



THE TRADE BILL BRIEFING

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1. AIMS OF UK TRADE POLICY

The UK's new trade policy should aim to:

- Be integrated within the UK's foreign and domestic policy frameworks so that trade agreements work to strengthen, not weaken, key values and commitments, including the UK's commitment to protecting and promoting human rights, labour rights and equalities
- Be used as a mechanism for tackling widespread human rights abuses in global supply chains and certainly not to open up markets in a way that increases exploitation.
- Promote more and better jobs that help to realise the economic and social rights of vulnerable and disadvantaged individuals/groups in the UK and in the UK's trading partners.

The purpose of the UK Trade Bill currently going through Parliament, as set out in the Queen's Speech, is to "put in place the essential and necessary legislative framework to allow the UK to operate its own independent trade policy upon exit from the European Union." One of the key benefits of the Bill is said to be that it will help "create a country that is stronger, fairer, more united and more outward-looking than ever before."¹

In order to meet this aspiration, the current Trade Bill must contain:

- A set of values to guide future trade policy.
- A framework for assessing the benefits and drawbacks of future trade agreements.
- A process of democratic accountability through which the people and their elected representatives can participate in the formation of future trade policy.

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2. KEY ASKS

Amnesty International UK makes the following key asks in relation to the Trade Bill. These asks are based on the identification of key aims of future UK trade policy and key lessons from trade policy in other countries:

- A statement of aims for UK trade policy contained within the bill which should commit the UK, inter alia, to:
 - (1) Tackle the worst forms of human rights abuses in global supply chains.
 - (2) Ensure that the UK maintains key human rights, labour rights and equality protections including those currently enshrined within EU law, the European Convention on Human Rights and the Human Rights Act. These aims will be implemented by meaningful and legally enforceable obligations.
 - (3) Promote more and better jobs that help to realise the economic and social rights of vulnerable and disadvantaged individuals/groups in the UK and in the UK's trading partners.
- A clause in the Bill to exclude from all future UK trade agreements any commitments which raise serious human rights and social justice concerns. Investor State Dispute Settlement provisions and commitments that may adversely affect public services such as health, education, water etc. (even when those services are contracted out) should be in the list of exclusions.
- An independent body with appropriate expertise is established with a remit to conduct or commission assessments of the impact of all future trade agreements on human rights, labour rights, equality and the environment in the UK and its trading partners. This could be the proposed Trade Remedies Authority, if it was given the resources, remit and powers to do so.
- The impact assessments produced by this body are debated in Parliament. Then Parliamentarians should vote on whether negotiations may proceed further.
- A meaningful process of consultation is established in relation to each trade agreement. This consultation process shall include demonstrable efforts to obtain the views of those individuals potentially most seriously affected by the trade agreement in question.
- The government must be required to demonstrate that the impact assessment and consultation process has been (i) taken account of in the decision about whether the trade agreement is signed, and (ii) reflected in commitments on what is included and excluded from the agreement itself.

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3. KEY LESSONS FROM TRADE POLICY IN OTHER COUNTRIES

A. Trade agreements are powerful instruments. They can be used to reinforce human rights, labour rights and equalities protections if provisions are properly designed and implemented.

Many UK labour rights, human rights and equalities protections are guaranteed by the UK's membership of the EU and supported by strong EU rules on how they must be protected and enforced. Once the UK has left the EU, it will be up to the UK government to decide about these rights and how they are protected. Although undoubtedly a regressive move, the UK government would be free to withdraw from the European Convention on Human Rights (ECHR) or repeal key labour rights protections including limits on working hours and equal pay. Giving up EU membership also means that the UK will not be required to adopt any future improvements to the protection of rights agreed within the EU.

Trade agreements are critically important legally binding instruments. Experts describe EU trade agreements as the most important legally binding instruments that the EU can use in its external policy.² If the UK leaves the Single Market, the UK's trade agreement with the EU would provide a mechanism for demonstrating an ongoing binding commitment in the future not to reduce human rights and labour protections. A commitment could also be enshrined within a UK-EU trade deal that human rights, labour rights and equalities will always be as good as or better than those protections in the rest of the EU.³

It is not unusual for provisions on human rights and labour rights to appear in trade agreements. Labour standards are now included as a standard component of all EU and US trade agreements. Globally 136 countries have at least one trade agreement containing labour standards provisions.⁴ EU agreements also include a standard set of human rights provisions. But research demonstrates that both EU and US labour provisions have had very limited effect and that commitments are difficult to enforce in practice. Nevertheless, such standards should be maintained by the UK at a minimum, if not built upon and improved.

If an EU-UK trade deal is to provide any future guarantees for UK rights and equalities protection, obligations must be specific (e.g. no withdrawal from the ECHR, match EU equalities and labour rights protection). They must also be supported by a stronger and more effective enforcement mechanism than those contained in current EU or US agreements.⁵

When it comes to signing trade agreements with other countries beyond the EU, UK policy-makers should be very wary of assertions that the UK can sign up to agreements and then successfully raise human rights concerns through trade relationships alone (e.g. with Saudi Arabia, the Philippines). EU efforts at such dialogue alone have had very limited effect. Given the UK's reduced market size after it leaves the EU, it will have comparatively limited influence. As a result, it is important to have a set of values which guide decisions about what countries to enter into trade agreements with in the first place and what provisions to include.

B. Trade agreements can themselves undermine human rights, labour rights and equalities. UK trade agreements need to be designed to ensure this does not happen.

Modern trade agreements include obligations to remove tariff barriers. But they also include a range of other obligations including investor protection, intellectual property, government procurement and regulation of service industries. These commitments can have diverse and varied social impacts. A joint report by the IMF, World Bank and World Trade Organisation in 2017 concluded that "adjustment to trade can bring a human and economic downside that is frequently concentrated, sometimes harsh, and has too often become prolonged."⁶

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It is therefore vital that the broader social impacts of trade agreements are considered including on human rights, labour rights and equalities. Action must be taken to avoid or to address impacts identified, particularly on vulnerable and disadvantaged groups and individuals.

The European Union conducts 'sustainability impact assessments' (SIAs) of all new trade agreements. SIAs assess the economic, environmental and social impact of trade agreements, including on human rights and labour rights. Once in force, EU agreements include a commitment to assess the effects of the agreement on sustainable development. In practice, however, SIAs do not tend to include detailed, sector-specific impact assessments on human rights or labour rights. They generally find positive impacts based on assumptions that jobs will be created and government revenues increased. SIAs therefore do not lead to specific and targeted human rights and labour rights protections in negotiating texts. Once EU agreements are in force, the broader social and environmental impacts of those agreements are not measured in any meaningful way.⁷ The Canada-Columbia free trade agreement, which has been in force since 2011, does include a human rights' reporting mechanism. But the reports produced have been superficial and heavily criticised by academics and civil society.⁸ Despite this, these elements are clear evidence of the commitment to human rights and labour rights that the UK needs to – at the bare minimum – replicate this.

The most significant problem with both the EU and the Canadian approach to impact assessment is that the assessments are insufficiently independent of the institutions responsible for implementing trade policy. In the EU, it is the Directorate-General for Trade that commissions SIAs of its trade agreements, while in Canada, it is Global Affairs Canada (the Department that deals with Foreign Affairs and International Trade) that is responsible for conducting assessments.⁹ Key to meaningful UK impact assessments that take human rights, labour rights and equality issues seriously, is the setting up of an independent body, staffed by individuals with demonstrable expertise in these broader social issues. This body would develop a methodology for studies and commission independent experts to undertake them during the negotiating period, and periodically once agreements have come into force.¹⁰ Again, this could be a role the new TRA could perform if given adequate resources, responsibilities and powers.

At the same time, it is important to recognise the limitations of even the best studies in accurately measuring the future impact of all provisions in a trade agreement. There are too many other domestic and international influences for cast-iron conclusions to be drawn. One way to ensure against some of the potentially most significant adverse impacts of trade agreements is for the UK government to guarantee that it will exclude particularly troubling commitments on principle from any future trade agreement. This should include any rights given to foreign companies to take legal action against the UK government through international arbitration processes. Some of the cases which have previously been brought to tribunals raise profound questions of social and environmental concern. Such cases have covered the ability of governments to ensure the provision of essential services such as water and sanitation, or to effectively tackle public health issues such as smoking.¹¹ There has been extensive criticism of the idea that foreign investors should get privileged access to an international investment process that circumvents the national courts.¹²

C. Trade agreements could become building blocks for tackling some of the worst abuses in the workplace and in global supply chains

Many millions of workers in global supply chains around the world suffer human rights and labour rights abuses such as modern slavery and the failure to pay a living wage. Trade agreements govern the conditions under which goods and services are traded internationally and so could potentially be utilised to tackle this issue. The European Union has Trade and Sustainable Development (TSD) Chapters in all its trade agreements which are seen by EU representatives as a vital first step towards responsible supply chains. But EU TSD

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chapters only contain vague references to corporate social responsibility (CSR) in the text of agreements, which in practice has led only to educational projects about CSR in trade partner countries. This is very limited in ambition and fails to recognise the inherent limits of voluntary CSR activity for improving labour conditions and other aspects of human rights in global supply chains.²³ There is a significant opportunity for the UK to improve on this as we leave the EU.

Future UK trade agreements should provide far stronger mechanisms for tackling abuses in global supply chains, not least because of the Government's commitment to combating modern slavery. They could for instance create road maps for action in important export sectors, linked to clear monitoring processes which seek to enhance working conditions for workers in those sectors. They could also include dispute settlement processes which target corporate actors directly and allow workers or affected communities to bring complaints against the corporation.²⁴ A critical starting point for this endeavour is a commitment in the UK's trade policy framework that meaningful efforts will be made to tackle this issue.

4. CONSTITUTIONAL QUESTIONS IN THE PROTECTION OF RIGHTS FROM ENHANCED POWERS

Clause 2(6) of the Trade Bill confers broad law-making powers on Ministers for the purposes of implementing an international trade agreement to which the UK is a signatory. This would allow primary legislation that gives effect to EU law, known as 'retained EU law', to be amended by Ministers. Such powers have been justified as allowing the Government maximum flexibility when implementing trade agreements, but without the inclusion of any safeguards for protecting human rights. Primary legislation that might be affected, in so far as it could be considered to give effect to EU law, include the Equality Act 2010, and the Modern Slavery Act 2015. The delegation of such broad law-making powers to Ministers should be limited in the Trade Bill to ensure that human rights and labour rights protections cannot be rolled back in the pursuit of international trade agreements.

5. THE ROLE OF THE TRADE REMEDIES AUTHORITY

The Trade Bill establishes a Trade Remedies Authority (TRA) to provide advice, support and assistance to the Secretary of State in connection with the conduct of international trade disputes. At present, there is no reference to this body being able to monitor and advise the Secretary of State on implementation of the human rights obligations that the UK and other states are party to, in the context of trade agreements. The TRA would be the obvious body to perform this function and if it were to do so it would be necessary to make this explicit in legislation, including clarity on its powers in this area.

Should the TRA be established and given responsibility for monitoring and advising on human rights obligations, there would need to be mechanisms for drawing the TRA's attention to potential and actual human rights violations that might warrant appropriate measures. It has long been common practice in Canada and the United States to establish public mechanisms or national contact points, where such concerns can be raised. As the TRA will be able to establish sub-committees, a commitment from the government that one of these committees would be a consultative vehicle for civil society and the wider public would be welcome.

The TRA will also have nine members who will be appointed with significant input from the government. Given that the TRA will advise across all manner of trade disputes and that international human rights law is a complex and specialist area, and that current and future trade agreements will have human rights obligations within them, human rights and sustainability experts should be represented on the membership panel.

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¹ Prime Minister's Office, *The Queen's Speech, Wednesday 21 June 2017* p12 and 20 available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/620838/Queens_speech_2017_background_notes.pdf

² Jurje and Lavenex, 'Trade Agreements as Venues for "Market Power Europe"?'. *Journal of Common Market Studies*, (2014) Vol. 52, No. 2, pp. 320–336.

³ For more detailed analysis of the issues and more detailed ideas for reform which form the basis for many of the ideas presented in this briefing see Harrison, Richardson, Campling, Smith, Barbu, *Taking labour rights seriously in post-Brexit UK trade agreements : protect, promote, empower*, (2017) Centre for the Study of Globalisation and Regionalisation, Working Paper 284/17:

<http://www.geog.qmul.ac.uk/media/geography/docs/research/working-beyond-the-border/284-17.pdf>

⁴ ILO, Handbook on Assessment of Labour Provisions in Trade and Investment Provisions (2017):

http://www.ilo.org/global/publications/books/WCMS_564702/lang--en/index.htm

⁵ The European Commission is currently listening to ideas for reform of its labour provisions. For a series of recommendations on how to reform current provisions and strengthen the enforcement process, which are drawn upon in this briefing, see Barbu, Campling, Ebert, Harrison, Martens, Marx, Orbie, Richardson, Smith, *A Response to the Non-paper of the European Commission on Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs)*: <http://www.geog.qmul.ac.uk/media/geography/docs/research/working-beyond-the-border/A-Response-to-the-Nonpaper-26.09.17.pdf>

⁶ International Monetary Fund, The World Bank, World Trade Organization, 'Making Trade an Engine of Growth for All', discussion paper for G20 meeting (March 2017):

<https://www.imf.org/en/Publications/Policy-Papers/Issues/2017/04/08/making-trade-an-engine-of-growth-for-all>

⁷ See Brando, Hachez, Lein and Marx, The impact of EU trade and development policies on human rights (30 June 2015):

<http://www.fp7-frame.eu/wp-content/uploads/2016/08/Deliverable-9.2.pdf>

⁸ See e.g. James Rochlin, 'A golden opportunity lost: Canada's human rights impact assessment and the free trade agreement with Colombia' *The International Journal of Human Rights* Vol. 18, Iss. 4-5, 2014; CBC News, *Government report on human rights abuses in Colombia a 'sham'* (21 May 2014)

<http://www.cbc.ca/news/politics/government-report-on-human-rights-abuses-in-colombia-a-sham-1.2649163>

⁹ See <http://www.international.gc.ca/trade-agreements-accords-commerciaux/env/facts.aspx?lang=en>

¹⁰ This recommendation is made in Harrison, *Human Rights in the International Economic Realm*, forthcoming.

¹¹ See e.g. Cotula and Schröder, On Community perspectives in investor-state arbitration the public health issues available at <http://pubs.iied.org/pdfs/12603IIED.pdf> and Valentina Vadi, *Public Health in International Investment Law and Arbitration* (Routledge, 2013).

¹² See Gus Van Harten, 'Is it Time to Revise or Terminate Investor-State Arbitration', Centre for International Governance Innovation (11 April 2017):

<https://www.cigionline.org/articles/it-time-redesign-or-terminate-investor-state-arbitration>

For a more detailed analysis, see Sornarajah, *The International Law on Foreign Investment*, (Cambridge University Press, 2017).

¹³ Harrison et al, Above n.3.

¹⁴ Setting out a range of related recommendations on this issue see Smith, Campling, Barbu, Harrison, and Richardson, (2017) 'Do labour provisions in EU trade agreements improve workers' lives and working conditions around the world?', summaries of key findings:

<http://www.geog.qmul.ac.uk/media/geography/docs/research/working-beyond-the-border/Smith-presentation-WTO-PF-Sept-2017.pdf>, and Harrison et al, Above n.3.

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