

No more **secret** trade deals: the urgent need for transparency and democracy in UK trade deals



With Brexit negotiations underway, the UK government must pass legislation on trade in line with the new powers it is expected to gain to negotiate and conclude UK trade deals. If, as expected, the UK exits the EU's 'customs union', it will have the power to negotiate trade deals for the first time in more than 40 years.

Legislation for these new powers will be captured under the **trade bill** announced in the 2017 Queen's Speech.¹ While a white paper is yet to be published, the Department for International

Trade has confirmed the trade bill is a priority for government which will come before parliament in the 2017 session beginning on September 14.

The UK is already engaging in informal trade talks with countries including Donald Trump's USA.² As such, it is of critical importance that legislation guaranteeing that parliament and the public can engage in a transparent and democratic process for mandating, negotiating and ratifying trade and investment agreements is proposed by the government.

Our experience of controversial trade deals **TTIP** (EU-US deal, the Transatlantic Trade and Investment Partnership) and **CETA** (EU-Canada deal, the Comprehensive Economic and Trade Agreement) highlight how trade deals should not be done. As well as locking-in an agenda of deregulation, privatisation and investor rights on Europe and the USA, TTIP was created to set a template for world trade after the failures of rich countries to secure their agendas at the World Trade Organisation.³ Both deals were preceded by ‘reverse lobbying’ (where business input was intensively solicited by the European Commission before negotiations⁴) with their ‘negotiating mandates’ determined without the input of parliaments or the public. They were negotiated in secrecy with parliamentarians denied access to key documents, with freedom of information requests on critical public interest issues like the NHS refused,⁵ and for CETA, concluded without the publication of impact assessments – and with parliamentary scrutiny intentionally avoided by the UK government.

Such a lack of transparency, scrutiny and accountability in trade deals results in intense public distrust and makes a mockery of democracy – and the notion of ‘taking back control’. Trade deals affect every area of our lives and are critical to the economic and environmental fortunes of the UK and the world’s poorest countries. We urgently need a democratic agenda for securing UK trade deals.

Our five demands to ensure transparency and democracy in UK trade deals

- 1. The right of parliament to set a thorough mandate to govern each trade negotiation, with a remit for the devolved administrations.**
- 2. The right of the public to be consulted as part of setting that mandate.**
- 3. Full transparency in negotiations.**
- 4. The right of parliament to amend and to reject trade deals, with full debates and scrutiny guaranteed and a remit for the devolved administrations.**
- 5. The right of parliament to review trade deals and withdraw from them in a timely manner.**

Corporate trade deals: A history of secrecy

Three examples of UK complicity in TTIP and CETA secrecy

- 1. Refusing to release details on legal advice received on the status of the NHS in TTIP.**
- 2. Bypassing parliament to sign the UK up to CETA while failing to publish a CETA study carried out in 2010.**
- 3. Failing to allow MPs to read TTIP texts until six months after Brexit – seven months after key TTIP texts leaked and more than three years after negotiations began.**

Trade deals have always been masked by a veil of secrecy. Negotiators and governments repeatedly say that secrecy is a necessary strategy used in order to achieve the best possible deal.

However, the balance between safeguarding trade interests and upholding transparency, accountability and scrutiny as fundamentals of our democratic system has been skewed excessively in favour of the former. An example of this is the 30-year ban placed on public access to key TTIP documents at the beginning of negotiations in 2013.⁶

This disgraceful attempt to block transparency – subsequently shattered by public and political outcry over the deal – must be seen alongside the privileged access corporations were granted to shape TTIP: an EU access to documents request found that ahead of TTIP the European Commission held 119 secret meetings with big business, 93% of all the Commission’s meetings with stakeholders ahead of the deal’s announcement. The fundamental truth of TTIP is that, from the outset, it has been a deal **by and for big business**.

What makes this approach of absolute secrecy untenable is that modern, ‘new generation’ trade deals include elements of huge public interest that must be subjected to public and parliamentary debate. Additionally, such deals are classed as ‘living agreements’. This means that deals continue to enforce new changes on countries after their ratification – such as the removal of regulations

Much to fear from Brexit trade deals



In addition to gaining access to EU trade deals – and potentially deepening them with elements important to UK big business – the Department for International Trade has a list of **‘working groups’** of countries it wants to negotiate its own deals with: **Australia; China; Gulf Cooperation Council** (Saudi Arabia; UAE; Bahrain; Kuwait; Oman); **India; Israel; New Zealand; Norway; South Korea; Turkey; USA** (officially a ‘high-level dialogue’).

In April 2017, Theresa May visited **Saudi Arabia**, a key destination for UK arms exports. The UK failed to speak out on Saudi Arabia’s ongoing, devastating bombardment of Yemen or on Saudi Arabia’s approach to human rights. This reflects a shocking, anti-human rights approach to trade under which the UK sells weapons to 22 of the 30 countries on its own human rights watch list.



In the same month, Liam Fox visited **the Philippines**, where he praised “shared values” with President Rodrigo Duterte. Duterte has coordinated a tide of extrajudicial killings targeting drug dealers and users, estimated to have cost the lives of 7,000 people in the space of a year.

Foreign Secretary Boris Johnson declared that “We are re-entering the Commonwealth” – although the head of the African, Caribbean and Pacific group of nations stating a UK trade deal should be delayed for six years after Brexit – prompting Whitehall officials to label the plans, **“Empire 2.0”**. And despite UK law restricting development spending to reducing poverty, Development Secretary Priti Patel is pushing for **UK aid to be tied to securing UK trade objectives**. When opening the London Stock Exchange, Patel made clear that she views poverty reduction through the lens of boosting UK big business: “Now is the time for UK businesses to seize the opportunities offered by Africa.”

Three post-Brexit trade deals prioritised by the UK Government:

- **UK-EU trade deal:** Both sides will be pushed by business to include the NHS and other public services, alongside ensuring absolute secrecy in negotiations and the inclusion of corporate courts. A recent European Court of Justice ruling means that corporate courts in a UK-EU deal could not be implemented without approval from individual EU member states.
- **UK-US trade deal:** Informal talks start on 24 July 2017. Theresa May has twice refused to rule out the NHS from a US trade deal – at the same time, the USA is removing Obamacare in favour of a wholly free market approach to healthcare. Visiting the USA, Liam Fox said he wants a new “financial services revolution” and has “an appetite to liberalise in every sector” – at the same time that Donald Trump announced plans to remove post-financial crisis banking regulations.
- **UK-Israel deal:** On the same day that the UK-Israel trade working group was established, Israel announced thousands of new settlement units, prompting the UK Minister for the Middle East to issue a condemnatory statement. These announcements highlight that the UK views Israel’s systematic violations of international law as irrelevant to any trade deal. The UK’s arms trading with Israel, worth over £100 million in 2016, contravenes UK policies on arms export controls.

What we need and why we need it

The current state of play: Constitutional Reform and Governance Act 2010

- 1) Under its prerogative powers, the government negotiates and then signs a treaty – but it cannot change domestic laws or rights or make changes to the UK constitutional arrangements without parliamentary authority. However, parliament does not currently have the power to approve, reject or amend the treaty itself. Parliament can make any necessary domestic law changes.
- 2) The Government lays the signed treaty before parliament, along with an explanatory memorandum. The treaty sits before parliament for 21 days, in which time the treaty cannot be ratified.
- 3) Parliament does not have to do anything, but if either House resolves against ratification during the 21 day period, the Government must explain why it wants to ratify. Technically, the House of Commons can block ratification by passing repeated resolutions. However, in practical terms it may not even be able to challenge treaties.*
- 4) If there are no outstanding resolutions, the Government can ratify the treaty; this is when a state confirms that it is bound by a treaty it has already signed. The treaty then enters into force in line with its provisions.

*During the 21 day period, challenges to a treaty can only be tabled during Opposition Day debates, only 20 of which – divided between two opposition parties – are scheduled during a parliamentary session. There has been no Opposition Day in 2017 since January.

(Devolved administrations have no formal right to participate in the development of trade policy, despite the implications for a number of devolved issues.)

Big business already enjoys high levels of access to the UK government. But to ensure a fair, transparent and democratic trading future for the UK – and, crucially, the countries we trade with – it is essential that our trade deals are transparent and subject to public and parliamentary scrutiny.

Our experiences with TTIP and CETA clearly show that without absolute transparency and scrutiny, leaders in the UK and EU will trade away our most cherished social, health and environmental protections and our public services. With trade deals increasingly undermining human rights and the fight against climate change, now more than ever we must fight together for **trade justice**. That's why we've joined together with allies working for trade justice to demand the following minimum requirements – reflected in **Early Day Motion 128** – to ensure transparency and democracy in UK trade deals:

1. The right of parliament to set a thorough mandate to govern each trade negotiation, with a remit for the devolved administrations.
2. The right of the public to be consulted as part of setting that mandate.
3. Full transparency in negotiations.
4. The right of parliament to amend and to reject trade deals, with full debates and scrutiny guaranteed and a remit for the devolved administrations.
5. The right of parliament to review trade deals and withdraw from them in a timely manner.



Take action!

- 1. Contact your MP to demand transparency and democracy in trade deals using our e-action or paper action postcards – ask them to sign EDM 128 on Parliamentary Scrutiny of Trade Deals.**
- 2. Order free materials on trade justice from War on Want: spread the word about the need to build a just trade agenda!**
- 3. Sign up for our trade justice email updates and book a War on Want speaker to visit your local area and explain why we need to fight for trade justice.**



- Issues relating to trade will likely intersect with other Brexit bills including the customs bill and the international sanctions bill.
- The Department for International Trade has established a 'high level dialogue' with the USA with a view to securing a post-Brexit trade deal. The high level dialogue is also on the list of 'working groups' set up by the Department. Trade Secretary Liam Fox MP confirmed trade talks with the USA will begin on July 24.
- A European Commission paper prepared for a TTIP meeting with Exxon Mobil highlights how the deal is seen as more important in setting a template for global trade: 'EU told ExxonMobil that TTIP would aid global expansion, documents reveal', *The Guardian*, 23 February 2016. For an assessment of how TTIP is a product of failures at the WTO, see: Estevez, I, *Unpacking Trade and Investment: US and EU Trade Strategy Beyond the Doha Round*. Brussels: Rosa Luxemburg Stiftung, 2017.
- Woll, C, 'Trade Policy Lobbying in the European Union: Who Captures Whom?' Max Planck Institute for the Study of Societies: Germany, 2006. Accessed online: <http://www.mpifg.de/pu/workpap/wp06-7/wp06-7.html>.
- 'Anger as government blocks TTIP legal documents relating to health service', *The Guardian*, 26 January 2016.
- 'Arrangements on TTIP negotiating documents', letter from Ignacio Garcia Bercero, Chief EU Negotiator for TTIP, to L. Daniel Mullaney, Chief US Negotiator for TTIP; Brussels: European Commission, 5 July 2013.
- War on Want was informed by the Department for International Trade that an assessment of CETA's impact on the UK was undertaken in 2010. War on Want has asked for this study to be published, and despite assurances that it will be, to date, it remains unpublished.
- The Investor Court System (ICS) is a re-branded version of ISDS corporate courts introduced after intense public opposition. In spite of some positive reforms including transparency and the presence of an appeal mechanism, the substantive elements of ISDS remain in place, permitting big business to sue states for lost profits through vaguely defined constructs such as their 'legitimate expectations' or right to 'fair and equitable treatment'. For more information, see: <http://www.waronwant.org/resources/zombie-isds>.
- For more information on, see <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-05/cp170052en.pdf>.
- The European Parliament's Employment and Social Affairs Committee found that CETA would widen the income gap between unskilled and skilled workers "thus increasing inequalities and social tensions". It added that: "There is a clear disparity between the levels of protection envisaged for investors and for labour interests and rights." For more information, see: http://www.emeeeting.europarl.europa.eu/committees/agenda/201612/EMPL/EMPL%282016%291208_1/sitt-3516887.
- For more information, see 'Impending vote on the trade deal which forced tar sands on Europe', *The Ecologist*, 11 January 2017.
- The average cost of an ISDS corporate court case is \$8 million, placing such litigation out of the reach of small and medium-sized businesses. For example, see 'Investor-to-State Dispute Settlement: Some Facts and Figures', p.9, European Commission. Accessed online: http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153046.pdf.
- For a full report on this issue, see Fowles, S, *The Subtle Revolution: TTIP, CETA and the Sovereignty of Parliament*. London: Mishcon de Reya, 2015.
- An example of such a case is when Slovakia was sued by health insurance company Achmea under the Netherlands-Slovakia bilateral investment treaty. Slovakia renationalised its health service in line with an election promise. After being sued and losing the case, Slovakia refused to pay. Its assets were then seized by a court in Luxembourg and handed over to Achmea.
- 'EU dropped pesticide laws due to US pressure over TTIP, documents reveal', *The Guardian*, 22 May 2015.
- 'The hidden costs of trade treaties', *Die Zeit*, 29 May 2015.



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