



Key human rights tests for UK Free Trade Agreements

Introduction

International trade and investment has the potential to bring shared prosperity and sustainable development. Trade can create new jobs and decent work, economic opportunity and tax revenues to bolster health and education programmes. Yet too often the rules governing trade and investment serve to stymie this potential and entrench inequalities. Trade deals make it easier and cheaper to buy and sell across borders; that's their core purpose. Yet without adequate rules and the right business incentives to protect workers and communities, trade deals can contribute to a 'race to the bottom' leading to stagnant or declining wages, worsening labour conditions, and a loss of protections for human and environmental rights.

To ensure more trade doesn't come at a high social or environmental price, trade deals increasingly include 'non-trade' chapters containing commitments to uphold human rights, labour rights and environmental protections as a form of safeguard against the potential harms created by trade liberalisation. The [UN Working Group on Business and Human Rights](#) recommends that states "*bring together trade and investment actors to set principles for creating trade and investment frameworks that respect human rights and the environment.*"

Having left the European Union, the UK is operating a fully independent trade policy for the first time in decades and aims to negotiate a number of Free Trade Agreements (FTAs) in 2022.¹

UK ministers have repeatedly recognised the role of human rights in trade policy. [The Trade Secretary has said:](#) "*The Government are clear that more trade will not come at the expense of human rights. The UK will continue to show global leadership in encouraging all states to uphold international rights obligations and to hold to account those who violate those rights.*" The UK's export strategy [announced](#) "*we will continue to ensure our trade supports environments which respect workers' rights, and will work with our trading partners to uphold labour standards.*" To this point, these rights-affirming statements have not been supported by a clear strategy.

As the UK negotiates new FTAs in 2022, agreeing trade and investment frameworks which embed respect for human rights and the environment should be an urgent priority. Below we set out four key tests that help to distinguish responsible trade deals which enhance human rights from those which could lead to harm for workers and communities.

¹ This includes negotiations with India, the Gulf Cooperation Council, Israel, Canada and Mexico, as well as accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

Tests for new UK trade deals

If they are to deliver for human rights, UK FTAs should meet the following tests.

1. Agreements should contain enforceable human rights conditions

UK FTAs should be contingent on the mutual implementation of core United Nations (UN) and International Labour Organization (ILO) human rights conventions. This would ensure trade deals support commitments to human rights around the world. Moreover, including such conditions in FTAs would help establish a level playing field for UK domestic producers by ensuring they are not undercut by competitors operating in jurisdictions with weaker human rights and labour rights protections, while avoiding unfair protectionism that would harm workers in other countries.

Many trade deals, including some UK FTAs, already include provisions relating to human rights, labour, gender, development and the environment.² However, these are weak. Violations of these provisions do not lead to enforceable trade consequences, as would be the case for the other parts of a trade deal, but to a slow and ineffective process of dialogue and non-binding recommendations.

The [Generalised Scheme of Preferences \(GSP\)](#), the scheme offering developing countries preferential access to the UK market, contains a precedent for incorporating binding commitments on human rights into trade arrangements. The UK Government should set out the human rights criteria expected to be met by both the UK and its FTA partners, using the 15 UN and ILO conventions in the GSP as a baseline.³ Agreements should only be signed on the basis that both parties are committed to these shared values. This condition should be subject to ongoing monitoring, in partnership with civil society, with enforceable consequences in the event of a violation.

2. Agreements should be subject to an independent human rights and environmental risk assessment

Modern, comprehensive trade agreements of the type the UK is aiming to negotiate have potentially far-reaching economic, social and environmental impacts. Before any new FTA is signed, an independent human rights and environmental impact assessment (HREIA) should be carried out to identify the key risks the agreement poses to human rights and how these risks might be mitigated. Stakeholders, including civil society groups, should have the opportunity to provide input and the HREIA should be regularly updated once the FTA is in operation. The interaction of human rights and environmental impact means that an integrated approach to these two issues is now unavoidable.

HREIAs of trade agreements are increasingly common. The [study by the UN Economic Commission for Africa of the African Continental Free Trade Area](#), as well as [the approach taken by the EU since 2015](#), are a precedent on which the UK should build.

² The UK Parliament's [Joint Committee on Human Rights has found](#) "a strong case for requiring minimum standard processes, practices and clauses to protect and promote human rights in all international agreements."

³ See [The Trade Preference Scheme \(EU Exit\) Regulations 2020, Schedule 2, Part 1](#).

3. Agreements should contain enforceable human rights obligations on businesses and investors

FTAs aiming to promote human rights should create opportunities and incentives, such as human rights criteria for public procurement, export credit and tariff reductions, to promote responsible business. To ensure a level playing field, they should also create mechanisms to hold corporations accountable, and impose penalties for failure to uphold human rights and environmental protections. The UK should explore options to include enforceable corporate accountability mechanisms within FTAs. The UK can draw inspiration from progressive precedents, some of which are beginning to yield positive results for workers.

Trade deals which support higher standards of corporate behaviour

- ➔ The US-Mexico-Canada Agreement contains a '[Rapid Response Mechanism](#)' through which violations of labour rights in a particular factory can be investigated and sanctioned via the removal of preferential tariffs. This is [beginning to produce positive results for workers](#).
- ➔ The [Morocco-Nigeria Bilateral Investment Treaty](#) requires investors to conduct a human rights risk assessment as a condition of qualifying for the benefits of the investment treaty, and holds investors liable under civil law for "*acts or decisions made in relation to the investment where such acts or decisions lead to significant damage, personal injuries or loss of life in the host state.*"
- ➔ Measures designed to improve conditions in specific supply chains include the Indonesia-EFTA FTA, which contains a provision on trade in palm oil that, in a first for a bilateral FTA, explicitly links 'sustainable' production with lower tariffs. Furthermore, the EU-Mercosur deal lowers tariffs on eggs imported to the EU only if they meet certain animal welfare standards. Similar mechanisms could be used to withdraw tariff preferences for importers that are unable to demonstrate they have put adequate human rights safeguards in place.

4. No Investor-State Dispute Settlement

The UK should not sign any new trade and investment agreements containing an Investor-State Dispute Settlement (ISDS) mechanism.

ISDS allows corporations to sue states through an opaque parallel legal system if government policies threaten corporate profits – even if those policies are designed for the common good and to protect human rights and the environment. Corporations have already used ISDS to sue governments more than a thousand times, including over laws aimed at raising minimum wages, guaranteeing affordable water to citizens and phasing out the use of fossil fuels.

Although ISDS features in the majority of international trade and investment agreements, it is increasingly being excluded from new treaties, [appearing in only one third of treaties agreed in the last five years](#). None of the UK's recently concluded deals, with New Zealand, Australia and Japan, feature ISDS. States such as Pakistan, South Africa and Tanzania have gone further by terminating or renegotiating existing agreements containing ISDS. An immediate danger is found in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which the UK is in negotiations to join and which includes ISDS.

Conclusion

The tests outlined above relate to the new trade and investment agreements the UK is negotiating or planning to negotiate.

However, FTAs comprise only one part of the UK's international trade arrangements. In its engagement with the World Trade Organization (WTO) on issues from e-commerce to intellectual property rules around COVID-19 treatments, the UK should similarly seek to ensure rights are centre stage. Equally, the UK's 'Developing Countries Trading Scheme' should support commitments to core UN and ILO conventions.

The UK has a valuable opportunity, as an independent trading nation with its own seat at the WTO, to play a significant role in shaping a world trading system that promotes and protects human rights. This will require a clear strategy demonstrating how new trade deals will meet the four tests:

- ➔ Agreements should contain enforceable human rights conditions.
- ➔ Agreements should be subject to an independent human rights and environmental impact assessment.
- ➔ Agreements should contain enforceable human rights obligations on businesses and investors.
- ➔ No Investor-State Dispute Settlement.

