

Labour Research (February 2018)

Features

Alarm over Tories' Trade Bill

Unions and campaigners are warning that the *Trade Bill*, currently going through Parliament, could undermine democracy – and threaten jobs, public services, workers' rights and environmental and consumer standards.

The *Trade Bill* is part of a suite of legislation that the government is bringing forward to prepare the ground for UK withdrawal from the European Union. This includes the controversial *European Union (Withdrawal) Bill*, which brings all EU law that currently applies in the UK directly into UK law (see *Labour Research*, January 2018, pages 16-18).

The main objective of the *Trade Bill* is to implement into UK law any new trade deal the government manages to negotiate with non-EU countries, replacing an agreement these countries currently have with the EU and which the UK will no longer be party to post-Brexit.

The Bill only covers these "replacement" agreements, and not any new deals with countries that are not already covered by an existing EU trade agreement.

Alongside the Bill, the government has also introduced the *Taxation (Cross-border Trade) Bill* which will enable a separate UK customs regime to be established once the UK exits the EU.

Both bills received their second reading in the House of Commons in January.

Leaving the EU customs union

In setting out the government's objectives for leaving the EU last year, prime minister Theresa May signalled that Britain would be leaving the EU customs union, under which the EU operates a common external tariff (taxes on imports from non-EU countries) and a common commercial policy governing trade arrangements with non-EU countries.

The *Taxation (Cross-border Trade) Bill* will enable the UK to operate its own set of tariffs with other countries (including with the EU), if no free trade agreement between the UK and EU is struck. However, the Bill also provides for the possibility that the UK may establish a customs union with the EU or another country or territory.

The TUC has called for the UK to stay within a customs union with the EU post-Brexit, and the Labour Party has also said this option should be kept on the negotiating table.

Even if there is a UK-EU free trade deal, leaving the customs union is likely to require customs controls (for example at the channel ports and between Northern Ireland and the Republic of Ireland) to check on the origins of goods, and ensure EU standards have been met and the right tariffs have been paid if goods originate from other countries.

The EU currently has close to 300 agreements with non-EU countries covering trading arrangements.

This includes free trade or preferential trade agreements with 65 countries, as well as agreements related to the mutual recognition of goods or to trade in particular sectors, for example with the USA, Australia and New Zealand.

In leaving the customs union, the UK will no longer be party to these trade agreements. The government has said that it is seeking to renegotiate these deals on the same-terms with the non-EU countries concerned. The *Trade Bill* will enable the government to "transition" these replacement deals into domestic law.

Failure to renegotiate these deals will mean trade barriers reappearing between the UK and some non-EU countries next year.

Although it is expected that there will be a transition period after the likely exit day in March 2019 which will last until the end of 2020 at least, and during which the UK will remain bound by the rules of the single market and customs union, the EU's chief Brexit negotiator Michel Barnier has said that the EU's trade deals with third countries will no longer apply to the UK during this period.

Renegotiating all these deals and getting agreement from all the countries involved by next year is likely to be very difficult to achieve.

Nick Crook, head of the international department at the UNISON public services union told *Labour Research* that this was "massively overambitious, as it also depends on the willingness of other countries to agree".

Crook referred to the difficulties that the UK has had in getting agreement on replicating existing tariff and import quota schedules for non-EU countries that it shares with the EU at the World Trade Organisation (WTO) as a taster of things to come.

A number of countries, including the USA, Argentina, Canada and New Zealand have objected to the proposal to carve out UK quotas from existing EU quotas agreed at the WTO.

Trade Bill gives government unchecked powers

Like the EU withdrawal Bill, the *Trade Bill* would enable the government to introduce legislative changes through delegated legislation without proper parliamentary scrutiny. This would include the use of so-called "Henry VIII powers" to use delegated powers to make changes to primary legislation

Public services union UNISON is working with the Trade Justice Movement (TJM), a coalition of campaign groups, development charities and unions, in backing amendments to make the *Trade Bill* more transparent and democratic.

Nick Crook, head of UNISON's international department, told *Labour Research* that the coalition was seeking to ensure that the *Trade Bill* sets out "a proper transparent process for negotiating, agreeing and scrutinising the content of trade agreements.

"This is essential given specific problems within existing and proposed trade agreements, such as provisions giving excessive power to investors and the lack of protection for labour rights."

Currently, the government has unchecked powers to negotiate and ratify trade agreements in secret without public or parliamentary oversight. This is a "huge democratic deficit that must be corrected", the TJM says.

The TJM is therefore calling for the right of Parliament to set a thorough mandate to govern each trade negotiation, the right of the public to be consulted as part of setting that mandate and full transparency in negotiations.

It says that Parliament should be able to amend and to reject trade deals, with full debates and scrutiny guaranteed and a remit for the devolved administrations. Parliament should also have the right to review trade deals and withdraw from them.

TUC international policy officer Rosa Crawford said that the delegated powers in the *Trade Bill* could create particular problems, given that the UK may be in a weak position when negotiating with some of the countries it is seeking a replacement deal with.

She added: "For example, countries like South Korea already have a trade deal with the EU and won't feel under pressure to come to a quick deal with the UK. So they could extract concessions from the UK in order to make a deal."

The delegated powers memorandum, published by the government with the Bill, says that these powers could also be used to enable the implementation of "substantial amendments, including new obligations".

In a TUC blog following the publication of the Bill, Crawford outlined the TUC's concerns that "these renegotiated deals might allow lower employment rights or other standards, lead to unfair competition against UK businesses employing workers in Britain or open our public services to further privatisation", and that this could occur without proper parliamentary scrutiny.

Trans Pacific Partnership and future trade deals

The government has cited the prospect of negotiating free trade deals independently of the EU as a primary reason for leaving the EU customs union. It says that it has already begun discussions with the USA and other countries about negotiating a post-Brexit free trade deal.

Last December, it was reported that UK and US negotiators have agreed to keep documents related to trade talks between them secret, leading to questions as to what they might be trying to hide.

Unions opposed the proposed EU-USA Transatlantic Trade and Investment Partnership (TTIP) trade deal. This was because of potential threats to employment and other standards, and the rights the deal would give investors to sue governments taking actions threatening investor profits, as well as the difficulty it would present in reversing the privatisation of public services.

And unions and others have raised concerns that a UK-US trade deal would replicate these negative elements and have fewer safeguards than those insisted on by the EU.

Last month, it was reported that the government had held talks on joining the Trans Pacific Partnership – a deal being negotiated by 11 countries around the Pacific Rim with similar features to TTIP (and from which president Trump withdrew the USA last year).

In its submission to the Trade White Paper, the TUC called for commitments that future trade deals contain clauses protecting workers' rights and exempting public services from liberalisation.

Trade remedies for UK industry weakened

The TUC is also concerned that the *Trade Bill* does not set up adequate mechanisms to protect UK industry from unfair trade distortions.

It has joined forces with general unions Unite, GMB and Community, and industry bodies in seven sectors, including UK Steel, the Chemical Industries Association and the British Ceramic Confederation (BCC) to form the Manufacturing Trade Remedies Alliance (MTRA).

A joint MTRA submission last November to the government's White Paper, *Preparing For Our Future UK Trade Policy*, called for the adoption of an effective trade remedies system to protect UK industries from unfairly subsidised imports or the "dumping" of imports below their true market value.

It raised particular concerns about imports from China which, it said, should not be treated as a "market economy". Subsidised imports from other countries, including Russia, are also a concern.

The *Trade Bill* was published in November 2017 within hours of the deadline for views to be submitted on the White Paper. This led to denunciations about the sham nature of the consultation from unions and others.

An MTRA statement said that concerns it had raised about the need for effective trade remedies had been ignored by the government, and that UK manufacturers would not have adequate protection under the "very liberal" trade remedies system being proposed.

Unite assistant general secretary Tony Burke warned that this "ultra-liberal approach" would "open the floodgates to cheap and illegally-dumped imports such as steel, tyres, ceramics, glass and fertilisers". And, he said, this would bring "a real risk our UK manufacturing industries will be devastated, costing thousands of well-paid and high-quality jobs".

Tom Reynolds, public affairs director at the BCC and co-ordinator of the MTRA told *Labour Research* that proposals put forward by the government in the *Taxation (Cross-border Trade) Bill* would "water down the action that can be taken against countries guilty of dumping imports" when compared to the actions that can be taken currently as a member of the EU. This would involve the UK operating a mandatory "lesser duty rule" (whereby anti-dumping duties are imposed at a lower level than the margin of dumping but are theoretically adequate to remove injury).

The EU is moving to a "conditional lesser duty rule" which would only apply where there are no price distortions (meaning the likes of China and Russia could face higher duties based on the dumping margin).

The EU has also adopted a new system which takes into consideration other distortions to trade such as the absence of labour and environmental standards. But the UK government was not spelling out how it would calculate the dumping margin and whether it would include such standards, Reynolds said.

The UK government is also proposing an "economic interest test". This test would weigh up the cost to consumers of levying anti-dumping measures, but would potentially ignore the impact on domestic producers of allowing an anti-competitive environment to persist, Reynolds added. No other member of the World Trade Organisation, which deals with the global rules of trade between nations, currently does this.

"The government doesn't want to pursue trade remedies that might displease multinational business interests so is pursuing an ultra-liberal regime," Crawford said.

GMB European officer Kathleen Walker Shaw said that the *Trade Bill* reflects the "dogmatically non-interventionist and pro-liberalisation" approach of trade secretary Liam Fox. She told *Labour Research*: "Our question is, where is British manufacturing going to be if they are not prepared to put in place mechanisms that are going to protect our industries against aggressive dumping and the effects from highly subsidised non-market economies like China on steel?"

The government had previously argued against higher EU anti-dumping duties on Chinese steel that would have afforded greater protection to the struggling UK steel industry. This approach was tied up with a desire to promote greater inward investment in the UK economy from China.

A hope that some kind of preferential trade deal with China may be in the offing post-Brexit may also be behind the government's reluctance to take a more aggressive approach to import dumping.

Representatives from unions and MTRA members signed a joint letter to the *Financial Times* last month calling for a rethink on the *Taxation (Cross-border Trade) Bill*. The letter said the Bill would set up a lighter-touch approach to illegal dumping than any other major economy, with much of the detail deferred into secondary legislation where there will be little or no parliamentary scrutiny.

And it warned that the UK's manufacturing base "and tens of thousands of jobs around the country" would be at risk if Parliament "gets the Bill wrong".

The MTRA has proposed a series of amendments to both the Trade and the Taxation cross-border Bills which, it says, could help to ensure a “truly level playing field for UK manufacturers”.

This also involves an amendment to the *Trade Bill* to ensure that membership of the proposed Trade Remedies Authority, which will advise the government on international trade disputes and proposed remedies, will include representatives of manufacturing industries and unions.

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8073>

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/654714/Preparing_for_our_future_UK_trade_policy_Report_Web_Accessible.pdf

<http://tjm.org.uk/trade-issues/democracy-and-transparency>

<https://www.tuc.org.uk/blogs/trade-and-customs-bills-threaten-workers%E2%80%99-rights-and-could-mean-hundreds-backdoor-trade-deals>

<https://www.tuc.org.uk/blogs/customs-bill-threatens-uk-industry-and-jobs>

<https://www.unitebrexitcheck.org/2010-2>

<https://www.ceramed.co.uk/news/bccs-laura-cohen-comments-on-trade-bill-publication>

<https://www.tuc.org.uk/blogs/it%E2%80%99s-odd-what-liam-fox-thinks-should-and-shouldn%E2%80%99t-be-ruled-out%E2%80%A6>

<https://www.theguardian.com/commentisfree/2018/jan/04/liam-fox-brexit-trade-policy-trans-pacific-partnership>

<https://inews.co.uk/news/exclusive-uk-demands-secrecy-brexit-trade-talks-us>

This information is copyright to the Labour Research Department (LRD) and may not be reproduced without the permission of the LRD.