

# Submission to House of Commons International Trade Committee inquiry

## UK Trade Policy Transparency and Scrutiny

From Trade Justice Scotland coalition

21 June 2018

### Trade Justice Scotland Coalition



#### About the Trade Justice Scotland coalition

The Trade Justice Scotland Coalition is an alliance of 27 Scottish organisations – including trade unions, NGOs and local activist groups representing hundreds of thousands of Scottish citizens. The coalition first came together in 2015 as part of the Europe-wide movement that opposed TTIP and continues now to focus on post-Brexit trade deals and in particular ensuring that there is a transparent and democratic process, involving all nations of the UK, for scrutinising and approving trade deals.

#### Introduction

Modern international trade deals (such as the EU-US trade deal TTIP and the EU-Canada trade deal CETA) have impacts beyond tariffs and quotas, with their effects extending into the realm of public policy through regulatory harmonisation and coherence, through the increased use of investor state dispute settlement mechanisms to challenge public policy making and the resulting regulatory ‘chill’, and through their impact on public services, public procurement and intellectual property. The impacts of trade deals are felt across society and in all parts of the United Kingdom.

The EU-US trade deal TTIP faced huge public opposition in Scotland, as well as right across Europe and in the US. Lack of transparency and democratic accountability in the negotiation process was a key issue in the public’s concern. Almost 3.5 million people across Europe signed a petition opposing TTIP and marches of hundreds of thousands of people took place in cities here in the UK and around Europe. TTIP became a politically toxic trade deal due to the strength of public opposition.

Post-Brexit trade deals here in the UK are also likely to face public opposition, and that opposition is likely to be increased by the lack of transparency, parliamentary scrutiny and democratic process

that currently exists here in relation to trade deals. We believe it is really important that this process is changed.

While trade policy itself is reserved to Westminster, many areas of policy that trade deals may impact on are devolved to Scotland, for example: health, environment, food, farming, public procurement and the provision of public services.

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, to greenhouse gas emissions targets. This, and the fact that if Scotland were to be sued using an investor protection clause in a trade deal, then it would be the UK government who would fight the case – but if the UK government lost then the Scottish government would have to pay the compensation costs<sup>i</sup> - mean that any international trade deals signed by the UK government could seriously impact upon Scotland's devolved powers and ability to use those powers to make public policy that might be different to other parts of the UK.

As such, we believe that it is vital that the elected representatives of the Scottish parliament are given a meaningful role in the formulation of trade policy and in the scrutiny and ratification of international trade deals.

### **Which documents pertaining to trade policy and negotiations should the Government make publicly available – and which should remain confidential?**

Given the huge public opposition to TTIP, mentioned above, then we believe there should be a presumption towards making as much information public as possible.

Looking at practice in the negotiations of other international treaties, such as the United Nations Framework Convention on Climate Change, it is clear that there is a move towards more rather than less transparency, and we believe that the UK government should follow this move in relation to its trade policy and negotiations.

Impact assessments of trade deals, looking at social (including health and education), economic, human rights, environmental, labour and gender impacts both in the UK (including a regional breakdown) and in developing countries, should be made publicly available in good time before negotiations begin. They should be written in plain English, with summaries that are easily understood by elected representatives and the public.

The objectives in any negotiating mandate prepared by the government should be made public before negotiations of any trade deal begin, and any changes to those objectives should also then be made public. Text proposals ahead of each negotiating round should be released to the public as should the consolidated text, showing the current state of agreement between the parties, after each negotiating round.

### **What level of access should Parliament and the devolved administrations and legislatures have to trade policy documents, including trade negotiation texts?**

The UK parliament, the Scottish government and the Scottish parliament should have a legal right to see trade policy documents and to access impact assessments, negotiating objectives, negotiating mandate, texts under negotiation and final texts of all trade treaties.

**How should the Government consult business and civil society groups on trade policy matters, including prospective and on-going trade negotiations?**

Public and business consultation is a vital part of formulating trade policy and ensuring that the outcomes of trade negotiations are publicly acceptable and beneficial across the UK. Those consultations must be accessible to and easily understood by anyone who wants to respond to them, and the results of the consultations must be properly taken into account. The opinions of business should not be allowed to override those of the wider public, or of bodies who represent interests without a voice such as the environment.

The Trade Justice Movement has made a number of practical suggestions for methods of consultation which we would agree with, and we refer you to their evidence for more detail on that.

**What role should Parliament and devolved administrations and legislatures have in drafting and/or approving the UK's negotiating mandate for trade negotiations?**

A UK parliamentary committee should be established to be fully involved in scrutinising any trade negotiations and providing guidance and direction. This committee should have full access to all negotiating documents. This could be similar to the UK's EU Scrutiny Committee or the role of EU parliamentary committees.

A joint Ministerial committee on trade should be set up, with representatives from all devolved administrations of the UK. That committee should be required to reach a consensus on any draft negotiating mandate before it proceeds to the UK and Scottish parliaments and the Welsh and NI assemblies, and should be revisited if the mandate changes during negotiations.

The consent of the Scottish parliament and the Welsh and NI assemblies should be secured for the negotiating mandate, specifically in relation to their powers and anything within their territories that may be affected by a trade deal.

**What procedures should be in place for the UK Parliament and devolved administrations/legislatures to scrutinise trade agreements as they are being negotiated?**

A negotiator from each of the devolved nations should be on the UK negotiating delegation for trade deals.

Members of the Scottish parliament and the Welsh and NI assemblies should be given the legal right to see negotiating texts. One or more committees in the devolved administrations should be chosen to scrutinise any trade negotiations from the perspective of the impact they may have on devolved powers and territories.

## **What powers should Parliament and the devolved administrations and legislatures have over the ratification and implementing legislation of UK trade agreements?**

The UK parliament should have an automatic debate and vote on a trade deal before it is implemented, using a super-affirmative procedure. The EU Parliament and US Congress are both ensured a vote on trade agreements.

The Scottish parliament and Welsh and NI assemblies should be given a formal and binding role in the ratification procedure, giving or withholding consent to a final trade deal, based on any impacts it may have on their powers and territories.

### **Examples from other countries of inclusion of devolved administrations in trade negotiations**

Looking at some other countries with varying federal systems, there are many examples of how regional, provincial and state parliaments and their representatives are involved in the negotiation and ratification of trade deals. Here in the UK, we may not choose to (or be immediately able to) emulate any of them completely but they serve as useful examples of how things could be done differently – and by comparison also highlight the extreme lack of involvement in trade deals that the devolved administrations here in the UK currently have.

A recent briefing<sup>ii</sup> produced by the Scottish Parliament Information Centre gave a useful summary of how trade agreements in some other federal countries are negotiated and passed. Two of the examples below are from that briefing and the other two are researched by us:

Looking at the example of Canada, and the EU-Canada trade deal (CETA), it's clear that the provinces played an active part. The mandate for the negotiations was drafted with input from the provincial governments, who also nominated their own chief negotiators and representatives who joined the Canadian national delegation. Those provincial negotiators were present during the bilateral talks with the EU, and they also participated in a pan-Canadian trade committee which worked between negotiations to agree and set the Canadian position for future talks. And all the negotiating documents were made readily accessible to provincial teams.

In Belgium, all regional governments are guaranteed the right to approve trade agreements under article 67 of the federal constitution. The Belgian government's role is to achieve consensus between the regional governments, meaning a much greater sharing of information and of views on all aspects of international trade deals than we see here in the UK between the UK Government and the devolved administrations.

Wallonia's refusal to allow Belgium to support the EU-Canada trade deal CETA received a lot of attention in 2016. The Belgian regional parliament's objections to the deal were based on eighteen months of hearings on CETA, including a local impact assessment, and which showed potential negative impacts particularly in the agriculture sector in Wallonia. As a result, the parliament of Wallonia was able to negotiate a number of concessions in CETA, as part of a compromise deal, which will benefit Wallonian farmers and the region's economy on ratification.

In the US, there has been concern from the state governments about the power of the federal government to pass trade deals whose rules over ride individual state 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) 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 a new US trade agreement. 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.<sup>iii</sup>

As the examples above demonstrate, including the Scottish parliament (and the other devolved administrations and legislatures of the UK) in the development, negotiation and scrutiny of international trade deals is not a radical ask. In fact, by including devolved administrations in the negotiation and ratification of trade deals the UK government will ensure a trade deal that is much more acceptable to politicians of all parties and across the UK.

### **The principles underpinning a just and ethical trading system**

The Trade Justice Scotland coalition is opposed to the new wave of trade deals, such as TTIP and CETA as we believe that they grant too much power to corporations and weaken democracy and the ability of governments to protect people and the planet. As a coalition, we have drafted a set of ten principles that we believe a just and ethical trade system (and the trade deals that are negotiated as part of that) should be based on. We believe that trade deals should honour obligations to human rights, workers' rights, and environmental and climate change commitments. We believe that international trade agreements should focus on trading in goods, and that public services, patents, local and national government procurement, domestic regulation, migration, investment and data privacy lie outside the scope of these agreements. We also believe that domestic courts rather than 'corporate courts', (which give foreign companies special legal rights outside of the national legal system) should deal with trade disputes. In short, our principles outline how we believe that trade deals could play a powerful and genuinely useful role in building a fairer society and protecting the planet. The full document is online at <http://scotlandagainstttip.org.uk/wp-content/uploads/Just-Trade-Principles-FINAL.pdf>. In a debate on Scotland's international policy framework and priorities for 2018, on January 16 this year, an amendment to the motion was tabled which welcomed and endorsed the Trade Justice Scotland coalition's trade principles and this amendment was voted for by a majority of MSPs.<sup>iv</sup>

**We believe that amending the Trade Bill to guarantee a democratic and inclusive process for agreeing international trade deals, that includes scrutiny by the Scottish parliament, is the first step in ensuring that the United Kingdom plays a truly positive and exemplary role in its post-Brexit trading arrangements with other countries around the world – and without that then the Trade Bill should not become law.**

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<sup>i</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-03-15/31198/>

<sup>ii</sup> <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2017/11/17/Negotiation-of-Trade-Agreements-in-Federal-Countries>

<sup>iii</sup> [https://www.citizen.org/sites/default/files/states\\_rights\\_and\\_trade.pdf](https://www.citizen.org/sites/default/files/states_rights_and_trade.pdf) p.33

<sup>iv</sup> <http://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5M-09887.1&ResultsPerPage=10>