

Trade and investment and gender

Briefing for a new government



Trade and investment and gender

Briefing from the UK Women's Budget Group – 2024

Summary

- Trade agreements impact differently on women and men. Poorly designed trade policies can prioritise the interests of multinational corporations and wealthy countries over equality and human rights.
- Post Brexit the UK has diminished negotiating power that leaves it in a weaker position to resist trade deals that reduce environmental or consumer standards.
- New UK Trade deals could include clauses that have a serious impact on public services, for example preventing a government taking a privatised service back into the public sector or limiting the ability of governments to regulate services. This will have a disproportionate impact on women who are more likely to depend on public services and more likely to work in the public sector.
- Treaties on investment have allowed corporations to sue Governments for a wide range of actions including environmental and health protections, regulation of finance or increasing the national minimum wage.

Recommendations

- UK trade negotiations should operate within 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.
- Trade agreements should 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.
- Governments should set up 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.
- There should be targeted support for groups most badly affected by changing trade relationships.
- Trade deals should include revision clauses so that they can be amended when this is justified.

- The UK should include carve out provisions in trade agreements to enable governments to exclude public services from trade agreements.
- The UK should adopt a 'positive list' approach so that only service sectors listed in the agreement are subject to trade commitments.
- The UK should exclude standstill clauses and ratchet clauses from trade deals to ensure policy making flexibility.
- 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.

In a modern economy where “90 per cent of everything”¹ that we use and consume has been internationally traded, the effects of domestic trade policies and international trade agreements are felt by everyone in society but can negatively affect groups with a weaker economic position, including women and Black, Asian and Minority Ethnic groups.

The UK decision to leave the European Union has not only affected our trading arrangements with the EU; it also means that we are responsible for setting our own trade policy with the rest of the world. This short briefing sets out some of the key gender issues which arise in relation to UK trade policy for women in the UK and in our trading partners.

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

power². 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 women³.

UK trade policy post Brexit

The EU is responsible for negotiating trade agreements on behalf of its member states. As a large block, the EU has considerable negotiating power with other countries. Now we have left the EU the UK is in a weaker negotiating position as a single country than it was as part of the EU.

In signing a trade deal with the UK, trade partners will be gaining access to a market of only 65 million consumers, as opposed to more than 500 million when signing trade deal with the EU. This diminishes the UK’s bargaining power. In trade negotiations with rich and powerful countries (e.g. the US), the UK will be in a weaker position to resist pressure to agree to trade deals which contain clauses that, for instance, reduce environmental or consumer standards or increase foreign companies’ access to tender to deliver public services. Even in trade negotiations with poorer and less powerful trade partners the UK’s more limited bargaining power means it is less likely to realise all of its ambitions.

In this new environment, in which compromise is inevitable, 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

¹ George, Rose (2013) 90 Percent of Everything: Inside Shipping, the Invisible Industry That Puts Clothes on Your Back, Gas in Your Car, and Food on Your Plate, New York: Henry Holt

² 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>.

³ Action Aid (2018) *From Rhetoric to Rights: towards gender-just trade* (<https://bit.ly/2CLLYOs>)

Trade policy affects people in their multiple roles as consumers, producers, workers, users of public services, and providers of unpaid care work. The impacts of trade policy are gendered as a result of the different position of women and men in these areas of activity

This means that it is important to not only model the likely impact of trade deals but also monitor 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 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 men⁴. 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 work⁵. This means that the Government should be planning for the needs of different groups of workers who will be affected by trade agreements, 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 society⁶.

At present, the UK has an impact assessment process which is weaker than when we left the EU and concentrates primarily on assessing overall economic impact rather than any distributional effects.

UK trade deals also impact on the economic situation of women in our trading partners. The benefits of trade are not equally shared and negative impacts may disproportionately affect women. As in the UK, there can be no 'one size fits all' approach to trade policymaking 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"⁷.

Even where employment opportunities increase for women as a result of trade liberalisation, these opportunities may leave women vulnerable to exploitation.⁸ 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'⁹.

⁴ 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>)

⁵ Balakrishnan, R. and Elson, D. (2011) *Economic Policy and Human Rights: Holding Governments to Account*. London: Zed Books

⁶ Fontana, M. (2016) *Gender Equality in Trade Agreements*. European Parliament (<http://bit.ly/2EUSu6S>)

⁷ 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>)

⁸ 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, ⁹ Action Aid (2018) *From Rhetoric to Rights: towards gender-just trade* (<https://bit.ly/2CLLYOs>)

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 men¹⁰. Reductions in public spending have a disproportionate negative impact on women as 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.

New UK trade deals could include clauses that have a serious impact on UK public services. Under some trade agreements 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.¹¹

When she was Prime Minister, Theresa May refused to rule out giving US companies the right to tender to deliver NHS services as part of a future trade deal with the US¹².

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 commitments¹³. At the same time, it should commit to excluding standstill clauses¹⁴ and ratchet clauses¹⁵ from trade deals to ensure future policy-making flexibility.

Investment

There are now more than 3,000 international

¹⁰ WBG, Runnymede Trust (2017) *Intersecting Inequalities*, (<https://bit.ly/2PFrb1N>)

¹¹ For more information see Trade Justice Movement, *Global Justice Now and War on Want* (2018) *The Trans Pacific Powergrab* (<https://bit.ly/2CJBA9J>)

¹² Guardian (Wednesday 7 February 2018) Theresa May refuses to exclude NHS contracts from US trade deals, (<https://bit.ly/2nKErpO>)

¹³ 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/1SviqH0>)

¹⁴ A "standstill clause" commits the parties to keeping the market at least as open as it was at the time of the agreement.

¹⁵ A "ratchet clause" is a commitment that, where one 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.

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)¹⁶. 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 health protections (e.g. plain packaging of cigarettes¹⁷), regulation of finance or increasing the national minimum wage¹⁸. Vattenfall, a Swedish company, successfully sued 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 wealth¹⁹.

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-designed²⁰. Even traditional proponents of the system, like the EU and the US, have advocated for reforms.

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. At the moment the UK is sending mixed messages in relation to its attitude to investment protection. It has announced that it will withdraw from the Energy Charter Treaty²¹, but it has signed up to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which contains investment protection provisions.

Recommendations

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- Governments should set up a demonstrably independent and expert body to conduct studies of the likely impact of trade deals on

¹⁶ 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>)

¹⁷ 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,

¹⁸ The case involving the minimum wage was Veolia Propreté v. Arab Republic of

Egypt (ICSID Case No. ARB/12/15)

¹⁹ 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,

²⁰ Aisbett et al, (2018) Rethinking International Investment Governance: Principles for the 21st Century, Columbia Center on Sustainable Investment (<https://bit.ly/2AbLE9j>)

²¹

Department for Energy Security and Net Zero press release, 22 February 2024, 'UK departs Energy Charter Treaty' <https://www.gov.uk/government/news/uk-departs-energy-charter-treaty>

equality and human rights and monitor actual impact over time in order to address adverse impacts.

- There should be targeted support for groups most badly affected by changing trade relationships.
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UK Women's Budget Group, May 2024

Contact: press@wbg.org.uk

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For further information contact press@wbg.org.uk

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