and the planet. As a coalition, we have drafted a set of ten principles that we believe a just and ethical trade system (and the trade deals that are negotiated as part of that) should be based on. We believe that trade deals should honour obligations to human rights, workers' rights, and environmental and climate change commitments. We believe that international trade agreements should focus on trading in goods, and that public services, patents, local and national government procurement, domestic regulation, migration, investment and data privacy lie outside the scope of these agreements. We also believe that domestic courts rather than 'corporate courts', (which give foreign companies special legal rights outside of the national legal system) should deal with trade disputes. In short, our principles outline how we believe that trade deals could play a powerful and genuinely useful role in building a fairer society and protecting the planet. The full document is online at <http://scotlandagainstttip.org.uk/wp-content/uploads/Just-Trade-Principles-FINAL.pdf>

28. Amending the Trade Bill, to guarantee a democratic and inclusive process for passing international trade deals, is the first step in ensuring that the United Kingdom plays a truly positive and exemplary role in its post-Brexit trading arrangements with other countries around the world.

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