

TRADE DEMOCRACY IN WALES

How post-Brexit trade deals could undermine
Wales' food, health service and devolved powers,
and how to make sure they don't



The Trade Justice Forum Wales is a new initiative, working to ensure trade deals are agreed in a transparent and democratic manner, and that they are beneficial to the majority of people and the environment. We oppose trade deals that endanger our rights, our environment and our democracy.

Summary of this briefing

- Modern trade deals go well beyond tariffs. They can affect our food standards, our public services, our environment and our democratic ability to regulate big business.
- Post-Brexit trade deals could, if not negotiated democratically, have a profoundly negative impact on Wales – undermining farmers, the NHS, education, culture, the environment and local government here.
- The US is demanding access to British markets for ‘chlorine chicken’, hormone-fed meat, and less protection for local products like Anglesey sea salt and Welsh lamb. It is also likely to demand a ‘corporate court’ system under which Wales could be sued, in secret special courts, by US-based multinational corporations.
- The devolved powers of Wales could be undermined by trade deals. Liberalisation of public services like the NHS, higher costs of medicines, or the importation of low grade food can be agreed in a trade deals without the consent of the Government or Assembly in Wales.
- In fact, legislation being discussed in Westminster – the Trade Bill – gives no right for the public, MPs or the Welsh Government or Assembly to play any meaningful role in trade policy. Although this Bill only covers ‘transitional deals’, this sets a dangerous precedent and represents a huge democratic deficit which must be challenged.
- The British government is already engaged in secretive post-Brexit trade talks with a wide range of countries including the United States, Saudi Arabia and Turkey.
- Unless the Trade Bill is amended to give Wales a say in trade deals, we urge the Welsh Government to withhold consent from this bill.

Modern trade deals affect us all

Many people think trade deals are about reducing tariffs (the duty paid by importers when they sell their products into a foreign market). But modern trade deals go well beyond tariffs. In particular they look at all sorts of regulation, from food standards to how we run public services, from financial regulation to protection of workers rights. In general, trade deals attempt to ‘harmonise’ – in practice usually lower – regulations to make life easier for big business to invest and trade around the world.

The problem with this is that our regulations are important – they exist because people have democratically decided they want a certain level of food protection or environmental

standards, that they want high quality public healthcare and education. A trade deal should not be able to override these democratic decisions.

The Transatlantic Trade & Investment Partnership (TTIP) was a gigantic proposed trade deal between the EU and US. But most of it wasn't about 'trade' as most people think of it. Rather it was about protecting the so-called 'rights' of big business, at a cost to the democratic rights of citizens in Europe and the United States. Through people power – campaigning and protesting – we defeated TTIP. It was never finalised or signed.

But after Brexit, the British government wants to sign its own trade deals, outside the EU. As a smaller power, we fear that President Trump will demand even more concessions from Britain. We could be looking at 'TTIP-on-steroids'. If we're to avoid this, we need to start campaigning now.

What would a UK-US trade deal mean for Wales

The Welsh Government doesn't have power over trade policy – that's currently a matter for Westminster. But because trade deals are so large and wide ranging, they are highly likely to impinge on areas of policy and public life that are devolved to the Welsh government. What would that mean in practice? We already know some of what the US will demand from a US-UK trade deal, because we know what the US government demanded in TTIP, what they're demanding in other trade deals, and what they openly state they dislike about European regulation.

Here are some of the most worrying aspects of the US government's agenda:

Food standards The US has fundamentally different food standards to us. Often animals are kept in industrial scale 'factory farms', with low standards of welfare. Cows might be kept in cramped conditions, never seeing the outside world and eating grain rather than grass. In such conditions, animals are given large quantities of antibiotics, steroids and hormones, both so they grow faster and because routine dosing is the only way to prevent disease in such conditions. Some of these treatments can cause the release of endocrine-disrupting chemicals into the environment, leading to negative impacts on animals beyond the farm. To address the issues caused by the lower welfare standards and as meat is prepared for market, poultry is often washed in chlorine to get rid of bacteria ('chlorine chicken'). Far more genetically modified food is grown and sold in the US. Crops are often sold with higher levels of chemical pesticide residue, and milk is sold with a higher white blood cell count (in effect meaning more pus is likely to be in your dairy).

These practices are banned in the EU because they are bad for animals, bad for consumers or bad for farmers. Some argue, like our Trade Secretary Liam Fox, that it's for customers to choose what sort of food they want to consume. But this is a disingenuous argument, because the US is also demanding less labelling of food, so it would be more difficult to know what we're buying. What's more, it would be impossible for farmers here to compete

with things being produced to a lower (and therefore cheaper) standard being imported from the US. The choice facing them would be stark: either go out of business or demand lower food standards from the government here.

US trade officials regularly describe public policy steps aimed at encouraging healthier diets as trade barriers – for instance minimum unit pricing for alcohol, nutritional labelling, or sugar taxes.¹

The US also opposes the use of ‘geographical indicators’ to designate special, local foods made to traditional methods. This would be a threat to the status of a range of high quality Welsh produce including traditional Welsh Caerphilly, Conwy mussels, Carmarthen ham, traditional Welsh cider or perry, Anglesey sea salt and Welsh lamb.

The US has repeatedly told the UK that unless it accepts US food standards, there will be no trade deal. But such a deal would be catastrophic for farmers and food quality.

The NHS and public services The US health system is extremely expensive, and prices many citizens out of essential healthcare. The US is also home to enormous private healthcare corporations. In any trade deal with the UK, these companies will demand the right to bid for parts of the NHS that have been contracted out. We fear this would be a further step towards full privatisation of the NHS, especially if a corporate court system (see below) allowed these corporations to sue a future government for revoking the partial privatisation model. Moreover, many modern trade deals incorporate ‘ratchet’ and ‘standstill’ mechanisms, which effectively lock in and increase levels of liberalisation in a specific service sector, something the US could well demand for the NHS.

The US is also well-known for insisting upon the most stringent possible levels of ‘intellectual property’ protection in trade deals. Most importantly, this includes monopoly protection for medicines and medical procedures. This is good for big pharmaceutical corporations, but not for patients, because it means corporate drug developers can maintain monopolies over drugs for longer. The US is increasingly arguing for protections which make it easier to renew patents on drugs (so-called ‘evergreening’), to develop patents on currently unpatentable aspects of healthcare, to strip away restrictions on advertising of patented drugs, and to prevent reference prices being set.

Some of these provisions would certainly increase the price of medicines in the UK, currently many times lower than those found in the US. Increasing drug prices are already a huge strain on NHS budgets. A US trade deal could massively increase the NHS deficit – or leave patients without many effective drugs.

¹ Office of the United States Trade Representative, *2018 National trade estimate report on foreign trade barriers*. 2018, <https://ustr.gov/sites/default/files/files/Press/Reports/2018%20National%20Trade%20Estimate%20Report.pdf>

What's true for healthcare could also be true for education, energy, railways or other public services.

Chemicals The US government is staunchly opposed to EU chemical regulations, known as REACH, which deem far more chemicals unsafe than the US system. This is partly because the EU uses the 'precautionary principle' which broadly means products must be proved to be safe before they can be sold. The US, meantime, requires regulators to have proof of harm before a chemical is withdrawn. This means for example that food colouring banned in the UK because they were harmful to children are still widely used in the US.

In a US trade deal, the US would want to end our use of the precautionary principle. This would mean less safe products on our shelves. It could also impact on jobs in Wales where some chemical products are manufactured. If manufacturers stop producing to EU standards, they will lose EU markets. If they continue to manufacture to EU standards, they could face being undercut by products made to US standards.

Culture and language The US has pushed for an audio-visual chapter in European trade deals, which make it more difficult to support local cinema, music, and online entertainment channels. In TTIP, France resisted this, worried that unfettered access of US entertainment channels to EU markets would undercut French cinema, and to some degree French language entertainment. If the US pushes for such a chapter in a UK deal, this could have a major impact on our ability to support the entertainment industry, including Welsh language entertainment.

Corporate courts One of the most controversial elements of the TTIP deal was the inclusion of an Investor State Dispute Settlement mechanism (ISDS), which we call corporate courts. These mechanisms allow foreign corporations (in this case US big business and wealthy investors) to sue governments for behaviour which they believe to be 'unfair'.

ISDS is contained in a large number of investment treaties globally. From these treaties we know that the definition of what constitutes 'unfairness' is essentially anything which impacts on a corporation's profit (or even their anticipated future profits). There are cases of countries being sued in these courts because: they increased the minimum wage for public sector workers; they re-nationalised part of their healthcare insurance system; they adopted policy to put cigarettes in plain packaging or to increase the size of health warnings on cigarette packages; they refused to build mines or quarries in the face of popular protest or because they would have a negative impact on the environment; they tried to remove dangerous chemicals in petrol; they implemented a tax on unhealthy foods.

It's possible to imagine cases being taken against the government for all manner of positive social or environmental policies. Even if the government wins, the proceedings are extremely expensive. What's more, the Welsh Government wouldn't be able to defend itself if it was challenged on a policy it had made. Rather it would be defended by the

Westminster government, but it would likely be the Welsh Government that would have to bear the cost if it lost the case.

Devolved powers From these examples of the impact of trade deals on public policy, it is clear that many aspects of devolved policy-making would be affected by a US-UK trade deal. Unless Wales has a say in negotiating and passing trade deals, it will be all too easy for a British government to undermine Welsh devolved powers.

As such, and given Prime Minister Theresa May's claim that the four nations of the UK are "equal partners", we believe that it is vital that the elected representatives of the Welsh Government are given a meaningful role in the scrutiny and ratification of international trade deals.

The Trade Bill

The Trade Bill was introduced into the Westminster Parliament in November 2017. Although the government had promised that this bill would set up all the necessary legislative framework for Britain to develop an independent trade policy post-Brexit², in fact the bill does no such thing. Of particular concern, the bill has no provisions for democratic oversight of trade policy. It actually reduces the current very limited powers of the Westminster parliament to scrutinise trade deals and it does not transfer the powers that the EU parliament has to Westminster. It also contains no provisions for allowing scrutiny by the Welsh Government or Assembly. As a result it is impossible for democratic representatives in Westminster or Cardiff to amend or stop trade deals.

While new legislation, rightly, goes through a process of many stages of consultation, scrutiny, debate and voting, trade agreements are currently entirely negotiated under the Royal Prerogative. Using its prerogative powers, the UK government is able to:

- Decide when and with whom to start negotiations
- Decide its own priorities and objectives
- Conduct negotiations, usually with very little to no transparency, and
- Conclude and sign the eventual deal

Under the current procedure, there is no requirement to consult the public or civil society organisations and no role for the Westminster parliament or any of the devolved administrations.

The UK government argues that these powers are unnecessary because the Trade Bill deals only with what they describe as 'replacement' deals for those that the UK is currently party

² *The Queen's Speech and associated background briefing, on the occasion of the opening of parliament on Wednesday 21 June 2017.*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/620838/Queens_speech_2017_background_notes.pdf

to by being a member of the European Union. They assume that these deals will essentially just be ‘cut and pasted’ onto the UK statute books, negating the need for democratic scrutiny.

We strongly disagree with this view. We think it is unlikely that deals will be ‘cut and paste’. Countries we are trading with will want to change deals with a market much smaller than the one they originally signed the deal with (i.e. the whole EU) – some have already said so publicly. And the UK government’s own explanatory notes to the Trade Bill say: “New UK-third country agreements that are implemented through use of this power will be legally distinct from the EU-third country agreements on which they are based. It may also be necessary to substantively amend the text of the previous EU agreements.”

But we are also concerned that new trade deals are actually being discussed now, by the Trade Secretary with a number of other countries (see below). We believe this makes it imperative that proper accountability mechanisms are in place *now* if the public and parliaments are to be able to shape the direction of Britain post-Brexit.

We are not alone in this view. The business lobby group, the International Chamber of Commerce, for example, wrote: “It is rare for business groups, unions, NGOs and global experts to appear together and agree on an issue but on the need for better, more inclusive and democratic engagement there is a consensus.”

We are calling for the Trade Bill to be amended to include provision for:

- Comprehensive, independently produced impact assessments that include environmental, human rights, gender, labour, social and economic impacts to be carried out and published. It is important that impact assessments are done for all parts of the UK and that AMs, MPs and the public have access to them.
- The government’s negotiating objectives and mandate be published and receive parliamentary scrutiny in Westminster and by the Welsh Assembly before negotiations start. If the UK government wants to change this mandate as negotiations progress then they must seek further consent.
- A joint ministerial committee on trade to be set up, and meet regularly, to strengthen Welsh ministers’ oversight of UK trade policy.
- During negotiations, texts should be public unless there is a specific reason to keep them confidential, and all texts, including confidential ones, should be made legally accessible to elected politicians of the UK parliament and the Welsh Assembly, with scrutiny allowed by committees in the UK parliament and the Welsh Assembly in so far as the deal touches on devolved issues.
- The final text of any trade deal must be subject to parliamentary debate and approval in Westminster with a consent motion for the Assembly in so far as the deal touches upon devolved issues.

If the Trade Bill is not amended accordingly, then we urge the Welsh Assembly to withhold its legislative consent for the Bill, for the reasons outlined above.

Examples from other countries

Including the devolved administrations in the development, negotiation and scrutiny of international trade deals is not a radical ask. Looking at some other countries with varying devolved systems, there are many examples of how regional, provincial and state parliaments and their representatives are involved in the negotiation and ratification of trade deals. Here in the UK, we may not choose to emulate them completely but they serve as useful examples of how things could be done differently:

- In Canada, during discussions on the EU-Canada trade deal (CETA), provincial government played an active role which included: inputting into the mandate for the negotiations, nominating their own negotiators who were present during the bilateral talks, seeing all negotiating texts and participating in a pan-Canadian trade committee which worked between negotiations to set the Canadian position for talks.
- In Belgium, all regional governments are guaranteed the right to approve trade agreements under article 67 of the federal constitution. The Belgian government's role is to achieve consensus between the regional governments, meaning a much greater sharing of information and views on all aspects of international trade deals.
- In the US, state governments have been concerned at the federal government's ability to undermine their public procurement laws, which is why five states (Maryland, Maine, Rhode Island, Hawaii and Minnesota) passed legislation creating a formal 'opt-in' mechanism for public procurement in trade deals. This requires a vote by the state parliament before state purchasing policies can be bound to comply with a new US trade agreement.

The UK government is already discussing trade with many countries

Although Britain is not allowed to formally negotiate trade deals until March 2019, in reality the Trade Secretary has set up a number of official trade working groups and dialogues to 'lay the groundwork' for post-Brexit trade deals. We know that working groups exist with 21 countries including the US, Gulf cooperation countries (including Saudi Arabia), Turkey, India, New Zealand and Australia. Trade has also been a subject of discussion with many more countries including the Philippines, Kenya and Brazil. It is deeply worrying that there has been no parliamentary debate about which countries we want to have trade deals with, or what the terms of those relationships should be.

Currently these trade working groups are highly secretive, with almost no detail available to the public or MPs about how often they meet, who attends them or what they discuss. Sometimes the government volunteers information, and from this we know that the US

group has met several times and has discussed a very wide range of issues, including most of those covered in this paper.

We want good trade policy – both for ourselves but also for the people of the countries we are talking to. This is especially true when we are dealing with much more or much less powerful countries, or countries with very limited democratic rights. Yet at the moment, no framework exists for ensuring these trade deals meet the standards we should expect from them. As such there is a high risk either that trade deals run into insurmountable public opposition, as TTIP did in 2016, or that our post-Brexit trading relationships will be damaging, both for us and for people around the world.

Apart from the Trade Bill, the government has no plans for further legislation in the foreseeable future that would give parliament, the devolved administrations or the public the power we need over trade deals in the foreseeable future. Yet trade talks are underway already – basic procedures for accountability and scrutiny need to be put in place now.

Where we are in Wales

The Welsh Government has produced a report, *Trade Policy: the issues for Wales*. This lays out some important principles for future trade deals. We encourage the Government to further develop these ideas, placing equality, sustainability, human rights and excellent public services at the heart of trade policy – both for us and those we trade with. To make this happen, we need trade democracy.

The National Assembly for Wales External Affairs and Additional Legislation Committee took the view in March 2018 that “At present, we are unable to recommend that the National Assembly for Wales (‘the Assembly’) grants its consent to the provisions in the Bill that relate to Wales.” We support this position.

We believe that amending the Trade Bill to guarantee a democratic and inclusive process for agreeing international trade deals, that includes scrutiny by the Welsh Assembly, is the first step in ensuring that Britain plays a truly positive role in its post-Brexit trading arrangements with other countries around the world. Without that, the Trade Bill should not become law.