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Centre for Human Rights in Practice

Elements of a Progressive UK Trade Agenda

Produced by the UPTURN network: Rigorous analysis for Progressive Trade

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Briefing Note - Elements of a Progressive UK Trade Agenda

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Introduction

The Upturn Network is a group of progressive academics and civil society researchers bringing decades of trade policy expertise to bear on ensuring UK trade policy is democratic and works for people and the environment.¹ This briefing note addresses a series of topics on which they have particular expertise in relation to the development of UK trade policy:

1. Labour rights
2. Climate Change
3. Digital Trade
4. Gender
5. Scrutiny of Trade Agreements

For each topic, this briefing identifies the key issues associated with that topic, sets out steps the government could take to address the issues identified and provides links to further reading to obtain a more in depth understanding of the topic and issues discussed.

1. Labour Rights

Summary of the Issues

Currently, the UK considers trade and labour issues only to the extent of negotiating standardised trade and labour chapters which lack enforceability mechanisms, and which are similar to those appearing in EU trade deals (albeit with more powerful dispute settlement in the case of the UK-Australia FTA). But the links between trade and labour are complex and multifaceted and require consideration of a wide range of issues in both the negotiation and implementation of trade agreements. They also require consideration of labour issues in the UK as well as in its trade partners.

Governments are sometimes keen to avoid signing trade agreements with countries where labour rights are being systematically abused. A clear finding from the academic research is that action is far more likely to have a positive impact on labour rights during the trade agreement negotiation process and before trade agreements are signed than once they are in force (so-called pre-ratification conditionality). When working closely with key stakeholders in partner countries (e.g. trade unions), governments have used the carrot of a potential trade deal to successfully obtain reforms such as the ratification of ILO Conventions and even measures taken to strengthen domestic protections (e.g. the [EU-Vietnam Trade Agreement](#) and various US trade deals).

¹ Key members of the network involved in the production of this briefing include Professor Donatella Alessandrini, Kent Law School, University of Kent; Ruth Bergan, Director, Trade Justice Movement; Professor Liam Campling, School of Business and Management, Queen Mary's, University of London (QMUL); Professor James Harrison, School of Law, University of Warwick; George Holt, Senior Researcher, Trade Justice Movement; Dr. Emily Jones, Blavatnik School of Government, University of Oxford; Professor Adrian Smith, School of Geography, QMUL.

Once trade agreements are signed, then it has proved far harder to drive meaningful action on labour issues. An increasing number of trade agreements around the world contain labour provisions. But the effects of these provisions on labour rights on the ground has generally not been significant. Dialogue and co-operation on labour issues has rarely produced meaningful results. Only one labour case has ever been successfully brought (by the EU against South Korea) and its effects are still uncertain despite a ruling that, partly, upheld the EU complaint. In May 2022, trade union organisations, together with CNV International, have for the first time filed [a complaint](#) through the EU's trade complaint system about the precarious working conditions of sub-contracted workers in the mines owned by a Swiss multinational in Colombia and Peru. This does show the value of opening up complaints processes directly to non-state actors.

In addition to labour provisions in trade agreements, one of the most important sources of complexity in the trade-labour relationship is that the commercial provisions in trade agreements can lead to both new opportunities for workers but also their increased exploitation. For instance, [research](#) on the clothing sector in Moldova found that, as tariff barriers were reduced, exports particularly to the UK and Italy increased. This stabilised an otherwise numerically volatile labour market in terms of the numbers of jobs for a workforce that consists of 90% women. So there was a positive impact on female participation in the workforce. But commercial pressure from lead firms in the UK and Italy, combined with weaknesses in the labour protection system in Moldova, led to the entrenchment of poverty wages and heavy reliance on piece rate payments and other troubling overtime practices and production methods (see readings below for other examples). This example is illustrative of a broader trend: as a [World Bank report](#) has acknowledged in 2020, the gains from global value chain trade are not being passed to workers (and consumers) but are being 'reallocated from labour to capital' (p3).

To start to effectively address labour issues through trade policy, commitments need to begin with the places where abuses are actually happening and then take meaningful significant action to address those abuses, including in the UK. But at the same time trade policy needs to recognise that those often locally experienced labour problems are caused by sourcing practices of lead-firms which are deepened as a result of trade liberalisation and integration. These sourcing practices also need to be considered and dealt with. While there is no perfect model, there is some good and emerging practice from around the world to draw upon in developing UK policy. For instance:

- The Rapid Response Labor Mechanism in the US-Mexico-Canada Agreement (USMCA) allows action to be taken when an individual factory or facility violates rights to freedom of association and collective bargaining. Where a violation is found, it allows for suspension of trade in those products from that factory or facility until the rights violation is remedied. This is the first time that an enforcement process in an FTA shifts the focus of attention from failures by government to effectively enforce labour laws and moves it to sites of production where goods are actually produced.
- The US-Cambodia Textile Agreement (USCTA) (1999) was an example of an agreement which addressed abuses in a particular sector (apparel). It set up a framework whereby Cambodian exporters who complied with internationally recognized core labour standards and national labour law were granted increases in market access. Factory-level inspections to ensure compliance were overseen by the ILO, funded in part by the US government. USCTA was rendered obsolete in 2005 by the WTO agreement to phase out textile and quotas but remains an interesting model.
- There are a number of recent examples of trade agreements providing reduced tariff rates for products that are produced sustainably. From a labour perspective, the most relevant example is the USMCA which requires that at least 40 per cent of the content of specified

vehicles must be sourced from high-wage facilities paying an average of \$16 per hour, otherwise a duty of 2.5 per cent is payable on import into one of the other USMCA countries.

- Increasingly trading blocs like the EU and the US are moving to using ‘autonomous’ or ‘unilateral’ measures to address labour (as well as human rights and environmental) issues in their trading relationships. [There have even been threats](#) that the US might take action to ban exports from the UK because of ‘slave labour’ allegations. Often the regulatory response involves putting the onus on companies to demonstrate ‘due diligence’ that their supply chains are sustainable in various respects. For instance, the EU Regulation on Conflict Minerals requires companies to undertake due diligence that what they buy is sourced responsibly and does not contribute to conflict or other related illegal activities. The US also recently signed the US Uyghur Forced Labor Prevention Act (UFLPA) which stops businesses importing goods into the US from China’s Xinjiang region, unless they can prove through due diligence processes that their products were not made with forced labour. These initiatives are part of a growing momentum among governments to require companies to undertake more generalised human rights due diligence; from the French Duty of Vigilance Law and German Act on Corporate Due Diligence in Supply Chains to the planned due diligence and forced labour initiatives of the European Union.

Steps the UK government could take:

- **Develop a strategy on trade and labour issues** – to guide its trade negotiations and wider trade policy, setting out its policy objectives and how it intends to achieve them. This should include commitments on the UK, its trade partners and lead-firms in supply chains trading between the parties to effectively and equitably address labour abuses in supply chains. .
- **Undertake systematic assessment of labour issues in relation to any new trade deal** (see Smith et al (2020) below setting out a method for how this could be done). The UK government needs to carefully assess the dangers and opportunities posed by any proposed trade deal for workers in both the UK and its trade partners. Such an assessment should identify the conditions under which a trade agreement should be signed, the sectors and issues where there are particular risks of labour-related problems occurring, and action needed to address those issues. It should include consideration of situations where lead-firms in supply chains are likely to increase exploitative practices as a result of trade deals being signed
- **Develop mechanisms in trade deals which are able to effectively address labour rights abuses in specific supply chains and sites of production.** Some examples are cited above which could be drawn upon to develop these mechanisms. In addition, there are other recent examples of countries offering tariff reductions only to sustainably produced products (see Harrison 2023 below for examples).
- **Develop appropriate autonomous/unilateral trade measures to address labour abuses in global supply chains.** This should include consideration of the kind of ‘due diligence’ measures set out above. It should also include mechanisms to deal with lead-firm pressures along the supply chain arising from trade integration that can lead to a worsening of labour standards and/or costs for improvements being borne by weaker firms in the supply chain, often in developing countries.
- **Support schemes which provide meaningful ‘bottom up’ monitoring of labour issues in global supply chains (i.e. enhancing the ‘voice’ of workers) and consider how trade agreements might reinforce them.** The Worker-driven Social Responsibility (WSR) approach which has emerged in parts of the USA to deal with labour abuses affecting farmworkers is one example of such a scheme (see below for further details). Electronics Watch is another

scheme operating in the electronics sector. These schemes could be financial supported and also potentially woven into the governance of trade agreements.

Suggested readings:

Harrison, J., Barbu, M., Campling, L., Richardson, B. and Smith, A (2017) "Taking labour rights seriously in post-Brexit UK trade agreements: protect, promote, empower". Briefing paper. CSGR Working Paper 284/17. Available at: <http://wrap.warwick.ac.uk/90331/>

Harrison, J., Barbu, M., Campling, L., Richardson, B. and Smith, A. (2018) "Governing labour standards through free trade agreements: limits of the European Union's Trade and Sustainable Development chapters", *Journal of Common Market Studies*, <https://doi.org/10.1111/jcms.12715>

Harrison J., (2023) "Trade agreements and sustainability: Exploring the potential of global value chain (GVC) obligations, *Journal of International Economic Law*, jgac057, <https://doi.org/10.1093/jiel/jgac057> Smith, A, et al. (2020) *Free Trade Agreements and Global Labour Governance: The European Union's Trade-Labour Linkage in a Value Chain World*. Routledge.

Smith, Adrian, et al. *Free Trade Agreements and Global Labour Governance: The European Union's Trade-Labour Linkage in a Value Chain World*. Routledge, 2020.

2. Climate Change

Summary of the issues:

There are a number of ways in which trade and trade policy can have both positive and negative impacts on climate change, including:²

- Freer trade can lead to increased emissions through increases in overall production, production in highly-emitting sectors, or transport.
- Freer trade can also lead to greater availability of the raw materials and goods countries need to tackle climate change.
- The obligations countries sign up to in trade and investment agreements, and at the WTO, can reduce the policy space they have to tackle climate change, and can expose them to disputes and lawsuits.
- Cooperative trade action can help end destructive policies such as overfishing or deforestation.
- As countries move to take measures to tackle emissions associated with consuming goods produced overseas, this can have unintended consequences on developing country trade and supply chains, making it harder for them to export goods and services

The relationship between trade and climate policy is therefore extremely complex. But discussion of this issues in the UK has been very limited. It has largely focused on the benefits that trade liberalisation can bring, including through increased UK exports of green goods and services.³ The lack of a clear UK strategy has also led to outcomes heavily influenced by the priorities of negotiating

² Draws from TJM and QMUL 2021, How trade can support climate action: a 2021 agenda for the UK, Trade Justice Movement and Queen Mary University of London:

https://www.tjm.org.uk/documents/reports/TJM_Trade-support-climate-action_Jul21_download.pdf

³ UK Trade and Climate Commission, Towards a fair and strategic trade and climate policy, December 2022, <https://www.tjm.org.uk/resources/briefings/towards-a-fair-and-strategic-trade-and-climate-policy>

partners – as illustrated in the contrast between the climate provisions in the UK’s FTAs with New Zealand and Australia. The absence of strategic thinking on this issue also leads to the UK government missing a number of critical issues that trade policy must address if an effective and just transition is to occur in the UK and its trade partners. A couple of examples are provided below.

Some trade and investment rules can undermine the UK’s efforts to transition to a green economy. Investor state dispute settlement (ISDS) mechanisms are traditionally included in trade agreements, as well as in investment treaties, and in the multilateral Energy Charter Treaty (ECT). ISDS grants investors the right to sue governments for policies that might threaten the profitability of their investments. The fossil fuel industry and the mining sector make most use of these mechanisms and have brought a number of cases that have directly challenged climate action. Global support for ISDS is waning, given the lack of evidence that ISDS provisions increase investment, and the negative impact it can have on climate action. The UK government should therefore reconsider its position on this issue.

In a range of other areas of policy, there are tensions between trade rules and climate goals. Governments can use policy measures such as public procurement and subsidies to promote demand for low-carbon technology. But such measures can be at odds with free trade principles and rules. For example, regulations, such as stipulating more climate-friendly production techniques, can be seen as a barrier to trade, and incentives, such as subsidies for renewable energy, can be seen as distorting free trade by giving national companies an advantage over foreign companies. These types of tensions need to be addressed so that the UK’s trade policy does not undermine its climate ambitions. UK trade policy involves a number of different trade policy measures including WTO rules, FTAs signed by the UK outside of the WTO framework, and unilateral trade measures. Each of these are discussed in turn below.

There are lots of complex ways in which WTO rules can potentially hinder action by individual countries to take measures to fight climate change. For instance, there is concern that government support for renewables or other green subsidies could provoke action at the WTO. The WTO was created without full knowledge of the threat posed by climate change and there is a strong case that its rules should be updated so that they can help and not hinder climate action. One important principle that should be explored is whether members should agree not to bring disputes against policies designed to fight climate change (a climate waiver). However, care must be taken that this does not lead to powerful countries justifying developmentally damaging policies. At the same time, the UNFCCC has shied away from directly addressing trade issues and it is the most inclusive and legitimate multilateral venue for discussing trade and climate issues in the future.

In relation to its post-Brexit FTAs, the UK government has not managed to sign trade agreements which have taken significant action on climate issues. It was criticised for weak language in its FTA with Australia and although the FTA with New Zealand was heralded by both governments as ground-breaking, close scrutiny shows it is unlikely to lead to substantial pro-environment policy changes. For instance, although tariffs on a record number of environmental goods are liberalised, any potential climate-positive effect is likely eliminated by liberalisation of other goods within the agreement. Similarly, although the UK and New Zealand have promised to address harmful fossil fuel subsidies, the definition of fossil fuel subsidies is left to national discretion, and according to the UK government’s metrics, it doesn’t have any subsidies (a point disputed by the OECD among others).⁴

⁴ See blog by Chloe Anthony and Emily Lydgate (2021) <https://blogs.lse.ac.uk/politicsandpolicy/trade-climate-policy/>

One agreement which does purport to put climate change at the heart of a trade agreement is the Agreement on Climate Change, Trade and Sustainability (ACCTS). ACCTS was launched in 2019 by Costa Rica, Fiji, Iceland, New Zealand and Norway, joined later by Switzerland. The countries involved propose to (1) reduce barriers to trade in environmental goods and services (2) phase out their fossil fuel subsidies and (3) encourage the promotion and application of voluntary eco-labelling programs and mechanisms. While ACCTS could be strengthened, its core approach – putting climate concerns at the centre of trade deals – is one the UK could emulate.

As countries become more engaged in the relationship between trade and climate change they are considering a range of unilateral trade measures, some of which restrict market access for high carbon or climate-damaging products. The most high profile measure is the Carbon Border Adjustment Mechanisms (CBAM). A CBAM is a tax at the border based on the carbon content of a product and is designed to enable a country to increase its carbon price domestically without their industries being competitively disadvantaged by products from countries with lower environmental standards. Both the EU and US are actively considering introducing CBAMs.

CBAMs could be a useful tool but there are still many unknowns and reasons for caution. Calculating the carbon content of any particular product is likely to be extremely complex and there is not yet an internationally agreed methodology. Careful thought would need to be given to ensuring that schemes are designed so they do not disadvantage developing country producers. In terms of compatibility with WTO rules, CBAMs are an untested area. A great deal will depend on how a scheme is designed and particularly whether the additional cost of exporting disadvantages foreign companies over domestic producers.

Steps the UK government could take:

The UK is in a strong position to bring attention to how the international trade regime can be shaped to support climate action.

- A logical first step is for the UK Committee on Climate Change to conduct an **audit of the UK's trade commitments** and their compatibility with climate obligations.
- To support more coherent policy making, the UK government should develop and **publish a trade strategy**, which must set out how its approach to new trade agreements and the WTO interface with climate commitments.
- The UK government should **work with other like-minded countries** to affirm the need for action to shape international trade rules in support of climate action. This should include (1) prioritising multilateral cooperation on trade and climate change, including greater discussion of trade-related issues as part of the UNFCCC process (2) working with a diversity of countries to explore how WTO rules can better support climate goals and (3) joining the ACCTS and working to strengthen and extend it.
- The UK government should **exit the Energy Charter Treaty**, terminate Bilateral Investment Treaties and review all Free Trade Agreements (FTAs) to **remove Investor-to-State Dispute (ISDS) clauses**
- The UK government should **revise its definitions and metrics on fossil fuel subsidies to bring them in line with the OECD's standard measures, and cross-reference the OECD measures in its FTAs**, so that commitments made in trade agreements have real impact.
- The UK government should consider **measures to improve the climate impact of its FTAs**, including effective forms of pre-conditionality, stronger non-regression clauses, pro-climate exemptions and positive incentives.

- The UK government should develop a **programme which includes development support and export** finance to encourage investment and incentives for technology transfer with developing countries (one possibility would be building on the Just Energy Transition Partnerships (JETPs) announced by South Africa and Indonesia).
- The UK government should consider **unilateral trade policies** (such as CBAM) which have market access consequences for developing countries only as part of a package that includes appropriate exemptions, sequencing, monitoring and support/finance.

Suggested readings:

Client Earth (2020) “International trade rules and environmental protection measures”: <https://www.clientearth.org/media/axymwawk/2020-10-15-international-trade-rules-and-environmental-protection-measures-ce-en.pdf>

TJM and QMUL (2021) How trade can support climate action: a 2021 agenda for the UK, Trade Justice Movement and Queen Mary University of London: https://www.tjm.org.uk/documents/reports/TJM_Trade-support-climate-action_Jul21_download.pdf

UK Trade and Climate Commission, Towards a fair and strategic trade and climate policy, December 2022, <https://www.tjm.org.uk/resources/briefings/towards-a-fair-and-strategic-trade-and-climate-policy>

3. Digital trade⁵

Summary of the issues:

Since the mid-2000s, the spread of the internet, generation of vast quantities of data, and enormous increases in computing power have spawned a series of transformative digital technologies, notably big data analytics, artificial intelligence, cloud computing, the Internet of Things, and new forms of robotics. These technologies are now integral to many sectors of the economy, particularly services sectors, and an estimated 26 per cent of UK GDP is generated in sectors heavily reliant on digital technologies.⁶ An estimated 75% of UK services exports, and an estimated 59% of imports are digitally delivered.⁷

At the international level, digitalization has spurred a rapid rise in cross-border data flows that some estimate to exceed the economic value of trade in goods, raising questions as to how these new forms of economic flow should be regulated. It has deepened economic interdependence between countries, creating new sources of economic gain, but equally exacerbating vulnerabilities, including cybersecurity risks. Competition over the control of not just frontier digital technologies, such as 5G and artificial intelligence, but also the semiconductors that underpin all electronic technology is at the heart of geostrategic competition between the US and China, raising the stakes of international standard-setting and intellectual property protections. The network effects associated with the digital economy have led to the emergence of technology firms of unprecedented size and geographic reach, prompting intense international negotiations over taxation of digital firms, and discussions on how to

⁵ This summary draws from Jones, E. and Adam, C. (2023), ‘New frontiers of trade and trade policy: digitalization and climate change’, Oxford Review of Economic Policy, 39(1)

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<https://www.ons.gov.uk/economy/economicoutputandproductivity/output/methodologies/ukdigiteconomyresearch2019>

⁷ <https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/articles/digitaltradeuk/2020>

promote fair and competitive digital markets. At the other end of the scale, digital platforms enable unprecedented numbers of individual consumers and workers to engage directly in cross-border trade, raising new questions about how to safeguard their welfare in international digital transactions.

Digitalization has been spurred by a light-touch regulatory approach, reminiscent of the approach to financial regulation in the 1990s and 2000s, which fuelled a dramatic expansion of financial services across the globe but also sowed the seeds of the global financial crisis. The largest technology companies have grown so vast that, by some metrics, they dwarf even the largest global banks. In July 2020, for instance, the market capitalization of the world's seven largest technology firms (Amazon, Facebook, Microsoft, Google, Tencent, Alibaba, Apple) exceeded US\$8 trillion, almost double the market capitalization of the world's top 200 banks.⁸

Governments are using trade agreements to update international economic rules for the digital era. As negotiations at the WTO are slow, due to major policy divergences, including between the US, EU and China, many recent preferential trade agreements include specific 'digital trade' chapters. First championed by the US, including in the TPP (which became the CPTPP) and then USMCA, the most recent wave of rulemaking has been spurred by Singapore, Chile, Australia and New Zealand. Since leaving the EU, the UK has been very active, seeking to position itself as a leader in digital trade, and negotiating extensive digital trade chapters with Japan, Australia, New Zealand, and a stand-alone Digital Economy Agreement with Singapore. It is also negotiating digital trade provisions with Mexico, Canada, India and in its accession to the CPTPP.

The UK government's overall approach has been to align with a US model, promoting liberalisation, including of cross-border data flows, stringent intellectual property provisions, innovation and the uptake of new digital technologies. Such measures will promote the digitalisation of the economy and provide advantages to the UK's export-oriented services sectors, particularly technology, and financial services firms. However, so far, the UK's approach to digital trade does little to address the growing concerns arising in the digital economy, particularly the vast market power of technology firms, online harms, problematic uses of new technologies such as biases in use of algorithms, and workers' rights in the gig economy.

The UK is making strides in domestic legislation in many of these areas and could be much more active in its trade policy. The issues of workers' rights in the gig economy and competition in digital markets are high on the agenda of the US government, and the new UK-US trade dialogue, provides an opportunity to move the discussion forward.⁹ Due to the cross-border activities of major technology firms, and increasing number of gig economy workers engaging in the 'global market' for digital labour, ensuring competitive markets and upholding labour rights requires international cooperation.

In some areas, the commitments the UK government is making may cause problems for effective regulation. In the area of data flows and personal data protection, the UK government is taking a strikingly different approach to the EU which may make it difficult to uphold the UK GDPR and retain data adequacy agreements with the EU. Commitments on source code disclosure, designed to protect the intellectual property of digital firms, may hinder the transparency and accountability of new technologies including algorithmic decision-making.¹⁰

⁸ <https://www.mckinsey.com/industries/financial-services/our-insights/banking-matters/big-techs-versus-big-banks-battle-for-the-customer>.

⁹ <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/march/joint-statement-usuk-dialogues-future-atlantic-trade>

¹⁰ On both issues see analysis of UK-Singapore DEA, under 'suggested readings'

As this is a relatively new area of trade policy, there is a paucity of robust information and analysis in the public domain. The government does consult stakeholders but the main forum for consultation is the Trade Advisory Group on Telecoms and Technology which comprises only of business representatives.¹¹ To ensure the UK's approach to digital trade strikes an optimal balance between competing interests, broader participation and informed public debate with businesses, civil society organisations and other stakeholders is needed. As digital trade policy has implications for a range of policy areas, policy also needs to be designed through close collaboration between government departments and agencies, and regulatory bodies.

Steps the UK government could take:

- **Widen the range of public policy objectives the Government considers in its to digital trade policies, including its negotiating objectives and impact assessments.** While facilitating and promoting digital trade is important for the UK economy, attention also needs to be paid to the protection and promotion of citizens' digital rights (including personal data protection and accountability of digital technologies); consumer protection (including promotion of a secure and safe internet, and consumer redress for cross-border digital transactions); workers' rights in the gig economy; promotion of a competitive and innovative digital economy; fair and effective taxation of digital economy firms; and cybersecurity. Ex-ante and ex-post impact assessments of trade agreements should include a far more detailed analysis on digital trade.
- **Create a far more robust mechanism for consulting and deliberating on its digital trade strategy and digital trade provisions in specific trade negotiations.** Given the breadth of policy issues and nature of policy trade-offs that need to be considered, digital trade policy needs to draw on the expertise and perspectives of a wide range of stakeholders in the business community (including SMEs, start-ups, and businesses that use digital products and technologies), consumer groups, digital rights groups, trade unions, and independent experts. Existing consultation mechanisms should be reviewed and strengthened to ensure they are more effective and representative of diverse stakeholder groups.
- **Take a whole-of-government approach to digital trade policy fully involving key departments and regulatory agencies in development and execution of digital trade policy.** The UK has created a Digital Regulation Cooperation Forum – a much needed initiative to align regulatory policy. However, it does not (yet) focus on digital trade policy.
- **On cross-border data flows, insist on more robust exceptions for personal data protection measures in its trade agreements** in order to safeguard the UK GDPR and the UK's own data adequacy instruments from challenge, and that no risk is posed to maintaining data adequacy with the EU. Promote initiatives to ensure smaller technology companies and public interest organisations can readily access big datasets.
- **On digital technologies and innovation,** ensure commitments in UK trade agreements are sufficiently robust to ensure the effective regulation of new technologies (including on transparency and accountability of algorithmic decision-making)
- **On internet regulation, use trade agreements to promote competition in international digital markets,** drawing on the excellent work of the UK Competition and Markets Authority
- **On protection of workers and consumers, pioneer a new approach to digital trade that includes strong provisions to uphold consumer and worker rights,** including through the prohibition of unethical uses of technology, addressing online harms, and promoting access to redress in cross-border transactions

¹¹ See <https://www.gov.uk/government/publications/trade-advisory-groups-tags/trade-advisory-groups-membership>

Suggested readings:

- Jones, E. and Adam, C. (2023), 'New frontiers of trade and trade policy: digitalization and climate change', Oxford Review of Economic Policy, 39(1) <https://academic.oup.com/oxrep/issue>
- Emily Jones et al (April 2022) written evidence submitted to International Agreements Committee on digital provisions in UK-Singapore DEA: <https://committees.parliament.uk/work/6650/singapore-digital-economy-agreement/>
- 4. More extensive analysis in working paper on UK and digital trade by Emily Jones et al (Feb 2021): <https://www.bsg.ox.ac.uk/research/publications/uk-and-digital-trade-which-way-forward>

Gender

Summary of the issues:

Across the world, women, and ethnic minorities and migrant women in particular, experience widespread social and economic disadvantage, including higher levels of unemployment, lower pay, greater work and social insecurity, a disproportionate share of unpaid domestic and care work, and less access to formal employment, land, credit and social benefits. International institutions and national governments see participation in global trade as key to promoting gender equality by creating increased access to better paid formal employment for women. The UK Government has committed to formulating a post-Brexit trade policy that will 'uphold gender equality'. However, the complex rules created by trade agreements can lead to negative as well as positive impacts for women in their roles as formal and informal workers, entrepreneurs, consumers, unpaid carers, service users etc.

Trade liberalization can be a source of more formal employment, higher wages and better working conditions when coupled with domestic reforms that enable women's access to property, social security, land and credit. But many studies have shown that women's participation in export sectors and global supply chains, whilst generating employment, does not necessarily translate into decent working and living conditions. At the same time, any increases in real wages and employment levels can be accompanied by the intensification of work, the reduction of social entitlements and increasing precarity, as the [2020 report on Leicester's garment factories](#) has indicated. Other commitments in trade agreements such as on services, investment and intellectual property can also have a negative impact on women around the world, for instance by limiting access to and employment in public services and subsistence agriculture; and by restricting affordability and availability of relatively cheap drugs.

This is why there are limitations to what 'gender chapters' included in agreements like those signed by Canada, Chile and more recently the UK can achieve: they focus on increasing women's participation in the workforce but fail to consider the impact of trade rules on the living and working conditions of women who may at the same time be workers, entrepreneurs, consumers, providers of unpaid care, service users and so on.

Steps the UK government could take:

- **Develop an inclusive strategy on Gender and Trade:** to make gender-aware policy choices, policy-makers should include women's rights organisations (WROs)- particularly those from marginalised communities- in the formulation, implementation and monitoring of trade policies
- **Base domestic and international trade policies on the systematic and regular gathering of gender/intersectional disaggregated data.** This entails: widening the scope of evidence to include qualitative data in consultation with women rights organizations (WROs), keeping in mind the overlapping forms of disadvantage experienced by women from different social groups; using gender-disaggregated statistics gathered at regular intervals to enable

comparisons over time; assessing the gendered impacts in every sector of the economy, including services provision, informal and unpaid work, women's unpaid care work, and access to and control over land, water and natural resources, food security, and health; consult WROs and other stakeholders in the formulation, implementation and monitoring of trade policies.

- **Build in trade agreements both ex ante and ex post equality impact assessments (EIAs) to measure the diverse impacts of trade rules on women.** The EU, but also the US and Canada, have a mandatory requirement for EIAs to be conducted on their trade agreements, which include an assessment by a team of experts and a public consultation, resulting in a final report, which the EU for instance must respond to. However, most assessments are ex-ante only, taking place before the agreement is ratified. Research has also shown that in most cases EIAs include only minimal gender aspects, which means that there is no systematic assessment of all the agreement's provisions on women. The UK could make use of the different approaches and indicators developed by economists and organisations aimed at more comprehensive assessments (e.g., the General Equilibrium Model for assessing the effects of trade on women developed by [Marzia Fontana and Adrian Wood](#) for the UK's Department for International Development; [UNCTAD's Trade and Gender Toolbox](#) and its policy brief on undertaking gender-aware ex-ante evaluations of trade policies).
- **Take action to address the impacts that have been identified,** from suspension and re-negotiation of trade agreements to the inclusion of binding obligations for supply chain firms regarding women's rights, labour rights and human rights (for example mandatory requirements to undertake gender-responsive human rights due diligence).
- **Include gender-responsive flexibilities,** like carve out clauses that enable governments to exclude public services; a 'positive list' approach so that only service sectors listed in the agreement are subject to trade commitments; or exclusions of ISDS clauses, with new dispute mechanisms transparent and based around a dispute prevention policy, domestic dispute settlement and the exhaustion of local remedies, and/or state-to-state arbitration.
- **Include measures to address the additional economic constraints a trading partner may be facing,** such as high levels of debt or policy conditionalities by international Institutions and lending agencies, as well as factors such as climate change and conflicts– all of which produce specific and often disproportionate adverse effects on women, and ethnic minorities and migrant women in particular.

Suggested readings:

- Donatella Alessandrini, Towards a Social Reproduction Approach to GVCs (2022) *European Journal of International Law* <https://academic.oup.com/ejil/article/33/1/131/6582764>

-UNCTAD, Gender and Trade ASSESSING THE IMPACT OF TRADE AGREEMENTS ON GENDER EQUALITY (UNCTAD 2020) https://unctad.org/system/files/official-document/UNWomen_2020d1_en.pdf

-Adrienne Roberts et al. Gender and Trade: Briefing from the UK Women's Budget Group on the impact on women of international trade and investment agreements (Women's Budget Group, 19 September 2019) <https://wbg.org.uk/wp-content/uploads/2019/09/FINAL-.pdf>

5. Scrutiny of Trade Agreements

A. Scrutiny during trade negotiations

Summary of the issues:

Until the late 1980s, trade agreements focused on removing tariffs and other border measures. Negotiations were a matter for the executive and technocrats, attracted little public attention, and were subject to very little debate or scrutiny in national parliaments. In contrast, contemporary trade agreements seek to align regulation between countries and have substantial implications for many areas of economic policy – from farming and food standards, to manufacturing, financial services and accounting, to the regulation of the digital economy, and healthcare. Trade negotiations have become politicised, with citizens and legislatures in many countries taking an active interest in the contents of trade agreements, and calling for more transparent, inclusive, and accountable decision-making.

Comparison with practices in other jurisdictions, such as the US and EU, suggests that effective parliamentary scrutiny requires the UK Parliament to have guaranteed access to a much higher level of information than it has at present; the opportunity to shape negotiating mandates before negotiations start; more time to scrutinise agreements; and debate and affirmative vote on the final treaty. There are strong grounds for providing devolved administrations with formal rights to participate in the treaty-making process, particularly in aspects of treaties that have an impact on areas of devolved competence, and for ensuring that sub-national legislatures have the opportunity to scrutinise treaties.

There are compelling reasons for strengthening Parliament's scrutiny role. Contemporary trade agreements involve policy decisions that affect the everyday lives of citizens. Effective scrutiny would improve the quality of decision-making, provide leverage in negotiations, and reassure negotiating partners any treaty they negotiate with the UK will be ratified and implemented. Properly engaging devolved administrations and legislatures would respect devolution and ensure that all parts of the UK support negotiated outcomes.

The UK Government has taken some steps to improve the scrutiny process, but current practice still falls short of what is required for scrutiny to be effective and relies on the goodwill of Government as the changes are not reflected in statute.

Steps the UK government could take:

- **Provide Parliament with a statutory right to a debate on the draft negotiating objectives for any treaty or treaty action the relevant scrutiny committee identifies as important and meriting such action.** This would bring the UK in line with the EU and US where legislative bodies are fully consulted on the negotiating mandate, could provide Government with leverage in the negotiating room, and strengthen the credibility of the Government as a negotiating partner by reassuring other governments that Parliament is on board with the Government's approach.
- **Provide Parliament with a statutory right to timely and substantive information, including regular public and private briefings to relevant scrutiny and subject-specific committees, and access to draft negotiating texts and related documents for all MPs and security-cleared staff, on a confidential basis.** This would bring the UK Parliament in line with the US and the EU, where legislators have a high level of access to information, including to confidential negotiating texts.
- **Require Government to make the treaty text public well before the treaty is tabled in Parliament, to allow sufficient time for examination and scrutiny, and oblige Government to extend the 21 sitting-day period for scrutiny if requested to do so by the relevant scrutiny committee.** In the US for example, Congress has access to the agreed text 60 days before signature, and access to the final text for 30 days before the treaty is laid before Congress for ratification.
- **Require Government to publish preliminary impact assessments at the outset of negotiations and full impact assessments when the treaty is laid in Parliament, which evaluate the economic,**

social, and environmental impacts of a proposed agreement. The UK Government has started to publish preliminary impact assessments at the outset of negotiations; this recommendation would formalise and systematise an emerging practice.

- **Provide that trade agreements shall not be ratified unless Parliament has debated and authorized ratification of the agreement, in cases where the scrutiny committee so decides.** This would bring the UK in line with the EU and US, where legislators must approve treaty texts as part of the ratification process. It also reflects the nature of contemporary trade agreements, which have implications for a wide range of public policy areas; would strengthen the quality of decision-making; and could provide the Government with greater leverage during negotiations.
- **Provide devolved administrations with the statutory right to co-determine the negotiating mandate in areas of devolved competence, and fully participate in negotiations on issues of devolved competence; provide devolved administrations and legislatures with the same level of information as the UK Parliament; and create an interparliamentary mechanism to involve devolved legislatures in treaty scrutiny.** There are valuable lessons to be learned from Canada, where the Government has found ways to involve Provincial administrations in areas where they have competence, whilst retaining control over the treaty-making process.

Suggested readings:

- Emily Jones et al (June 2021) written evidence submitted to Public Administration and Constitutional Affairs Committee inquiry ‘The scrutiny of international treaties and other international agreements in the 21st century’. Submission compares practice in UK with that in EU, US, Canada, and Australia: <https://committees.parliament.uk/writtenevidence/37703/pdf/>
- More extensive analysis in working paper by Emily Jones and Anna Sands (Aug 2020): <https://www.geg.ox.ac.uk/publication/ripe-reform-uk-scrutiny-international-trade-agreements>
- Reports in Sep 2021 and follow-up in 2022 by the International Agreements Committee, House of Lords, that do a good job of analysing the problems with UK treaty scrutiny and make some strong recommendations:
<https://publications.parliament.uk/pa/ld5801/ldselect/ldcom/97/9702.htm> and
<https://publications.parliament.uk/pa/ld5802/ldselect/ldintagr/75/7502.htm>

B. Post-implementation scrutiny and monitoring

Alongside having effective processes for pre-ratification scrutiny of trade agreements, a second element of scrutiny concerns the mechanisms in place to ensure on-going scrutiny and monitoring of an agreement’s implementation. One area where this is already occurring is with regard to sustainable development objectives, which includes labour and environmental commitments. The European Union has developed a set of mechanisms, which are reflected broadly in post-Brexit UK ‘roll-over’ trade agreements with EU trade partners. Central to this model is the role played by Domestic Advisory Groups (DAGs) in the EU model. The DAGs operate with an EU conception of ‘civil society’ input, involving a tri-partite set of actors: trade unions, business representative bodies and non-governmental organisations. The precise configuration of involvement of these groups varies depending on the particular agreement and its focus. For example, more developmentally oriented Economic Partnership Agreements tend to involve developmental NGOs as civil society actors.

The DAGs have notionally important roles in the monitoring process of trade and sustainable development (TSD) chapters of trade agreements (which contain labour and environmental obligations). The EU model involves annual DAG meetings and joint civil society group platforms to raise matters, as part of an overall approach emphasising dialogue and co-operation. Research on the

EU model has highlighted a number of limitations in its early years of implementation. Key issues identified include:

- Unclear aims for DAG meetings leading to quite wide-ranging issues not always focused on core TSD matters.
- Inadequate resourcing to allow attendees to meaningfully participate, especially relatively resource-poor NGO and trade union organisations from trade partners in the Global South.
- Inadequate resourcing to support the secretariats of DAGs, which was subsequently partially resolved by closer integration with the European Economic and Social Committee.
- Silo-ing of TSD elements outside of the wider trade agreement's dispute settlement mechanisms.
- In terms of substance and content, little evidence that DAGs were bringing labour and environmental issues to the table for the relevant inter-governmental trade agreement committees to action. One exception is the EU-South Korea agreement, which did ultimately result in labour standards issues coming to a Panel of Experts process which in several important respects found against the Republic of Korea on a number of key labour rights issues in 2021.

The US operates a different model of 'labor chapters'. The labor chapters seek to ensure that signatory states provide access to domestic legal remedy for possible violations of labour law. In terms of institutional structures they mandate a Labor Affairs Council comprised of high-level representatives of the parties,¹² a Labor Cooperation Mechanism to promote joint activities by state officials, and encourage each party to establish a National Labor Advisory Committee comprised of civil society actors to give advice on implementation. The US model, and in particular its complaints process, allows interested organisations to bring complaints and the US Department of Labor to review and receive submissions, and allocates a more significant role to trade unions and other labour advocates.

Steps the UK government could take:

UK trade policy should consider carefully alternative models of trade policy implementation scrutiny and monitoring which might include:

- Setting clear aims for what role domestic advisory groups should play and ensure they are resources effectively to play that role.
- Undertaking robust *ex post* impact assessment of trade agreements, including their broader social and environmental impacts, and ensuring there are effective mechanisms for responding to issues uncovered through the impact assessment process.
- Developing more participatory, worker-driven models to allow monitoring to take place from ground level up.
- Investing in labour/environmental attaché's in Embassy's in trade partner countries to monitor those standards.
- Considering how to avoid disconnecting TSD-related monitoring from wider dispute settlement processes in trade agreements.

One of the most promising attempts to overcome labour abuses and enhance working conditions in global supply chains is the Worker-driven Social Responsibility (WSR) approach which has emerged in

¹² The Labour Affairs Council meets in an open session with the public within the first year after the entry into force of the agreement and sporadically thereafter.

parts of the USA to deal with labour abuses affecting farmworkers.¹³ The WSR approach is based around five key principles:

- the establishment of industry-specific codes of conduct initiated around the interests of workers;
- regular and comprehensive auditing by independent monitors (rather than the often light-touch audit approach of CSR);
- worker-to-worker education and complaint resolution systems which are constantly available to workers (i.e. a form of worker auditing);
- market consequences for buyer and supplier firm non-compliance, with immediate remediation of issues coming forward; and
- the requirement that lead-firms meet the economic necessities in their contracts with suppliers (e.g. avoiding 'poverty pay') as well as the human resources infrastructure to underpin deep monitoring.

The WSR approach could be integrated into labour provisions in trade agreements as a way of ensuring "deep and comprehensive" protection and enhancement of workers' rights in global supply chains by drawing upon and enhancing 'worker voice'. It would also enable a closer institutional integration of supply-chain monitoring mechanisms with the agenda of ensuring the fairness of global economic integration pursued by international trade agreements.

Suggested readings:

ECPDM, Making it Count: Civil Society Engagement in EU Trade Agreements, Discussion Paper No.276, available at <https://ecdpm.org/wp-content/uploads/Making-Count-Civil-Society-Engagement-EU-Trade-Agreements-Discussion-Paper-276-July-2020-ECDPM.pdf>

Orbie, J. *et al* (2016) "Civil society meetings in European Union trade agreements: features, purposes, and evaluation". CLEER Papers 2016/3. Available at: https://www.asser.nl/media/3044/cleer16-3_web.pdf

¹³ The WSR agenda arose out of the Fair Food Campaign spearheaded by the Florida Coalition of Immokalee Workers that sought to establish a new paradigm for labour rights monitoring, one which is "designed, monitored, and enforced *by the very workers whose rights it is intended to protect*". See National Economic and Social Rights Initiative (no date) 'Worker-Driven Social Responsibility', NESRI webpage. Available at: <https://www.nesri.org/initiatives/worker-driven-social-responsibility>

