Trade has a profound effect on almost all aspects of daily life. Yet at the moment trade rules are undermining the things we value – decent jobs, the planet, ending poverty, building a more equal society. Instead they act as a tool for powerful corporate interests.

As the UK looks to start making its own trade policy when it leaves the EU, there is a blank slate. If we do not seek to fill it with trade policy from the perspective of justice and rights, it will be filled by others. Those of us who believe in a more just and equal world for everyone need to start building an alternative vision of trade. One that is both open, international, collaborative and local and democratic.

We want to start a discussion about how we could change UK trade deals so that trade rules can complement and support the rest of society, here and around the world, and provide the space to enable people to build economic alternatives.

Trade has always been part of society and always will be. But it is only one aspect, not the most important thing in our lives. Decent jobs, restoring the environment and tackling climate change, ending poverty, creating a more equal society, respect for rights and freedom from fear, good health, and education that helps everyone reach their potential – all of these things and more matter far more in life than trade. Trade should help us achieve these things – it is not an end in itself.

Trade as we tend to think of it in everyday language is also a much wider, more varied subject than the particular type of trade that is covered in trade deals. People trade things with each other in many different kinds of markets, formally and informally, at many levels – locally, regionally, nationally and internationally. Yet this complex web of different types of trade is often undermined by trade rules which only privilege international commodities.
Across the world there are many vibrant connected efforts to rebuild trade and market systems in a fairer and more sustainable way that can support the things that matter in life. The solidarity economy, food sovereignty, energy justice, tax justice and other initiatives all try to reshape trade to work for people. Most of these initiatives have been created from the bottom up. They need to be supported and enabled to flourish rather than undercut by trade rules.

Just as quite a lot of actual trade falls outside of trade deals, much that goes into modern trade deals has very little to do with trade. Trade deals nowadays touch on most areas of law making and public policy, from health to education to jobs, and they have been given such supremacy that they can override those laws and policies. These deals have become a useful tool to fix the rules of the game so that a deregulatory, pro-privatisation approach is locked in – an approach that gives increasing power to corporations. Instead of trade being judged on how well it supports what matters in life, our society is being judged according to whether it is ‘minimally trade distorting’.

The massive public campaign against the proposed EU-US trade deal, TTIP, by millions of people on both sides of the Atlantic has forced decision makers to recognise that they have had their heads in the sand. Even the European Commission now recognises it has been “slightly myopic if not entirely blind to the downsides of globalisation for too long” and that things need to change.

We need to set out a positive progressive vision. We want to start a discussion about how we could change trade deals so that trade rules can complement and support the rest of society, and provide the space to enable people to build economic alternatives.

**Trade deals are not necessarily a good thing**

While there is always potential from trade, embarking on a trade deal with another country or countries is not always the right thing for the UK to do, for two reasons:

- when there are concerns about human rights abuses, environmental destruction, arms sales or similar in the country concerned;
- when it would be more appropriate to offer the country trading access to UK markets without asking anything in return.

It should be a basis of trade policy not to enter into a trade agreement with any country unless it has ratified and is implementing core human rights treaties, fundamental labour conventions and the UN climate treaty. It also makes sense to consider whether the two countries have common levels of tax and financial regulation, so that corporations cannot play one side off against the other.

Trade itself can undermine human rights, particularly between very unequal players – rich and poor countries, powerful corporations and local communities. Deals such as those that the EU has been trying to set up with African, Caribbean and Pacific countries, known as EPAs (Economic Partnership Agreements) require the countries in the global south to open up their markets to transnational corporations. These type of deals have undermined local farmers and businesses, destroying livelihoods, while natural resources are extracted. All the profits go to large corporations with no benefits to local economies and regional trade.

At the same time a trade deal can limit the options for the country’s law and policymaking, and restrict its potential for development. The country is locked in to an economic model where its only advantages are natural resources and cheap labour so it must continue to exploit people and the environment. The chance to develop new economic sectors, improve wages and conditions and develop strong public services is lost.

Goods from countries in the global south should be able to enter the UK without any taxes or duties or quotas, but without the country having to make a trade deal opening up its own markets in exchange. Giving this type of access is known as a non-reciprocal trade preference, also often called ‘duty-free, quota-free’.

At the moment, as part of the EU, the UK provides duty-free quota-free access to least developed countries. It is essential that, as a minimum, this is improved – the UK should extend the number of countries to which this is offered and simplify the rules.

**Trade is not more important than people and planet**

Trade needs to be fitted back into its place as one component of the whole. And a component shaped by the overarching values and priorities of society as a whole, expressed in human rights law and environmental standards.
Human rights law, international environmental law and international trade law are all parts of international public law. Public interest groups have long been highlighting the importance of a clear hierarchy among the different parts, with human rights and environmental law taking precedence over trade law. However in practice trade law has been able to dominate. Trade law grants additional rights to already immensely powerful corporations. And it has strong enforcement mechanisms, with real penalties, which do not take account of other aspects of international public law.

It needs to be explicitly written into trade agreements that the rules must comply with human rights law, labour standards, environmental standards and climate commitments, and that if there is a conflict, the trade rules are subordinate.

This does not mean that the trade deal should have any role in defining the scope of these other areas of international law, simply that the rules should make reference to the various treaties and define that these prevail over trade rules.

This ‘override’ or ‘supremacy’ clause needs to apply to the entire text of the trade deal.

As well as providing boundaries for the enforcement mechanisms of trade deals, establishing the principle of the supremacy of human rights and environmental law should also shape the content of trade deals when they are being written, and involve assessment of the impact of trade deals on human rights and the environment. Impact assessments are particularly needed, and should be legally required at various stages in the process: before embarking on a trade deal, before finalising a deal, as part of regular reviews of a current deal (eg every five years) and before providing any financial support to exporters.

It must be possible to make changes to a trade negotiation or deal based on the outcome of such assessments, or indeed to leave. Current withdrawal clauses in trade agreements often require extremely long ‘sunset’ periods, during which the provisions of the trade deal still apply. This needs to be changed to a much shorter timeframe, that allows prompt action to be taken while still giving everyone involved notice.

The dominance of trade law has led to a whole range of issues that are only peripherally related to trade being added into trade deals. This has resulted in many of the most controversial aspects of modern trade agreements. Secretive, remote trade negotiations have rewritten other aspects of law and policymaking without any democratic accountability – and also sometimes simply without expertise in these other areas.

Why now?

The type of trade we want to help create the world we need has taken on a new urgency. For decades politicians, on the left as well as the right, recited assurances of the benefits of neoliberal free trade policies in the face of rising inequality. Meanwhile the losers were essentially left to fend for themselves. In the absence of any progressive alternative being put forward, the backlash of anger has been exploited by economic nationalists like US president Donald Trump.

While Trump may have taken up some of the rhetoric of critics of free trade, at heart his approach to trade remains as neoliberal as his predecessors. What is added is a veneer of aggressive nationalism (‘America First’) and a disdain for global solidarity and international rulemaking. Trump simply wants to push the problems of free trade onto the rest of the world, while keeping the benefits for the US.

Those of us who believe in a more just and equal world for everyone need to start building an alternative vision of trade.

In the UK the imperative is even stronger at the moment. Brexit has brought trade to the forefront of the political agenda in the UK, and we have a blank slate. If we do not seek to fill it with trade policy from the perspective of justice and rights, it will be filled by others – either the neoliberal status quo or the more extreme nationalists.
Part of seeing trade as just one component in the wider whole is therefore to focus trade deals back in on the core issues of trade and market access – shedding all the accreted fat and getting back to the original purpose of trade agreements. Issues such as patents, government buying standards, domestic regulation, migration, investment or data privacy do not belong in trade agreements. For some of these issues, there are existing intergovernmental organisations and forums where international rules can be agreed. There may still be controversies and arguments, but they can then be debated on their own merits by specialists, usually in more transparent settings than trade negotiations.

It is also essential to include watertight exclusion or shield clauses for public services. The clauses currently found in several trade agreements are either mere rhetoric, too narrowly defined or proven to be effectively unusable.

An effective exclusion clause should be modelled on the existing exemptions for security and military concerns which are much stronger. Those are very broad, allowing countries to take ‘any action’ in protection of security interests. Vitally, they also explicitly leave it to the country’s own judgment what action is necessary, which means the government’s actions are not subject to a legal challenge and the judgment of a dispute panel. Clauses parallel to these should be included for public services, with a clear and comprehensive definition of what is being excluded.

**Summary**

1. Trade agreements should comply with human rights, labour standards, environmental standards and climate commitments, and if there is a conflict, trade rules should always be subordinate.

2. Trade agreements should focus on trade in goods and not be used to set rules for matters beyond trade. Things such as patents, government buying standards, domestic regulation, migration, investment or data privacy should be excluded from trade agreements and any international rules should be set in the various intergovernmental organisations specialising in these issues.

3. Public services should be protected in trade agreements with strong, broad exclusion clauses, modelled on existing exclusions for security concerns.

**Trade should work in the public interest**

In order for trade to support the wider values and priorities of society, trade rules need to work in the public interest. This ought to include helping to counteract inequality and power imbalances – it certainly should not involve making them worse.

Yet at the moment trade deals give special rights to transnational corporations who are already among the most powerful organisations in the world, and do not even impose any obligations on them in return. Trade deals include ‘corporate courts’, formally known as ISDS (Investor state dispute settlement) or ICS (Investment court system). This allows foreign corporations to sue governments for passing regulations that could affect corporate profits, through an international arbitration process that completely bypasses national justice systems. In practice, this means corporations can sue over almost anything they don’t like – environmental protection, regulating finance, renationalising public services, anti-smoking policies – you name it.

- **Public health:** Cargill sued Mexico over a tax on sugary drinks; Ethyl sued Canada over a ban on MMT, which is a suspected neurotoxin, in petrol
- **Energy:** Vattenfall sued Germany for deciding to phase out nuclear power; Lone Pine sued Quebec over a fracking moratorium
- **Employment:** Veolia sued Egypt over the introduction of a minimum wage.

Governments can never really win from an ISDS case – even if the judgement is in their favour they have legal costs which on average are just under £5 million for each case. If the state loses, it can be forced to pay much more in compensation. The system can only be used by companies suing governments, not vice versa. The winners from ISDS have been the richest – 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.

Corporate courts do not even serve their ostensible purpose of attracting investment – investors base their decisions on a whole range of factors that weigh far more. They have just become an opportunistic tool for corporate power.

Corporate courts should be excluded from trade deals.
Instead, trade agreements should include mechanisms for individuals, groups and communities to bring grievances over the harm caused by trade agreements. If anyone needs international rules to protect their rights it’s the victims of corporate exploitation, not the perpetrators.

There is already a negotiating process underway at the United Nations for a UN Treaty on Transnational Corporations and it is hoped that, if agreed, this treaty would set up an international court through which it will be possible for communities to hold multinationals to account. The UK itself should support the process and ratify an eventual treaty. For future trade deals, ratification of the treaty should be a precondition and the planned UN Court on Corporate Crimes should be referenced. In the meantime, accessible and effective grievance mechanisms should be incorporated in trade agreements, including through national courts and regional human rights mechanisms, with real sanctions for violations.

Even if trade deals can be reshaped to support society, there will inevitably still be some people who lose out as a result. As with any change to the status quo, some will benefit but some will be worse off – there is never a complete ‘win-win’ for everyone. This will affect people in all the countries involved in a trade deal. If it disproportionately affects one country more than others, that is a good sign that that country shouldn’t do the trade deal. But for other countries there need to be plans for how to help people.

One part of this is the need for governments to put resources and focus into industrial policies, agricultural policies, regional policies and other plans to ensure that as many people as possible are able to benefit from the trade deal. For instance, in anticipation that the EU-Canada trade agreement, CETA, will increase competition for cheese manufacturers, as part of its agriculture policy the Canadian government is investing millions in support for the Canadian dairy sector. Then there must be compensation that provides money to people who lose their jobs as a result of the trade deal so that they can retrain, or finance for small businesses to help them thrive in a new situation. Lastly it must be recognised that there will be claims upon welfare systems.

All these aspects need to be considered as part of a package that comes with a trade deal, and planned and budgeted for accordingly. Lower income countries that cannot afford to provide such initiatives themselves, should have them provided for by the wealthier country. If these are not in place, the trade agreement should not go ahead.

As well as the government having the political will to develop industrial, agricultural, welfare and similar policies, trade rules must not prevent them from doing this. At the moment, trade rules have been used to claim that such policies should be abandoned on the grounds that they interfere with markets and free trade. Instead, trade rules should recognise that these policies not only support legitimate policy objectives, but they also make trade better for everyone. Exclusion or shield clauses for policymaking in the public interest, similar to that outlined above for public services, should be included in trade deals to make this explicit.

One particular issue for public policymaking is the need to ensure that the technologies we need to face global challenges like climate change are shared across the globe. Countries in the global south need access to the technology necessary to ensure their sustainable development, and trade needs to make this easier, not harder. Requiring companies to produce at least a certain proportion of goods locally can be a means to ensure that technologies and skills are shared. Trade agreements should enable, rather than ban this. The choice of whether to seek the transfer of a technology must remain the democratic choice of the country involved, so that they are able to avoid high-risk technologies if they wish.

Summary

4. Trade agreements should not include ‘corporate courts’ (Investor State Dispute Settlement or ISDS) which give foreign companies special legal rights outside of the national legal system.

5. Trade agreements should include mechanisms for individuals, groups and communities to bring grievances over harm caused by the trade agreements.

6. Trade agreements should only be negotiated when there are adequate, plans for compensation and alternative decent work for those who lose out as a result of a trade deal. When agreements are between developed and developing countries, the developed countries should provide finance for this.
7. Trade agreements must recognise the legitimate need for space to make policy in the public interest through industrial, agricultural, welfare, technology and other developmental policies, and protect this space with strong, broad exclusion clauses modelled on existing exclusions for security concerns.

Trade should do good

Trade agreements should also be reoriented to positively contribute to society’s values and priorities.

At the moment, trade rules tend to not only be blind to the environmental and social costs of things being traded, but actually prohibit favouring more socially and environmentally responsible products and practices. For instance, proposed rules in trade negotiations between the EU and US, TTIP, would have prevented measures to reduce fossil fuel use and increase renewables, when our future on this planet depends on doing just that. This needs to be reversed.

Trade agreements should ensure tariffs and trade preferences take social and environmental considerations into account, so that goods with less environmental impact and higher social welfare receive greater preference. For instance, trade deals could:

- increase tariffs on fossil fuels and introduce import and export controls on fossil fuels designed to scale down their use
- allow for a sliding scale of tariffs based upon a product’s climate impact, including assessing negative effects from production and transport, and positive ones from use of renewable technologies
- allow for a sliding scale of tariffs based upon social welfare, with products from cooperatives paying less than those from multinationals

To do this depends upon other elements outlined here – ensuring trade agreements take a much more inclusive approach to what are considered legitimate policy objectives, and that trade deals stop trying to encroach on other areas of policymaking.

Trade deals have too often been an excuse for a race to the bottom in standards. Instead they should be used to enable standards to be raised for everyone, including meeting human rights, labour, environment and climate requirements. Everyone benefits when standards are pushed upwards globally.

Trade agreements should explicitly specify that nothing in the rules can be interpreted to justify lowering standards and the agreements should only be completed if all the countries involved are able to reach the highest common denominator. Introducing a grievance mechanism for individuals, groups and communities should help in implementing this, as suggested above. It would enable, for instance, unions to pursue breaches of labour rights directly.

Summary

8. Trade agreements should ensure tariffs and trade preferences take social and environmental considerations into account, so that goods with less environmental impact and higher social welfare receive greater preference.

9. Trade agreements should commit countries to raising standards to the highest, not lowest, denominator, including meeting human rights, labour, environmental and climate obligations.

Trade should be democratic

Given the broad scope of trade policy, people have a right to know about, and be part of shaping it. This should not be a ‘concession’ – trade policy would actually be improved by robust debate and contributions from a broad range of knowledge and expertise.

Trade policy also needs to be accountable to parliamentary sovereignty. However as things stand, our elected representatives in the UK have virtually no say over trade deals. MPs can’t set a mandate to guide government negotiations, they have no right to see details of the negotiations, they can’t amend deals and they can’t stop them.

In other words, we have no real democratic control over these vitally important deals. This needs to change.

Summary

10. Trade policy and trade negotiations should be guided by parliament, with the ability to scrutinise, amend or stop trade negotiations, and should be based on meaningful public consultation. Trade agreements must be debated and voted on by parliament.
Ten alternatives to a corporate trade agenda  

What a democratic UK trade policy after Brexit would look like

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Ten alternatives to a corporate trade agenda

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