

Gender impacts of trade and investment agreements

Women's Budget Group response to Department for International Trade consultations

October 2018

Background

The Department of International Trade is consulting on trade negotiations with Australia, New Zealand and the United States and also on potentially seeking accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

The Women's Budget Group recognise that trade agreements are powerful instruments that have the potential to help improve the economic situation of women and advance the realisation of gender equality and human rights. However, trade agreements can also undermine human rights, labour rights and equalities. UK Trade agreements need to be designed to ensure this does not happen.

In order to achieve this WBG recommends that the Department of International Trade should:

- Develop a transparent overarching policy framework that prioritises the protection and promotion of equality and human rights in the UK, our trading partners and third countries. UK trade negotiations should operate within this framework.
- Ensure that trade agreements include mechanisms to ensure that any new employment opportunities for women in the UK or our trading partners protect and promote rather than undermine equality and labour rights.
- Establish a demonstrably independent and expert body to conduct studies of the likely impact of trade deals on equality and human rights and monitor actual impact over time in order to address adverse impacts.
- Work across Government to develop programmes of targeted support for groups most badly affected by changing trade relationships.
- Include revision clauses in trade deals so that they can be amended when this is justified
- Include carve out provisions in trade agreements to enable governments to exclude public services from trade agreements.
- Adopt a 'positive list' approach so that only service sectors listed in the agreement are subject to trade commitments.
- Exclude standstill clauses and ratchet clauses from trade deals to ensure policy making flexibility.
- Undertake a serious review of the benefits and drawbacks of investor protection provisions. In their current form such provisions should be excluded from all future UK trade deals.

About the Women's Budget Group

The Women's Budget Group (WBG) is a network of leading academic researchers, policy analysts and activists set up in 1989 to analyse UK government economic policy for its impact on women and to promote policies that will increase gender equality.

Our vision is of a gender equal society.

Our mission is to promote greater gender equality in policy making and raise awareness of feminist approaches to economics.

We do this by producing well-respected, academically robust analysis of the gender impact of economic policy in order to influence policy discussions and promote gender-equal policy outcomes

Trade agreements are complex and can impact differently on women and men

Modern trade agreements not only cover tariffs (taxes on goods crossing borders) but also create obligations on states in a number of areas including regulation of consumer and environmental standards, labour standards, human rights, investor protection, intellectual property, procurement of public services and regulation of service industries. These commitments can have both positive and negative social impacts, that are likely to be gendered.

Trade policy can help improve the economic situation of women, and address barriers that prevent women realising their rights. However, it is well established that trade agreements can have significantly different impacts on different groups of women and men because of differences in economic position, caring responsibilities and power.¹ Poorly designed trade policies have been shown to prioritise the interests of multinational corporations and wealthy countries over equality and human rights, with sometimes severe impacts on the poorest and most marginalised women.²

It is crucial that UK trade negotiations operate within a transparent overarching policy framework so that there is confidence that sacrifices will not be made that disproportionately affect women's interests.

Economic impacts of trade agreements

Assessing the economic impact of trade agreements is complex. For example the IPPR has calculated that a 'hard Brexit' would hit women's jobs harder than men's jobs.³ Conversely the IFS calculate that less educated men are most likely to work in sectors exposed to the impacts of Brexit, and that overall more men (17%) than women (10%) work in highly exposed sectors.⁴ The differences between these two models appear to be the result of different assumptions about the impact of non-tariff barriers.

These differences show the importance of not only modelling the likely impact of trade deals but also monitoring actual impact over time. Studies should be conducted or commissioned by a demonstrably independent and expert body. Such studies must be accompanied by a range of policy mechanisms which are available to address adverse impacts identified. These include the use of revision clauses so trade agreements can be amended when this is justified and targeted support for groups most badly affected by changing trade relationships.

Over time there are likely to be winners as well as losers as a result of new trading arrangements. Those with the most resources (wealth, transferable labour market skills, mobility) are more likely to

¹ See for example Staveren, I.P. van; Elson, D.; Grown, C.; Cagatay, N. (ed.) (2007) *The Feminist Economics of Trade*, Routledge, London. On the prioritisation of commercial concerns in EU trade agreements over labour rights and sustainable development see Harrison, Barbu, Campling, Richardson, and Smith 'Governing Labour Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters' *Journal of Common Market Studies*, (2018b) DOI: <https://doi.org/10.1111/jcms.12715>.

² Action Aid (2018) From Rhetoric to Rights: towards gender-just trade (<https://bit.ly/2CLLYOs>)

³ IPPR (2018) An Equal Exit? The distributional consequences of leaving the EU (<https://bit.ly/2CJU7Tu>)

⁴ IFS (2018) The exposure of different workers to potential trade barriers between the UK and the EU, (<https://bit.ly/2OCov7W>)

be able to respond or adapt to and benefit from these new arrangements. Men as a group tend to have more of these resources than women. For example, women tend to have lower total wealth in the form of savings and investments than men.⁵ Therefore, gendered employment effects of new trading arrangements are likely, in which women gain less than men do.

For example, after the introduction of NAFTA (the North American Free Trade Agreement), some of the most disadvantaged workers – many of whom were women – were unable to find new opportunities for work.⁶ This means that the Government should be planning for the needs of different groups of workers who will be affected by Brexit taking into account that their access to the resources and skills required to participate in the labour markets on decent terms is heavily influenced by their gender and their position in society.⁷

UK trade deals will also impact on the economic situation of women in our trading partners. The benefits of trade will not be equally shared and negative impacts may disproportionately affect women. As in the UK, there can be no ‘one size fits all’ approach to trade policy-making because “increased trade openness affects women’s employment and earnings in different ways, depending on the income level of the country, skills, and the economic sector.”⁸ Even where employment opportunities increase for women as a result of trade liberalisation, these opportunities may leave women vulnerable to exploitation.⁹ Action Aid has argued that ‘trade and investment rules that compel countries to rapidly liberalise and deregulate their economies can have dire consequences for women and men living in the Global South [...and...] have served to exacerbate and exploit women’s historical position of social and economic disadvantage’.¹⁰

Trade agreements must be designed so as to include mechanisms for ensuring that any new employment opportunities created for women are respectful of their labour rights and serve to reduce and not exacerbate discrimination (e.g. on wages) between women and men.

Public Services

Public services and associated social infrastructure are relied upon more by women than by men since women are the primary users of public services, the majority of workers in the public sector and the main providers of unpaid work when public services are cut.¹¹

WBG is concerned about clauses in trade deals that could have a serious impact on UK public services. For example, the UK government is currently considering joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTP), a trade deal between eleven Asia/Pacific countries.¹² The deal has already been negotiated but other countries may be allowed to sign up.

⁵ Kan, M. and Laurie, H. (2010) *Savings, investments, debts and psychological well-being in married and cohabiting couples*, Institute for Social and Economic Research (<http://bit.ly/2EVNMWw>)

⁶ Balakrishnan, R. and Elson, D. (2011) *Economic Policy and Human Rights: Holding Governments to Account*. London: Zed Books

⁷ Fontana, M. (2016) *Gender Equality in Trade Agreements*. European Parliament (<http://bit.ly/2EUSu6S>)

⁸ Assah Kuete, S. and Tanankem Voufo, B., How does Trade Openness affect Women’s Job Opportunities and Earnings in Cameroon, 20016, UNCTAD, (<https://bit.ly/2yq5Bb5>)

⁹ For instance, where new employment opportunities are created for women in the clothing and textile sector, evidence from existing studies shows that labour provisions in trade agreements have not generally been designed so as to address causes of worker exploitations. See e.g. Smith, Barbu, Campling, Harrison, Richardson, (2018) Labor Regimes, Global Production Networks, and European Union Trade Policy: Labor Standards and Export Production in the Moldovan Clothing Industry, *Economic Geography*, 94:5, 550-574,

¹⁰ Action Aid (2018) From Rhetoric to Rights: towards gender-just trade (<https://bit.ly/2CLLYOs>)

¹¹ WBG, Runnymede Trust (2017) *Intersecting Inequalities*, (<https://bit.ly/2PFrb1N>)

¹² Department of International Trade (2018) Consultation on the UK potentially seeking accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (<https://bit.ly/2zXpas8>)

Under CPTP countries agree to open up all services to international competition, except those specifically included on a list of exemptions negotiated before the agreement is signed. Any service not on that list is automatically open to competition and countries cannot reverse their decision to open up services without severe penalties. This would prevent a government taking a privatised service back into the public sector. It would also limit the ability of governments to regulate services in the future that were not included on the original list because they had not yet been developed.

Public services can be excluded from competition, but only if they are not provided on a commercial basis or in competition with other suppliers. This exclusion would not apply to the NHS for example which operates an internal market and competes with private healthcare.¹³

Making commitments in trade agreements could enable a foreign service supplier to challenge regulations designed to protect the quality of public services, on the basis that they may constitute a trade barrier.

For women in the Global South the requirement to open up services to privatisation doesn't just risk undermining public services, it also risks preventing them from being established in the first place. Where essential services are liberalised, governments' power to utilise policy-mechanisms for ensuring essential services to the whole population – for instance through cross-subsidisation or through imposing direct obligations on service providers to widen access may be reduced.

The UK should therefore include strong carve-out provisions to ensure that government can exclude all public services from trade commitments. It should also adopt a 'positive list' approach whereby only those service sectors which are listed in the agreement are subject to trade commitments.¹⁴ At the same time, it should commit to excluding standstill clauses¹⁵ and ratchet clauses¹⁶ from trade deals to ensure future policy-making flexibility.

Investment

There are now more than 3,000 international treaties on investment which are known as bilateral investment treaties (BITs). The types of provisions contained in BITs, explained below, are now finding their way into many trade deals across the world. This is something which should not happen in future UK trade policy.

BITs have been criticised for giving foreign investors extensive protections for their investment that do not apply to any other group, without any corresponding obligations (for example to meet domestic or international labour rights, human rights or environmental standards).¹⁷ BITs generally allow companies to sue governments through Investor State Dispute Settlement (a form of international arbitration) and this can lead to awards of billions of dollars of damages. Corporations have claimed compensation for a wide range of government actions including environmental and

¹³ For more information see Trade Justice Movement, Global Justice Now and War on Want (2018) *The Trans Pacific Powergrab* (<https://bit.ly/2CJBA9j>)

¹⁴ On the difference between negative and positive lists see European Commission, (2016) *Services and investment in EU trade deals Using 'positive' and 'negative' lists* (<https://bit.ly/1SviqHO>)

¹⁵ A "standstill clause" commits the parties to keeping the market at least as open as it was as at the time of the agreement.

¹⁶ A "ratchet clause" is a commitment that, where on party unilaterally decides in the future to further open up a particular sector, it would then be "locked in" and that opening cannot be subsequently reversed.

¹⁷ See for example: Trade Justice Movement (2015) *Worried About UK BITs? The case for reviewing UK investment protection provisions*, (<https://bit.ly/2EmgNLb>) and Aisbett et al, (2018) *Rethinking International Investment Governance: Principles for the 21st Century*, Columbia Center on Sustainable Investment (<https://bit.ly/2AbLE9j>)

health protections (e.g. plain packaging of cigarettes¹⁸), regulation of finance or increasing the national minimum wage.¹⁹ Vattenfal, a Swedish company, is currently suing the German Government for its decision to end nuclear power generation. Over 95% of all compensation awarded in ISDS cases has gone to companies with over US\$1 billion in annual revenue and super-rich individuals with over US\$100 million in wealth.²⁰

A recent study by the Columbia Center on Sustainable Investment found that, decades after the first BITs were signed, there is no conclusive evidence that they increase flows of foreign direct investment. At the same time, they undermine the ability of states to pursue legitimate public policy aims. The study argues that the entire international investment regime needs to be re-designed.²¹ Even traditional proponents of the system, like the EU and the US, are currently advocating for reforms.

The UK is already planning to ‘roll over’ at least one EU trade agreement with strong investor protection provisions into UK law (the EU-Canada Comprehensive Economic and Trade Agreement). Once investor protection is included in one trade agreement, future trade agreements are likely to include similar commitments, thereby making trade policy with different countries coherent and consistent.

Instead, the UK government should use its independent trade policy-making powers to undertake a serious review of the benefits and drawbacks of investor protection provisions. In their current form such provisions should be excluded from all future UK trade deals.

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WBG is an independent, voluntary organisation made up of individuals from Academia, NGOs and trade unions. See www.wbg.org.uk

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¹⁸ On the cases brought through ISDS on plain packaging as part of a wider strategy by tobacco companies see Benjamin Hawkins, Chris Holden & Sophie Mackinder (2018) A multi-level, multi-jurisdictional strategy: Transnational tobacco companies’ attempts to obstruct tobacco packaging restrictions, *Global Public Health*,

¹⁹ The case involving the minimum wage was *Veolia Propreté v. Arab Republic of Egypt* (ICSID Case No. ARB/12/15)

²⁰ Gus Van Harten & Pavel Malysheuski, “Who has benefited financially from investment treaty arbitration? An evaluation of the size and wealth of claimants”, *Osgoode Legal Studies Research Paper*, No. 14/2016, p1,

²¹ Aisbett et al, (2018) *Rethinking International Investment Governance: Principles for the 21st Century*, Columbia Center on Sustainable Investment (<https://bit.ly/2AbLE9j>)