

## Summary

- The UK government should use the development of its independent trade policy to improve its trade and development policy so that it has the best possible outcomes for developing countries.
- The EU's Economic Partnership Agreements (EPAs) are extremely contentious and continue to pose serious risks to developing countries' economies and development objectives.
- Therefore, rather than seeking to replicate the EPAs, the UK should extend the unilateral preferences that it currently provides for least developed countries (LDCs) to other developing countries.
- Beyond this, the UK should also ensure its trade arrangements support developing countries' poverty reduction and development agendas.
- To do this trade arrangements must be compatible with the UK's commitments under international law, including human rights law, ILO standards on labour rights, the UN Sustainable Development Goals (SDGs), environmental law and the Paris Climate Agreement 2015.
- Trade deals should not include controversial issues such as services, especially public services, intellectual property and government procurement and should enable developing countries to use the full suite of policy tools to support economic diversification, the transition to value-added production and the development of decent jobs.

## Introduction

1. The Trade Justice Movement (TJM) appreciates the opportunity to respond to the International Trade Committee inquiry on Trade and the Commonwealth: developing countries. 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.
2. 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.
3. 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.

### **Should the UK seek to replicate or modify the unilateral trade preferences it currently grants Least Developed Countries after Brexit?**

4. The Government could improve on the unilateral trade preferences it currently grants least developed countries (LDCs) in a number of ways including by:
  - extending the country coverage of the existing EU duty-free, quota-free arrangements to include non-LDCs that remain economically vulnerable. Eligibility for this would need to remain objective and be based on shared developmental needs, for example, by extending it to countries in a customs union where the majority of members are LDCs or by utilising bespoke developmental metrics. This would enable eligibility to be based on modern developmental criteria rather than outdated income classifications ensuring that preferences were directed to where they could have the greatest impact.
  - The benefit of this approach would be that cumulation between countries would be easier and therefore LDCs would be able to better utilise inputs from other developing countries, process them and export to the UK. This would help to support the Sustainable Development Goal (SDG) target to increase the LDC share of value added exports.

### **Should the UK seek to replicate or modify the unilateral trade preferences it currently grants other developing countries and after Brexit?**

5. The Government's commitment to provide a unilateral preference scheme is welcome, however the plan to simply replicate the existing EU scheme without improvements is a missed opportunity. The existing schemes should be expanded so that they have the best possible outcomes for developing countries.
6. We are concerned, however, that there has been a lack of detail on the Government's intentions beyond replication. The commitment in the Taxation (Cross-Border Trade) Bill is not definite, and also only enshrines preferences for LDCs in primary legislation meaning that trade preferences for other developing countries could be removed by a future Government.
7. The Government could improve on the EU's preferential market access schemes in a number of ways including by:
  - extending the product coverage of EU GSP<sup>1</sup>/GSP+ to include products that are exported by a broader range of developing countries, such as bananas, yams, sugar and apples, subject to impact assessments. In addition there is scope to incorporate a wider list of products currently excluded in order to protect European production in areas that the UK has no interest.
  - extending the amount that UK tariffs are reduced for products included in the GSP/GSP+ arrangements and incorporating a cap on the maximum tariff applicable. At present there is a standard 3.5% tariff reduction on ad valorem tariffs which can result in tariffs for select products remaining prohibitively high even after reduction.
  - offering simplified rules of origin and maximum regional cumulation. This will increase the utilisation of preferential rates whilst also facilitating an increase in cross-border value chains and developing country share of the export of processed goods.
  - making preferences conditional on respect for ILO core labour standards.

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<sup>1</sup> Generalised Scheme of Preferences

8. For more information about how the UK could improve on the preferences currently provided to LDCs and other developing countries please see Traidcraft's submission to this inquiry.

### **Are Economic Partnership Agreements (EPAs) effective from both a trade and development perspective?**

9. The EU's Economic Partnership Agreements (EPAs) are extremely controversial and after more than 14 years of negotiations they remain heavily contested by partner countries. Tanzania's foreign affairs permanent secretary Aziz Mlim stated that the proposed EU-East Africa Community (EAC) EPA will lead to the destruction of local industries as markets are opened up to developed countries.<sup>2</sup> These concerns are shared by the ITUC-Africa, which stated that the agreements contradict African countries' development objectives and will limit their ability to meet their commitments under the SDGs.<sup>3</sup>
10. The agreements have been resisted by many developing countries and to date only two regional agreements have been signed – the CARIFORUM agreement with Caribbean countries was signed in 2008 and with the Southern African Development Community in 2016. In other regions governments continue to oppose the agreements. In East Africa both Tanzania and Uganda have said they will not sign the EPA in its current form, and in West Africa Nigeria has also delayed signing the ECOWAS (Economic Community of West African States) agreement until further consultations can be completed.
11. EPAs require developing countries to undertake a level of liberalisation that undermines their social and economic development and is incompatible with many countries' industrial strategies. The agreements prevent countries from using tariffs and subsidies to shield nascent industries and support the transition to value-added and high skilled production. Instead, infant industries will be exposed to unfair competition from EU goods, which will lead to job losses and a growth in the informal economy.
12. Trade liberalisation also deprives governments' of revenue, limiting their capacity to invest adequately in public services or decent job creation.
13. Regional integration is also undermined by the EPAs, which establish regional groupings that split existing custom unions or regional alignments; and which impose different trade rules on countries in the same region. This includes the provision of different cumulation rules and differences in the products that are subject to liberalisation, which prevents the development of regional customs unions.
14. EPAs foster tensions between LDCs and non-LDCs within the same regions. LDCs already receive tariff free access to the EU market through the EBA (Everything But Arms) arrangements and, therefore, will not benefit from signing a reciprocal agreement. This causes conflict with non-LDC countries that will lose preferential access to the EU market if they do not sign an EPA.
15. The inclusion of a rendezvous clause commits developing countries to continue to negotiate on controversial issues that go beyond what has been agreed at the WTO, including the liberalisation of investment and services. This exposes more public services to threats of privatisation and has the potential to significantly reduce developing countries' policy space and ability to achieve their development objectives.

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<sup>2</sup> "Tanzania backs out of EAC deal with EU over Brexit", *Daily Nation* 9 July 2016, <https://www.nation.co.ke/news/Tanzania-backs-out-of-EAC-deal-with-EU-over-Brexit/1056-3287032-2bh4taz/index.html>

<sup>3</sup> *ITUC-Africa statement on EPAs*. 2016, [https://www.ituc-africa.org/IMG/pdf/statement\\_epas.pdf](https://www.ituc-africa.org/IMG/pdf/statement_epas.pdf)

16. EPAs also do not include adequate protection of workers rights, as labour chapters contain no enforcement mechanisms or sanctions when rights are violated.
17. Replicating the controversial EPAs is not an effective approach to trade and development policy. Rather than supporting developing countries to strengthen their economies and reduce poverty, this would commit the UK government to a trade and development policy that undermines developing countries poverty reduction and development agendas.

### **How should the UK approach its relationship with countries with whom it currently has an EPA after Brexit?**

18. As the UK leaves the EU it has the opportunity to develop a new 'gold star' approach to trade and development policy that has the best possible outcomes for developing country partners.
19. To do this the government must commit to new trade relationships that respond to the needs of partner countries, support countries' poverty reduction and development strategies and are compatible with the UK's international human rights, labour rights and sustainable development commitments.
20. In addition to the concerns with the substance of the EPAs and the broad opposition to the agreements amongst partners in developing countries, the UK also faces the practical challenge of having to renegotiate 40 new trade agreements prior to leaving the EU. Even if developing countries are willing to sign the EPAs, it may not be practically possible for the UK to negotiate the agreements in time, which could lead to the UK imposing tariffs on poor countries.
21. Given the considerable risks associated with the replication of the EPAs, the UK government should not seek to re-negotiate these deals. Rather, as outlined above, it should focus on expanding its unilateral preferencing scheme so that both LDC and non-LDC countries have duty free access to the UK market.
22. Where developing country partners have already agreed to replicate an EPA, the government should provide partner countries with the option of trading under an extended unilateral preferencing scheme. Partner countries can then choose which approach is more compatible with its development agenda.
23. The development of an expanded preferencing scheme would simplify the negotiating process by reducing the number of trade deals that the UK must re-negotiate prior to Brexit. It would also eliminate the risk that tariffs would be imposed on developing countries and ensure that the UK's trade and development policy provided the best alignment with developing countries development objectives.

### **Should the UK make particular arrangements for trade with developing countries that are members of the Commonwealth?**

24. It is important that the UK reaffirm its commitment to multilateralism and that it works within the multilateral system to make trade policy more compatible with developing country priorities. The Commonwealth could however be a space for learning, piloting initiatives and making progressive commitments while multinational negotiations progress.

### **In what other ways might the UK seek to support development through trade?**

25. The government should ensure democratic debate and accountability in the UK, and support it in the partner country, to strengthen the extent to which trade deals respond to people's needs and support development.
26. In the UK this means that the government must establish a legal framework for the oversight and scrutiny of trade agreements, that ensures trade deals are democratic and accountable to Parliament and the public. This includes ensuring 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; full 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.
27. The UK should also ensure its trade arrangements are compatible with its commitments under international law, including human rights law, ILO standards on labour rights, environmental law, the UN Sustainable Development Goals, and the Paris Climate Agreement 2015. This includes ensuring that trade policy is compatible with national and international efforts to achieve food sovereignty and gender equality, to improve health outcomes, and to end energy poverty and instigate a just transition to a low carbon economy. Trade agreements for developing countries should not include trade in services (especially any provisions that would affect public services). These agreements must also avoid forcing developing countries to open up areas like public procurement to multinational companies. Developing countries' policy freedom to encourage the development of homegrown expertise must not be undermined by a trade agreement with the UK.
28. Trade agreements for developing countries should not include intellectual property provisions (often known as TRIPS<sup>4</sup> Plus) that require countries to restrict the use of compulsory licensing for medicines and to implement more aggressive patent enforcement measures. These measures would be disastrous in countries that rely on TRIPS flexibilities to secure access to key medicines.
29. Trade agreements for developing countries should focus solely on issues of trade (e.g. tariffs and quotas) and not encompass so-called 'non-tariff' barriers to trade. As such, there should be no provision for regulatory alignment, regulatory coherence or regulatory cooperation in these agreements. If these countries request it, the UK should assist these countries in developing their own regulatory frameworks through overseas development assistance.
30. The UK should not be using trade policy to influence the regulatory environment of developing countries. There must be no system of investor-state dispute settlement (ISDS) in trade agreements with developing countries. Where these mechanisms already exist through bilateral investment treaties, consideration must be given to amending or replacing these agreements in collaboration with the trade partner in question.
31. There must be no provision for e-commerce that forces developing countries to allow UK companies to move data outside of the jurisdiction in question or grants privileged market access to e-commerce firms. Developing countries must also be free to impose local presence, technology transfer or privacy protection conditions on UK e-commerce firms.
32. Trade deals must not undermine domestic markets, should support regional trade and enable developing countries to transition to value-added production by supporting strategic industries and decent jobs.

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<sup>4</sup> Trade Related Aspects of Intellectual Property Rights

33. To this end, developing countries should also be permitted to use a full range of policy tools to support development priorities and policy objectives, including:
- TRIPS flexibilities
  - local content, local presence and performance requirements,
  - technical standards, licensing and qualification requirements
  - flexibility to adjust tariffs for sensitive sectors
34. Beyond this, the UK should also develop regulation and legislation that addresses human rights and labour rights abuses within international supply chains. This would go beyond the Modern Slavery Act to embrace wider human rights due diligence.

**In what ways might the UK coordinate its trade policy with other policies (e.g. development assistance) in order to support development?**

35. The primary guide for UK engagement with developing countries is development cooperation policy. Trade policy must be coherent with the development objectives of the UK and partner countries and of the Sustainable Development Goals. It also needs to be coherent with the objectives of environment and climate policy. Trade policy should be designed with all these objectives in mind.
36. To enable this, impact assessments should be carried out when trade deals are initially considered, and before decisions are made to start negotiations. These impact assessments should look at economic, social, human rights, environmental and regional impacts, including impacts on workers' rights and gender equality, and they should include the impact of a potential deal in developing countries. The impact assessments should be published and communicated in plain English. As well as supporting decision-making, these impact assessments would also help improve coordination and coherence.
37. It should also be clear that trade policy is not always a useful tool for fulfilling development objectives. When this is the case, it is entirely appropriate for trade policy to be excluded and for support to be offered through development assistance and other development cooperation tools. As noted above, examples of contexts and sectors where this regularly applies are public services, public procurement and domestic regulation.
38. UK trade interests should not dictate trade policies towards developing countries, but should be secondary to the development priorities of the partner countries. UK trade interests must never influence development priorities or access to development assistance. For this to happen would contravene OECD rules on development assistance.<sup>5</sup>
39. DFID funded programmes linked to economic development should seek to strengthen the ability of workers and small-scale producers to self organise, through co-operatives, community based organisations, trade unions and similar. This can help these groups to participate in democratic processes, claim rights and improve the extent to which their voices are heard in shaping trade policy.
40. When the UK enters into a trade deal with a developing country that places an additional burden on the country in terms of compliance with new procedures and standards, the UK should provide assistance to assist the developing country in adapting. This assistance should always be additional to existing development cooperation commitments and should never lead to other support being redirected or reduced.

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<sup>5</sup> OECD, *Official development assistance – definition and coverage*.  
[www.oecd.org/dac/stats/officialdevelopmentassistancedefinitionandcoverage](http://www.oecd.org/dac/stats/officialdevelopmentassistancedefinitionandcoverage)

### **How can the Government best promote and support UK Foreign Direct Investment in developing countries?**

41. The government needs to have an effective ability to regulate the actions of UK companies and their subsidiaries that invest in developing countries, in order to ensure that rights and development are not undermined. This requires public transparency of documents relating to investments and of beneficial ownership of investment vehicles. Free, prior and informed consent of communities affected by investment is a requirement for indigenous communities and the principles of this approach should also be extended to all communities. Provision must be made for meaningful grievance mechanisms and access to remedy where rights violations have occurred.
42. Investment must not be allowed to undermine public policy strategies, for instance on areas such as health, environment or climate commitments in line with the Paris Climate Agreement. Thus there should be no special legal privileges through investor-state dispute settlement (ISDS) or any other kind of special court for foreign investors outside of the national legal system.
43. For example, companies have used ISDS claims or the threat of an ISDS claim to undermine government action on fracking moratoria, patent rules on medicines, oil pipelines, cigarette packet labelling, pollution from power stations, and decision after decision on dangerous mines. There is also little evidence that ISDS serves any purpose in attracting investors.<sup>6</sup>
44. As a result of public pressure, the European Commission has proposed an updated form of ISDS, known as the Investment Court System (ICS). However ICS does not resolve the fundamental concern with ISDS – the substantive, far reaching powers granted to corporations to sue governments over laws and decisions they do not like. It is not an adequate solution, and instead ISDS should simply be excluded from trade deals.

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<sup>6</sup> See for instance:

E Aisbett, 'Bilateral investment treaties and foreign direct investment: correlation versus causation' in Sauvant, K. and L.E. Sachs (eds.) *The effects of treaties on foreign direct investment: bilateral investment treaties, double taxation treaties and investment flows*. New York: OUP, 2009 ch.15

Poulsen, Lauge N. Skovgaard, 'The Importance of BITs for Foreign Direct Investment and Political Risk Insurance: Revisiting the Evidence' in Sauvant, K. (ed.) *Yearbook on International Investment Law and Policy* Oxford: OUP, 2010.

J. W. Yackee, 'Do Bilateral Investment Treaties Promote Foreign Direct Investment? Some Hints from Alternative Evidence"', *Virginia Journal of International Law* 51 (2) 2010, pp.397-434