Fairtrade Foundation Briefing – Trade & Customs Bills, 2nd Reading

This briefing has been written to support MPs in their preparation for the second readings of 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 ***Monday 8th January 2018*** and we are still awaiting the confirmed date for debate on the Trade Bill.

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 the Customs Union. The Fairtrade Foundation has not taken a view on whether or not this outcome is desirable – our intention, 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*.

In seeking this, we are working closely with other members in the Trade Justice Movement and with other development organisations such as Traidcraft.

Summary of Key Issues:

Across both pieces of legislation, and any further trade bill that may follow, we are asking the government to ensure consistency and support for poverty reduction and the Sustainable Development Goals (SDGs) and to secure:

- An improved unilateral preference offer/scheme for developing countries;
- A commitment to conduct thorough and timely impact assessments, which take account of the impact trade policy decisions and trade deals (including between two wealthier countries) might have on poorer countries and producers;
- A revised process for debate and approval of trade deals, including through enhanced parliamentary scrutiny and decision-making.

By way of background, it may be helpful to understand how Fairtrade supply chains are impacted by trade and customs arrangements. The Fairtrade market in the UK is worth £1.6bn and certified goods exported to the UK include 'fresh produce', primarily bananas and flowers, sugar which is refined in the UK and re-exported across the EU, and products like coffee and cocoa which are often processed in other EU countries for sale in the UK. A thriving Fairtrade market is therefore dependent on an effective trading relationship with the EU 27, as well as a healthy trading relationship with developing countries themselves.

Scope of Legislation:

- The **Customs Bill** intends to grant powers to the UK government to set tariffs and apply other financial measures. Among other things, the Bill proposes the establishment of a preference scheme, initially rolling over the EU preference scheme, and would enshrine the offer of duty-free, quota-free access for the Least Developed Countries (LDCs) in law.

- 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. This includes controversial Economic Partnership Agreements (EPAs) with developing countries and Free Trade Agreements (FTAs) with Fairtrade-exporting countries in Latin America and the Caribbean.

This is being presented as a technical exercise but the Bill does include "Henry VIII" powers[1] and the explanatory notes published alongside the Bill say that, *"it may also be necessary to substantively amend the text of the previous EU agreements…"*[2]

As drafted, the Bill does not set out a process for agreeing future trade deals but knowing the government's intention is for a transitional agreement with the EU that allows the UK to negotiate on trade, it is imperative that a revised process is proposed in legislation by March 2019. If the government plans to bring forward a second trade bill during this parliamentary session, then it should clarify its intention to do as soon as possible. If not, then this bill appears to be the only opportunity to bring forward the required changes. In cross-party polling this year (weighted to reflect current composition) carried out for Fairtrade Foundation & TJM by Dod's Research, **86% of MPs agreed that there must be parliamentary scrutiny and approval of new trade and investment agreements.**

1. Taxation (Cross-Border Trade) Bill – or Customs Bill[3]

i) Establishing a Unilateral Preference Scheme

Clause 10 of the published Bill establishes a trade preference scheme and in **sub-section 3(a)**, the Bill enshrines duty-free, quota-free access for LDCs in law, rolling over the existing EU 'Everything But Arms' (EBA) scheme. The Fairtrade Foundation welcomes this approach which will provide continuity in market access for the poorest countries. We campaigned for this and highlighted the issue in our 2017 report, *Brexit: Let's Change Trade for Good*[4], with case-studies including sugar exported from Malawi and coffee exported from Tanzania.

This report drew on Traidcraft analysis, to consider a wider group of developing countries and vulnerable economies. Exploring the position of 116 countries, this analysis showed that a 'cliff edge' scenario could result in an estimated £1bn in additional taxes being added to imports from developing countries. This is why action to ensure continuity is so important. For example, exporters from Kenya, which is not an LDC, could end up paying an additional £14.5m in tariffs (e.g. to export cut flowers), if they lose preferential market access to the UK post-Brexit.

The government has recognised this risk and has proposed roll-over of existing EU agreements in order to maintain market access. However this approach is not without problems (see below on the Trade Bill), and an alternative could be for the UK to expand its unilateral offer, improving on the current EU scheme. This may require amendment of the definition set out in **Schedule 3** of the Bill which follows the EU in determining eligibility for a preference scheme via the UN (its list of LDCs) and World Bank classification (its list of lower income and lower middle-income countries). *Parliamentarians may wish to probe further and ascertain how much flexibility there is*, with legislation as drafted, to expand the DFQF scheme beyond LDCs, and/or to expand a UK preference scheme to cover a wider number of vulnerable economies. Any scheme must be compatible with the WTO 'Enabling Clause', but there are examples of generous and acceptable schemes operating in other countries[5] e.g. Norway and New Zealand. As set out in the

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[1] http://researchbriefings.files.parliament.uk/documents/CBP-8073/CBP-8073.pdf
[2] https://publications.parliament.uk/pa/bills/cbill/2017-2019/0122/en/18122ennew.pdf p.11
[3] https://publications.parliament.uk/pa/bills/cbill/2017-2019/0128/18128.pdf
[4] http://www.fairtrade.org.uk/~/media/fairtradeuk/resources%20library/fairtradefoundation-brexit-letschangetradeforgood.pdf
[5] http://www.traidcraft.co.uk/media.ashx/post-brexit-report.pdf

explanatory notes, further detail will be provided in *regulations* (see Clause 32) – this is also the case for establishing the 'rules of origin', set out in **Clause 17**, which are applied to assess eligibility for preferential rates.

ii) Trade Policy guided by Poverty Reduction and the Sustainable Development Goals

The UN Sustainable Development Goals (SDGs)[6] were agreed in September 2015 and put forward an ambitious social, economic and environmental agenda for 15 years. Trade policy is explicitly referenced through Goals 2[7], Goal 8[8], Goal 10[9], Goal 14[10] and Goal 17[11], and make a vital contribution to other areas including poverty, food security[12], gender equality, decent work[13], inclusive and sustainable industrialisation, sustainable consumption and production, and climate change. The UK government has repeatedly stated its commitment to achieving the SDGs, not only through the work of DFID but across government departments through the integration of SDGs in Single Departmental Plans (SDPs)[14].

The Bill refers to 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)). An additional point could be added, to embed policy coherence for development[15], and the UK's commitment to achievement of the SDGs, in legislation.

2. Trade Bill

i) Rolling Over 'Existing' Deals

The Trade Bill as drafted[16], focuses on existing deals signed between the EU and other countries or groups of countries. There are currently over 40 agreements[17] and the countries with which the EU has these deals account for nearly £140bn of UK trade. These deals include Economic Partnership Agreements (EPAs) with ACP (African, Caribbean and Pacific) countries, and also Free Trade Agreements (FTAs) with Latin American countries such as Colombia and Panama. Whilst these developing countries account for a relatively small amount of UK trade, taken the

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[6] http://www.un.org/sustainabledevelopment/sustainable-development-goals/

[7] 2.b: *Correct and prevent trade restrictions and distortions in world agricultural markets, including through the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect, in accordance with the mandate of the Doha Development Round*

[8] 8.a: *Increase Aid for Trade support for developing countries, in particular least developed countries, including through the Enhanced Integrated Framework for Trade-Related Technical Assistance to LDCs*

[9] 10.a: *Implement the principle of special and differential treatment for developing countries, in particular least developed countries, in accordance with WTO agreements*

[10] 14.6: *By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing etc…*

[11] 17.10: *Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system…* and 17.11: *Significantly increase the exports of developing countries, in particular with a view to doubling the least developed countries' share of global exports by 2020,* and 17.12: *Realise timely implementation of duty-free and quota-free market access on a lasting basis for all least developed countries…*

[12] For example 2.3: *By 2030, double the agricultural productivity and incomes of small-scale producers…*

[13] Goal 8 includes targets on the achievement of decent work for all, measures to eradicate forced labour and modern slavery, and the protection of labour rights.

[14] https://www.gov.uk/government/publications/implementing-the-sustainable-development-goals/implementing-the-sustainable-development-goals

[15] 17.14: *Enhance policy coherence for sustainable development*

[16] https://publications.parliament.uk/pa/bills/cbill/2017-2019/0122/18122.pdf

[17] http://researchbriefings.files.parliament.uk/documents/CBP-8073/CBP-8073.pdf

other way round, we can see that trade with the UK is significant for many of these countries. Trade with the UK accounts for 29% of exports from Belize and 7.5% of Kenya's exports[18].

As noted above, the Fairtrade Foundation has two concerns regarding the proposed roll-over of existing EU deals. Firstly, we are worried that the process may take longer and be more complex than planned, potentially leaving some countries exposed to a 'cliff-edge' scenario in March 2019. For example, there are Tariff Rate Quotas (TRQs) to be divided up in relation to products like bananas. Secondly, and more importantly, we are worried that rolling over the EPAs, at a time when some African leaders are calling for a pause and rethink, risks locking in flawed deals and an approach which has been problematic especially in sub-Saharan Africa. Countries like Nigeria and Tanzania are still refusing to sign these deals[19], and where a country is an LDC, there is no incentive for them to sign. An alternative would be to offer equivalent market access through a different route i.e. through a new UK preference scheme.

ii) Enshrining Impact Assessments in Law

The Fairtrade Foundation would like to see the UK set a gold standard in 'impact assessment' work on trade, thoroughly considering whether or not a deal will support a country's development and protect national policy space (also a target included within the SDGs). Impact assessments should apply to the countries directly involved in any potential deal, and also to countries that may be affected indirectly by a bilateral deal, often as a result of preference erosion. For example, a free trade deal between the UK and Australia could impact on Namibian beef exports. Lowering or eliminating tariffs on Brazilian sugar could impact on other ACP exporters. These impact assessments should deal with a range of perspectives and consider gender, inequalities, labour rights and environmental consequences, should be produced in a timely way, commissioned independently, and *before* a negotiating mandate is established.

iii) Trade Policy Guided by Poverty Reduction and the Sustainable Development Goals

As set out above in relation to the Customs Bill, we would like to see the Trade Bill amended to enshrine poverty reduction and achievement of the SDGs as key principles of UK trade policy. An additional concrete measure could also be the exclusion of ISDS (Investor-State Dispute Settlement) clauses from trade deals given their potential impact on policy space.

iv) Revised Process for Agreement of Trade Deals

As previously noted, amendments are required to establish a revised process for the scrutiny and approval of trade deals, with particular attention paid to the role of parliament. Under current rules, UK parliamentarians would have less input and control over UK trade policy than MEPs have over EU trade policy.

The Fairtrade Foundation is supporting proposals from the Trade Justice Movement which cover a range of areas, also set out in Early Day Motion (EDM) 128[20] and detailed in this recent briefing[21]. Fairtrade supporters have already expressed concern that deals might be done in the dark – 20,000 of them have signed a petition to the Trade Secretary on this issue.

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[18] https://atlas.media.mit.edu
[19] http://allafrica.com/stories/201711270824.html
[20] https://www.parliament.uk/edm/2017-19/128
[21] http://tjm.org.uk/documents/reports/TJM_SecuringDemocracyInUKTradePolicy_2017_web.pdf