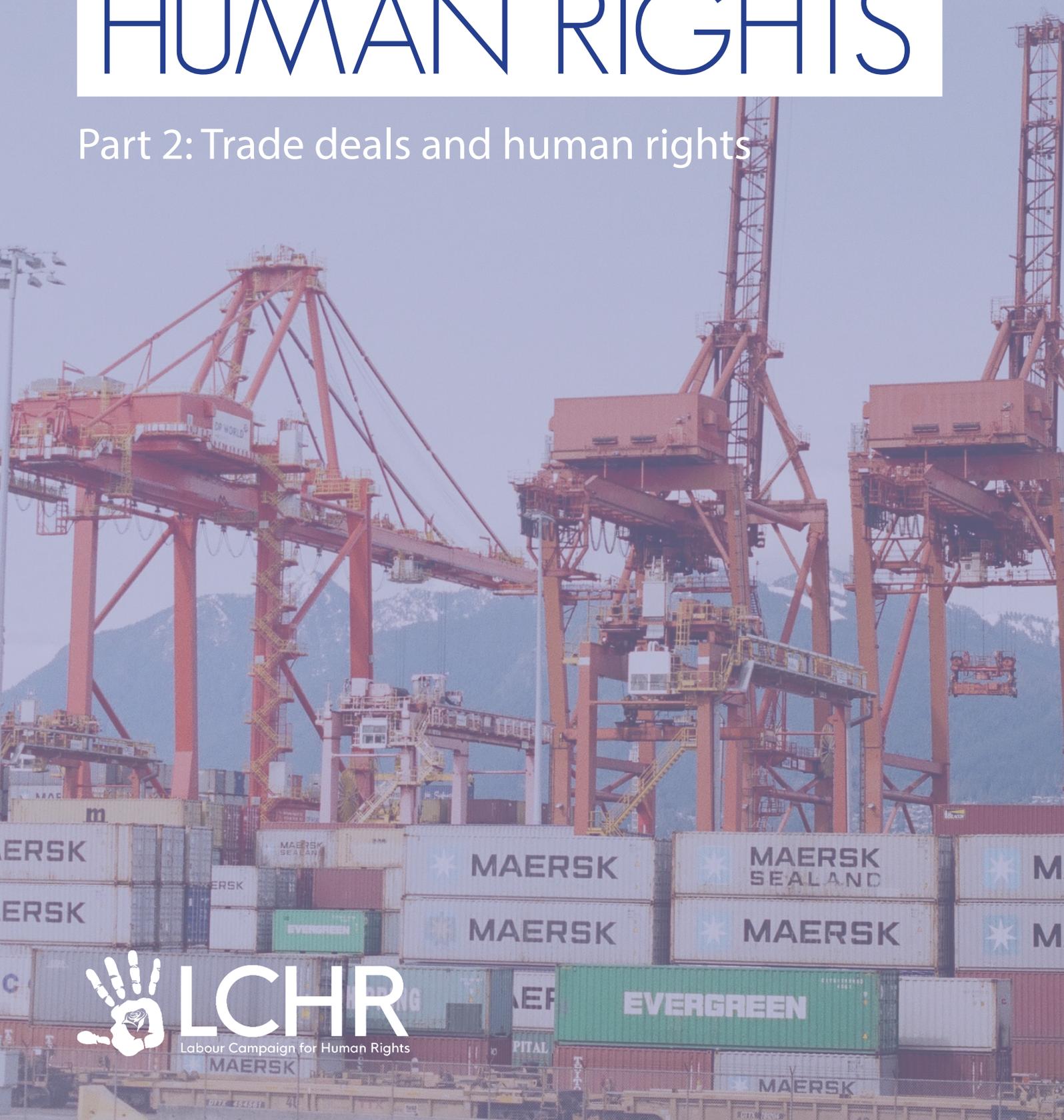


# TRADE AND

# HUMAN RIGHTS

Part 2: Trade deals and human rights



**LCHR**  
Labour Campaign for Human Rights



# TRADE AND HUMAN RIGHTS

## Part 2: Trade deals and human rights

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The Labour Campaign for Human Rights is a campaign within the Labour movement that seeks to ensure that human rights remain at the heart of Labour Party policy and practice.

In January 2019 we launched our 'Britain and Her Allies' campaign which seeks to develop a human rights-based foreign policy for the Labour Party. We work with a range of human rights organisations, charities and activist groups to draw attention to human rights violations by countries around the world that the UK has close economic, cultural or historical ties with and to develop policy proposals for the UK government to help end these abuses.

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# SECTION A

## HUMAN RIGHTS AND TRADE: THE EU REGIME

### 1. Overview

The EU links trade and human rights on the basis that 'an openness to trade, combined with good governance...is a major contributor to inclusive growth and sustainable development, and thus to improved human rights conditions'.<sup>1</sup> Therefore, good governance - the process by which public institutions respect human rights and democratic norms - can facilitate development and respect for human rights.<sup>2</sup> Accordingly, the EU requires all free trade agreements (FTAs) to contain a commitment to comply with human rights and democratic principles. Since 1995, the EU has attempted to make its FTAs conditional upon human rights and democratic standards by requiring that all agreements concluded with third countries contain a human rights clause. While true human rights conditionality would mean not signing agreements with countries that abuse human rights, human rights clauses are the first step in this direction.

### 2. The common commercial policy

The EU common commercial policy (CCP) brings a range of trade-related areas within the EU's exclusive jurisdiction.<sup>3</sup> Consequently, EU trade policy, including the negotiation and conclusion of FTAs, is managed by the European Commission and its Directorate-General for Trade (DG Trade) on behalf of all EU member states.<sup>4</sup> The CCP is 'the oldest, most integrated and most powerful external policy domain of the EU'.<sup>5</sup> The 2007 Lisbon Treaty extended the EU's competence to all aspects of external trade, including services, trade-related intellectual property rights and foreign direct investment.<sup>6</sup>

The EU states that the key aim of the CCP is to 'increase trading opportunities for [members states] by removing trade barriers such as tariffs and quotas and by guaranteeing fair competition'.<sup>7</sup> Furthermore, the EU aims to use the CCP to promote human rights, labour and environmental standards, and sustainable development.<sup>8</sup> Furthermore, the Lisbon Treaty stipulates that trade must be conducted in accordance with the principles of democracy, the rule of law, human rights and natural resource sustainability.<sup>9</sup>

The EU has sought to foster the nexus between trade and human rights by gradually integrating human rights into the CCP. This includes the imposition of human rights clauses in FTAs with third countries to promote EU values and principles,

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1 European Council, [EU Annual Report on Human Rights and Democracy in the World in 2013](#), 23/06/14.

2 European Parliament, [The effects of human rights related clauses in the EU-Mexico Global Agreement and the EU-Chile Association Agreement: Ex-Post Impact Assessment](#), 01/02/17.

3 European Parliamentary Research Service, [EU trade policy](#), 01/10/19.

4 See article 207 of the Treaty on the Functioning of the European Union. Note that the Lisbon Treaty (2007) subsequently extended EU exclusive competence into all aspects of external trade, including services, trade-related intellectual property rights and foreign direct investment as noted in Leblond, P. & Viju-Miljusevic, C. (2019), [EU trade policy in the twenty-first century: change, continuity and challenges](#), 04/10/19.

5 University of Ghent, [Living Apart Together: EU Comprehensive Security from a Trade Perspective](#), 10/10/13.

6 Journal of European Public Policy, [EU trade policy in the twenty-first century: change, continuity and challenges](#), 04/10/19.

7 European Parliament, [Making the Most of Globalisation: EU Trade Policy Explained](#), 03/06/19.

8 Ibid.

9 Journal of European Public Policy, [EU trade policy in the twenty-first century: change, continuity and challenges](#), 04/10/19.

as well as security interests.<sup>10</sup> The European Commission has described the protection and promotion of human rights as the 'silver thread running through all EU action both at home and abroad'.<sup>11</sup> The European Council's Strategic Framework and corresponding Action Plan for Human Rights and Democracy provide a roadmap to mainstream human rights into 'all areas of its external action without exception' and commit the EU to 'develop methodology to aid consideration of the human rights situation in third countries in connection with the launch or conclusion of trade and/or investment agreements'.<sup>12</sup> The European Commission's Communication on Trade, Growth and Development affirms the need for human rights, good governance and democratic standards in developing countries for sustained trade- and investment-led growth, and for enhanced synergies between trade and development policies.<sup>13</sup> Additionally, the Commission's 2011 appointment of a EU Commission's Directorate-General for Trade and human rights within DG Trade in 2011, signposted a 'new approach' in which trade policy can lever to promote normative values around the world, including human rights.<sup>14</sup>

The European Parliament has also supported mainstreaming human rights in the CCP and human rights conditionality in FTAs.<sup>15</sup> The Lisbon Treaty enhanced the European Parliament's powers in trade-related areas in three important ways:<sup>16</sup>

1. All essential EU trade legislation, including trade preferences and their potential human rights-related aspects, is subject to legislative scrutiny by the European Parliament before being put before the Council of Ministers.
2. The European Parliament must now grant its 'hard power of consent' to the ratification of all EU trade agreements.
3. The European Parliament has a more prominent role in the negotiation of trade agreements.<sup>17</sup>

The European Parliament's support for human rights conditionality was reaffirmed in a 2016 resolution emphasising the limitations of the human rights conditionality including existing monitoring mechanisms.<sup>18</sup>



<sup>10</sup> European Council, [Common approach on the use of political clauses](#), 02/06/19.

<sup>11</sup> European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, [Joint Communication to the European Parliament and the Council, Human Rights and Democracy at the Heart of EU External Action - Towards a More Effective Approach](#), 12/12/11.

<sup>12</sup> Council of the European Union, [EU Strategic Framework on Human Rights and Democracy](#), 25/06/12.

<sup>13</sup> European Commission, [Trade, Growth and Development: Tailoring Trade and Investment Policy for Those Countries Most in Need](#), 27/01/12.

<sup>14</sup> European Commission, [Trade for all: Towards a more responsible trade and investment policy](#), 01/10/15.

<sup>15</sup> Ghent University, [The European Parliament's New Role in Trade Policy: Turning Power into Impact](#), 01/01/14.

<sup>16</sup> Frame, [The integration of human rights in EU development and trade policies](#), 30/09/14.

<sup>17</sup> European Commission, [What did the Lisbon Treaty change?](#), 14/06/11.

<sup>18</sup> European Parliament, [Resolution of 5 July 2016 on Implementation of the 2010 Recommendations of Parliament on Social and Environmental Standards, Human Rights and Corporate Responsibility](#), 05/07/16.

## a. Human rights clauses

The EU is a pioneer in linking human rights with trade liberalisation. By including human rights conditions in FTAs with third countries, it has sought to uphold and promote human rights and democracy through its external action. According to EU official policy:

'The inclusion of political clauses in agreements with third countries aims at promoting the EU's values and political principles which constitute the basis for its external relations as well as at promoting the EU's security interests. Moreover, political clauses constitute a specific tool which the EU can use to implement some of its most important external policy objectives, e.g. respect for human rights, democracy and the rule of law and non-proliferation.'<sup>19</sup>

The human rights clauses that the EU negotiates into its FTAs have three components.

First, an obligation on behalf of both parties to uphold human rights, democratic principles and the rule of law as specified in the 1948 Universal Declaration of Human Rights, the 1950 European Convention on Human Rights and other relevant international human rights instruments.<sup>20</sup>

This provision is phrased similarly across EU agreements. For example, Article 1(1) of the 2010 EU-Korea Framework Agreement states:

'The Parties confirm their attachment to democratic principles, human rights and fundamental freedoms, and the rule of law. Respect for democratic principles and human rights and fundamental freedoms as laid down in the Universal Declaration of Human Rights and other relevant international human rights instruments, which reflect the principle of the rule of law, underpins the internal and international policies of both Parties and constitutes an essential element of this Agreement'.<sup>21</sup>

Second, a clause requiring monitoring of the implementation of the essential elements of this commitment through a committee comprised of representatives of both parties – usually an 'Association Council' or 'Joint Council' – and/or other monitoring organs such as bilateral parliamentary committees or civil society groups.<sup>22</sup> For example, Article 45(1) of the 1998 EU-Mexico Framework Agreement establishes a Joint Council, Joint Committee and Special Committees established by the Joint Council to 'supervise the implementation of [the] Agreement'.

Third, an enforcement mechanism (or 'non-execution clause') enabling the partial or full suspension of an agreement if breached by either party. For example, Article 8(3) of the 2012 EU-Colombia and Peru Trade Agreement provides that 'any Party may immediately adopt appropriate measures in accordance with international law in case of violation by another Party of the essential elements referred to in Articles 1 and 2 of this Agreement' (emphasis added).<sup>23</sup> However, the suspension clause often specifies that the measures adopted must be 'proportional' and 'least disturb' the operation of the agreement, making full suspension of the agreement unlikely. Furthermore, there is no mechanism to measure objectively when a violation occurs, meaning this determination is left to the discretion of both parties.<sup>24</sup>

The primary objective of the non-execution clause is to enable the EU to address human rights issues with its partners through dialogue.<sup>25</sup> The Cotonou Agreement (2003) between the EU and African, Caribbean and Pacific (ACP) Group of States has an extensive non-execution clause, emphasising the role of political dialogue prior to sanctions and providing an elaborate schedule in case 'appropriate measures' are considered.<sup>26</sup> The non-execution clause in

19 'Common Approach on the use of political clauses' agreed by Coreper in 2009.

20 House of Commons Library, [The Human Rights Clause in the EU's External Agreements](#), 16/04/04.

21 [EU-South Korea Trade Agreement](#), 01/05/10.

22 European Parliament, [The European Parliament's role in relation to human rights in trade and investment agreements](#), 01/02/14.

23 [EU-Colombia/Peru Trade Agreement](#), 01/06/12.

24 European Parliament, [The effects of human rights related clauses in the EU-Mexico Global Agreement and the EU-Chile Association Agreement: Ex-Post Impact Assessment](#), 01/02/17.

25 European Parliament, [Human rights in EU trade agreements: The human rights clause and its application](#), 01/07/19.

26 European Journal of International Law, [The Trade and Development Policy of the European Union](#), 2007.

the EU-Canada FTA, the Comprehensive Economic and Trade Agreement (CETA), was the first EU FTA to limit the application of the non-execution clause to situations only where the 'gravity and nature [of the human rights violations] was of an exceptional sort such as a coup d'état or grave crimes that threaten the peace, security and well-being of the international community'.<sup>27</sup>

## b. Origins of human rights conditionality

The first reference to human rights clauses in an EU trade agreement was in the fourth Lomé Convention (1989), which included a clear commitment to using them to promote development. However, there was no mechanism to allow for the suspension or termination of the agreement in the event that human rights commitments were seriously violated.<sup>28</sup> EU FTAs signed in the 1990s - namely the 1992 agreements with Brazil, the Andean Pact countries, the Baltic States and Albania - were among the first to have explicit suspension triggers on the basis of violating human rights commitments. In 1995, it became EU policy to negotiate such clauses into all FTAs. There are still relatively few exceptions to the rule that trade agreements must include human rights conditionalities.

Typical clauses are based on the 1969 Vienna Convention on the Law of Treaties, which states:

'A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part...3. A material breach of a treaty, for the purposes of this article, consists in...(b) The violation of a provision essential to the accomplishment of the object or purpose of the treaty'<sup>29</sup>

These clauses do not create new standards for a party's human rights commitments, but are designed to ensure that it is meeting its existing obligations under international law. For the EU, the human rights conditionality ensures it continues to abide by human rights standards according to its own core treaties and the EU charter of fundamental rights.



<sup>27</sup> [Comprehensive Economic and Trade Agreement](#)

<sup>28</sup> The fourth Lomé Convention (Lomé IV) set out a set of developments and improvements to an original agreement between the European Economic Community and 71 African, Caribbean, and Pacific countries; See Commission of the European Communities Directorate-General for Information, Communication and Culture, Lomé IV, signed 15/12/89.

<sup>29</sup> United Nations, [Vienna Convention on the Law of Treaties](#), 23/05/69.

### c. Trade and sustainable development

Since 2008, the new generation of EU FTAs have included trade and sustainable development (TSD) chapters requiring parties to comply with labour and environmental standards, including the International Labour Organisation's (ILO) Core Labour Standards (including freedom of association, collective bargaining and elimination of forced and compulsory labour).<sup>30</sup> The EU Commission recognised that the inclusion of 'strong provisions to promote core labour standards' was key to address concerns raised by civil society groups about the relationship between trade liberalisation and human rights.<sup>31</sup>

Each TSD chapter contains provisions on cooperation and obligations to respect and 'strive' to improve multilateral and domestic labour and environmental standards, a commitment to uphold levels of domestic protection in relation to labour rights, and a commitment not to use labour standards for protectionist purposes.<sup>32</sup>

For example, the TSD chapter in the EU-Central America Trade Agreement affirms both parties' commitment to

the ILO Core Labour Standards and multilateral environment agreements (Article 286) and commitment 'not to lower the levels of protection afforded in domestic environmental and labour laws' or 'fail to effectively enforce its labour and environmental legislation in a manner affecting trade or investment between the Parties'.<sup>33</sup>

To ensure institutional oversight, the chapters include the establishment of a joint committee composed of representatives from both parties and a civil society mechanism (CSM) comprising business, union, and NGO representatives.<sup>34</sup> For example, Article 230(1) of the 2008 EU-Cariforum agreement (between the EU and 15 Caribbean Community states) establishes a Trade and Development Committee to 'monitor and assess the impact of the implementation of [the agreement] on the sustainable development of the Parties'. It also establishes a Consultative Committee comprised of civil society representatives with a mandate 'encompass[ing] all economic, social and environmental aspects of the relations between the [parties], as they arise in the context of the implementation of this Agreement'.<sup>35</sup> However, the TSD chapter does not provide for a sanctioning mechanism for breaches of the obligations.



### d. Generalised System of Preferences

The Generalised System of Preferences (GSP) is a trade arrangement by which the EU provides preferential access to the EU market to designated beneficiary developing countries that fulfil certain criteria relating to poverty and non-diversification of exports.<sup>36</sup> Such preferences are provided on a non-reciprocal basis. The GSP Regulation provides a

30 The International Journal of Human Rights, [Human rights protection in new generation's free trade agreements of the European Union](#), 24/04/19.

31 European Commission, DG Trade: Strategic Plan 2016-2020, 22/12/17.

32 University of Cambridge Faculty of Law, [Human Rights and Sustainable Development Obligations in EU Free Trade Agreements](#), 03/09/12.

33 Official Journal of the European Union, [EU-Central America Agreement](#), 15/12/12.

34 The Journal of World Investment and Trade, [The Labour Rights Agenda in Free Trade Agreements](#), 28/10/19.

35 Official Journal of the European Union, [EU-Cariforum agreement](#), 30/10/08.

36 European Commission, [The EU's new Generalised Scheme of Preferences \(GSP\)](#), 01/12/12. The current ten-year scheme is set out under Regulation (EU) No 978/2012 with further primary and delegated legislation to be found on the [Eur-Lex website](#) (GSP Regulation).

sliding scale of preferences within three schemes.<sup>37</sup>

1. The general GSP, open to a broad group of developing countries;
2. Everything But Arms regime, open to countries designated by the UN Development Programme as 'Least Developed Countries', providing duty-free and quota-free access to the EU market for all exports (excluding arms and armaments); and
3. The GSP+ incentive regime, open to 'vulnerable' countries that have ratified and implemented 27 international conventions on human rights and sustainable development (including ILO Conventions).<sup>38</sup>

Though its primary objective is to contribute to economic development by supporting growth and job creation in developing and least-developed countries, the EU employs the GSP as a trade instrument to impose human rights obligations on third countries. The GSP+ incentive regime rewards beneficiary countries with additional trade preferences for compliance with international conventions, and represents the 'most comprehensive and detailed human rights mechanism established in the framework of the common commercial policy'.<sup>39</sup>

Preamble 24 of the GSP Regulation states that the preferences may be suspended if the beneficiary commits 'serious and systematic violations of the principles laid down in certain international conventions concerning core human rights and labour rights'.<sup>40</sup> For example, in 1997 the European Commission withdrew GSP status from Myanmar for forced labour practices (although it was reinstated in 2013 when the ILO assessed that the situation had progressed sufficiently following labour reforms).<sup>41</sup>

The European Commission monitors compliance with relevant conventions through monitoring missions and engagement with partner countries (including human rights dialogues), monitoring bodies and third parties (including civil society groups).<sup>42</sup> The Commission then prepares 'scorecards' that feed into biennial reports for the European Parliament and European Council on the 'status of the ratification of the conventions in the GSP beneficiaries, the compliance of the beneficiary countries with any reporting obligations under those conventions, and the status of the implementation of the conventions in practice'.<sup>43</sup> In 2020, the Commission 'intensified the dialogue' with countries including Myanmar and Bangladesh to 'press for concrete actions on and sustainable solutions to serious shortcomings in respecting fundamental human and labour rights'.<sup>44</sup>

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37 European Parliament, [Generalised Scheme of Preferences Regulation](#), 01/12/18.

38 Ibid

39 European Parliament, [Human rights in EU trade policy: Unilateral measures applied by the EU](#), 01/05/18.

40 European Parliament, [Generalised Scheme of Preferences Regulation](#), 01/12/18.

41 European Commission, [The EU's Generalised Scheme of Preferences \(GSP\)](#).

42 Ibid.

43 European Parliament, [Generalised Scheme of Preferences Regulation](#), 01/12/18.

44 European Commission, [Report on the Generalised Scheme of Preferences covering the period 2018-2019](#), 11/02/20.

# Case Study: Cambodia

In February 2020, the European Commission partially suspended Cambodia's preferential trade preferences with the EU, after the Cambodian government failed to address human rights concerns. The opposition party leader was charged with treason, in addition to a crackdown on workers' rights.<sup>45</sup>

As early as 2018, the Commission had begun the process of limiting Cambodia's preferential trade arrangement – Everything But Arms – which enabled the country to send most goods to Europe tax-free.<sup>46</sup> In October 2018, the European Commissioner for Trade, Cecilia Malmström, announced that she had notified the Cambodian authorities that the Commission would be launching the process for the withdrawal of their preferences as a result of systemic violations on top of concerns about workers' rights and land grabbing. She added: 'Without clear and evident improvements on the ground, this will lead to the suspending of the trade preferences that they currently enjoy.'<sup>47</sup>

By February 2019, following a fact-finding mission to Cambodia in July 2018 and a series of bilateral meetings with Cambodian diplomats, the Commission had begun the temporary withdrawal procedure.<sup>48</sup> Concluding that there was evidence of serious human rights violations, the process aimed to bring Cambodia in line with the country's obligations under UN and ILO conventions.

The process consisted of a six-month period of intensive monitoring and engagement with the Cambodian authorities, a three-month period for the EU to produce a report based on the findings and, after 12 months, a final decision on whether or not to withdraw tariff preferences. The Commission would

then decide the scope and duration of the withdrawal, which would come into effect after another six-month period.<sup>49</sup>

Malmström was keen to stress in this instance that the EU's trade policy was based on values, and not just empty words: 'The evidence shows that exporting to the EU Single Market can give a huge boost to their economies. Nevertheless, in return we ask that these countries respect certain core principles. Our engagement with the situation in Cambodia has led us to conclude that there are severe deficiencies when it comes to human rights and labour rights in Cambodia that the government needs to tackle if it wants to keep its country's privileged access to our market.'<sup>50</sup>

The European Union is Cambodia's second biggest trading partner (after the US).<sup>51</sup> The partial suspension of Cambodia's EBA trade preferences will affect selected garment and footwear products, and all travel goods and sugar. After the six-month period, sectors affected by the suspension will be subject to import tariffs when entering the EU market.<sup>52</sup> The Commission's announcement on 12 February 2020 is estimated to cost the country around €1 billion.<sup>53</sup> However, if the Cambodian government meets the Commission's human rights requirements, preferences could be reinstated.

Josep Borrell, Vice President of the European Commission and the EU High Representative for Foreign Affairs and Security Policy, said that the EU, 'will not stand and watch as democracy is eroded, human rights curtailed, and free debate silenced. Today's decision reflects our strong commitment to the Cambodian people, their rights, and the country's development.'<sup>54</sup>

45 Human Rights Watch, [Cambodia: EU Partially Suspends Trade Preferences](#), 13/02/20.

46 European Commission, Everything But Arms.

47 European Commission, On Myanmar and Cambodia, 05/10/18.

48 Just-Style, [Cambodia to lobby EU over preferential trade benefits](#), 02/07/18.

49 European Commission, [Cambodia: EU launches procedure to temporarily suspend trade preferences](#), 11/02/19.

50 European Commission, [Cambodia: EU launches procedure to temporarily suspend trade preferences](#), 11/02/19.

51 Human Rights Watch, [Will EU Suspend Trade Deal With Cambodia?](#), 12/07/18.

52 Human Rights Watch, [Cambodia: EU Partially Suspends Trade Preferences](#), 13/02/20.

53 Bloomberg, [EU Hits Cambodia With Trade Sanctions Over Rights Breaches](#), 12/02/20.

54 European Commission, [Trade/Human Rights: Commission decides to partially withdraw Cambodia's preferential access to the EU market](#), 12/02/20.

## 4. Criticisms of human rights conditionality in EU trade policy

The use of human rights conditionality in EU trade policy has been criticised on three principal grounds: (1) the system's fragmented structure; (2) the European Commission's selectivity bias; and (3) the absence of a sufficient monitoring or enforcement mechanism.

Critics have highlighted that the conditionality regime is inconsistent across all international trade instruments. As a result, human rights conditionality clauses have been left out of significant EU trade agreements. For example, sectoral agreements, such as those relating to fisheries, steel and cotton, do not contain such a clause. This is particularly concerning as workers in these sectors often suffer from systemic and severe human rights violations, especially in relation to labour rights.<sup>55</sup>

The lack of uniformity when integrating human rights into the EU's international agreements has also led to variable standards across different conditionality clauses. For example, the Cotonou Agreement, was championed for its sophisticated system of applying human rights conditionality to partner countries. This system is particularly praised for its mandated political dialogue and consultation before 'appropriate measures' are applied.<sup>56</sup> However, association agreements with countries such as Mexico, Chile, and Syria omit conditionality provisions from dispute settlement procedures.<sup>57</sup>

Similarly, EU trade sustainability impact assessments lack consistency. While the EU-ACP (Africa, Caribbean and Pacific countries) Economic Partnership Agreement exclusively focuses on EU trade partners, the EU-India Free Trade Agreement is broader in scope, and concentrates on the economic, social and environmental impact on both partners.<sup>58</sup> This inconsistency is caused by the fragmented legal structure of the framework, which weakens EU efforts to promote and protect human rights standards through external trade relations.

A frequent criticism is that the EU is inconsistent in its enforcement, even when human rights conditionality is provided for in an agreement. Even where FTAs include a conditionality mechanism, the EU has activated human rights clauses in only a small number of cases. For example, Guatemala - a country infamous for labour rights violations - was granted GSP+ status in 2014.<sup>59</sup> However, four years earlier, Sri Lanka was temporarily suspended from the scheme after an investigation identified violations of both the International Covenant on Civil and Political Rights and the Convention against Torture.<sup>60</sup>

The case of the Philippines is often held up as evidence of the Commission's double standards. Criticism has focused on the EU's failure to act in response to the oppressive policies of the Duterte government, which was responsible for arbitrarily detaining opposition leaders and human rights activists, and leading a brutal 'war on drugs', where state-sanctioned extrajudicial executions led to the country being investigated by the International Criminal Court.<sup>61</sup> Despite mounting international pressure for the Philippines to be suspended from the GSP+ scheme, the human rights clause remains dormant, the country remains a beneficiary, and the government has not been held to account for its violations.<sup>62</sup>

The uneven application of human rights conditionality clauses has led to charges that the EU practices double standards. Moreover, most of the countries that have felt the full force of human rights conditionality have been located in the developing world.<sup>63</sup> Conditionality cases have been activated by the EU in 23 cases - all African, Caribbean and

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55 Director General External Policies of the Union, [The Application of Human Rights Conditionality in the EU's Bilateral Trade Agreements and Other Trade Arrangements with Third Countries](#), 25/11/08.

56 Ibid.

57 Ibid.

58 Utrecht Journal of International European Law, [The Promotion and Integration of Human Rights in EU External Trade Relations](#), 29/09/16.

59 Ibid.

60 Ibid.

61 Human Right Watch, [Philippines - events of 2018](#).

62 European Commission, [List of GSP beneficiary countries](#), 01/05/19.

63 Europe and the World: A Law Review, [Policy vs practice: The use, implementation and enforcement of human rights clauses in the European Union's international trade agreements](#), 26/06/19.

Pacific countries.<sup>64</sup> In contrast, Andorra and San Marino were granted an exception to the conditionality clause in their trade deals.<sup>65</sup> This has been interpreted by critics as the EU 'exporting' its values and human rights standards only to developing countries that it trades with.<sup>66</sup> Others have characterised this pattern of behaviour as a failure to activate conditionality against stronger countries where the sanctions are more likely to be unsuccessful, and not applying equal treatment to less powerful trading partners.<sup>67</sup> This undermines the EU's position as a global actor willing to uphold human rights standards and muster the bravery to 'walk the walk'.

Moreover, it has been suggested that EU inaction in the face of human rights violations of its trade partners correlates with whether the state in question desires a closer relationship with the EU, and whether there are already strong economic ties. This is thought to explain EU action in response to coups d'état and failed elections in the Central African Republic (2005), the Ivory Coast (2001-2), Fiji (2003), Haiti (2001) and Togo (2006). All states which expressed a desire for a closer economic relationship with the EU.<sup>68</sup> By contrast, regimes which lack this desire undermine the EU's power to enforce human rights standards. This is considered to be the reason for the EU's lack of action taken against Zimbabwe, then led by President Mugabe, who expressed no interest in closer relations with the EU.<sup>69</sup>

A third explanation of the EU's selective behaviour is that it is not primarily a human rights body, and that its policy is ultimately shaped by its foreign policy goals. The European Parliament has been vocal in promoting this assessment, and has observed that the most common situation where the EU has invoked conditionality is during a political crisis, often involving a coup d'état or failed election, or in response to grave human rights violations, such as in Uzbekistan, Liberia and Russia.<sup>70</sup> As a result, states that commit 'minor' abuses and violate 'soft rights', such as LGBT and children's rights, are not held to account.<sup>71</sup> This is at odds with the EU Strategic Framework and Action Plan on Human Rights, which states that 'when faced with violations of human rights, the EU will make use of the full range of instruments at its disposal, including sanctions or condemnation.'<sup>72</sup>

Lastly, the EU's conditionality clauses have been criticised for the absence of an effective monitoring or enforcement mechanism to ensure that states comply with their human rights obligations. With the exception of the GSP+ scheme, human rights conditionality clauses across FTAs are not overseen by a single 'operational mechanism' dedicated to monitoring the fluctuating human rights situation of the parties, nor the effectiveness of sanctions when they are applied. The responsibility instead falls on local diplomatic missions, which do not have the expertise or resources to fulfil the role.

An example of good practice was introduced in 2012, when the EU strengthened the compliance mechanism to the human rights conditionality of the GSP+ in response to this widespread criticism. The process implemented consists of ongoing 'dialogue' with the beneficiary authorities, and formal monitoring of compliance through 'scorecards', with oversight from the European External Action Agency. The conclusions are reported to the European Parliament and the Council every two years.<sup>73</sup> This system has been praised for enhancing cooperation with beneficiary countries, and increasing accountability by involving multiple actors.

However, there is no transparent process for engaging with third parties such as human rights organisations. Consequently, the system is primarily overseen by a body not solely dedicated to human rights.<sup>74</sup> In addition, the implementation of this process into similar agreements has yet to occur. Therefore, while this appears to be a shift in the right direction, the EU has a long way to go to meeting its own standards of using trade to uphold human rights overseas.

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64 Ibid.

65 Ibid.

66 Ibid.

67 Frame, [The integration of human rights in EU development and trade policies](#), 30/09/14.

68 Director General External Policies of the Union, [The Application of Human Rights Conditionality in the EU's Bilateral Trade Agreements and Other Trade Arrangements with Third Countries](#), 11/2008, page 17.

69 Ibid.

70 Ibid.

71 Prickartz A-C, Staudinger I, [Policy vs practice: The use, implementation and enforcement of human rights clauses in the European Union's international trade agreements](#), 2019.

72 Beke L, D'Hollander D, Hachez N, Pérez de las Heras B, [The integration of human rights in EU development and trade policies](#), 2014.

73 Utrecht Journal of International European Law, [The Promotion and Integration of Human Rights in EU External Trade Relations](#), 29/09/16.

74 GSP Platform, [Reform the GSP Regulation](#), 01/12/17.



## 5. Human rights impact assessments

The European Commission is responsible for ensuring that the EU's policies, programmes and interventions are not harmful to human rights abroad. This is an obligation under both international and European law and extends to all trade agreements.<sup>75</sup> Therefore, human rights impact assessments (HRIAs) are used to identify, analyse and monitor the impact of trade deals on human rights.<sup>76</sup>

HRIAs are used in a variety of contexts, whether as policy tools for governments or NGOs or as part of due diligence by multinational companies.<sup>77</sup>

Balancing the potential positive human rights implications of FTAs (i.e. economic growth and increased employment) with the negative implications for human rights (i.e. an increase in exploitative or abuse employment practices) can be a difficult task. Therefore, HRIAs can be used to reduce inconsistencies between trade-related and human rights-related goals by providing decision-makers with the tool for anticipating future scenarios and ensuring they are addressed.<sup>78</sup>

The European Commission uses impact assessments more widely to provide evidence and information when making decisions about trade policy, stating that its 'impact assessments identify problems and possible solutions and describe the likely economic, environmental, social and whenever relevant, human rights impacts of those solutions'.<sup>79</sup> The Commission conducts Sustainability Impact Assessments of potential new trade agreements, which provide an in-depth analysis of the potential economic, social, human rights, and environmental impacts of ongoing trade negotiations.<sup>80</sup> However, methodologies vary and the guidelines are vague. There is no single existing blueprint for undertaking HRIAs

<sup>75</sup> European Journal of International Law, [The European Union and Human Rights: An International Law Perspective](#), 01/09/06.

<sup>76</sup> Chatham House, [Human Rights Impact Assessment of Trade Agreements](#), 18/02/19.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> The European Commission, [Impact assessments](#), 15/04/20.

<sup>80</sup> The European Commission, [Sustainability Impact Assessments](#), 11/05/20.

or even a universally accepted definition of what one is.<sup>81</sup> In June 2012, the EU Council adopted a Strategic Framework on Human Rights and Democracy, accompanied by an action plan, calling on the Commission to incorporate human rights in all impact assessments and to develop a methodology to aid consideration of the human rights situation by 2014.<sup>82</sup>

Although HRIAs are primarily used prior to the implementation of EU trade agreements, this does not always take place.<sup>83</sup> For example, the EU did not conduct a HRIA before negotiating the EU-Vietnam FTA in March 2016.<sup>84</sup>

The European Commission was urged to adopt clearer guidelines on the analysis of HRIAs in trade-related policy initiatives.<sup>85</sup> The Commission continues to recommend its more extensive 2015 guidelines on HRIAs of trade-related policy initiatives in both the EU and the partner country, developed in response to the 2012 Strategic Framework and Action Plan.<sup>86</sup>

The 2015 guidelines recommend assessing the potential impacts of trade-related initiatives on human rights by checking compliance with the Charter of Fundamental Rights and examining the effect of proposed measures on human rights obligations under international law, including consideration of civil, political, economic, social, cultural and core labour rights, based on additional core UN human rights conventions, International Labour Organisation conventions and the European Convention on Human Rights.<sup>87</sup> The analysis is then broken down and the impacts presented as 'direct' or 'indirect', 'positive' or 'negative', or 'major' or 'minor'.

HRIAs can ensure that key actors at the national and international level confront a range of concrete issues that would not normally be part of the mainstream trade agenda (the impact of trade obligations in terms of access to food, land, livelihood, education, healthcare and housing etc.). However, they are unlikely to ever provide entirely objective truths about the impact of trade agreements.<sup>88</sup>

There are several problems with HRIAs. It is difficult to provide compelling analyses of the relationships between FTAs and human rights, and there are few circumstances in which they are able to confidently predict that human rights violations are likely to flow directly from a trade agreement. Even where it is possible to predict adverse human rights impacts, the facts, contingencies and causal links will in many cases be too unclear at the time of negotiation to allow for a detailed and bespoke set of safeguards to be written into the text of the agreement itself.<sup>89</sup>

The European Commission's guidelines on the analysis of human rights in impact assessments of trade-related policy initiatives encourage an evaluation once the trade policy is in operation, with a report and recommendations as to possible follow-up actions.<sup>90</sup> The Commission is required to monitor the arrangements and adapt or renounce an agreement should the partner be seen to abuse human rights.<sup>91</sup>

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81 University of Warwick, [Human Rights Impact Assessments of Trade Agreements: Reflections on Practice and Principles for Future Assessments](#), 01/06/10.

82 Council of the European Union, [EU Strategic Framework and Action Plan on Human Rights and Democracy](#), 25/06/12.

83 Chatham House, [Human Rights Impact Assessment of Trade Agreements](#), 18/02/19.

84 European Ombudsman, [The Commission's failure to carry out a human rights impact assessment of the envisaged EU-Vietnam free trade agreement](#), 26/02/16.

85 International Federation for Human Rights, [Commission comes under fire from European Parliament on its trade agreements](#), 10/03/16.

86 [Guidelines on the analysis of human rights impact in impact assessments of trade-related policy initiatives](#), 02/07/15.

87 European Commission, [Guidelines on the analysis of human rights impact in impact assessments of trade-related policy initiatives](#), 02/07/15.

88 University of Warwick, [Human Rights Impact Assessments of Trade Agreements: Reflections on Practice and Principles for Future Assessments](#), 01/06/10.

89 Chatham House, [Human Rights Impact Assessment of Trade Agreements](#), 18/02/19.

90 European Commission, [Guidelines on the analysis of human rights impact in impact assessments of trade-related policy initiatives](#), 02/07/15.

91 House of Lords Library, [Human Rights and Trade Deals](#), 05/09/19.

# SECTION B

## HUMAN RIGHTS IN UK TRADE DEALS POST-BREXIT

### 1. Overview

Now that the UK has left the EU - and the Common Commercial Policy - it is legally able to forge new trading partnerships across the world. What does this mean for human rights conditionality in trade agreements? On the one hand, and despite public statements to the contrary, there is a risk that the current Government will abandon human rights conditionality altogether, in order to secure trade deals as easily and quickly as possible. This is particularly the case given the political imperative for the Government to secure, and be seen to secure, FTAs before the end of the transition period (31 December 2020). On the other hand, there is a real opportunity to lead the way on human rights and improve on the EU regime. The UK must avoid the risk of making 'quick and dirty' trade deals but establish the 'gold standard' for human rights conditionality in trade agreements.

There is evidence that the UK Government is wavering in its commitment to human rights, especially where the possibility of achieving a quick trade deal is at stake.<sup>92</sup> For example, the House of Commons Foreign Affairs Committee has found the Government has consistently failed to take a firm approach to grave human rights violations in its trading relationships with a range of partners including Saudi Arabia, Bahrain, Myanmar, and the Philippines.<sup>93</sup> Last year, the government failed to categorise key countries with poor human rights records - such as Turkey - as priority countries.<sup>94</sup> The government's ongoing negotiation of rollover agreements with the 46 countries that already have deals with the EU have largely failed to cover human rights.<sup>95</sup> Reports that former Australian prime minister Tony Abbott may be in line for a senior position on the recently established Board of Trade have raised further concerns in this regard. Abbott has previously characterised protecting environmental and workers' rights as "peripheral" issues in trade negotiations.<sup>96</sup>

### 2. Brexit and the need for new free trade agreements

The UK is stuck between diverging geopolitical interests. The United States has been identified as a priority partner for an FTA by the current Government for strategic, political and economic reasons.<sup>97</sup> However, striking a deal with the U.S. is fraught with difficulties. Regardless of who the next U.S. president may be, U.S. trade policy may obstruct a deal with mutually beneficial outcomes. The UK's desire to maintain the 'special' relationship may also obstruct engaging in meaningful negotiation with China. Trump has positioned China as a strategic competitor to the US, putting pressure on the UK to take a tough line on China for economic and security reasons.<sup>98</sup> The UK must strike a balance on human rights between the parties of this trade war.

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92 Key government schemes such as Cross-Government Prosperity Fund has no human rights content, at least with respect to China, despite its stated link to the Sustainable Development Goals. See Report: [The use of UK aid to enhance mutual prosperity](#), 23/10/19.

93 Foreign Affairs Committee, [Global Britain: Human rights and the rule of law](#), 11/09/18.

94 Foreign and Commonwealth Office, [Human Rights and Democracy 2018 report](#), 01/06/19.

95 House of Commons Hansard, [EU Trade Agreements: Roll-over](#), 17/10/19.

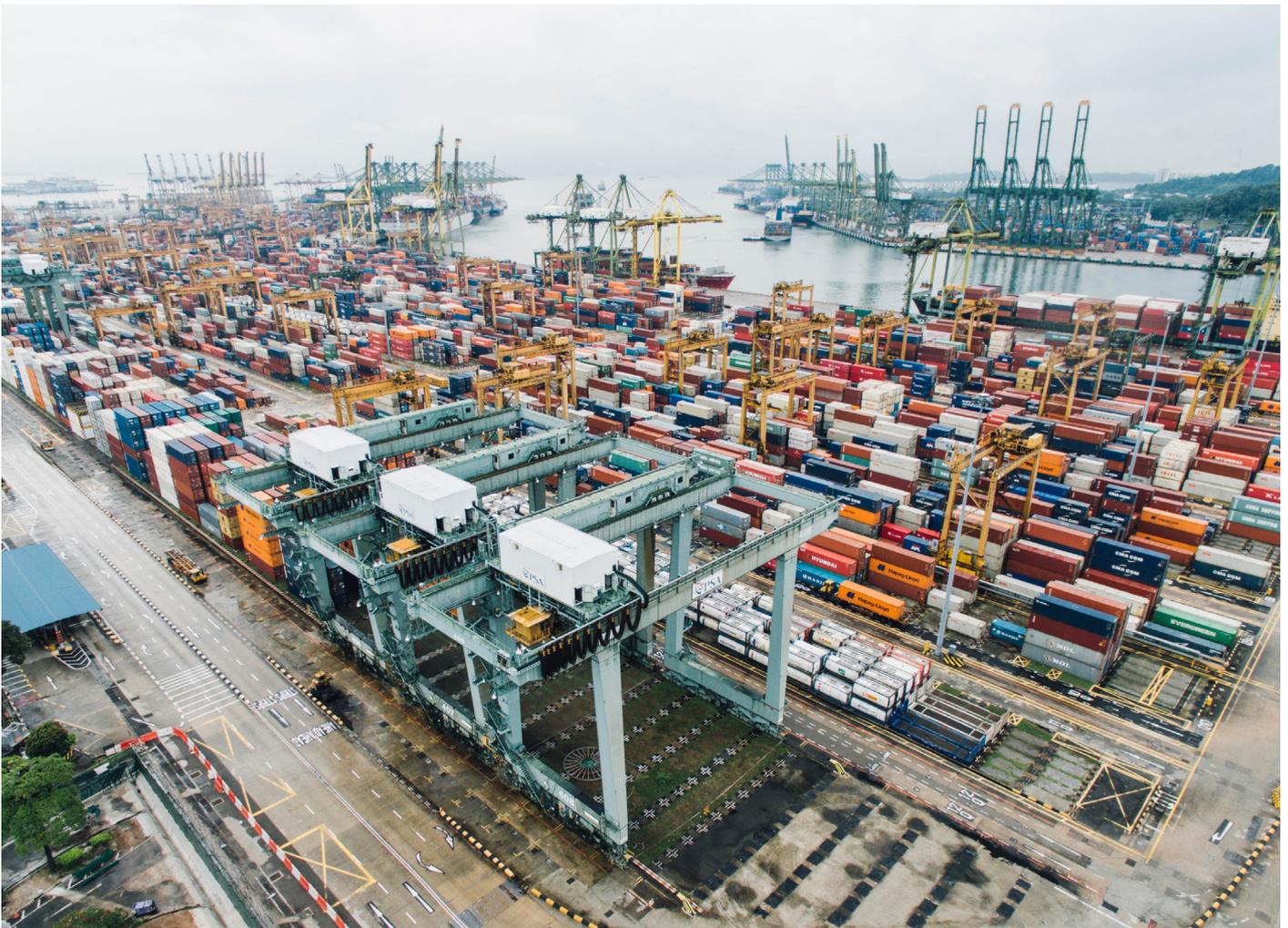
96 The Guardian, [Fresh controversy over Tony Abbott's Brexit role](#), 30/08/19.

97 The USA is the largest investor in the UK in terms of foreign direct investment (FDI) and represents the largest value of any of Britain's trading partners at £201.6bn of total trade and growing 15.0% of the UK's total trade ([Department for International Trade](#), UK Trade in Numbers, February 2020 trade). See Elizabeth Truss, [Free Trade Agreements with the Rest of the World: Written statement](#), 06/02/20.

98 Financial Times, [Brexit Britain trapped between superpowers](#), 29/01/20.

The Government increasingly faces a tight deadline for negotiating and concluding rollover trade agreements with existing partners - i.e. third countries with which the UK had a trade deal through the EU, such as South Korea, Canada and Mexico. The UK remains committed to securing trade agreements by the end of the implementation period, due to end 31 December 2020 under the Withdrawal Agreement. No extension to finalise trade agreements is provided for in the European Union (Withdrawal Agreement) Act so the government would need agreement from the EU and further primary legislation to extend the implementation period. Now that the sign-off window for an extension on 1 July 2020 has passed, this option seems unlikely.<sup>99</sup>

This clear time imperative is compounded by the COVID-19 pandemic, which has delayed the government's plans to strike quick deals around the world.<sup>100</sup> Although they have now resumed, the postponement of the UK-US trade talks in April lost valuable time.<sup>101</sup> If there is no agreement, the UK reverts to so-called WTO terms set out in the Schedules of Commitment and Concessions in the General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS).



99 While the Withdrawal Agreement specifies the 'implementation' period end on 31 December 2020, an UK-EU Joint Committee is required to extend the period by up to two years before 31 July 2020 as stipulated in [Article 132\(1\) Withdrawal Agreement](#). See Section 15A European Union (Withdrawal) Act 2018, as amended by Section 33 of the European Union (Withdrawal Agreement) Act 2020.

100 The Telegraph, Ben Riley-Smith, [UK-US trade talks postponed indefinitely as coronavirus crisis puts quick deal in doubt](#), 09/04/20.

101 The Guardian, Daniel Boffey, [Brexit: UK plan to agree trade deal by December is fantasy](#), says EU 08/04/20.

### 3. Taking leadership: Setting the gold standard

Brexit Britain need not compromise on human rights. Instead, the UK now has an opportunity to set a new gold standard for human rights in trade agreements. Rather than compromising conditionality clauses to chase 'quick and dirty' trade deals, the UK could design and use future trade partnerships to advance human rights in the context of its foreign policy goals. Conditionality clauses can be strengthened and widened to promote key human rights objectives, such as specific references to children's rights under the United Nations Convention on the Rights of the Child, or accessibility and inclusion for all protected groups (as per UK equalities legislation).<sup>102</sup> Article 23 (c) of the Universal Declaration of Human Rights Declaration states that 'Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.'<sup>103</sup>

The UK is at risk of becoming reliant on states that commit gross human rights violations.<sup>104</sup> Why should we submit to calls to lower human rights standards instead of leading the way? A key part of the UK's global influence must focus on moral leadership. Trade deals directly affect individuals. Promoting human rights as an inherent part of such agreements provides an important instrument for projecting the UK's influence overseas. Increasingly, the UK operates in a world in which other countries use trade agreements to advance foreign policy goals<sup>105</sup> and to promote human rights in conjunction with other key goals, such as adequate labour rights and conditions, anti-corruption and transparency measures, and environmental standards.<sup>106</sup> The UK's foreign policy has historically been centred around harnessing a system of intergovernmental institutions such as the UN human rights system to cultivate a rules-based international order.

Taking leadership in promoting human rights globally is also key to driving trade and prosperity. The COVID-19 crisis has shown that the importance of farmers and workers for UK's own food security. Therefore, protecting the rights of workers around the world is in the UK's long-term interest. A trade policy that takes into account human rights will also in turn promote business. Supporting a rules-based international legal system lays the bedrock for stability, security, and prosperity. The institutions of the rule of law necessary to promote human rights allow for fairer more competitive domestic markets that enable trade and attract investment. The creation of a framework of states with shared legal understandings and mechanisms that adhere to internationally accepted norms on human rights necessarily translates into robust legal regimes and facilitates trade through common systems and values.<sup>107</sup>

The UK has an opportunity to lead the way on human rights and trade and set the gold standard for human rights conditionality. This would involve improving on the flaws of the EU system, in particular the inconsistency in its application and lack of a robust sanction mechanism. Therefore, the new UK regime should include:

- A detailed model human rights conditionality clause - with a set of core, immutable commitments - that is included in free trade agreements across the board. Whilst there might be some minor amendments to reflect the nuances of particular agreements, the core commitments would be non-negotiable.
- A process by which effective human rights impact assessments are carried out at the time when free trade agreements are entered into, with a mechanism for carrying out regular updated assessments throughout the course of the agreement.
- A clear and effective monitoring mechanism by a single dedicated organisation, such as a joint monitoring

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102 Written submission from Dr Roger Morgan OBE ([HIA0001](#)); and Written submission from the Business Disability Forum ([HIA0018](#)) given to House of Commons House of Lords Joint Committee on Human Rights Human Rights [Protections in International Agreements, Seventeenth Report of Session 2017-19](#).

103 UN Universal Declaration of Human Rights.

104 The Economist, [Britain is increasingly willing to cosy up to nasty regimes](#), 19/05/18.

105 Recent studies have shown that countries including the United States, Canada, New Zealand, Australia, Chile, Japan, and the European Union have incorporated clauses and sections in their trade agreements.

106 Written submission from the Institute for Human Rights and Business ([HIA0005](#)) given to House of Commons House of Lords Joint Committee on Human Rights Human Rights [Protections in International Agreements, Seventeenth Report of Session 2017-19](#).

107 Foreign Affairs Committee, [Global Britain: Human rights and the rule of law](#), 05/09/18.

committee or agency. This would need to be a single 'operational mechanism' dedicated to monitoring the fluctuating human rights situations in both countries. It should be properly funded by both parties - perhaps with a fixed (inflation adjusted) budget in the agreement - and have a clear and transparent process for working with third parties, such as companies, civil society and human rights organisations. This should produce annual human rights 'scorecards', similar to the EU GSP+ regime.

- Adequate financial support (through the UK Overseas Development Agency) to help poorer countries comply with its human rights obligations.
- An effective sanctions mechanism whereby there are real consequences for clear human rights abuses identified via the monitoring mechanism. As with the GSP+ regime, the starting point should be dialogue but there must be a clear and defined escalation process ultimately resulting in suspension where identified abuses are not addressed.
- An independent government agency - similar to the European External Action Agency - to carry out annual human rights impact assessments in relation to trade agreements and also ensure that human rights conditionality clauses and monitoring is carried out in a uniform manner across all of the UK's free trade agreements. This would ensure a human rights-based trade policy is applied across the board.

#### 4. Parliamentary oversight of trade deals

There are considerable doubts over the government's ability to deliver a Brexit that safeguards citizens' interests while establishing trading relationships around the world.<sup>108</sup> However, under the current system, parliament's role in holding the government to account is severely limited. Scrutiny of human rights in trade deals is deeply inadequate at almost every stage of the parliamentary process. Sufficient transparency and inclusivity in advancing human rights in trade deals will be essential to rebuild trust in trade and protect human rights.

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108 See for example, The Hansard Society, [The 2019 Audit of Political Engagement](#); We Own It, [Fewer than 1 in 3 people trust Boris Johnson on the NHS](#); Sky News, [Just one in seven trust parliament on Brexit, new poll reveals](#).



## a. Negotiation and mandate

The first stage of a trade negotiation is to establish key negotiating objectives. For each trade agreement, the government sets out key objectives by publishing an Outline Approach. The negotiating mandate sets out clear instructions to UK negotiators on the issue of human rights. However, at present this is not mandatory, and parliament has little substantive power to scrutinise the government's negotiation strategy and the extent to which protecting and promoting human rights is an objective.

The government continues to argue that the negotiation of international treaties is the function of the executive carried out in the exercise of the royal prerogative.<sup>109</sup> However, the House of Commons International Trade Committee has repeatedly called for parliament to scrutinise any negotiating mandate in the form of a substantive motion before it is set and negotiations commence. This is necessary to give parliament the opportunity to express any human right concerns regarding the proposed mandate and allow the government to modify it if necessary.<sup>110</sup>

During the negotiation process, it is essential that parliament is kept up to date on the relevant human rights issues. While the previous government had initially committed to reporting to parliament on trade treaties on an ongoing basis,<sup>111</sup> this policy appears to have been discontinued.

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109 The 'royal prerogative' refers to those powers of the 'Crown' (i.e. the executive) that are recognised by the common law, as distinct from those conferred and exercised under statute.

110 The International Trade Committee, Sixth Report of Session 2017-19, [UK trade policy transparency and scrutiny](#), on 28 December 2018 (HC 1043).

111 See Liam Fox, Oral statement to Parliament: [Creating a transparent and inclusive future trade policy](#), Published 16 July 2018; Department for International Trade, [Processes for making free trade agreements after the United Kingdom has left the European Union](#), February 2019 CP 63.

## b. Ratification

Parliament must have the real ability to hold the government to account on trade deals in the form of a yes/no vote for MPs on trade deals with key human rights implications. The current negative vote constitutional procedure is unable to give Parliament a real say in the ratification process.

Part 2 of the Constitutional Reform and Governance Act 2010 (CRAGA) placed on a statutory footing parliament's powers of scrutiny in relation to the ratification of new treaties.<sup>112</sup> Under CRAGA, before ratifying a treaty, the government must lay a copy before parliament with relevant information for 21 sitting days without either House voting against ratification.<sup>113</sup> However, parliament's role in ratification under CRAGA has been widely criticised as ineffectual in scrutinising the government's conduct of trade negotiations, with regards to human rights or otherwise.<sup>114</sup> Although parliament can theoretically block indefinitely the ratification of a treaty, any parliamentary rejection of a trade agreement would face severe difficulties:

- First, parliament has only a 21-day window of delay to pass a resolution against a treaty to analyse treaties that can stretch to one thousand pages or more and may involve complex human rights issues. The government may, by announcing the extension and laying a statement before Parliament, increase this period by 21 sitting days at a time. However, such a window has only ever been extended once.<sup>115</sup>
- Second, the government may seek an 'alternative procedure' that may be applied in 'exceptional' cases. This provision essentially gives the government discretion to ratify a treaty without the 21-day time frame. The Joint Committee on Human Rights has previously recommended removal of the exception.<sup>116</sup>

The key weakness of the CRAGA ratification procedure is that it fails to provide any procedural mechanism to ensure any debate or vote on trade agreements. Given the government's control over parliamentary business, it has the discretion to refuse time to debate a treaty, even when a select committee has examined and reported on a treaty within the laying period.<sup>117</sup> The onus is currently on parliament to rally a sufficient number of MPs to oppose the agreement in the first instance for a motion to even be held.<sup>118</sup>

There is a real risk of parliament failing to block trade deals with serious human rights failings. The government's large majority and the vastly higher volume of trade deals being negotiated means parliamentary scrutiny is more important than ever. Currently, there is no rule for a minimum number of MPs required for debate time to be found.<sup>119</sup> Nor is there any procedural right to table a motion, or even request debate against ratifying a treaty.

## c. Explanatory memorandum

The government is subject to limited requirements to publish an explanatory memorandum to set out in 'the provisions of the treaty, the reasons why ratification is sought and any other matters the Minister considers appropriate'.<sup>120</sup>

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112 The previous 'Ponsonby Rule' constitutional convention dictated that most international treaties have to be laid before Parliament 21 days before ratification.

113 [legislation.gov.uk](https://legislation.gov.uk/ukpga/2010/15/part-2), [Constitutional Reform and Governance Act 2010](https://legislation.gov.uk/ukpga/2010/15/part-2).

114 International & Comparative Law Quarterly, [Treaties, Brexit and the Constitution](#), 23/03/18, 225-245; Also see written submission for JCHR [Human Rights Protections in International Agreements](#) Seventeenth Report of Session 2017-19 from the outcomes of a conference on Treaties, Brexit and the Constitution by Jill Barrett (Queen Mary, University of London) Eirik Bjorge (Bristol University) Ewan Smith (University of Oxford) and Arabella Lang (House of Commons Library) - written evidence ([PST0020](#)); The Trade Justice Movement, Written Submission to the Constitution Committee's Inquiry on Parliamentary Scrutiny of Treaties, November 2018 ([PST0010](#)).

115 For an explicitly HR-focused treaty (Protocol 15 ECHR), even after granting an extension, the Government declined to provide the opportunity for a debate in both Houses, saying that it would be for our Committee to propose a motion to take note of our Report, and to secure time for this to be debated in either or both Houses during the extended scrutiny period (See the [JCHR Report on Protocol 15 to the European Convention on Human Rights Fourth Report of Session 2014-15](#)).

116 Joint Committee on Human Rights, [Legislative scrutiny: Constitutional Reform and Governance Bill: Video Recordings Bill](#), 18/01/10

117 See Standing Order No. 14 of the [Standing Orders of the House of Commons](#).

118 Joint Committee on Human Rights, [Evidence of Jack Straw](#), 01/06/18

119 A decade after the CRAGA, no motion against ratification of a treaty has ever been passed, by either House. According to the [Hansard Society](#), no such motion has even been debated.

120 Section 24

Typically, if a treaty raises significant human rights issues, a copy of the explanatory memorandum will be sent to the Joint Committee on Human Rights (JCHR). In all cases, the government must engage accordingly with the Foreign Affairs Committee and any other select committee that has expressed interest.<sup>121</sup>

However, the JCHR has found that parliament has 'not received adequate or timely information' from government about the potential human rights implications of trade agreements. The government accepts that the current process of communicating meaningful human rights information has been inadequate and 'should be improved'.<sup>122</sup> The government has proposed:

1. updating the internal guidance template explanatory memorandum given to government departments to include a standard human rights heading;
2. requiring the lead department to set out the compatibility of the treaty provisions with the UK's international human rights obligations; and
3. stating expressly where the Department is of the view that there are no significant human rights implications.

The government must adhere to these commitments, as process is currently not being adequately followed.<sup>123</sup> Few explanatory memoranda contain a section on human rights analysis, even non-trade treaties with more significant human rights implications, such as mutual legal assistance or extradition.<sup>124</sup>

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<sup>121</sup> Joint Committee on Human Rights, [Human Rights Protections in International Agreements](#), 12/03/19.

<sup>122</sup> Joint Committee on Human Rights, [Government Response to the Committee's Seventeenth Report of Session 2017-19](#), 17/05/19.

<sup>123</sup> Joint Committee on Human Rights, [Human Rights Protections in International Agreements](#), 12/03/19.

<sup>124</sup> See for example the lack of any section on human rights compatibility in the EM for the recent UK/Kuwait Treaty on Mutual Legal Assistance in Criminal Matters: International treaty, [\[CS Kuwait No. 2/2018\] UK/Kuwait: Treaty on Mutual Legal Assistance in Criminal Matters](#), 05/07/18 or the UK/Kuwait Extradition Treaty: [International treaty, \[CS Kuwait No. 1/2018\] UK/Kuwait: Extradition Treaty](#), 05/07/18.

# Recommendations

The UK's future trade partnerships will have far-reaching and longstanding human rights implications that will affect its relationship with the rest of the world for decades to come. The UK has now lost the scrutiny powers developed over 40 years in the EU. Whilst this poses risks, it also presents a unique opportunity.

The UK now has the chance to set a new gold standard for human rights in trade agreements by creating a world-class human rights conditionality regime. This should include:

- A detailed model human rights conditionality clause – with a set of core commitments – that will be included in free trade agreements across the board.
- A process by which effective human rights impact assessments are carried out at the time when a free trade agreement is entered into, with a mechanism for carrying out regular updated assessments throughout the course of the agreement.
- A clear and effective monitoring mechanism by a single dedicated organisation, such as a joint monitoring committee or agency. This should produce annual human rights 'scorecards'.
- Adequate financial support (through the UK Overseas Development Agency) to help poorer countries comply with its human rights obligations.
- An effective sanctions mechanism whereby there are real consequences for clear human rights abuses identified via the monitoring mechanism. There must be a clear escalation process ultimately resulting in suspension where identified abuses are not addressed.
- An independent government agency to carry out annual human rights impact assessments in relation to trade agreements and ensure that monitoring is carried out in a uniform manner across all of the UK's free trade agreements.

There must also be proper parliamentary oversight of new trade deals. Compared with other developed common law jurisdictions, the UK parliament has significantly less legislative control over trade deals.<sup>125</sup> New Zealand, Australia and even the USA guarantee their legislatures a vote on every trade deal.<sup>126</sup> The government must seek to 'bring home' the lost EU powers of parliamentary scrutiny.<sup>127</sup> Central to this must be a parliamentary yes/no vote on all key trade deals.

The government must ensure that for each key trade deal with human rights implications: (i) parliament and the relevant committees receive regular communications; and (ii) a substantive motion is held before the mandate is set. For all treaties with significant human rights implications, the government should: (i) provide government time for debating motions on ratifying such treaties, and (ii) commit to a threshold number for a motion to be held. Finally, the government must make a voluntary political commitment to allow the Commons to allow this final vote to be binding.<sup>128</sup>

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125 Jesus College Oxford, [Treaties, Brexit and the Constitution](#), 23/03/18.

126 Institute for Government, [Taking back control of trade policy](#), 01/05/17.

127 Prior to adopting the decision concluding the agreement, the Council must, in various circumstances, obtain the consent of the European Parliament.

128 A Treaty Scrutiny Joint Select Committee of both chambers (as recommended by the Select Committee on the Constitution 20th Report of Session 2017-19 HL Paper 345 [Parliamentary Scrutiny of Treaties](#)) may advise in conjunction with the JCHR on the key trade agreements wide reaching human rights outcomes.



# LCHR

Labour Campaign for Human Rights

