

## Fairtrade Foundation Briefing – Trade & Customs Bills, House of Lords

This briefing has been written to support Peers in preparation for debates on both the **Taxation (Cross-Border Trade) Bill** – also known as the Customs Bill, and the **Trade Bill**. At time of writing, the date for second reading of the Customs Bill has been set as **Tuesday 4<sup>th</sup> September 2018** and second reading of the Trade Bill will be on **Tuesday 11<sup>th</sup> September 2018**. This briefing considers both of these Bills, as taken together they aim to prepare the UK to become an independent trading nation in the event of leaving a Customs Union with the EU. Whilst the Customs Bill is designated a ‘Supply Bill’, we have felt it important to raise one outstanding issue of policy, which we hope will still be raised in debate – whilst amendment of this Bill in the Lords will not be possible, we are still hopeful that the government will take note.

The Fairtrade Foundation has not taken a firm view on the Customs Union debate. Our aim, whether the UK applies the common external tariff or not, is **to ensure that policy decisions and trade deals improve prospects for developing countries and producers**. Any increase in friction at borders with the EU 27, or changes to tariffs or rules of origin, may be a significant impediment to some of our Fairtrade licensees, and so we await a response from the European Union on whether or not they consider proposals such as a ‘common rulebook’ for goods and agriculture, and a ‘facilitated customs arrangement’ (FCA) viable options. We are quite clear that the UK and EU 27 should avoid a ‘no deal scenario’, given the disruption and costs that would arise, and the potential for that to be passed up the supply chain to producers. It is our understanding that without a Withdrawal Agreement there will be no transition period, and this could also put existing deals with some developing countries at risk. The Fairtrade Foundation will shortly be publishing a briefing paper that considers outstanding Brexit issues through the lens of key commodities such as coffee, bananas, cocoa, flowers and sugar.

### **Summary of Key Issues for debate in the House of Lords**

We are asking Peers to raise the following issues:

- The **Customs Bill** as drafted, makes no reference to sustainable development, and would allow tariff changes to take place without regard to their impact on developing countries. We hope that the government may still amend the Bill to **include “sustainable development”** in the criteria to which the Secretary of State must have regard to in Part 1: 8 (5), and Part 2: 39 (4).
- The **Trade Bill** as drafted, fails to reform the democratic process for the negotiation, scrutiny and approval of future trade deals. It would mean that the UK government could commence trade negotiations, and even sign and ratify trade deals during a transition period (from April 2019), without any parliamentary votes or clarity on its scrutiny role. Parliamentarians would have less say over future UK trade deals than MEPs currently have over EU-wide deals. We hope to see the Bill amended to incorporate the elements needed for a **transparent and inclusive future trade policy**. These were set out in amendment NC3 that was voted on in the Commons at Report Stage.

## 1. The Taxation (Cross-Border Trade) Bill, or Customs Bill<sup>1</sup>

The **Customs Bill** intends to grant powers to the UK government to set tariffs and apply other financial measures post-Brexit. Among other things, the Bill also proposes the establishment of a UK preference scheme, rolling over the EU preference scheme<sup>2</sup>, and within that, enshrining the principle of duty-free, quota-free access for the Least Developed Countries (LDCs) in law. The government plans to set out details of a new preference scheme in future regulations, and we urge parliamentarians to engage with these plans once the regulations are published, in order to maximise positive outcomes for developing countries. Our hope is that there will be scope to amend the list of qualifying countries (currently set out in Schedule 3), with expanded eligibility criteria beyond a simple 'GDP per capita' approach. A unilateral offer may also need to be made to those countries that have existing EU deals (EPAs and FTAs) in a no-deal scenario.

Our outstanding concern at this stage is that **the Bill would enable both import and export duties to be set without any regard to development impact**. This is highly problematic given the high dependence of some economies on the UK market, and given the history that exists in relation to products such as sugar and bananas. For example, a unilateral reduction in tariffs applying to bananas imports could significantly harm the banana-exporting countries of the Caribbean, many of whom are struggling to compete with neighbouring exporters.

The Bill does already refer to a set of criteria to which the Treasury must have regard when considering the rate of import duty and export duty to impose, (Part 1: 8 (5), Part 2: 39 (4)), which currently includes:

- (a) the interests of consumers in the United Kingdom;
- (b) the desirability of maintaining and promoting the external trade of the United Kingdom;
- (c) the desirability of maintaining and promoting productivity in the United Kingdom;
- and
- (d) the extent to which the goods concerned are subject to competition.

A point could still be added by the government to ensure the criteria includes the impacts on sustainable development.

This would be consistent with the Trade White Paper and its chapter on 'Supporting developing countries to reduce poverty'<sup>3</sup>, as well as with the UK's commitment to achievement of the UN Sustainable Development Goals (SDGs), otherwise known as the Global Goals.

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<sup>1</sup> <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0128/18128.pdf>

<sup>2</sup> The EU currently operates a three tier preference scheme comprising the 'Everything But Arms' (EBA) arrangement, offering DFQF access to the LDCs, the Generalised System of Preferences (GSP) and the GSP+ which offers preferential access to those developing countries that have ratified 27 international conventions on human and labour rights, good governance, and environmental protection. Other developing countries can also access the UK market via reduced tariffs as a result of existing EU bilateral agreements.

<sup>3</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/654714/Preparing\\_for\\_our\\_future\\_UK\\_trade\\_policy\\_Report\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/654714/Preparing_for_our_future_UK_trade_policy_Report_Web_Accessible.pdf)

## 2. The Trade Bill<sup>4</sup>

The **Trade Bill** intends to grant powers to the government to ‘roll-over’ trade deals signed between the EU and another country or group of countries. These include deals with developing countries in Fairtrade supply chains, such as those with Economic Partnership Agreements (EPAs) such as Kenya and the Dominican Republic and those with Free Trade Agreements (FTAs) such as Colombia and Panama. Whilst there was some helpful amendment of the Bill in the Commons to ensure scrutiny of any legislative changes arising from ‘rolled-over’ agreements, the Bill still does not set out a reformed parliamentary process for agreeing future trade deals despite the government’s stated intention to negotiate, sign and ratify new trade deals in a transition period (i.e. from April 2019).

On 16<sup>th</sup> July, the Secretary of State Liam Fox made a statement to parliament<sup>5</sup> in which he made a number of welcome commitments on new trade deals – including to 14-week public consultations and the publication of an impact assessment. None of this however is set out in legislation, and no detail was given in the statement on the timing and process for commissioning impact assessments, nor on their scope (e.g. will they include sectoral analysis). This is of particular concern to the Fairtrade Foundation given the impact that big trade deals can have on development outcomes through market access arrangements, but also deals on standards and investor protection mechanisms such as ISDS. This is not only relevant for any UK negotiations with a country like India, which whilst not a Least Developed Country (LDC), is still home to a third of the world’s extreme poor (those living on less than \$1.90 a day). It is also relevant to deals between the UK and countries like the US and Australia, which have the potential to erode the value of preferential agreements that exist with developing countries.

Moreover, Liam Fox confirmed that the existing procedure for the ratification of treaties, the Constitutional Reform and Governance Act (CRA) 2010 would apply without amendment, to new trade deals. As outlined by Dr Fox, parliament would have a limited role unless implementing legislation is required – perhaps through a general debate, and then via regular updates including to the International Trade Committee, but UK parliamentarians would not have a vote to approve the terms of a new deal, unlike existing MEPs who do have this power in the European Parliament. The Secretary of State was also unable to confirm in his statement, the level of transparency and access to negotiations documents that would apply. MEPs now have access to trade negotiation documents, albeit in a heavily criticised ‘secret reading room’. We do not know whether UK parliamentarians will even have this as a minimum.

Organisations ranging from the International Chambers of Commerce<sup>6</sup>, to the Hansard Society<sup>7</sup> and the Trade Justice Movement<sup>8</sup>, have argued that the CRA, a ‘negative’ process which does

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<sup>4</sup> <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0122/18122.pdf>

<sup>5</sup> <https://www.gov.uk/government/speeches/creating-a-transparent-and-inclusive-future-trade-policy>

<sup>6</sup> [https://cdn.shopify.com/s/files/1/2992/1976/files/Trade\\_Governance\\_Model\\_-\\_web\\_version.pdf?9421482943105580904](https://cdn.shopify.com/s/files/1/2992/1976/files/Trade_Governance_Model_-_web_version.pdf?9421482943105580904)

<sup>7</sup> <https://www.hansardsociety.org.uk/blog/trade-bill-highlights-parliaments-weak-international-treaty-role>

<sup>8</sup> [https://www.tjm.org.uk/documents/reports/TJM\\_SecuringDemocracyInUKTradePolicy\\_2017\\_web.pdf](https://www.tjm.org.uk/documents/reports/TJM_SecuringDemocracyInUKTradePolicy_2017_web.pdf)

not automatically trigger any parliamentary debate, scrutiny or votes, is insufficient. In cross-party polling last year (weighted to reflect current political composition) carried out for Fairtrade Foundation & the Trade Justice Movement by Dod's Research, 86% of MPs also agreed that there must be parliamentary scrutiny and approval of new trade and investment agreements.

**All of these issues were addressed in Commons amendment NC3<sup>9</sup> and we would urge members of the House of Lords to amend the Bill along similar lines.**

The Fairtrade Foundation is also supportive of proposals to strengthen the Bill by ensuring that future trade deals are consistent with existing international commitments, such as the SDGs, international climate commitments and ILO conventions.

In relation to the roll-over of existing agreements, this is something broadly welcomed by the Fairtrade Foundation. Given the significance of trade with the UK for a number of developing countries, such as Belize and Kenya, it is important for their market access to be protected and guaranteed. However, we have suggested that the UK government could consider alternatives to the problematic 'Economic Partnership Agreements' (EPAs) – such as an expansion of its proposed unilateral preference scheme, perhaps for a time limited period.

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**Text of previous amendment NC3:**

- (1) The Secretary of State shall not commence negotiations relating to a free trade agreement unless—
  - (a) a Minister of the Crown has laid before Parliament a sustainability impact assessment conducted by a credible body independent of government following consultation with—
    - (i) each devolved authority,
    - (ii) public bodies, businesses, trade unions and non-governmental organisations which, in the opinion of the Minister, have a relevant interest, and
    - (iii) the public, and the assessment shall include both qualitative and quantitative assessments of the potential impacts of the proposed trade agreement, including social, economic, environmental, gender, human rights, labour, development and regional impacts,
  - (b) a Minister of the Crown has laid before Parliament a draft of a negotiating mandate relating to the proposed trade agreement, setting out—
    - (i) all fields and sectors to be included in the proposed negotiations,
    - (ii) the principles to underpin the proposed negotiations,
    - (iii) any limits on the proposed negotiations, and
    - (iv) the desired outcomes from the proposed negotiations, and
  - (c) the House of Commons has approved by resolution a motion, drafted in terms which permit amendment, setting out a proposed negotiating mandate and authorising the Secretary of State to enter negotiations on the proposed trade agreement on the basis of that mandate, and the House of Lords has approved a resolution in the same terms as that approved by the House of Commons.
- (2) The United Kingdom may not become a signatory to a free trade agreement unless—

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<sup>9</sup> [https://publications.parliament.uk/pa/bills/cbill/2017-2019/0122/amend/trade\\_rm\\_rep\\_0705.pdf](https://publications.parliament.uk/pa/bills/cbill/2017-2019/0122/amend/trade_rm_rep_0705.pdf)

- (a) during the course of the negotiations, the text of the trade agreement as so far agreed or consolidated has been made publicly available within ten working days of the close of each negotiating round,
- (b) between each round of negotiations, all documents relating to the negotiations have been made available for scrutiny by select committees in both Houses of Parliament,
- (c) upon conclusion of the negotiations, the House of Commons has approved by resolution a motion, drafted in terms which permit amendment, setting out the text of the trade agreement as negotiated and authorising the Secretary of State to sign the proposed agreement, and the House of Lords has approved a resolution in the same terms as that approved by the House of Commons, and
- (d) the text of the trade agreement includes provision for a review of the operation and impacts of the agreement no later than ten years after the day on which the agreement comes into force.