

Briefing



UK-US trade

Submission to the Department for International Trade

Introduction

The Trades Union Congress (TUC) bring together more than 5.6 million working people who make up our 48 member unions. We support unions to grow and thrive, and we stand up for everyone who works for a living. Every day, we campaign for more and better jobs, and a more equal, more prosperous country.

1. The TUC welcomes the opportunity to provide evidence to the Department for International Trade consultation on UK-US trade.¹ We are, however, concerned about the limited nature of the consultation, consisting mainly of closed tick box questions and only two open questions for respondents to provide fuller answers. This provides little scope for detailed responses which will limit the understanding the government can gain of respondents' concerns.

What would you want the UK government to achieve through a free trade agreement (or related trade talks) with the United States, and why?

2. The TUC and our US counterpart the AFLCIO have called for trade deals involving the UK and US to secure high labour and other safety standards, create decent jobs and protect public services.
3. The TUC is concerned by a number of recent actions by the US government that threaten UK trade which suggest the US is not currently a desirable partner to enter trade negotiations with. In particular, we are concerned about President Trump's recent imposition of tariffs on steel and aluminium from the EU, the opposition of US trade officials to EU levels of regulatory protection for safety standards and workers' rights, and the US government's opposition to EU Geographical Indicators.
4. We would not want future trade arrangements with the US to continue along similar lines to the Transatlantic Trade and Investment Partnership (TTIP) – currently stalled in negotiations between the EU and US. The TUC is opposed to TTIP due to the threats it would pose to public services, environmental and labour standards and the state's ability to legislate in the public interest.²
5. The TUC and AFLCIO also would not want future trade arrangements with the US to replicate NAFTA which had inadequate protections for workers' rights and has led to widespread job displacement.
6. The TUC believes any future trade deals involving the UK and the US must considerably strengthen the provisions found in EU trade deals to secure workers' rights. The AFLCIO

¹ <https://consultations.trade.gov.uk/policy/consultation-on-trade-negotiations-with-the-us/>

² <https://www.tuc.org.uk/research-analysis/reports/congress-2014-composite-resolution-transatlantic-trade-and-investment>

has similarly called for stronger protections for workers' rights in other trade deals including NAFTA.³

7. On the occasion of the Prime Minister's meeting with the US President in January, the leaders of the TUC and the AFLCIO released a statement which said any deal between the UK and US 'needs to foster globally-recognised worker protections – rights American workers want and British workers don't want to lose.'⁴

The UK must prioritise a deal with the EU

8. The TUC is concerned by suggestions from the Trade Secretary that trade deals with countries like the US could substitute for a trade deal with the EU.⁵ The TUC believes the best option on the table to ensure UK workers continue to be protected by EU levels of employment rights, although we are open to other proposals that meet the same objectives, is for the UK to continue to be a member of the single market.
9. A UK-US trade agreement would boost the economy by just 0.3 per cent, while leaving the customs union and single market would leave the UK's economy 4.8-7.8 per cent smaller, according to the government's own analysis.⁶ Crucially for the TUC, continued membership of the single market and customs union provides legal assurance of a high standard of employment rights.
10. The TUC is concerned that the government's red lines on Brexit – ruling out both single market and customs union membership – increase the likelihood of a bad Brexit deal which would leave the UK economically and politically vulnerable on the global stage and more likely to sign up quickly to trade deals with powerful countries like the US, no matter the price to workers or the economy.
11. A cautionary example of this is the US-Australia free trade agreement. The then Australian Prime Minister John Howard agreed to sign this deal after just over a year of negotiations with the US in 2005, primarily as a means to bolster's the country's diplomatic alliance with the US following the second invasion of Iraq.⁷ The result of rushing to sign the deal was that it unfairly advantaged US exporters' interests over the interests of Australian workers. The deal required Australia to open key sectors such as textiles and agriculture while the US continued to keep protections on these sectors. Unions expressed concern that the labour chapter of the agreement was unenforceable and public services would be opened to further privatisation through the 'negative list' approach to service listing taken in the deal.⁸

³ <https://aflcio.org/sites/default/files/2018-01/NAFTA2pager.pdf>

⁴ <https://www.tuc.org.uk/research-analysis/reports/us-and-uk-trade-union-leaders-what-we%E2%80%99d-president-and-prime-minister>

⁵ <https://www.independent.co.uk/news/uk/politics/uk-us-trade-deal-pacific-group-countries-brexit-liam-fox-donald-trump-chlorinated-chickens-a8458001.html>

⁶ <https://www.cer.eu/publications/archive/bulletin-article/2018/dead-or-alive-uk-us-trade-deal>

⁷ <http://www.eastasiaforum.org/2015/02/08/the-costs-of-australias-free-trade-agreement-with-america/>

⁸ http://www.actu.org.au/media/309895/actu_ausfta_ssc_sub.doc

12. Furthermore, ten years after the deal was signed, trade expert Shiro Armstrong notes that the deal has not benefitted the Australian or US economies, stating 'there is no evidence that the agreement has been associated with an increase in trade between the two countries.'⁹

Threats to workers' rights and safety standards

13. The TUC is concerned that, without proper engagement with social partners about the content, any trade deal entered into by the UK government with the US will be disadvantageous for workers, jobs and the economy, particularly as the US has significantly lower levels of employment protection and safety standards than the UK.
14. The threats to standards were reinforced by a number of statements by the US government. In November 2017 US Commerce secretary Wilbur Ross stated that 'the removal of both tariff and non-tariff barriers will be a critical component of any trade discussions between us... we must reduce unnecessary divergences in regulations and standards that many of our companies, especially our SMEs, face.'¹⁰
15. The TUC is concerned that the UK could be pressured by the US to lower employment standards to those found in the US. The US has not ratified all the international ILO standards on labour rights and has passed laws 'Right to Work' laws in 24 states which restrict unions' capacity to bargain and organise.
16. Any trade agreement involving the UK and US that does not contain enforceable clauses on labour standards will encourage a race to the bottom as it will make it easier for EU companies to go to parts of the US where it is easiest to exploit workers.
17. The TUC believes any agreement between the UK and US should promote the ILO Decent Work agenda, decent jobs and core ILO standards. There must be independent mechanisms to monitor adherence to these commitments, with independently enforceable penalties for violations of workers' rights.¹¹
18. The TUC is also concerned about the lower level of food and environmental safety standards found in the US would impact on the safety and quality of UK goods.

Threats to public services

19. The TUC is concerned that the quality of public services would be significantly threatened by any UK-US trade deal that took a similar approach to public services to TTIP. The TUC regrets that the DIT consultation document dismisses the threats trade deals can pose to public services.

⁹ <http://www.eastasiaforum.org/2015/02/08/the-costs-of-australias-free-trade-agreement-with-america/>

¹⁰ <http://uk.businessinsider.com/us-commerce-secretary-wilbur-ross-on-post-brexit-trade-with-uk-2017-11>

¹¹ <https://www.tuc.org.uk/blogs/what-would-it-take-trade-deals-protect-workers%E2%80%99-rights>

20. Both CETA and TTIP take a 'negative list' approach to service listing which means only public services explicitly excluded can't be opened to further privatisation.¹² The TUC has concerns that in a trade deal with the US, the government may not list all the services involved in public service delivery, as was the case with CETA.¹³ Furthermore a 'ratchet clause' of the kind found in TTIP would mean that services already opened to privatisation could not be renationalised in the future.
21. The TUC believes public services must be explicitly excluded from any US-UK agreement. Liberalisation commitments in any agreement should only apply to services using a 'positive list' approach. The wording of public services in the agreement should not create ambiguity as to what is classified as a public good. Public services should not be seen in the minimal definition of 'services in the exercise of governmental authority' as defined in Article 1.3 of GATS (which should also cover services provided by sub-national levels of government) or 'public utilities'. Rather they should be more broadly defined using terminology used by the EU Treaties to include provision of public goods such as education and health.
22. The TUC believes any deal with the US must contain a broad carve out for all cultural industries including state-run cultural institutions such as the BBC.

Threats to public procurement

23. The TUC believes any trade deal with the US must have protections for public procurement markets. We are concerned any liberalisation of public procurement rules would restrict the ability of local authorities and other public bodies to source and employ locally, ensure decent wages and require skills training. This means national and local government would be limited in their ability to use public money to achieve social and environmental outcomes through their supply chain and employment practices.
24. We share the concern of the US trade union movement that opening up procurement will threaten the 'Buy America' policies in the US which allow states to preferentially recruit local workers for publicly funded projects and source goods from US enterprises that recognise trade unions.

Threats to democracy

25. The TUC is concerned that workers' rights, public procurement and public services, as well as democratic decision making more broadly, would be threatened if any trade deal between the UK and US contained any kind of ISDS mechanism. We stand with trade unions globally in rejecting ISDS style courts in trade deals.¹⁴
26. In the past foreign investors have used ISDS mechanisms to sue governments for laws that, although legitimate and promote public welfare, were interpreted by their lawyers

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www.epsu.org/sites/default/files/article/files/Study%20M%20Krajewski_Model%20clauses%20for%20the%20Exclusion%20of%20public%20services_2016.pdf

¹³ <https://www.unison.org.uk/content/uploads/2015/02/On-line-Catalogue229952.pdf>

¹⁴ https://www.ituc-csi.org/IMG/pdf/17gc_e_6.1_-_frontline_and_priorities-en.pdf

as a form of 'indirect expropriation'. For example, Slovakia was sued by the Dutch health company Achmea via ISDS when it renationalised its health care system and ordered to pay €1.3 million in 2014. Researchers at LSE have flagged that there is a particular risk of the US using ISDS mechanisms to challenge the way UK public services are run given the significant presence US health companies already have in the NHS.¹⁵

27. We are concerned that the existence of an ISDS-style a court in any US-UK deal would create pressure on governments not to pass policies in the public interest that might be challenged by foreign investors. These could include decisions to raise the wages or change the way public services are run.
28. The TUC believes foreign investors should use domestic court systems, just as domestic investors do, to resolve disputes around property rights. There are sound legal systems in both the US and UK to ensure property rights are respected. Even if there were doubts about the functioning of domestic courts, however, the TUC believes the domestic system would not be improved by the establishment of a parallel, democratically unaccountable court system that only protects foreign investors.
29. Rather than concentrate power further in the hands of multinational investors, the TUC believes any trade deal involving the UK and US should contain mechanisms that enable workers to claim their rights to decent treatment.

Threats to jobs and increased gender inequality

30. The TUC would be concerned if any deal with the US made it more difficult for the UK to take firm action against US tariffs imposed on UK exports. The TUC condemned President Trump's decision on May 31 to levy a 25% tariff against steel and aluminium from the UK and other EU countries.¹⁶ These tariffs threaten hundreds of thousands of jobs in manufacturing and associated sectors, as well as the communities that depend on these industries. We share the concerns raised by steel producing counties at the OECD that such tariffs are likely to increase the amount of steel dumped in the EU from China.
31. The TUC is concerned that the UK government's current proposals for post-Brexit trade remedies are unlikely to be effective in providing counter measures to future unfair tariffs imposed by the US. In alliance with Unite, GMB and Community, the TUC has been working with manufacturing employers in the Manufacturing Trade Remedies Alliance to call for the government to significantly strengthen legislation for a post-Brexit trade defence regime. We are calling for amendments to the Trade and Customs Bills to ensure that the Trade Remedies Authority includes manufacturing employer and union representatives and for the economic interest test and public interest test to be removed as these are likely to prevent swift and effective trade defences being applied to protect key sectors.

¹⁵ <https://www.italaw.com/sites/default/files/archive/costs-and-benefits-of-an-eu-usa-investment-protection-treaty.pdf>

¹⁶ <https://www.tuc.org.uk/blogs/time-give-our-industries-protection-they-deserve>

32. The TUC would be concerned by any trade deal with the US similar to NAFTA that sought to deregulate labour markets both by removing tariff protections from key strategic sectors and reducing 'non-tariff barriers' to trade. As noted above, deregulation in previous trade agreements such as NAFTA led to widespread job losses and underdevelopment. It is concerning that the DIT consultation document states 'FTAs have had a positive impact on average real wages' while citing two studies of NAFTA as evidence. The AFLCIO has compiled evidence from the past 20 years on the impact of NAFTA and drawn the opposite conclusion – the deal has damaged wages and led to almost a million jobs being lost in the USA and widespread job displacement in Mexico.¹⁷
33. Unions are concerned that workers who lose jobs are often be forced to take up new employment on precarious terms with low pay in the informal sector. As women are disproportionately likely to be employed in the informal sector already, any increase in the informal economy will increase the disadvantage women suffer in the labour market and increase gender wage gaps.

Is there anything else that you would want to say about the UK's future trade relationship with the United States?

34. As stated above, the TUC is concerned by a number of recent actions by the US government that threaten UK trade which suggest the US is not currently a desirable partner to enter trade negotiations with.
35. In addition to Trump's decision to levy a 25% tariff against steel and aluminium from the UK and other EU countries discussed above, the TUC was concerned that the US Department of Commerce last year backed Boeing's claim to impose tariffs on Bombardier. While the TUC welcomed the ruling in February by the US International Trade Committee that there should not be tariffs imposed, should the US government's will have held sway, there would have been tariffs on Bombardier's operations in Northern Ireland that would have put thousands of high skill jobs at risk.¹⁸
36. The TUC also has concerns about US opposition to Geographical Indication (GI) status and protections in trade agreements vital to agri/food industry protected products across the UK such as Scotch Whisky, Welsh Lamb, Scottish Salmon, and related age provenance for spirits products.
37. Our concerns for Government commitment to GI protections were heightened when the Government's recent on White Paper on future relationship with the EU indicated that it would not maintain the EU level protections for GI's but rather introduce a UK framework.¹⁹ It is important that the UK ensures GI protections consistent with EU provisions in their technical requirements to ensure future access to EU markets, as

¹⁷ https://aflcio.org/sites/default/files/2017-03/March2014_NAFTA20_nb.pdf

¹⁸ <https://www.tuc.org.uk/news/government-must-stand-bombardier-workers-and-northern-ireland-economy-says-tuc>

¹⁹ <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

well as protecting UK products from countries such as the US that have opposing policies.

38. In 1994 the US and European Community completed an agreement which agreed recognition of certain products distinctive to US and EC (including Bourbon for US and Scotch Whisky). Any future agreement with US must replicate this agreement between the UK and US to maintain protection for Scotch Whisky and other products included.
39. The TUC is also concerned that US has signalled it will continue blocking the UK's offer on Tariff Rate Quotas (TRQs) at the WTO in alliance with Brazil, Argentina, Canada, New Zealand, Uruguay and Thailand. This suggests a threat that the US may further disrupt the UK's application for WTO membership which would hinder the UK's ability to trade internationally.