



**Brexit and Human Rights Briefing No.6: Trade and
Human Rights
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Executive Summary

After Britain leaves the European Union, it will be free to determine its own trade policy and strike its own trade deals. With respect to human rights, this presents risks as well as opportunities. There is a significant danger that pressure to strike quick trade deals to boost prosperity, coupled with Britain's reduced bargaining power, will result in a race to the bottom when it comes to aligning domestic regulatory standards with those of third countries. There's also a danger that mechanisms designed to raise human rights standards abroad will be omitted from such deals.

However, there are also opportunities. The human rights mechanisms integrated into the EU's current trade policy have been criticised as inadequate and ineffective. With Britain taking control over its own policy, we have the chance to adopt a more effective approach of our own. There is also an important opportunity to weave duty of care into trade policy, making sure UK companies take responsibility for what happens in their supply chains.

This briefing will explore these issues in more detail. It will recommend the following:

- That domestic regulatory standards should not be watered down for the purpose of easing trade.
- That human rights conditionality clauses in trade deals should be strengthened by making monitoring more rigorous and by adding fines and incentives.
- That a 'failure to prevent' model, mirroring the 2010 Bribery Act, should be adopted to enforce corporate liability and ensure a duty of care for corporations operating internationally.
- That Parliament should have a veto power over trade deals in order to ensure they maintain the most robust human rights standards.

The domestic risks

Modern trade deals commonly focus extensively on levelling the playing field between countries in terms of their regulatory frameworks. Similar regulatory standards make it easier to establish 'frictionless trade', where goods can be sold and companies can operate easily between markets. Many of the countries Britain might want to strike trade deals with after Brexit, including the United States, have lower regulatory standards than our own. This is true across a wide spectrum of areas, from management of carcinogens, pesticides, and pollution, to privatisation of public services and workers' rights.

The danger is that, in order to ensure the best regulatory conditions for trade, Britain will be forced to accept a reduction in our domestic standards. This concern has already been widely reported with respect to a potential UK-US trade deal, for example in relation to America's lower hygiene standards in meat production.¹ There have also been concerns that the proposed free trade deal between the US and the EU, the Transatlantic Trade and Investment Partnership, would open the NHS up to greater privatisation. The danger of this would be even greater with a UK-US trade deal since the UK will have less bargaining power to exclude its healthcare sector from marketization.

If we take a holistic view of human rights, including economic, social, and environmental rights, a reduction in domestic regulatory standards could therefore threaten human rights across a wide range of areas. LCHR's view is that the UK should hold firm during

¹ <https://www.theguardian.com/animals-farmed/2018/feb/21/dirty-meat-shocking-hygiene-failings-discovered-in-us-pig-and-chicken-plants>

negotiations and refuse to lower any of our domestic standards in order to accommodate trade. Instead, the UK should seek to improve the regulatory standards of third countries.

Human rights conditionality

Conditionality clauses are an established method of integrating human rights into trade policy by making trade conditional on the third country respecting human rights. The EU, for example, makes extensive use of such conditionality clauses in its trade agreements. However, conditionality clauses have also been criticised as inadequate and ineffective. If the UK is to make use of them, it should address these criticisms and ensure their effectiveness.

Research commissioned by the Economic and Social Research Council as part of its *'Working Beyond the Border'* report found that the conditionality clauses in current EU trade deals have a number of shortcomings in their design and execution. The most pressing concerns relate to the insistence on a culture of dialogue and cooperation on promoting labour standards between both parties, when, in a large number of cases, this is not the main priority for the partner nation. The report points to the example of South Korea, which has seen government crackdowns on trade unions, to show the discrepancy between the EU's intentions and that of the third country.² Indeed, South Korea has not ratified the International Labour Organization's (ILO) Freedom of Association & Collective Bargaining conventions, and leaders of the Korean Metal Worker's Union (KMWU) have a long history of suffering state detainment and persecution.³

There are numerous other examples of the ineffectiveness of the EU's conditionality clauses. Pakistan, for example, currently has a "GSP+" enhanced trade status with the EU, despite, according to Amnesty International, the arbitrary detention of human rights activists, enforced disappearances, and the prevalence of bonded labour there.⁴ Bangladesh, where the Rana Plaza disaster put the spotlight on poor working conditions for garment workers, has duty-free and quota-free access to the EU market.

To ensure human rights conditionality clauses actually work, they have to have teeth. One option would be to attach fines to conditionality clauses if they are violated, while another would be to provide economic incentives to countries to improve their standards. The UK should also consider making monitoring processes more rigorous.

Duty of care

Putting human rights at the heart of trade policy means looking inward as well as outward. There is an opportunity to bring duty of care into the heart of UK trade policy by introducing civil liability for UK companies for failings in their supply chains with respect to human rights and labour standards. With recent legislation on modern slavery and bribery setting a precedent for UK companies taking responsibility for their supply chains and the activities of their partners, now is the time to expand this principle and integrate duty of care into trade and business activities more broadly.

The Rana Plaza tragedy in 2013 sparked renewed interest in UK company operations overseas. Two years after the incident, which killed over 1,100 workers in Dhaka, Bangladesh, the Modern Slavery Act was passed which stipulates that UK companies

² <http://www.geog.qmul.ac.uk/media/geography/docs/research/working-beyond-the-border/Governing-Labour-Standards.pdf>

³ <http://www.industriall-union.org/south-korea-trade-unionists-holed-up-in-offices>

⁴ <https://www.amnesty.org/en/countries/asia-and-the-pacific/pakistan/>

turning over in excess of £36 million are required to publish an annual review of slavery within their supply chains.

Whilst the Rana Plaza workers were paid – just very poorly – the passing of the Modern Slavery Act sought to bring about a much needed culture of reform in abuses in UK company supply chains, and ensure that their duty of care related to workers’ pay, conditions, and rights, is upheld. Yet a 2017 report from CORE, the Corporate Responsibility watchdog, found that, despite the stipulation to report on slavery within supply chains, only one third of British companies covered by the Act have actually reported findings as part of the Transparency in Supply (TISC) clause.⁵ This suggests the legislation must be strengthened.

In addition to TISC, there are additional legislative mechanisms which could be utilized further to ensure that British corporations improve their duty of care post-Brexit. The aforementioned research from CORE, the *Briefing for the General Debate on the Implementation of the Modern Slavery Act 2015*, also highlights that the UK is bound by UN Guiding Principles on Business and Human rights, namely the process of Human Rights Due Diligence (HRDD). The UK became the first country in the world to formally adopt an implementation plan for the UN Guiding Principles on Business and Human Rights, initially published in 2013 but updated in May 2016.⁶ Yet whilst other EU nations provide laws on the largest companies providing HRDD analysis, UK companies, as CORE highlights, fail to report on a regular basis. In addition, there are worrying trends with regards to the persistence of labour exploitation, with the National Crime Agency reporting a 35% annual rise in slavery victims in the UK in March 2018.⁷

To consider stricter legislation for duty of care, we can look to the 2010 Bribery Act. Transparency International UK, the anti-corruption NGO, argue that the Bribery Act is among the world’s strictest legislation on bribery, creating four prime offences related to bribery and offering transnational judicial reach. This means that both UK companies with operations abroad and foreign companies operating in the UK can be liable to punishment.⁸ Indeed, the Bribery Act ensures that ‘to avoid corporate liability for bribery, companies must make sure that they have strong, up-to-date and effective anti-bribery policies and systems.’ The extra-territorial reach of the Bribery Act is something which LCHR believes should be replicated to create a duty of care for UK companies to ensure their third party suppliers provide adequate pay and working conditions for their employees.

Conclusions and recommendations

The UK has an opportunity to set the gold standard for human rights in trade after it leaves the European Union. It must avoid the temptation to reduce domestic regulatory standards or omit conditionality clauses in order to chase quick trade deals. To ensure this does not happen, the UK Parliament should veto power over any trade deals.

To further the cause of human rights internationally, the UK should improve on the EU’s flawed conditionality mechanisms in its own trade deals, strengthening monitoring

⁵ http://corporate-responsibility.org/wp-content/uploads/2017/10/171026_briefing-for-general-debate-on-MSA-implementation_web.pdf

⁶ Good Business: Implementing the UN Guiding Principles on Business and Human rights: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf

⁷ <https://www.theguardian.com/commentisfree/2018/apr/02/modern-slavery-daily-life-exploitation-goods-services>

⁸ <http://www.transparency.org.uk/our-work/business-integrity/bribery-act/#.WuopcoiUtPZ>

mechanisms and attaching fines and incentives to conditionality clauses. The UK should also make sure respect for human rights starts at home by establishing a duty of care by UK companies for what happens in their supply chains.

Specifically, LCHR recommends:

- That domestic regulatory standards should not be watered down for the purpose of easing trade.
- That human rights conditionality clauses in trade deals should be strengthened by making monitoring more rigorous and by adding fines and incentives.
- That a 'failure to prevent' model, mirroring the 2010 Bribery Act, should be adopted to enforce corporate liability and ensure a duty of care for corporations operating internationally.
- That Parliament should have a veto power over trade deals in order to ensure they maintain the most robust human rights standards.

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