

NPF SUBMISSION**TRADE RESPONSE****POLICY CONSULTATION: BRITAIN IN THE WORLD****SUBMITTED BY: THE SOCIETY OF LABOUR LAWYERS TRADE GROUP****AUTHORS: GEORGE PERETZ KC, JOSEPH KELEN, DANIEL JONES ET AL.****DATE: 17 MARCH 2023****1. What is the role of international trade in promoting domestic economic growth, boosting jobs and driving up wages?**

International Trade has had a sometimes controversial relationship with promoting jobs, growth and wages. Whilst the first trade agreements made little reference to labour rights, beyond some agreement as to the export of goods involving prison labour, since 1994 concern over the impact of international trade on labour and wages has led to the increased promotion of sectors involving high-value labour.

The UK has historically benefited greatly from international trade, with trade playing a significant role in the country's economic development and prosperity. Currently, over 26% of the UK's GDP derives from our export of goods and services. International trade however should no longer be considered only a tool for promoting domestic economic growth, but also for boosting jobs and wages. Over 6.5 million positions in the UK are currently supported by exports, representing 13% of the employment in the UK, and with an average wage of £24,462, nearly 7% higher than the national average.¹

Nevertheless, more can be done to ensure these effects are better felt by those in the labour market more generally. As studies have repeatedly shown, whilst overall wages might increase thanks to international trade, jobs in manufacturing in the UK have fallen dramatically as a result.² This in turn has had a significant impact on levels of inequality in the UK, and the shape of the UK economy towards being service-led.³ This competition in manufacturing has often arisen because of the exploitation of workers overseas, either through low wages, poor health and safety standards or a lack of environmental protection.⁴

What is needed, now more than ever, is a Labour government committed to improving job security in high labour value areas, using trade agreements not just to lower prices for consumers, but to improve the welfare of workers. This submission by the Society of Labour

¹ Department for International Trade, Estimating the relationship between exports and the labour market in the UK, 10th March, 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966549/Estimating-the-relationship-between-exports-and-the-labour-market-in-the-UK.pdf

² Dorn, D., & Levell, P. (2021). Trade and Inequality in Europe and the US, <https://www.zora.uzh.ch/id/eprint/215628/1/Dorn-Levell-TradeInequality.pdf>

³ Jaumotte, F., Lall, S. and Papageorgiou, C. (2013), 'Rising Income Inequality: Technology, or Trade and Financial Globalization?', IMF Economic Review, 61, 271–309, <https://www.imf.org/external/pubs/ft/wp/2008/wp08185.pdf>

⁴ Harrison, J. (2019). The labour rights agenda in free trade agreements. *The Journal of World Investment & Trade*, 20(5), 705-725, https://brill.com/view/journals/jwit/20/5/article-p705_5.xml

Lawyers outlines possible trade policies and provisions in future trade agreements that could directly benefit workers, the environment and human rights protection both domestically and overseas. International trade, and the economic prosperity it enables, provides a crucial tool in such policies' promotion, providing an additional in Labour's arsenal to great a more just, fair society in the UK and the world.

2. How can Labour ensure the UK's international trade policy promotes growth and investment across the nations and regions of the UK?

It is clear that, under the Conservatives, the benefits of international trade are limited not just to certain economic sectors, but also to certain economic regions. In every region outside London and the South-West of England, there has been a net deficit in total trade of exports to imports,⁵ a trend which has been repeated over previous years.⁶

To combat these regional inequalities, a Labour government must ensure that all sectors of the economy benefit from international trade.

We would start by emphasising the importance of having a wider and more democratic process for determining trade strategy and negotiating trade agreements. Under the Conservatives, UK trade policy has been formed in a silo, often deaf to business and other interests and concerns – and generally deaf to regional concerns. Too often, trade agreements have been negotiated without any adequate consultation on strategy or detail with Parliament, let alone any representatives of regional or devolved government or unions or businesses based outside the South East. And, too often, they have been driven by the desire to reach an agreement at all costs in order to obtain a good photo and a few pages of favourable press coverage. When negotiated, these inadequate trade agreements are then subject to wholly ineffective Parliamentary scrutiny, often only under the CRAG process⁷ which allows (at most) a single vote on ratification. That poor process leads to poor trade agreements, such as the UK-Australia FTA, described even by one of the ministers most involved as a poor deal for the UK.

Under Labour, trade policy should be driven by a wider strategy determined by an open democratic process and subject to democratic challenge and scrutiny at all stages of negotiation. Such a process would have a number of advantages. It would allow those outside the Westminster/Whitehall bubble to have their voices heard and concerns respected, ensuring that trade policy delivered across the UK. It would increase the democratic legitimacy of trade agreements when made. And it would also strengthen the UK's hand in negotiations, as it would be clear to counterparties that UK "red lines" were genuine and that the UK government could not just drop them when put under pressure.

⁵ONS, International trade in UK nations, regions and cities: 2020, <https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/bulletins/internationaltradeinuknationsregionsandcities/2020>

⁶ ONS, International trade in UK nations, regions and cities: 2019, <https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/bulletins/internationaltradeinuknationsregionsandcities/2019>

⁷ Constitutional Reform and Governance Act 2010, section 20

The Labour Government should therefore legislate to require an open and transparent process, involving regional and devolved governments as well as businesses, unions, NGOs and the wider public, to determine trade strategy and the mandate for trade negotiations, as well as improving Parliamentary scrutiny of trade strategy and negotiations to a level at least equivalent to the way in which the European Parliament or Congress scrutinises EU or US trade policy (for example, by requiring Parliamentary approval of trade negotiating mandates as well as keeping the relevant select committees informed as to, and consulting them on, the course of negotiations).

In terms of substantive policy, we would also suggest:

1. Ensuring that regional inequalities in access to infrastructure, including international transport by sea and air, and electronic communication systems, are significantly reduced to allow the export of goods and services from all regions. This means expanding regional airports and train connections in a net-zero compliant manner, aiming for transport which is affordable, accessible, and sustainable, and improving access to ultra-fast internet (given the UK's vast disparities), to improve regions' ability to trade internationally.⁸
2. Providing compensation to those negatively affected by trade liberalization, granting them access to financial assistance, educational opportunities to reskill and support to become re-employed. Such a scheme has already been successfully implemented in the United States since 1962, under the Trade Adjustment and Assistance program, with generally positive reviews.⁹
3. Preventing "races to the bottom" by insisting on high labour and environmental standards in trade agreements. For example, a labour government should consider including in future trade deals requirements that certain imported manufactured goods, such as automobiles, have at least 40% of their components produced by labour earning the United Kingdom's minimum wage.¹⁰

3. How can Labour build resilience into the international trade system and better ensure the security of essential supply chains?

All international trade is built on a system of trust. Countries have to believe that they will benefit from taking part in the international trade system, and that any abusers will be effectively punished. Labour must therefore develop policies to encourage cooperation in established mechanisms it is already a part of, such as the World Trade Organization

⁸ UK Civil Aviation Authority. 15 April 2022

<https://www.caa.co.uk/data-and-analysis/uk-aviation-market/airports/uk-airport-data/uk-airport-data-2021/annual-2021/> ; ONS, Exploring the UK's digital divide, 4 March 2019 Exploring the UK's digital divide - Office for National Statistics (ons.gov.uk)

⁹ Guth, J., & Lee, J. (2017). Evaluations of the trade adjustment assistance program for workers: A literature review. *Executive Briefings on Trade*.

https://www.usitc.gov/publications/332/executive_briefings/ebot_taaevaluationsguthlee.pdf

¹⁰ As found in the United States- Mexico-Canada Agreement, Chapter 4, Annex 4-B-1, Article 7.

(“WTO”), and forge new relationships with like-minded countries to diversify the risk resulting from bad actors. Such policies should therefore include:

1. Aiming to reach an international agreement on the strengthening of WTO rules on the prevention of export bans for essential goods, including medical supplies, basic agricultural goods, and critical raw materials. This could include removing the exception to the general prohibition on export bans under Article XI:2(a) of the General Agreement on Tariffs and Trade (“GATT”) for foodstuffs or other essential products.
2. Attempt to restore the Appellate Body of the WTO, which has been vacant since 30 November 2020. International Trade relies upon the effective adjudication of disputes between countries to prevent a tit-for-tat escalation of sanctions and reprimands. Since 67% of all WTO decisions are appealed, the resultant vacancies have led to a significant escalation in protectionist policies, causing harm to the wider international trade system as a whole.¹¹
3. Diversifying the countries with which the UK has trade agreements, so that essential supply chains are less threatened by regional shocks. For example, the energy price shocks which have threatened European supplies of tomatoes and cucumbers in 2023 have had little impact on the price of those from Mexico, the world’s main exporter, which sits at nearly 50% below the UK average.¹² The UK’s accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, of which Mexico is a part, may assist in building up stronger trading links with a more diverse range of suppliers, helping to mitigate any future supply shocks.

These policies would not only help strengthen UK supply chains, but encourage countries to act more cooperatively in the international arena, preventing future supply shocks that we saw arise under COVID-19.

4. How will a Labour government’s trade policy reduce poverty and global inequality while promoting (a) human rights, (b) workers’ rights, (c) fair trade and (d) global peace and security?

A Labour government’s trade policy can generate growth, both domestically and in lower and middle-income countries by embracing the language of human rights, workers’ rights, fair trade, and security throughout any future trade deals made.

¹¹ WTO Appellate Body, Annual Report for 2018, https://www.wto.org/english/tratop_e/dispu_e/ab_anrep_2018_e.pdf

¹² Selina Wamucii, United Kingdom Tomato Prices (2023), <https://www.selinawamucii.com/insights/prices/united-kingdom/tomatoes/#:~:text=United%20Kingdom%20%28UK%29%20tomatoes%20wholesale%20price%20In%202023%2C,British%20pound%20sterling%20is%20GBP%2011.9%20per%20kg> ; Selina Wamucii, Mexico Tomato Prices (2023) , <https://www.selinawamucii.com/insights/prices/mexico/tomatoes/#:~:text=In%202023%2C%20the%20approximate%20price%20range%20for%20Mexico.for%20tomatoes%20in%202019%20was%20US%240.84%20per%20kilo>

This can be done through:

1. Statements in the trade agreement which explicitly affirm both countries' commitments to international agreements on labour or human rights, such as to the Universal Declaration of Human Rights, or International Labour Organisation Convention, and a commitment to effectively implement them. An example of this can be found in the Canada-Israel FTA (Article 13.2(1)):

"Each Party reaffirms its commitment to implement effectively the obligations under the Convention on the Elimination of all Forms of Discrimination Against Women, adopted by the United Nations General Assembly on 18 December 1979, and notes the general recommendations made under its Committee"

2. Including, particularly in relation to workers' rights and fair trade, a requirement that certain goods must have a minimum percentage of "Labour Value Content" or "Fair Trade Content" to qualify as goods originating from a party, and therefore capable of benefiting from reduced tariffs. An example of this can be found in the USMCA, which requires at least 15% of any passenger vehicle exported to have been made by labour earning at least \$16 an hour (Annex 4-B-1, Article 7).
3. Incorporating a monitoring process, which would grant a role for British parliamentary representatives and civil society actors to consider and make recommendations on the effective implementation of the agreement.
4. Providing exceptions to trade obligations when they would conflict with human rights, labour or security standards. An instance of this can be found in the EU-Cariforum Economic Partnership Agreement, which incorporates attempts to combat child labour into an exception provided under Article XX of the GATT:

"the Parties agree that ... measures necessary to combat child labour shall be deemed to be included within the meaning of measures necessary to protect public morals or measures necessary for the protection of health"

5. Including an "essential elements" clause which makes the enforceability of the trade agreement as a whole subject to compliance with various human rights, labour or fair trade standards, and allows for the agreement to be terminated if such standards are not complied with. See, for instance, Article 2 of the EU-Albania agreement:

"Respect for the democratic principles and human rights as proclaimed in the Universal Declaration of Human Rights and as defined in the European Convention on Human Rights... constitute essential elements of this Agreement."

And Article 60(3)(b) of the Vienna Convention on the Law of Treaties (“VCLT”), which allows States to terminate a treaty in the event of:

“the violation of a provision essential to the accomplishment of the object or purpose of the treaty.”

This can be supplemented by an “appropriate measures” clause, which would empower the UK to derogate from its commitments under the Treaty in the event of a party’s breach of an “essential element”. In this regard, it should be noted that the EU has successfully implemented such measures for breaches of global peace and security at least twenty times, in relation to flawed elections,¹³ coup d’états,¹⁴ and broader violations of human rights globally.¹⁵

5. How can Labour use trade policy to deliver environmental protection and help drive the world to net zero?

The policies outlined in question 4 would equally apply to environmental protection, allowing Labour to use trade to help drive the world to net zero.

These include:

1. Expression of shared principles, alongside commitments to implement these in domestic law, for example the Free Trade Agreement between New Zealand and the EU Article 19.6 provides that:

1. The Parties recognise the importance of taking urgent action to combat climate change and its impacts, and the role of trade in pursuing this objective,

...

2. In light of paragraph 1, each Party shall effectively implement the UNFCCC and the Paris Agreement, including commitments with regard to Nationally Determined Contributions.

2. Binding commitments to international environmental treaties, such as Article 764 of the Trade and Cooperation Agreement between the UK and EU (“TCA”):

“...each Party shall respect the Paris Agreement and the process set up by the UNFCCC and refrain from acts or omissions that would materially defeat the object and purpose of the Paris Agreement”

¹³ Central African Republic, Comoros, Fiji, Guinea-Bissau, Ivory Coast, Madagascar, Mauritania, Niger, Republic of Guinea.

¹⁴ Guinea-Conakry, Haiti, Ivory Coast, Togo

¹⁵ Liberia and Zimbabwe, both in 2001

3. Incorporating monitoring processes, through the establishment of an international committee to oversee implementation, such as in Article 22.4 of the EU-Canada Trade Agreement:

“The Committee on Trade and Sustainable Development, established under Article 26.2.1(g) (Specialised committees), shall be comprised of high level representatives of the Parties responsible for matters covered by ... [Chapter] Twenty-Four (Trade and Environment). The Committee on Trade and Sustainable Development shall oversee the implementation of [This Chapter], including cooperative activities and the review of the impact of this Agreement on sustainable development ...”

4. Unilateral exceptions clauses, like Article 101 of the North American Free Trade Agreement:

5.

The Parties understand that the measures referred to in GATT Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT Article XX(g) applies to measures relating to the conservation of living and non-living exhaustible natural resources.

5. And “essential elements” clauses allowing the treaty to be terminated, as found in Article 771 of the TCA:

“... Article 764(1) [titled “Fight against climate change”] constitute[s] [an] essential element[] of the partnership established by this Agreement and any supplementing agreement.”

- 6. What are the specific implications of policy proposals in this area for (a) women, (b) Black, Asian and minority ethnic people (c) LGBT+ people, (d) disabled people and (e) all those with other protected characteristics under the Equality Act 2010?**

These policy proposals, particularly in the area of human rights, will likely have a significant benefit to minority and discriminated groups, not just in the UK, but also overseas.

First, a commitment to various international human rights treaties will include those treaties' articles preventing discrimination. However, a Labour government could make this commitment even more impactful by:

1. Making explicitly enforceable commitments to prevent discrimination within any future trade agreement. An example of this can be found at Article 23.9 of the Agreement between the USA, Mexico, and Canada, which requires parties to implement policies against:

“...employment discrimination on the basis of sex (including with regard to sexual harassment), pregnancy, sexual orientation, gender identity, and

caregiving responsibilities; provide job-protected leave for birth or adoption of a child and care of family members; and protect against wage discrimination.”

This would provide a significant benefit to discriminated groups in other countries, who may for the first time gain protection under that country’s domestic law.

2. Provide a space for individuals of parties to the trade agreement to make public submissions to the UK government about non-compliance with such anti-discrimination policies. An example of this can be found in Article 12.10 of the Canada-Israel Free Trade Agreement:

1. Each Party shall provide for the submission and receipt of, and periodically make available a list of, public communications on matters regarding labour laws that:

- (a) are raised by a national of that Party or by an enterprise or organisation established in the territory of that Party;*
- (b) arise in the territory of the other Party; and*
- (c) pertain to any obligation under Section A.*

Second, such a commitment could result in better enforcement domestically of human rights treaties that the UK government has already signed. For example, whilst the UK ratified the UN Convention on the Rights of the Child in 1991 (“UNCRC”), it has not been made part of domestic law. This has meant that children can still receive “reasonable punishment”, including smacking, despite it being arguably incompatible with a child’s right not to receive corporal punishment under the UNCRC.

If the proper implementation of the UNCRC, or another international treaty, such as the Convention on the Rights of Persons with Disabilities, were included as part of the UK’s efforts to encourage human rights protections in other countries, it would likely also have a significant effect on the UK’s own enforcement of such treaties domestically, benefiting minorities.

7. What consideration would need to be given to policy proposals in this area when collaborating with devolved administrations and local governments in England, Scotland, Wales and Northern Ireland?

Many areas of a progressive trade policy will overlap with devolved powers, including agriculture, human rights, public-sector procurement and, in the case of Northern Ireland, employment law. Whilst this would not prevent a Labour government from ratifying a treaty over devolved administrations’ opposition, it may result in the institution refusing to implement a treaty measure they oppose. Such disputes over the implementation of international law have already been heard by the Supreme Court.¹⁶

¹⁶ *Reference by the Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (2021) UKSC 42*

Failing to take into account devolved and local governments' interests only further exacerbates the current disconnect felt by local communities with national policy, fueling campaigns for independence. A Labour government should commit to:

1. Providing a formal route by which the devolved administrations and local government bodies can have a say in establishing the UK's policies and positions on international agreements. This could be done through the establishment of an inter-governmental committee, by which the heads of the devolved governments, and representatives from the Greater London Authority and the 10 combined authorities of England, would meet with the UK government prior to formal trade negotiations taking place.
2. Requiring the approval of devolved institutions for any negotiated trade agreement impacting devolved powers, as done in Germany and Austria.
3. Granting devolved governments the right to formally request that the UK negotiating team incorporate specific priorities into negotiations, as pursued in Switzerland.

Whilst in theory none of these policies are expressly needed, gaining the input and consent of devolved and local governments would prevent such treaties from being used as a basis to further claim a separation between national policy and local interests. These proposals would directly combat any such threat.

Consultation with devolved and regional governments should also form part of a wider system of consulting business, unions, NGOs and the wider public about UK trade policy, including trade agreements: see above.