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Trade Justice Scotland Coalition

Trade should be democratic

1. Trade policy and trade negotiations should begin with meaningful public consultation. The UK parliament should be able to scrutinise, amend or terminate trade negotiations.



Global Justice Glasgow protest against CETA at the SNP conference in Glasgow

Modern trade deals are concerned with much more than whether to raise or lower taxes and tariffs on imports and exports. Increasingly, they have begun to encroach upon public policy and so impact on all aspects of our daily lives from access to the NHS, to what we eat, and our rights as workers. Yet, as recent negotiations by the EU on huge trade deals like TTIP (the EU-US trade deal) and CETA (EU-Canada trade deal now provisionally implemented) have shown, negotiations are done in secret with little opportunity for democratic scrutiny. The UK has one of the least democratic processes of all EU countries for ratifying trade deals. As things stand, our elected representatives have virtually no say over trade deals. They can't set a mandate to guide government negotiations, they have no right to see details of the negotiations, they can't amend deals and they can't stop them. This has meant, for example, that CETA was signed by the UK government without any debate at Westminster and could be ratified without any parliamentary vote.

Post-Brexit, the UK will negotiate its own trade deals. Indeed, making new trade deals with countries around the world will be a priority for the UK government in the coming years. A just trade system must have its foundations in a democratic process. This means proper public and parliamentary scrutiny of trade deals throughout the negotiating process. This should include:

- 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 with negotiating texts to be publicly available with versions in plain English
- The right of parliament to amend and to reject trade deals, with full debates and scrutiny guaranteed and a remit for the devolved administrations
- The right of parliament to review trade deals and withdraw from them in a timely manner

Devolved administrations should participate in the formulation of the negotiating mandate for new UK trade deals, and new trade deals should be debated and voted on at Holyrood, Cardiff and Stormont.

Democratic scrutiny of trade deals should allow for devolved administrations to scrutinise and vote on their content. This is particularly the case when trade deals impact on areas of devolved competence which is certainly the case with trade deals like TTIP and CETA.

Referendums on large or particularly controversial trade deals have been used recently by Switzerland, the Netherlands and Costa Rica – all of whom have the option for a referendum on international trade deals written into their constitutions. In order for the referendums to take place, a percentage of the population need to sign a petition within a set time period. In Costa Rica (CAFTA deal with the EU), the Netherlands (EU-Ukraine trade deal), and Switzerland (vote on whether to join the EEA), the government of the day agreed to abide by the results of the

referendum, although this was not legally required.

Demand for greater scrutiny of trade deals by regional governments is also increasing. The regional parliament of Wallonia, for example, forced the Belgian government to hold back from signing CETA, for a short time at least, due to its concerns about some of the content of the deal. The regional governments of Belgium have the right to insist the federal government veto a trade deal if the parliament votes against it. The Wallonian government had been very thorough in its scrutiny of the deal, holding eighteen months of hearings and impact assessments that led to a very detailed declaration on why Wallonia opposed the deal and what reforms it wanted.

In the United States, there has also been concern from the state governments about the power of the federal government to pass trade deals whose rules override the individual states' own laws on aspects of public policy. Public procurement laws have been a particular area of dispute. In order to counter this, five American states (Maryland, Maine, Rhode Island, Hawaii and Minnesota) have recently passed legislation creating a formal 'opt-in' mechanism for public procurement in trade deals. This requires a vote by the state parliament before state purchasing policies can be bound to comply with US trade agreements. The state of New Jersey created similar legislation and also established an office of trade enforcement to monitor trade agreements, and assess the impact on the local economy.

The Scottish government, and other devolved administrations of the UK, should be concerned about the impact that trade deals will have on public procurement and many other devolved policies that might be affected, including health and social services, the environment and local government. Using the US states' opt-in laws as a model, we would suggest that devolved administrations should have a similar opt-in clause. This would involve a detailed impact assessment of how a trade deal will impact on devolved areas of policy which would be scrutinised by parliamentary committees at Holyrood, leading to debate on a motion voted on by the parliament. The option for a committee that monitors trade agreements and their impacts would also improve scrutiny.

Trade should be in the public interest

2. Trade rules should comply with human rights, labour standards, environmental standards and climate commitments.

There are things in the world that are more important than trade. Fighting poverty, building decent public services and stopping runaway climate change are all far more important than ensuring the price of bananas in Scotland is 3p less than last year. But trade agreements currently assume free trade trumps all other considerations. Trade agreements like TTIP and CETA for example, have much stronger enforcement mechanisms than many environmental or human rights agreements. This has to change. The easiest way to do this is via an override clause that states that social and environmental considerations will always take precedence over the rest of the trade deal. Though there are carve-outs for certain public services and policy areas in existing trade deals, these are too narrow. This override clause needs to specifically state that trade can only occur if this does not come at the cost of the environment or the livelihoods of communities.

3. Trade agreements should focus ONLY on trading in goods.

Trade deals need to go back to focussing on the equitable exchange of goods instead of encroaching on areas of public policy, such as public services and their regulation, public procurement, patents, migration, or data policy.

Including public services in trade deals leads to increased privatisation. Ratchet and standstill clauses included in recent deals like TTIP and CETA, threaten to lock in the privatisation of public services making it very difficult for future governments to reverse any decision to privatise. Similarly, the ability of national and local government to prioritise local employment, local business, and the ethical sourcing of goods – useful tools that can be used to tackle climate change and develop local economies – can be seriously hampered, particularly by including public procurement rules in trade deals. The rights this grants to foreign investors restricts the powers of local and national government in these areas.

Both CETA and TTIP included 'negative listings' for services, meaning that if a country does not explicitly list services it wants excluded from the deal, they are assumed to be included.

Negative listings make it harder for a country to keep services public. It also means that any new products or services invented in the future would automatically be included in the relevant parts of the trade deal. Public services should not be included in trade deals at all, but as an immediate first step, current trade deals should at least include a positive listing system in order to be clear and deliberate about any services a country wants to include in that trade deal.

4. Domestic courts rather than 'corporate courts' should deal with trade disputes.

Foreign investors should not have special legal privileges allowing them to sue governments using courts outside of the domestic legal system. It has become standard that modern trade deals include the investor state dispute settlement clause (ISDS). This allows foreign investors to sue governments if they decide to terminate a contract with a company, or if the government makes new laws or policies that affect the way a corporation does business in that country. So, for example, Argentina was sued by foreign water and electricity companies (including EDF) when it chose to freeze utility prices and was forced to pay out \$1 billion in damages. Similarly, in Germany, the Swedish nuclear company Vattenfall is suing the German government. Public concern about nuclear power grew in Germany after the Fukushima disaster and that prompted the government to decide to phase out nuclear power. Vattenfall used ISDS to begin litigation against the German government.

As we can see from these examples, ISDS radically increases corporate influence on government decision-making. As well as being expensive, ISDS legal cases create 'regulatory chill', where even the threat of litigation can persuade governments to shelve strong legislation to protect people and planet.

US negotiators proposed that ISDS be included in TTIP, but the investor clause was considered so controversial that the European Commission originally removed it from negotiations until a full public consultation was carried out. 97% of the 150,000 responses to the consultation opposed the inclusion of ISDS. Rather than remove ISDS entirely from the trade deal, the European Commission proposed an alternative known as the Investor Court System. However, this only included minor reforms and also includes the proposal for an actual physical court in the EU which threatens to give legitimacy to a system that privileges

corporate rights over the rights of ordinary citizens. If corporations believe a government is in some way breaching the terms of a trade deal, then a country's domestic courts should be used to settle grievances.

5. Trade agreements should include mechanisms for individuals, groups and communities to bring grievance proceedings for harm caused by the trade agreements.

While most trade and investment deals at the moment have ISDS, allowing corporations to sue countries for loss of profit, the victims of corporate exploitation struggle to bring the perpetrator to justice. It is these citizens, not corporations, that need an international-level court to protect their rights.

There is already a negotiating process underway at the UN for a UN Treaty on Transnational Corporations which is envisaged to contain an international court where it will be possible for communities to hold multinationals to account. The UK itself should support the process and sign an eventual treaty. Signing up to the treaty, including any UN Court for Corporate Crimes, should be a precondition inserted into every trade and investment deal the UK signs.

6. A compensation package and alternative decent work for those who lose out as a result of a trade deal should be a pre-requisite of any trade negotiation. When agreements are between developed and developing countries, the developed countries should provide finance for this.

One of the purposes of trade deals is to stimulate the economy and create new jobs. However, while some industries will benefit from a trade deal, others will almost certainly lose out. In order to help those who lose their jobs because of a trade agreement, a compensation package that gives money to unemployed people to retrain, or finance for businesses to invest in new technology to help their business thrive in a new situation, should be provided. This already happens in some cases. For example, the implementation of CETA is likely to impact on Canadian dairy farmers because the European cheese industry will compete with indigenous industries to sell their produce in Canadian outlets. Consequently, the Canadian government has put \$250 million into a dairy farm investment programme.

Countries involved in trade negotiations together

should use impact assessments to establish which industries will benefit and which be disadvantaged by a trade deal. Compensation packages should then be put in place to help those who will be disadvantaged. Lower income countries that could not afford to provide such initiatives themselves, should have them provided for by the wealthier country.

Trade should do good

7. Trade agreements must ensure tariffs and trade preferences take social and environmental considerations into account, so that goods with less environmental impact and higher social welfare receive greater preference.

At the moment trade tends to be blind to both the environmental and social impacts of moving goods and services across borders. It is increasingly illegal for countries to favour certain socially responsible business models over those of multinationals. An ethical trade agreement would do the opposite and build in incentives to business models that give something back to communities. So, for example, co-operatives would be able to get more preferential trade terms than multinationals are able to access and businesses that deal in green energy infrastructure would enjoy lower trade barriers than those that deal in fossil fuels.

8. Trade agreements should commit countries to raising standards to the highest, not lowest level, including meeting human rights, labour, environmental and climate obligations.

The UK government should only commit to trade negotiations with another country if the country has ratified and is implementing core human rights treaties, the fundamental ILO conventions on workers' rights, and has signed the UN climate treaty. It should also consider whether it has common levels of tax and financial regulation, so that corporations cannot play one side against the other.

9. A just trade system should be based on solidarity not competition. Within this system trade deals could facilitate the sharing of knowledge and technology, for example low carbon energy and generic medicines, particularly with countries in the global south.

Countries in the global south need to be supported in the development of local green technologies that facilitate access to electricity and sustainable development, as well as other essentials that meet people's human rights, such as access to affordable medicines. The current intellectual property rights system is hampering knowledge-sharing, innovation and accessibility and should not be part of trade deals. Instead, trade deals with countries in the global south should encourage limitations on and exceptions to intellectual property rights where it will benefit the general public – for example in health, education, agriculture and technology transfer.

10. Foreign aid should be kept as a separate issue from trade, so that it cannot be used to persuade a country to open up its domestic markets.

At the moment, by law the UK's development aid should be for the purpose of poverty reduction. It should not be a quid pro quo for countries in the global south opening up their markets. Before the passing of the International Development Act in 2002 there are numerous examples of aid that was given in exchange for trade, military or other benefits to the UK. The most recent government, including the last international development secretary, has however spoken of taking us back to the earlier situation, with aid becoming conditional on trade concessions. A just trading system would allow countries to pursue policies that best suits the circumstances of the country in question, and trade deals following just principles would include clauses that underline this right.

Trade Justice Scotland Coalition brings together trade unions, campaign organisations and local activists, campaigning in Scotland for an alternative to huge trade deals like TTIP and CETA .

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