Introduction

The Trade Justice Movement (TJM) is grateful for the opportunity to respond to the House of Lords Liaison Committee’s Review of Investigative and Scrutiny Committees inquiry. TJM is a UK coalition of nearly seventy civil society organisations calling for trade rules that work for people and planet. Our members include trade unions, aid agencies, environment, social justice and human rights campaigns, Fairtrade organisations and consumer groups.

1. Should the current committee structure be changed?

Yes. As explained in the answer to the next question, the Trade Justice Movement believes that the House of Lords should establish a Non-EU Sessional Committee on International Trade.

2. What changes are needed in the wake of Brexit? Are committees needed to scrutinise the UK-EU relationship in future, and if so how?

In the wake of Brexit, the House of Lords should establish a Non-EU Sessional Committee on International Trade. This committee would play a complementary role to that of the International Trade Committee in the House of Commons, which scrutinises the activity of the Department for International Trade, and conducts inquiries on issues related to international trade. It would also perform a distinct function from the International Relations Committee or the Economic Affairs Committee. Ideally, we hope that the committee would play a formal role in reviewing negotiations for new trade agreements between the UK and other countries, with the power to refer these agreements to both Houses for debate, scrutiny, ratification and rejection.

As we argue in this submission, international trade plays its own unique and increasingly important role in global political economy, which cuts across foreign relations, economic affairs, global geopolitics, international development and defence. International trade and specifically trade agreements have large consequences for public policy, affecting human rights, including labour rights, democracy, rule of law, public services and the environment. Brexit means that the government will have sole competency for the UK’s trade policy, and it is essential that Parliament plays a role in ensuring scrutiny, accountability and oversight.

a) Trade after Brexit

One of the key promises made by the Leave campaign in the 2016 Referendum was that, outside the EU, Britain would be able to manage its own trade policy. As a member of the EU, international trade agreements, including free trade agreements (FTAs), bilateral investment treaties (BITs), the setting of tariffs and cooperation with third countries on standards (such as equivalence and mutual recognition regimes), are the sole competence of the EU. As a non-EU member, the UK will negotiate and agree its own trade agreements with other countries.
This means that, regardless of the deal agreed between the UK and the EU, the UK government will gain competence for trade and investment policy after the 29th March 2019.

Under the existing UK rules, Brexit means that trade agreements will be entirely negotiated under the Royal Prerogative and the government is able to decide when and with whom to start negotiations, set its own priorities and objectives, conduct negotiations and conclude and sign the eventual deal. There are no transparency requirements: neither the public nor civil society has a guaranteed right of input, and Parliament does not have a mandate to oversee and scrutinise trade negotiations. The UK’s existing procedure for the negotiation and ratification of trade agreements gives the Government broad powers to negotiate trade agreements in secret and to ratify these agreements without a vote in Parliament.

The Government has introduced a Trade Bill into Parliament, which when passed will give ministers powers to ‘rollover’ bilateral trade agreements which the UK currently has with third countries through its EU membership. However, the Bill fails to address the fact that EU deals will require significant amendment, either because partner countries demand it or because it is technically impossible to simply transfer provisions across: in effect, the deals will be new deals that are passed without parliamentary oversight. The Bill also fails to address the limitations of existing legislation: it grants Henry VIII powers to ministers and limits the power of Parliament to scrutinise or block trade deals. This is worrying, particularly as the current trajectory suggests that new post-Brexit trade agreements will be negotiated in the same way, without Parliamentary oversight.

There is a clear democratic deficit in the UK’s approach to the development of trade policy. This must be addressed before leaving the EU, so that there is a modern and democratic framework in place to govern the re-negotiation of EU trade agreements and the negotiation of trade agreements with new trade partners. Establishing a new International Trade Committee in the Lords would reflect the way Brexit changes the government’s powers and address the democratic deficit in the UK’s existing trade policy. It would reassure members of the public that the government’s trade policy is not outside the oversight of the legislature, and thus strengthen transparency, accountability and democracy.

b) Scrutiny of modern trade agreements

The need for democratic oversight of UK trade policy is especially important in the context of modern trade agreements, which affect many aspects of public policy, including jobs, the environment, health, development and inequality. This has been a development of the last few decades, where developed countries and

most notably the EU have negotiated large, bilateral trade agreements which include, for example, regulatory cooperation as well as mechanisms to protect investors – such as the controversial Investor-State Dispute Settlement (ISDS) system. Notable examples include the Transatlantic Trade and Investment Partnership (TTIP), between the EU and USA, and the Comprehensive Economic and Trade Agreement (CETA), between the EU and Canada. These are the kinds of agreements which the UK hopes to negotiate and sign with countries from April 2019, and the government has already cited informal negotiations with the USA, the Trans-Pacific area, Australia and New Zealand. Given this, it is imperative that trade agreements are subject to the highest level of transparency, scrutiny and accountability.

The highly technical and wide-reaching policy implications of modern trade agreements mean that it would be difficult for Parliament to properly scrutinise details of these agreements without devoted select committees. Trade policy occupies a unique space beyond the remit of other committees, such as foreign or economic affairs, not least because it is subject to its own kind of international law. A trade-specific select committee in the Lords would give peers the time and space required to scrutinise the detail in new trade deals and assess wider policy implications – particularly on health, human rights, workers’ rights and environmental standards. At times this may require joint inquiries with other committees. Either way, it should be clear that occasional debating time in the Chamber is insufficient to properly address the complexity and increasing importance of modern trade agreements.

TJM also hopes that a new International Trade Committee could play a formal scrutiny role in new trade agreements, a suggestion which was supported by many MPs in amendments to the Trade Bill. This would have to be incorporated into primary legislation, and would require that any new trade negotiations are referred to the committee. The Parliamentary scrutiny committee should have a remit to access all trade negotiation documents as negotiations progress. The Committee should be given the responsibility to review, amend and approve draft negotiation texts. Adequate time should be given for the committee to scrutinise documents and for the Government to then revise its negotiating position. This would mean that MPs and peers can read negotiation documents, assess public policy implications of deals and ultimately refer trade deals for debate and either ratification or rejection on the floor of both Houses. This would give the committee more powers than other select committees, but would not be significantly different to the role currently played by the European Scrutiny Committee or Delegated Legislation Committees. The committee could also be modelled on the European Affairs Committee in the Danish Parliament, which has the power to mandate government action on European affairs.

---

4 See the Department for International Trade’s consultation publications (2018) https://www.gov.uk/government/publications?departments%5B%5D=department-for-international-trade&publication_filter_option=consultations
6 More information on the Danish Parliament’s European Affairs Committee here:
c) Specific threats to democracy and rights

In addition to the procedure for agreeing trade deals, which currently lacks Parliamentary oversight, there is increasing concern about the content of trade deals undermining democracy and human rights. These concerns were raised about TTIP and CETA, which led to civil society action across Europe and North America. In particular, concerns were raised around the Investor-State Dispute Settlement (ISDS) mechanism and its implications of democracy, human rights and rule of law.

ISDS is a mechanism for investor protection, designed to protect the interests of private investors if their profits are harmed by changes to or the implementation of domestic policy. ISDS cases are settled in international arbitration courts, rather than domestic courts. The original stated aim of ISDS was to increase investment in countries where the legal infrastructure was considered to be weak, however the evidence suggests that such provisions have done little to help attract investment to these countries. Further, arbitration courts do not meet Western standards for rule of law: they lack an appeals system, judges do not have the same level of training, trials are not always transparent and there are very high costs to bring a case. ISDS also has worrying implications for public policy; governments risk significant legal costs for defending a case and compensation in the millions, sometimes billions, of dollars if they lose. This has led to 'regulatory chill', whereby states are reluctant to introduce legislation which might harm the profits of these investors – even if the legislation is in the interests of the environment, social welfare, or is democratically supported by the electorate. There are examples of cases including Vattenfall vs. Germany (2009), where the Swedish energy firm Vattenfall launched an investor-state claim against Germany on the basis that Hamburg’s environmental legislation amounted to an expropriation and a violation of Germany’s obligation to afford foreign investors “fair and equitable treatment.” To avoid the case being taken to an international tribunal, the German government settled. If it had gone to an international arbitration court, the cost to the German taxpayer could have been far higher. Other similar cases include Lone Pine vs. Canada (2013) and Anglian Water Group vs. Argentina (2010).

In addition to ISDS, TTIP-style trade agreements can also undermine environmental and other standards, such as health standards, workers’ rights or consumer rights, through regulatory cooperation. Although regulatory cooperation is not in itself undesirable, including such provisions in trade agreements can make it difficult for governments to change things like environmental policy and human rights – even when these changes have democratic support. Where trade agreements are made with countries with lower standards, this can also lead to the lowering of standards or prevent future improvement. For example, concerns were raised about TTIP forcing the UK to

https://www.thedanishparliament.dk/en/committees/committees/euu
allow chicken products washed in chlorine on UK supermarket shelves, whereas
the practice is currently banned on health grounds. As the UK rushes to establish
trade deals with new countries after Brexit, it is not inconceivable that similar
standards and protections will be affected.

Although the establishment of an International Trade Committee would not by
itself prevent ISDS or standards-cutting in future trade deals, it would at least
give Parliament a platform on which to examine, debate and challenge the
inclusion of these provisions in trade deals. The House of Lords has a strong
record on noting where public policy has unwanted implications for rights and
rule of law, partly due to the high number of legal professionals who are
members of the House of Lords. It would be valuable for new trade deals to
receive scrutiny from these experts.

14th September 2018