

MSP briefing

How new trade deals might impact on Scotland's laws and policies

September 2021

Trade Justice Scotland Coalition



About the Trade Justice Scotland Coalition

We are a coalition of Scottish Trade Unions, campaign organisations and local activists campaigning against trade deals that threaten to give new powers to corporations while privatising public services and weakening the democratic rights of ordinary citizens. We came together to campaign against TTIP and believe that campaigning by coalitions like our own was instrumental in stopping that trade deal. [We're also calling for the UK and Scottish governments to develop a more ethical trade policy.](#)

Concerns with modern trade deals

Trade has always been part of society and always will be. But global trade deals and modern trade rules go beyond the customs border and into the realm of public policy.

We are concerned that laws democratically decided upon because citizens agree they want a certain level of protection for public health, workers and the environment, and high quality public education and healthcare, can be overridden by trade deals. We are particularly concerned because, as a devolved nation where trade is a reserved issue, our laws and policies might be weakened through a trade deal, with barely any opportunity for parliamentarians or the public to have any say in those changes.

Overriding Scotland's devolved laws and policies

Scotland has regularly been the first nation in the UK to bring in stronger public policy legislation: from banning smoking in public places, to the extended moratorium on fracking, the ban on growing GM crops, and stronger climate change targets. We have also so far resisted efforts to introduce greater private sector provision in the NHS, and Scottish Water is one of the very few water companies in the UK that is still publicly owned.

Yet, trade deals may have an impact on Scotland's progressive policies and laws in these areas. Indeed, it would be possible through an Investor State Dispute Settlement (ISDS) clause in one of these deals for corporations to legally challenge all manner of positive social and environmental policies our devolved parliament might develop, and sue for compensation where they believe their profits might be threatened. In this case, the Scottish government would not be able to defend itself. Rather, the case would be defended

by the UK government. But if the case was lost, it would be the Scottish government that paid any compensation due.

The climate emergency

Modern trade deals also give corporations the power to effectively block climate action. The recent IPCC report showed clearly that immediate action is the only way to avoid the ever-worsening impacts of climate change. The UN climate talks in Glasgow this November will be a critical moment to get global agreement on that action. But in many ways free trade agreements are at odds with this. Unlike environmental agreements, such as the UN climate treaty, trade agreements have strong, enforceable rules with penalties if they are broken, whereas climate treaties have targets, goals and aspirations but no enforcement mechanisms.

Trade deals can actively encourage trade in fossil fuels at a time when we should be making a just transition away from fossil fuel use. For example, a recent trade deal between the US, Canada and Mexico makes it cheaper for oil corporations to export more Canadian tar sands oil. Similarly, Canada used the negotiations for the EU-Canada trade deal CETA to put pressure on the EU to continue importing tar sands oil, overriding a regulation that would have prevented that.

Trade deals would not directly rewrite Scotland's climate change targets, but they could be used to repeatedly knock down proposals made to reach those targets. For example, as Scotland tries to reduce its emissions from agriculture, a trade deal like the Australia-UK deal favours the import of cheap meat whose production is high in greenhouse gas emissions – rather than supporting sustainable farming in Scotland. It puts pressure on the Scottish government to weaken its own policies and laws on animal welfare and environmental protection. In other countries, trade rules have also been used to dispute subsidies and support for renewable technologies.

The threat of ISDS could have a chilling effect on the Scottish government's willingness to pass the laws and make the policies that are needed considering the climate emergency we face. In the same way that the Scottish government decided upon a moratorium for fracking in Scotland, the Canadian state of Quebec also banned fracking. Yet fracking corporation Lone Pine sued the Canadian government using an ISDS clause in a trade deal with the US. Indeed, the ISDS clause included in so many trade deals has a history of being used by fossil fuel and energy companies to challenge policies and laws needed to move to a low carbon economy and protect the environment. RWE and Uniper, two more energy companies, are suing the Netherlands over the phase out of coal-fired power stations, while Rockhopper, a UK fossil fuel company, is suing Italy over a ban on offshore oil drilling close to the coast, and TC Energy, a Canadian company, is suing the US over the cancellation of the Keystone tar sands pipeline. Cases like these have a chilling effect, intimidating other countries who may have been considering taking similar action to tackle climate change

New UK trade deals

The UK government is negotiating a number of trade deals that could have far-reaching implications for Scotland's social and environmental laws and policies, as well as its ability to tackle climate change effectively. Key upcoming deals include:

- **Australia-UK:** already signed in principle and so far, due to public pressure, it excludes ISDS. Many Scottish politicians rightly have concerns about the impact of this deal on Scottish farmers, [and the deal will also be bad for animal welfare and climate action.](#)
- **New Zealand-UK:** due to be agreed by the end of the year
- **Canada-UK:** an initial deal has been signed and ratified and is in place. ISDS is included but is currently suspended and is supposed to be being reviewed. Preparations are being made for a

further trade deal to go beyond the current one. As well as ISDS, we also have concerns about de-regulation and digital rights in this new deal.

- **India-UK:** negotiations start in November. In the same way that we have concerns about how bigger countries and trade blocs impact on our policies, laws and economy through trade deals, we are equally concerned that lower-income countries, such as India, might be negatively affected by a trade deal with the UK. We want assurance that an India-UK deal will include proper protection for small-scale farming that makes up 82 percent of farmers in India; that the deal will not encourage privatisation of public services, and that India's important role as supplier of affordable medicines to the global south will not be threatened by inclusion of stricter rules on medicine patents.
- **CPTPP (Comprehensive & Progressive Agreement for Trans-Pacific Partnership)** a trade agreement encompassing 11 countries in the Pacific region. Members include Japan, Canada, Australia, Malaysia and Singapore. The UK may join by the end of the year. We have many concerns about this, including ISDS.

What MSPs can do

We ask that MSPs speak out about the impact trade deals can have on the Scottish parliament's democratic powers, especially its ability to tackle climate change. We ask that you:

- Support the need for ethical trade deals by endorsing the [Trade Justice Scotland Coalition's Principles for Just Trade Deals](#)
- As new trade deals are negotiated that might impact on devolved laws and policies, speak out about the need for a better process for scrutinising and passing trade deals that involves Scottish parliamentarians. And call for a Scottish parliament inquiry into the impact specific trade deals will have in Scotland.
- Oppose any trade deal that ratchets up or locks in the privatisation of public services - particularly health services, puts downward pressure on Scotland's food, animal welfare, workers' and environmental standards, or that rejects or undermines the precautionary principle
- Oppose any trade deal that includes ISDS

If you would like more information on anything in this briefing, or to meet with us to talk about any of these issues please contact Jane Herbstritt, campaigner at Global Justice Now, on behalf of the Trade Justice Scotland Coalition: jane.herbstritt@globaljustice.org.uk

Our website is: www.scotlandagainsttip.org.uk