

Post-Brexit Trade and Development Policy

Ensuring Trade Justice for the Global South



September 2017

- As the UK takes back competence for trade policy following the EU referendum consideration must be given to the impact of UK trade arrangements on countries in the Global South.
- The UK has committed to carry over existing EU arrangements that give preferential market access to Southern countries and to explore opportunities to expand these relationships.
- However, there is a disparity between the UK's historical approach to trade policy and Southern countries' development objectives.
- The UK must bring existing and future trade agreements into line with international human rights and environmental commitments and avoid undermining Southern countries' development agendas.
- The government must take immediate action to ensure the forthcoming Trade Bill guarantees a transparent and democratic process for the ratification of trade agreements.
- UK investment policy must be reviewed and Bilateral Investment Treaties cancelled or fundamentally redesigned so that investment protection is balanced with investor obligations and governments' right to regulate.
- The UK must conduct impact assessments on all of its trade deals and commit to deals that minimise negative and maximise positive impacts for Southern countries.

The Impact of Brexit on Southern Countries

The UK's decision to leave the EU constitutes a significant change to the policy landscape on trade and development. This decision has already had an impact on countries in the Global South with the fall in the value of the pound reducing the value of aid flows and remittances from the UK. Conservative predictions estimate that the [value of UK aid](#) will reduce by more than £1.9 billion and the [value of remittances from the UK](#) will decrease by at least US\$1.4 billion. Brexit may also lead to a reduction in [UK foreign direct investment](#). Beyond this, the return of trade and investment policy to full UK competence poses new challenges and opportunities for countries in the Global South.

The UK's focus in trade negotiations will be on ensuring its trade policy counteracts any negative impacts of Brexit on the UK economy, maintains the UK's global position, and protects its businesses and consumers. It may seek far-reaching ['21st century' trade agreements](#) that move well beyond the traditional role of trade deals to address broad policy issues including investment protection, services, public procurement and regulatory cooperation. These agreements restrict governments' right to regulate and pose serious threats to Southern countries' development agendas.

Nevertheless, Brexit also provides an opportunity for the UK to develop an innovative trade and development policy that is better aligned with Southern country priorities. New trade arrangements could ensure the best possible development outcomes by supporting regional integration and market diversification, and by strengthening local industries that develop value-added products. Beyond this, UK trade deals could strengthen human rights and labour rights protections and enable governments' to develop public policy that reduces poverty and inequality.

Current UK Trade Arrangements with Southern Countries

The UK is not a major trading partner for many countries in the Global South. It is the destination for two percent of goods exported from developing countries and four percent of exports from the [48 least developed countries](#) (LDCs). Nonetheless, Southern country producers export at least [£34 billion worth of products to the UK each year](#). These are some of the poorest producers in the world and any changes to UK trade policy after Brexit could directly impact their employment security, labour conditions and living standards.

Beyond this, there is [a group of Southern countries](#) for whom the UK represents a significant share of exports and who are heavily reliant on external trade. These countries export a narrow range of products that would not be competitive on the UK market in the absence of preferential trade arrangements that reduce or eliminate UK trade tariffs. Brexit poses considerable risks for producers in these countries and even minor changes to UK trade arrangements could reduce their competitiveness on the UK market, pushing them into poverty.

Southern Countries with large UK exports	
Country	Exports to UK as a percentage of total exports
Belize	25%
Mauritius	20%
Fiji	15%
Gambia	14%
Sri Lanka	11%
Bangladesh	10%
St Lucia	9%

Southern countries currently receive preferential market access to the UK under EU trade arrangements, including:

- The Everything But Arms Scheme (EBA);
- The Generalised Scheme of Preferences (GSP) - standard GSP or GSP plus; and
- The Economic Partnership Agreements (EPA's).

Under the EBA arrangements LDC's benefit from duty-free exports into the UK on all goods other than arms and ammunition. The GSP and GSP Plus arrangements [reduce or eliminate tariffs on goods exported to the UK](#) from non-LDC countries. Together these preferential market access schemes save [LDC exporters €385 million](#) per year, [non-LDC African, Caribbean and Pacific \(ACP\) exporters €205 million](#) and [Commonwealth exporters €715 million](#).

The EPA's are regional free trade agreements that the EU has signed or is negotiating with African, Caribbean and Pacific partners. Unlike the unilateral EBA and GSP/GSP Plus arrangements, the EPA's are reciprocal trade agreements that place requirements on Southern partners to liberalise their economies. To date the EU has signed EPA's with [Caribbean partners](#) and the [Southern African Development Community](#).

In addition to these EU trade arrangements, the UK has over 100 Bilateral Investment Treaties (BIT's), more than two-thirds of which are with Southern countries. BIT's are agreements between two governments that are designed to promote investment flows and protect international investors and their investments.

Priorities for reform of UK Trade Arrangements with Southern Countries

Reform of UK trade policy is necessary to ensure that Brexit doesn't negatively impact on Southern countries and that new trade arrangements are in line with the UK's international human rights and environmental obligations. However, the UK also has the opportunity to address some of the challenges of existing trade arrangements, which limit poverty reduction and development efforts in the Global South. A new gold standard trade and development policy would ensure that trade arrangements are people-centred, environmentally responsible and mutually beneficial for communities in the UK and the Global South. Priorities for trade policy reform include:

Ensuring Transparency and Democracy in the UK's Trade Agreements

Current Parliamentary procedures for trade agreement ratification grant extraordinary powers to the Government, effectively sidelining MPs, and offering no mechanisms for public input. Making trade deals accountable to parliament and the public is a necessary first step for the development of deals that are compatible with human rights and poverty reduction goals. It is essential that the forthcoming trade bill includes key transparency and accountability mechanisms that guarantee the negotiation and ratification of trade agreements is democratic and inclusive. More information about the trade and democracy campaign is available on [TJM's website](#).

Trade Priorities for Southern Countries

Boosting regional trade

Improving trade links between countries in the same region has for a long time been a priority for Southern countries, particularly African countries. Negotiations around the African Continental Free Trade Area (CFTA) and customs union are ongoing. Aims include deeper economic integration, agricultural development and food security. There is growing evidence that good regional trade links are crucial for achieving development goals.

Special Safeguard Mechanism

This measure would allow Southern countries to protect their economies from import surges which can damage their local economies. Getting such a mechanism incorporated into the WTO is a long-time priority for Southern countries: the G33 submitted a number of proposals to the 2015 WTO ministerial to get progress but nothing was agreed.

Boosting value-added production

Southern countries have long recognised that if they are to open up their markets and compete at a global level, they need to be able to diversify their economies and retain more of the value of production in-country.

Cotton

The 'C4' group of cotton-producing LDCs (Benin, Burkina Faso, Chad and Mali) have long demanded improvements in market access, reductions in rich-country trade-distorting subsidies and domestic subsidies, and increased development assistance. However progress in this area has been extremely slow.

Ending trade-distorting agricultural subsidies

As of early 2016 developed countries are supposed to have eliminated remaining scheduled agricultural export subsidies. So that, for example, the EU binds export subsidies at zero with significant potential benefits for LDC cotton producers. However the gains from this are undermined as many subsidies have in fact simply been transferred to the WTO 'Green box' (schedule of permitted subsidies).

TRIPS permanent waiver

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is a WTO agreement that provides international companies with strong intellectual property protections on things like medicines and food. A permanent waiver would exempt LDCs from the implementation of this agreement, preventing any related hikes in the cost of food or medicines. For the last 20 years LDCs have been offered only temporary waivers, meaning that significant negotiating capacity is expended in defending the waiver.

Duty-Free, Quota-Free market access

On paper there has been significant progress in getting preferential access for Southern countries to rich-country markets. Only a small number of tariffs remain (mainly in the US). However, globally tariff levels have fallen considerably, reducing the value of these measures for Southern countries - this is referred to as 'preference erosion'.

Public stockholding for food security

This would allow Southern countries to maintain stocks of basic foods to protect against volatile global food prices. It was hoped that a permanent solution would be reached in 2015 but this has yet to be achieved. Successive ministerial meetings have also failed to address the issue of the monetization of food aid. This is a particular issue for the US. It involves the sale of food commodities purchased in and shipped from the US and sold for local currency in a recipient country by "cooperating sponsors" - typically US-based NGO'S or recipient governments.

Strengthening Preferential Market Access Schemes

In June 2017 the UK announced that it will carry over “[existing duty-free access to UK markets](#)” for Southern countries. This included a commitment to translate the EU EBA, GSP and GSP Plus arrangements and EPA’s into UK law. It also committed to exploring options to expand these relationships.

The EU EPA’s have been [extremely controversial](#) and remain heavily contested by countries across the Global South. After 14 years of negotiations many countries, [particularly across Africa](#), continue to resist these agreements, arguing that they will have [devastating consequences for local industries](#), reduce employment opportunities and [worsen poverty](#). Southern countries criticise the EPA’s for:

- Undermining regional integration by establishing regional groupings that [split existing custom unions or regional alignments](#) or by imposing different trade arrangements on [countries in the same region](#), which prevents the development of regional customs union;
- [Fostering tensions](#) between LDC’s, which receive tariff free access to the EU market through the EBA arrangements and will not benefit from signing an EPA, and non-LDC countries that will lose preferential access to the EU market if they do not sign an EPA;
- Expanding the privatisation agenda by including a [rendezvous clause](#) that commits Southern countries to continue negotiating on controversial areas that were not included in the original agreement, including the liberalisation of [investment and services](#). This goes beyond current WTO commitments and has the potential to significantly reduce Southern countries’ policy space and development capacity; and
- [Driving market liberalisation](#), which forces Southern countries to open up their markets to direct competition with EU goods. Without tariffs nascent industries that develop added-value products are unable to compete with EU goods. This reinforces Southern countries’ dependency on commodity exports and impedes their capacity to diversify their economies.

Beyond concerns with the substance of the EPA’s, the UK may face practical challenges in translating these agreements into UK law. Given the UK is not a major trading partner for many Southern countries, it may lack the economic and diplomatic clout to conclude EPA’s on the same terms as the EU. Southern partners may instead look to negotiate alternative trade arrangements that deliver stronger development outcomes. In addition to this, it may not be feasible to implement new EPA’s until after the UK has left the EU. This would mean that Southern partners that do not receive preferential market access under the EBA or GSP/GSP Plus arrangements would be required to trade with the UK under WTO rules until a trade deal could be agreed. This would effectively result in the UK imposing tariffs on some of the poorest countries in the world. For these reasons, the UK should not seek to roll over the EPA’s. Rather, the UK should look to build on and expand

the EU EBA and GSP arrangements. This would ensure that Southern countries are not negatively impacted by the UK’s withdrawal from the EU, and would provide all LDC and non-LDC countries with preferential access to the UK market. The UK could improve EU preferential market access schemes by:

- Extending the country coverage of the EU EBA arrangements to include non-LDC countries, giving all Southern countries tariff free access to UK markets for all products except arms and ammunition.
- Extending the product coverage of EU GSP/GSP Plus to include products that are exported by a broader range of Southern countries, such as bananas, yams, sugar and apples.
- Extending the amount that UK tariffs are reduced for products included in the GSP/GSP Plus arrangements.
- Offering simplified rules of origin and maximum regional cumulation.

When translating the [EU GSP arrangements](#) into UK law, the UK should consider criticism of the requirement under GSP Plus that partner countries’ ratify and put into practice [27 International conventions](#) addressing human rights, labour rights, environmental standards and good governance. Critics argue that the failure to include social and environmental conditions [in all EU trade agreements](#) means that countries that participate in GSP Plus have different requirements to other EU trade partners. They also question whether these provisions actually improve human rights and labour conditions, arguing that a lack of enforcement means that the ratification of these conventions is high but the [implementation remains limited](#). The [inconsistent use of sanctions](#) against countries that breach these conventions also demonstrates a double standard in the EU’s enforcement measures. Beyond this, the requirement that Southern countries monitor the implementation of these conventions adds an [administrative burden](#) that diverts resources and attention from other policy agendas.

The UK should ensure that its position on the inclusion of social and environmental conditions in trade arrangements is underpinned by sound evidence and is governed by a clear framework for how and when it will respond to human rights and labour rights violations. It must also make sure this position is consistent across all trade arrangements, including with partners in the Global North.

Reforming UK Bilateral Investment Treaties

BITs are heavily biased in favour of international investors, challenging governments’ ability to decide policy in areas like health, energy, water and climate change. The majority of UK BIT’s contain investor to state dispute settlement clauses (ISDS), which allow investors to sue governments in private tribunals over policy decisions that threaten their profits. Over the last 15 years, non-OECD countries have faced an incredible [\\$415 billion in ISDS claims against them](#).

UK BIT’s are broadly worded and based on outdated principles from the post-War era, allowing for the most

expansive interpretation of clauses and leading to significant uncertainty as to their impact.

Problematic clauses in UK BIT's

Fair and Equitable Treatment

Fair and equitable treatment clauses require governments to treat investors 'fairly' and not upset their 'legitimate expectations'. They have permitted investors to bring disputes against government activities such as changes in [tariff charges in public utilities, withdrawal of tax exemptions and changes to the regulation of chemicals](#).

Indirect expropriation

Indirect expropriation clauses provide for compensation where a [regulatory measure is considered to harm, affect or interfere with an investment](#) even where these have been enacted for the public good. This can cover a wide range of government actions and measures, ranging from taxation to environmental regulation.

The UK has competence for existing BIT's irrespective of its membership of the EU. Therefore, the Government should review its investment policy prior to Brexit, cancelling or fundamentally redesigning UK BIT's so that investment protection is balanced with governments' right to regulate. This review should also ensure that future and existing investment agreements are compatible with the UK's commitments under the [UN Guiding Principles on Business and Human Rights](#) and other international human rights and environmental protection instruments. For more information read [TJM's analysis of the problems with UK BIT's](#).

Reducing the impacts of trade agreements with third parties

UK trade arrangements with the EU and other partner countries will also have implications for Southern countries. Trade arrangements with the EU may result in diverging rules and standards between the EU and UK. This could lower standards and create an additional burden of bureaucracy for Southern country exporters. Beyond this, if the UK lowers its tariffs with advanced or emerging economies, Southern countries, particularly larger countries producing substitutable products, may experience significant preference erosion and trade diversion. The UK must ensure trade deals do not have negative impacts on Southern countries by:

- Carrying over EU standards and labelling in order to simplify customs procedures and market access for Southern countries; and
- Undertaking ex ante impact analyses of all potential trade deals and ex post impact assessments of all trade deals and committing to deals that minimise negative and maximise positive impacts for Southern countries.

Ensuring Trade Policy upholds Human Rights and Environmental Standards

From the end of WWII until the 1980s, trade agreements covered only the trade of physical goods that crossed borders. However, in the 1990s a new agreement was

introduced to liberalise global trade in service industries called the Global Agreement on Trade in Services (GATS). GATS introduced international rules that were enforceable through trade sanctions and opened up service industries to be run by global corporations. These rules shifted the balance of power between governments and corporations by reducing the restrictions on how business could operate. Since then multilateral trade agreements and many BIT's have been used to extend the liberalisation agenda and expand market access for multinational corporations.

Modern trade agreements have a huge impact on almost every sector of the economy, restricting governments' ability to regulate and impacting on most areas of public policy from agriculture and energy to health and public services. In many cases these agreements undermine hard fought labour, environment and human rights standards, prioritising corporate profit over social and environmental regulation. Labour, environmental and human rights standards are non-negotiable and the UK must ensure that new trade arrangements do not undermine its international human rights and environmental obligations, and its commitments under the [Sustainable Development Goals](#). Trade agreements should treat existing national and international standards as a baseline and create mechanisms to shield countries from competitive commercial pressures as they seek to raise standards ever further.

Challenging Corporate Power

Modern trade and investment agreements are a major facilitator of globalisation, which increases global competition as countries vie for foreign investment. Globalisation has substantially increased the power of multinational corporations, institutionalising labour competition and facilitating a [global race to the bottom](#) that has forced governments to tolerate serious [human and labour rights abuses and environmental damage](#) in order to attract trade and investment.

A growing number of trade deals include chapters on labour and environmental standards in order to prevent a decline in labour and environmental conditions. However, the evidence indicates that these provisions have had limited effectiveness in [improving labour conditions](#) and [environmental standards](#). Further, it has been argued that these clauses are counterproductive and represent a form of disguised protectionism from Northern countries.

An alternative approach to addressing the negative social and environmental impacts of trade and investment agreements is to place obligations on investors to uphold human rights, labour rights and environmental standards. This is in line with the [UK's national action plan on business and human rights](#), which called for investment treaties that do not [undermine host countries' ability to meet human rights obligations](#). The UK should adopt this approach, developing trade deals that:

- Create obligations on investors, such as civil liability in the home and host state;
- Protect governments' right to regulate;

- Include accessible mechanisms to redress human rights violations by investors; and
- Include supremacy clauses for human rights agreements.

Morocco - Nigeria BIT

[Morocco and Nigeria's BIT](#), signed in 2016, moved beyond the incorporation of clauses upholding labour rights, human rights and environmental standards. The BIT also included right-to-regulate clauses, investor obligation provisions, and transnational civil liability clauses.

This signals a shift in treaty practice and recognition of the need to redress power imbalances between corporate, state and individual stakeholders.

Tackling Climate Change

Trade agreements have often been detrimental to environmental protection and the fight against climate change. Given climate change has a disproportionate impact on Southern countries this issue is of central importance to development policy. Modern trade agreements expand CO2 emissions by increasing the production and movement of goods and facilitating the development of additional infrastructure for GHG intense industries. Further, trade agreements have significantly more clout than climate or environmental agreements because they are binding and enforceable, which means that trade tends to trump emissions reductions.

It is crucial that the UK's trade policy is in line with its commitments on climate change and its industrial and energy strategy. Beyond this, the UK should show global leadership by:

- Ensuring trade agreements with Southern countries provide for maximum technology transfer and research exchange on matters of climate adaptation and the reduction of greenhouse gases; and
- Promoting a global approach to trade that facilitates rather than undermines climate and environmental commitments.

Enabling Progressive Tax Policy

Trade policy relates to tax in two key ways. It explicitly aims to reduce trade taxes, mostly border tariffs, in order to boost international trade. This has negative impacts for Southern countries where trade taxes remain a significant source of revenue. In 2012 trade taxes accounted for, on average, [over 5% of revenue in LDC's compared to 0.5% in developed countries](#). Trade policy also has increasing influence over tax policy, restricting governments' ability to reform domestic tax laws. Many trade and investment agreements include [taxation carve-out clauses](#) to protect governments' fiscal sovereignty. However, businesses are increasingly finding [loopholes to use these deals](#) to reduce current and future tax liabilities.

The UK has historically pushed for trade and investment agreements that require Southern countries to lower tariffs on a wide range of goods and that contain strong protections for international investors. The UK should ensure Southern countries' fiscal sovereignty and support their development objectives by:

- Undertaking an assessment of the timing, scale and distributional aspects of the fiscal impact of new trade deals;
- Prioritising non-reciprocal agreements that [preserve tax revenues as well as boost trade for Southern countries](#); and
- Developing trade deals that do not curb governments' fiscal policy space.

Promoting Gender Equality

Significant progress has been made towards gender equality over recent decades. However, women and girls continue to experience discrimination in all aspects of their lives. [The UN Sustainable Development Goals](#) recognise that governments' economic policies have a huge impact on their ability to tackle gender inequality and discrimination. Trade policy is a major part of a country's economic policy; and trade agreements influence many of the policy decisions that are necessary to achieve gender equality.

The WTO and modern trade and investment agreements increase marketisation and liberalisation. This has negative impacts for women and girls, especially those in the Global South. Women bear the brunt of employment instability and precariousness as well as reduced access to essential public services and affordable medicines. The UK must ensure new trade arrangements are compatible with international efforts to address gender inequality by:

- Undertaking gender and human rights impact assessments for all trade agreements; and
- Ensure UK trade agreements are in line with the UK's international commitments towards the realisation of gender equality and do not prevent governments from implementing measures to address gender inequality.

Conclusion

The UK's decision to leave the EU poses both risks and opportunities for countries in the Global South. The decision to translate the EU's preferential market access schemes into UK law guarantees a degree of continuity for Southern partners. However, Brexit provides an opportunity for the UK to build on EU arrangements and develop an innovative, development-friendly, trade and development policy. The Government must seize this opportunity and commit to trade arrangements that uphold human rights, labour rights and environmental standards and that have the best possible outcomes for trade partners in the Global South.