



Trade Justice Movement submission to the International Trade Committee inquiry into UK Trade Policy Transparency and Scrutiny

Summary

1. Modern trade agreements affect many aspects of public policy, including jobs, the environment, health, development and inequality. Given this, it is imperative that trade agreements are subject to the highest level of transparency, scrutiny and accountability.
2. However, the UK's existing procedure for the negotiation and ratification of trade agreements gives the Government broad powers to negotiate trade agreements in secret and to ratify these agreements without a vote in Parliament.
3. The Government has introduced a Trade Bill into Parliament. However, the Bill does not address the limitations of existing legislation. Rather, it extends the government's power over trade policy.
4. There is a clear democratic deficit in the UK's approach to the development of trade policy. This must be addressed before leaving the EU, so that there is a modern and democratic framework in place to govern the re-negotiation of EU trade agreements and the negotiation of trade agreements with new trade partners.
5. To do this the Trade Bill must be amended to ensure there is a presumption of transparency in trade negotiations; civil society and the public have the right of input throughout these negotiations; and Parliament and devolved administrations have a meaningful role in the oversight, scrutiny and approval of trade agreements.

Introduction

6. The Trade Justice Movement (TJM) appreciates the opportunity to respond to the International Trade Committee inquiry into UK Trade Policy Transparency and Scrutiny. TJM is a UK coalition of nearly seventy civil society organisations calling for trade rules that work for people and planet. Our members include trade unions, aid agencies, environment, social justice and human rights campaigns, Fair Trade organisations and consumer groups.
7. TJM considers that international trade must be judged in relation to its ability to meet the global challenges facing us – poverty, inequality, social injustice, climate change and environmental degradation.
8. Trade is not an automatic good or end in itself, but a tool to enable people to live in dignity, advancing living standards, wages, and rights and accelerating the transition to an economy that does not destroy the resources and natural support systems on which all of us depend. Trade policy must be subject to environmental standards, human rights, climate rules, workers' rights, development cooperation objectives and other public policy goals, and must not undermine or override them.
9. Modern trade agreements have a great impact on the UK's domestic policy space, with implications for issues such as health care, water provision and food standards. As such, parliamentary sovereignty demands that parliamentarians have the powers to scrutinise and vote on trade agreements. Yet the existing procedure for the negotiation and ratification of trade agreements gives the Government broad powers to negotiate and ratify these agreements without a Parliamentary or public oversight.
10. Under existing UK rules, trade agreements are entirely negotiated under the Royal Prerogative and the Government is able to decide when and with whom to start negotiations, set its own

priorities and objectives, conduct negotiations and conclude and sign the eventual deal.¹ There are no transparency requirements: neither the public or civil society are guaranteed a right of input and parliament does not have a mandate to oversee and scrutinise trade negotiations.

11. The Westminster Parliament's only role is at ratification, but this is limited to a negative procedure.² The trade agreement is laid before Parliament, and if no objections are raised within 21 sitting days the agreement is ratified. There is no guarantee of debate. It is not absolutely clear how an objection could be made, but it would have to either be in government time (if the government was prepared to provide this opportunity), opposition time (if an opposition day debate is scheduled within the 21 days) or a delegated legislation committee.³ If an objection is made, the government can provide an explanation as to why the agreement should nevertheless be ratified and the process repeats. It is therefore not technically possible for Parliament to outright reject a trade agreement if the government wishes to persist.
12. There is no role for the devolved administrations in scrutiny of trade agreements. While trade policy itself is reserved, many areas of policy that trade deals may impact on are devolved, for example: health, environment, food, farming, public procurement and the provision of public services.
13. There is a clear democratic deficit in the current negotiation and ratification procedure. This should be addressed as a matter of urgency, so that the UK has a modern and democratic framework in place prior to leaving the EU. This framework should cover both the re-negotiation of EU trade agreements and the negotiation of trade agreements with new partner countries.
14. The government has introduced a Trade Bill into Parliament. However, the Bill does not include the necessary provisions to ensure the UK's procedure for negotiating and ratifying trade agreements is democratic and transparent.
15. The Trade Bill must be reformed to guarantee the right of Parliament to set a thorough mandate to govern each trade negotiation, with a remit for the devolved administrations; the right of the public to be consulted as part of setting that mandate; the presumption of transparency in negotiations; the right of Parliament to amend and to reject trade deals, with full debates and scrutiny guaranteed and a remit for the devolved administrations; and the right of Parliament to review trade deals and withdraw from them in a timely manner.

Which documents pertaining to trade policy and negotiations should the Government make publicly available – and which should remain confidential?

16. The lack of transparency in trade negotiations has received sustained public criticism in the UK and internationally. This criticism has led to increasing acceptance of the need for transparency in trade negotiations and has resulted in some improvements to international negotiation processes.
17. After criticism of the lack of transparency during the TTIP negotiations with the USA, the EU committed to: making more negotiating texts public; providing all MEPs with access to additional restricted documents in a secure reading room; reducing the number of restricted documents so that MEPs have access to more information outside the secure reading room; publishing a list of the documents shared with the European Parliament and the Commission as

¹ House of Commons Library (2017) The royal prerogative. Briefing paper number 03861. UK Parliament. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN03861>

² Ratification is under the Constitutional Reform and Governance Act 2010, section 20, <https://www.legislation.gov.uk/ukpga/2010/25/section/20>

³ House of Commons Library, Parliament's role in ratifying treaties. House of Commons, 2017, pp12-13, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05855>

well as information about who is being consulted in relations to trade negotiations; disclosing negotiating mandates immediately after their adoption; and publishing final trade agreement texts in advance of the legal revision being completed.⁴

18. The WTO also publishes submissions made by member states during negotiations and reports by committee chairs on its website and the USA has committed to publish negotiation objectives prior to starting trade negotiations, impact assessments for all trade agreements, and negotiating texts before signing trade agreements.
19. Beyond this, transparency is the norm in a wide range of intergovernmental organisations. The United Nations Framework Convention on Climate Change publishes negotiating texts and submissions from parties prior to the start of its negotiations and as the negotiations progress. For the World Health Organisation, World Intellectual Property Organisation, Human Rights Council and the Aarhus Convention it is routine for draft negotiation documents to be released throughout negotiations processes, and for meetings to be open to accredited observers and event broadcast live on websites.
20. The international direction of travel in trade policy is towards increased transparency. The UK should follow this trend by ensuring the presumption in UK trade negotiations is towards transparency. This means that all materials should be made public unless there is a specific and convincing reason as to why confidentiality is required.
21. In particular the government should release its text proposals ahead of each negotiating round. The consolidated text, showing the current state of agreement between the parties, should be released after each negotiating round. Impact assessments for all trade agreements should also be published in good time and their findings should be communicated in non-technical language.

What level of access should Parliament and the devolved administrations and legislatures have to trade policy documents, including trade negotiation texts?

22. Members of the Scottish parliament and the Welsh and NI assemblies should be given the legal right to see the negotiating mandate prior to the start of negotiations, the negotiation texts as negotiations progress, and the final text of trade agreements prior to ratification.

How should the Government consult business and civil society groups on trade policy matters, including prospective and on-going trade negotiations?

23. A robust procedure for public and civil society consultation and input throughout trade negotiations is crucial to build public trust in trade agreements. It will also lead to the development of trade agreements that have better outcomes for the UK public.
24. The USA's public consultation system mandates that public consultations must be carried for 90 days prior to the initiation of all trade negotiations.⁵ This model could be replicated in the UK in order to guarantee the UK public's right of input. However, in order to redress the disproportionate level of access and influence that business stakeholders have throughout trade negotiations, the Government should ensure that public consultation processes address issues of public interest such as the impact of trade agreements on human rights and labour rights conditions, environmental standards, and public service provisions.

⁴ See European Union (2015) European Commission publishes TTIP legal texts as part of transparency initiative. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1231>; European Union (2015) *Trade for all: Towards a more responsible trade and investment policy*. http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

⁵ Institute for Government (2017) Taking back control of trade policy. https://www.instituteforgovernment.org.uk/sites/default/files/publications/IFGJ5448_Brexit_report_160517_WEB_v2.pdf

25. There are several examples that the UK could draw on when developing a mechanism for civil society consultation. However, again, additional steps are required to ensure civil society can participate to the same degree as business stakeholders and that their input is taken on board.
26. The USA's advisory committee system is one of the most consultative mechanisms and consists of 28 advisory committees, enabling approximately 700 citizen advisors to gain access to confidential information and comment on draft agreements. Civil society can provide input into trade policy through this system, but in practice the majority of advisory committee members are from private firms⁶ and the recommendations and advice given by civil society representatives are often overlooked.⁷
27. In the EU, civil society organisations can engage with trade negotiations through the Civil Society Dialogue, which provides a structured space for information sharing that is recorded and web-streamed. However, the dialogue is largely one-way. Information is provided to civil society but there is little opportunity for civil-society to present their ideas or for detailed discussion between government and non-government representatives. This limits scope for meaningful civil society scrutiny of and input into EU trade policy.⁸
28. The Cotonou Agreement takes a more comprehensive approach to stakeholder engagement and sets out a legal framework for the participation of non-state actors in trade negotiations.⁹ This framework led some countries, such as Guyana, Jamaica and Mauritius, to include non-state actors as observers in official delegations, although a majority of these actors were from the private sector.¹⁰
29. ECOWAS took this a step further during the Economic Partnership Agreement negotiations with the EU. Private sector and civil society representatives were included in its negotiating team and actively participated in all elements of the negotiations. Civil society actors were able to use this space to put forward alternative market access schemes that offered better development opportunities for West African countries.¹¹
30. In order to facilitate meaningful civil society scrutiny and input into UK trade agreements the government should carry out mandatory public consultations and publish consultation reports prior to initiating trade negotiations. DIT should also publish its consultation schedules as well as information on who is being consulted when developing a mandate for trade negotiations.
31. The government should also establish civil society advisory/consultation body to feed into and scrutinise UK trade policy and trade negotiations. Civil society should be able to decide who participates in the consultation body, and participants should not have restrictions placed upon them as to what they can communicate throughout this process.
32. Consultation mechanisms are vital to ensure trade policy has the best possible outcomes for people and the environment in the UK and abroad. However, the UK government cannot rely on

⁶ Christopher Ingram & Howard Schneider, *Industry voices dominate the trade advisory system*. 27 Feb 2014, <http://www.washingtonpost.com/wp-srv/special/business/trade-advisory-committees/>

⁷ Public Citizen (2000) *On Procedures for Obtaining Trade Policy Advice from Non-Governmental Organizations*. <https://www.citizen.org/article/procedures-obtaining-trade-policy-advice-non-governmental-organizations>

⁸ European Commission (2014) *Evaluation of DG TRADE's Civil Society Dialogue in order to assess its effectiveness, efficiency and relevance*, pp. 66-67. http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152927.pdf

⁹ The Cotonou Agreement (2000). http://www.europarl.europa.eu/intcoop/acp/03_01/pdf/mn3012634_en.pdf

¹⁰ The European Centre for Development Policy Management (2001) *A User's Guide for Non-State Actors*. <http://ecdpm.org/wp-content/uploads/cotonou-nsa-guide-chapter-4.pdf>

¹¹ Trommer, S (2013) "Legal Opportunity in Trade Negotiations: International Law, Opportunity Structures and the Political Economy of Trade Agreements", *New Political Economy*. <http://www.tandfonline.com/doi/abs/10.1080/13563467.2012.753520>

these mechanisms alone. A democratic procedure must include transparency, parliamentary scrutiny and oversight and consultation mechanisms.

What role should Parliament and devolved administrations and legislatures have in drafting and/or approving the UK's negotiating mandate for trade negotiations?

33. The government should follow a transparent procedure for scoping potential trade agreements before starting negotiations, as is done in the EU. This should involve impact assessments looking at social (including health and education), economic, human rights, environmental, labour and gender impacts both in the UK (including a regional breakdown) and in developing countries. These should be commissioned and carried out independently and should be published, with the findings communicated in non-technical language. These findings should be taken into account when decision whether to go ahead with trade negotiations and how these negotiations should be shaped.
34. Parliament should have a mandate to review and recommend amendments to negotiating positions in advance of the negotiations and review impact assessments and make recommendations about whether the Government should proceed with trade negotiations.
35. To facilitate this, the government should establish an appropriate parliamentary committee, either by broadening the scope of the House of Commons International Trade Committee or establishing a Trade Scrutiny Committee. This committee should function in a similar manner to the European Scrutiny Committee or the Danish Parliament's European Affairs Committee, which the government must get a mandate from prior to developing positions in the European Council. If this position is revised it must be re-submitted to the Committee for a new mandate.¹²
36. The government should also establish of a Joint Ministerial Committee on International Trade that includes representatives from all devolved administrations of the UK. That committee should be required to reach a consensus on any draft negotiating mandate before it proceeds to the UK and Scottish parliaments and the Welsh and NI assemblies, and should be revisited if the mandate changes during negotiations.
37. Parliament's consent should be secured for the trade negotiations to begin, including on objectives, principles and boundaries of the negotiations. Consent should also be secured from the Scottish parliament and the Welsh and NI assemblies, specifically in relation to their powers and anything within their territories that may be affected by a trade agreement.

What procedures should be in place for the UK Parliament and devolved administrations/legislatures to scrutinise trade agreements as they are being negotiated?

38. Parliament should have oversight of trade negotiations as they progress and should have the right to feed into these negotiations. The Parliamentary scrutiny committee detailed above should have a remit to access all trade negotiation documents as negotiations progress.
39. The Committee should be given the responsibility to review, amend and approve draft negotiation texts. Adequate time should be given for the committee to scrutinise documents and for the Government to then revise its negotiating position.
40. The Joint Ministerial Committee on International Trade should facilitate engagement between the Department for International Trade and devolved administrations throughout trade negotiations. Scrutiny committees should be established in each devolved administration and

¹² Sargeant, J., Runswick, A., Clarke, S (2017) *A Democratic Brexit: Avoiding Constitutional Crisis in Brexit Britain*. <http://www.unlockdemocracy.org/publications/a-democratic-brexit-report>

should be given the role of scrutinising any trade negotiations in regard to the impact they may have on devolved powers and territories.

41. A negotiator from each of the devolved nations should be on the UK negotiating delegation for all trade agreements.

What powers should Parliament and the devolved administrations and legislatures have over the ratification and implementing legislation of UK trade agreements?

42. Parliament should have an automatic debate and vote on a trade agreement before it is implemented, using a super-affirmative procedure.
43. This would reflect process in the EU and the USA. In the EU, trade agreements are voted on by the EP and a majority vote is required for the agreements to be approved. In the USA, under the fast track process, once trade agreements have been agreed they are brought to an 'up or down' vote in both chambers of Congress.¹³
44. The Scottish parliament and Welsh and NI assemblies should be required to give their consent to a final trade deal, based on any impacts it may have on their powers and territories, before that trade deal is implemented.
45. Trade agreements should include review clauses for the agreement to be assessed every five years and reviewed by Parliament, who should have the power to propose changes or even withdraw from the agreement if necessary. The Scottish parliament and Welsh and NI assemblies should also be included in those reviews, in order to assess the impact on their powers and territories and to propose changes or recommend to the UK parliament that the UK withdraw from an agreement if necessary.

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¹³ European Parliamentary Research Service (2016) Role of the *US Congress in trade agreements: The 'Fast Track' procedure*. [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/577999/EPRS_IDA\(2016\)577999_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/577999/EPRS_IDA(2016)577999_EN.pdf)