

Trade can be a vital tool for countries and people to work their way out of poverty. It can support job creation, value addition and clean industrialisation. As the UK begins to develop an independent trade policy we have an opportunity to develop a gold standard for development, to put sustainability and rights at the heart of what we do and to ensure that there is coherence between what we do on the trade agenda and our world-class development work.

The Trade Bill placed before parliament on 7th November 2017, and due for second reading on 9th January 2018, is the Government's first step to developing an independent UK trade policy. Its stated aim is to ensure continuity for trading partners and consumers on Brexit day 1, and ensure that no country faces a cliff edge in terms of market access into the UK. These are good objectives.

The Government proposes achieving continuity by effectively 'replicating the effects of' a number of trade policy instruments, including transitioning 40 of the EU's FTAs and 'mirroring' the EU's unilateral preference scheme for developing countries. Of those 40 FTAs, 9 are with developing countries and are called Economic Partnership Agreements (EPAs). The powers to introduce a preference scheme are included in the Taxation (Cross-Border Trade) Bill, also known as the Customs Bill. While this is a welcome move the Government should use this opportunity to create a world leading preference scheme rather than simply copy the EU model.

Points to raise at second reading

The Government is seeking to establish a world-leading trade policy that works for everyone but the draft legislation falls short of this in three key ways.

- Given that the replicated deals are essentially new and 'legally distinct' agreements there is insufficient parliamentary scrutiny in the process proposed.
- The bill misses the opportunity to embed sustainable development within UK trade policy.
- Replication of some EPAs is a short-sighted approach which merely stores up problems for the future and needs to be challenged. The UK can do better than replicate flawed agreements.

Lack of scrutiny

The Bill proposes that 'transitioned' FTAs and EPAs be passed by use of statutory instrument by negative resolution. The Government argues that these agreements are already being implemented and have been scrutinised at the EU level and suggest this is a purely technical exercise with no further scrutiny needed.

We disagree. These agreements cannot be identical to ones agreed by those parties with the EU. There will necessarily be changes to the content. Negotiating parties may not wish to commit to new deals until they have a clearer picture of the UK's relationship with the EU and they may well wish to press for improvements. In evidence to the Trade Select Committee Liam Fox, alongside DIT Permanent Secretaries, indicated that these will be new deals, with the contents requiring some negotiation. Some of the powers sought in the bill precisely anticipate the possibility of 'substantial amendments, including new obligations'.¹ For example the Southern Africa EPA enables South Africa to export a certain quota of canned fruit to the EU28. This quota will need to be reallocated in the new UK-specific agreement. Any such changes alter the terms of trade and, therefore the predicted impacts, costs and benefits.

Given the reality that these are 'legally distinct' agreements, that will be binding, have indefinite effect and form the first foundations of our new trade policy, full scrutiny is required. This should include consultation with stakeholders, assessment of impact, scrutiny, full debate and approval by both Houses.

Commitment to sustainable development

The trade bill is an opportunity for the Government to establish itself as a leader in relation to embedding environmental protection, action on climate change, human rights, tackling inequality and delivery of the Sustainable Development Goals (SDGs) in its trade policies. There's a real danger that these are the areas where regulatory standards might be compromised in order to secure quick trade deals. The appeal of

¹ <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0122/Trade-Bill-Delegated-Powers-Memorandum.pdf>

British businesses and goods is that the UK is viewed as a country that trades in a fair and sustainable way, protecting workers, consumers and the environment. This adds value to 'brand UK' when businesses are trying to market themselves abroad and must be protected in future trade policy. Government could signal its intentions and fulfil its recent pledge to enhance trade for developing countries² by inserting a short paragraph within the bill preamble outlining the purpose of UK trade policy is to increase prosperity and ensure sustainable development.³

A creative approach to Economic Partnership Agreements

The EPAs are an example of a missed opportunity to support sustainable development and underline why parliamentary scrutiny of these replicated FTAs is essential.

EPA negotiations started in 2002 and the following 15 years of negotiations have resulted in only two full regional agreements being in force. One with southern Africa and one with the Caribbean. The other more contentious agreements are at various stages, with a number of additional 'stepping stone' agreements having been signed with single countries alone despite their membership of regional customs unions.

EPAs have been resisted by many developing country governments, criticised by civil society globally and the EU's approach repeatedly criticised by the International Development Select Committee⁴. In East, West and Central Africa the EPA groupings are made up predominantly of LDCs whose market access is already secure through 'Everything But Arms' and non-LDCs who have a vested interest in pressing their neighbours to sign these deals knowing they are not in their interests. This has led to an impasse in negotiations in those regions.

The UN Economic Commission for Africa has called for a 'pause' in EPA negotiations to allow progress towards a Continental Free Trade Area and EU member states are now questioning the approach which has caused serious political tensions with precisely those countries who will be our trading partners of the future.⁵

Given that the 5 most contentious EPAs only account for 0.3% of total UK trade,⁶ the UK should save precious negotiating capacity for priority markets. Instead, now is the time for the UK to develop a creative new approach that ensures continuity of market access by bringing forward intended improvements to a preference scheme and embedding this within a wider developmental partnership. This should be ready on Brexit day 1 to create a win-win for trade partners and UK businesses.

Proposal for amendments

- All transitioned FTAs should be subject to an impact assessment, stakeholder consultation, scrutiny by a dedicated committee and the final agreements should be subject to a positive vote in both Houses.
- Agreements with implications for consumers, businesses, development or human rights impacts should be further investigated. Developmentally damaging agreements should not be replicated. Government should instead be required to provide an alternative that grants equivalent levels of market access.
- Government should assert its commitment to sustainable development in the preamble to the bill.

More detail on both the Trade and Customs Bills is available at www.traidcraft.org.uk/policy or from Matt Grady, Senior Policy Adviser on 020 3752 5714 or matt.grady@traidcraft.org.

² <http://bit.ly/2BdmRUu>

³ This would be similar to Article 3 of the Lisbon Treaty <http://bit.ly/28XAF2V>

⁴ EPAs require a level of trade liberalisation including from LDCs that leaves them little room to support industrialisation strategies. They have also been criticised for the introduction of negotiations on issues such as investment and government procurement liberalisation which had previously been rejected at the multilateral level. The International Development Select Committee enquiries in 1998, 2004 and 2007 were critical of the EU's EPA approach.

⁵ Gunther Nooke, Merkel's representative to Africa recently agreed that EPAs are 'are not an agreement, and not a partnership'.

⁶ Department for International Trade, Trade Bill Impact Assessment. Figures cover imports and exports. 2017