

# Trade Justice Wales evidence submission to the UK Trade and Business Commission

UK Trade and Business Commission

Request for Input on Devolution and UK Trade Policy

Trade Justice Wales

(Fair Trade Wales & Cardiff University – Wales Governance Centre)

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## About us

We are grateful for the opportunity to feed into the UK Trade and Business Commission's work. This response is being submitted by Trade Justice Wales – a network of civil society stakeholders coordinated in partnership between Fair Trade Wales and a team of academics from Cardiff University's Wales Governance Centre. The aim of the project has been to explore/take stock of the landscape for Welsh civil society input into trade policy at the Welsh and UK levels. Seeking to gauge and understand levels of cooperation and capacity - to strengthen both and to identify any challenges.

## Authors

- Aileen Burmeister, Head of Fair Trade Wales ([aileen@fairtradewales.org.uk](mailto:aileen@fairtradewales.org.uk))
- Dr Ludivine Petetin, Reader in Law – Cardiff University Wales Governance Centre ([PetetinL@cardiff.ac.uk](mailto:PetetinL@cardiff.ac.uk))
- Charles Whitmore, Research Associate – Cardiff University Wales Governance Centre (point of contact for queries - [whitmorecd@cardiff.ac.uk](mailto:whitmorecd@cardiff.ac.uk)).

## Executive Summary

- Many of the trade policy related challenges articulated by stakeholders through the Trade Justice Wales project have stemmed from the post-Brexit commencement of a fast-paced set of negotiations without prior consultation and establishment of an overarching trade policy and domestic engagement strategy. This reactive approach has resulted in processes which are rarely inclusive, not necessarily suited to the UK's devolution settlements and which are challenging for many stakeholders in Wales to scrutinise and engage with.
- There is a lack of capacity and resource within civil society in Wales on trade related issues. The barriers this creates are compounded by the absence of an overarching trade policy and consistent approach to timely and meaningful engagement on trade.
- The mechanisms for providing devolved intergovernmental input on UK trade policy ought to be reviewed as devolution occurred where trade policy competence was exercised by the EU. Post-Brexit and under current devolution arrangements, trade agreement negotiation is a UK reserved competence, but one that cuts across many areas of devolved competences. Furthermore, agreement implementation is a devolved function. As a result pre-existing

arrangements are no longer suited to the UK's constitutional and territorial governance systems. There is a need to ensure timely and consensus-based decision making involving devolved institutions prior to and throughout trade negotiations.

- The analysis and impact assessment of trade deals at the UK level is a point of concern for the stakeholders we have engaged with. Participants in our work felt that analysis is insufficiently holistic, especially around the social dimensions of trade like health and human rights and that policy decisions frequently feel settled prior to the limited UK level engagement and consultation that takes place. For example stakeholders have highlighted concern about the UK's lack of opposition to the use of Investor State Dispute Settlement mechanisms and about the assessment of environmental, emissions impact, labour rights etc... implications, which often seems to be at odds with other UK and devolved policy ambitions and leading civil society analysis.
- Consideration should be given to the unique Welsh (and other devolved) context in the establishment of UK trade policy and governance. *Inter alia*:
  - Wales is largely made up of SMOs (micro, small and medium organisations), for whom the current approach to policy and negotiations is challenging to engage with owing to resource limitations.
  - It has ambitious legislation on sustainability in the Well-being of Future Generations Act which also establishes a series of policy goals that should be aligned and consistent with a modern approach to trade at the UK level (for example on global responsibility).
  - is a bilingual nation working in both English and Welsh.
- Alongside the global crises of covid, climate and cost-of living, Wales has lost access to EU convergence and structural investment and funding. In addition, links with EU civil society that supported domestic policy capacity and expertise in this area have weakened owing to the UK and EU now pursuing separate trading agendas.
- The lack of a trade strategy or overall goals and formal structures leads to more time used to understand the basics, leading to an active disengagement from many small organisations. We find that there is a need for investment in actively ensuring inclusivity by raising awareness of opportunities resulting from the UK's new trade negotiations, and for upskilling.
- The UK Government's steps to increase engagement is welcome but more improvements are needed in both substance and procedures, these include but are not limited to:
  - A UK Trade strategy that recognises trade as a vehicle to advance policy areas such as environmental policy, health, human rights, and sustainable development;
  - Appropriate and formal scrutiny and engagement procedures; and
  - Clear and easy to understand information publicly available and bilingually.

## **The Welsh context**

Wales is confronted with four concurrent issues: the climate and biodiversity crises; the cost-of-living situation; the aftermath of Brexit; and the consequences of COVID-19. On top of this important contextual background, Wales has historically been a poor region when part of the EU by receiving EU convergence and structural funds (the Levelling Up funds will somehow cushion some of that blow but not to the same extent). Wales is now facing a huge loss of EU investment and funding across Wales, which is and will continue to lead to more poverty, worsening health and a less resilient population. Consequently, poverty is exacerbated by rurality and the loss of services, particularly good public transport across Wales. Smaller and medium sized organisations have struggled more than larger ones to adapt to the concurrent challenges of EU withdrawal related complexity, regulatory uncertainty and new legal requirements making it more difficult for them to operate abroad. Yet the Welsh landscape is characterised particularly strongly by SMOs (micro, small and medium organisations) across public, private and third sectors. SMOs have less resources and expertise than other organisations, which can limit their ability to access all benefits to help them thrive. For example, finance, HR and IT expertise can be limited in-house, as is accessing staff training and networking opportunities, due to lack of staff resource. This has implications for trade deal utilisation by end-users and implementation in terms of the level of support and awareness raising that is likely to be required to support businesses to avail themselves of the benefits created by new trading arrangements. However, these ways of working have also resulted a culture and practice (as well as expectations) of consultation, co-design and collaborative working across organisations, sectors and with the Senedd and Welsh Government. This could be also facilitated by the UK Government.

Wales has very strong connections with the island of Ireland due to its geographical proximity and various ferry routes exist across the Irish Sea. However, Brexit has caused great difficulties with trading arrangements (as well as travel and holidays etc) to both Northern Ireland and the Republic directly impact the Welsh economy.

Another two aspects ought to be mentioned when thinking about Wales: bilingualism and the Well-being of Future Generations (Wales) Act 2015. First, the Welsh language is a very important part of Wales' fabric and culture. This is often forgotten at the UK policy level and in the case of trade, there are potential implications if for example, there are negative economic impacts for Welsh rural communities. Second, the Well-being of Future Generations (Wales) Act 2015 drives Welsh law and policy forward with its 7 well-being goals for Wales 'a prosperous Wales; a resilient Wales; a healthier Wales; a more equal Wales; a Wales of more cohesive communities; a Wales of vibrant culture and thriving Welsh language; a globally responsible Wales.

## **'What are the main challenges facing your industry/sector, and what are the main drivers of these challenges?'**

### **The capacity gap in Wales**

We have found a significant lack of stakeholder capacity in Wales to have a voice in trade policy formulation and implementation. Even in the most well-resourced organisations for trade policy work in Wales, this is usually only part of someone's role. We have not found a full-time Trade Policy officer outside of Governments.

Prior to Brexit, the locus of trade policy formulation in the EU meant that civil society in Wales relied heavily in expertise and policy capacity based in the EU with known processes and procedures and institutionalised stakeholder engagement mechanisms to rely upon. With the repatriation of this competence however, stakeholders in Wales now face a resource, capacity and upskilling challenge to translate domestic devolved and national policy objectives into UK trade policy terms.

This is exacerbated by a significant and rapidly moving body of trade negotiations taking place in a domestic context lacking:

- UK level structures for trade policy inclusive of trade policy formulation reflective of the constitutional makeup of the country.
- An inclusive and cross-cutting trade policy and resulting strategy (written following a consultation exercise).
- Transparency.
- Easy to find information.
- Known processes and procedures to rely upon, and meaningful and supportive engagement mechanisms.

## **Engagement**

The challenges above are compounded by a lack of transparency, and limited channels for formal consultation and input; the lack of support to facilitate engagement, and processes which actively make input more challenging.

Consultations that are undertaken prior to trade negotiations are often not well communicated and have short windows. They are framed specifically towards larger business interests, with seemingly little to no consideration for SMOs, or input on the social and devolved aspects of trade policy. Organisations in Wales may have certain concerns over trade deals, but do not know the language used in consultations or where to find or input that relevant information. Where engagement does take place, stakeholders have expressed concerns that even well-established and evidenced concerns are not often engaged with meaningfully. The lack of meaningful discussion on whether the UK should oppose the use of Investor State Dispute Resolution mechanisms is an example of this highlighted in our network.

Advisory groups are useful ways of engaging on strategic, thematic or individual deal level, but the lack of transparency as to what groups exist and who sits on them, makes it difficult for Welsh organisations to engage. Requirements for seniority on the STAG, and a lack of remuneration for involvement, makes it difficult for Wales representatives to sit on an advisory group in the first place. Where they do, the requirement to sign non-disclosure agreements prevents working closely with other Welsh organisations, or the ability to receive information from an England based organisations on relevant devolved issues impossible. With a growing proliferation of advisory groups as each new deal is made, this is also a large resource stretch.

The establishment of a DIT office in Wales (recently changed to DBT) with an engagement team has helped with informal engagement and has led to meetings with certain trade deal teams, and some Welsh organisations being added into information dissemination from DBT, such as newsletters and Quarterly Stakeholder Briefings, which is useful.

However, the absence of a consistent substantive and procedural approach to trade policy and engagement continues to make meaningful engagement challenging at the UK level – making engagement more reactive and structured around information dissemination, rather than around

proactive input. Existing engagement and processes rely mostly on good relationships and goodwill and it is overall too *ad hoc*. The Welsh Government approach to the Trade Policy Advisory Group is viewed as a preferable model.

## **The lack of long-term goals**

The absence of overarching and consistent goals for trade policy (sustainability; improving human and labour rights; increasing environmental and social standards...) creates significant uncertainty in the trading landscape, thereby preventing SMOs from being able to plan policy and engagement ahead of time.

Some responses we received voiced concern that without a trade strategy aligned to and consistent across central and devolved policy goals, there is a risk that the UK could 'trade away' long term goals in areas like environmental policy, climate change, labour and human rights, for very minor short term economic advantages (for example research has cast doubt on the of economic advantage the UK is likely to see arising from accession to CPTPP). The establishment of an inclusive trade policy by meaningful public consultation prior to further negotiations could instead be an opportunity align trade with a wide variety of devolved and central policy ambitions. This would also provide an opportunity for a wide variety of civil society stakeholders to engage with a single trade policy platform, as opposed to needing to do so around individual trade negotiations (provided these were aligned to the established policy). Modernising the UK's approach to the scrutiny of and stakeholder engagement on trade policy would also increase procedural certainty for SMOs in the medium to long term.

## **Impact Assessments**

We have found that the way in which trade deals are assessed at the UK level is insufficiently comprehensive and lacking coherence. For instance, issues like human rights and the potential gendered impact of trade are often limited to cursory analysis, while issues with clear evidence of negative impact like the inclusion of Investor State Dispute Settlement mechanisms are disregarded. We have found issues with analysis of impacts on low and middle income countries and environmental assessments, with suggestions of negligible and small impacts on areas that will go against the UK's commitments to the Sustainable Development Goals and Net Zero. Further issues can be found with the labour rights assessment of CPTPP for example, as there are significant divergences between the analyses published by the UK Government and those of authoritative stakeholders like the TUC.

The lack of climate, health, environmental, gendered, labour, human rights (etc.) considerations in trade policy creates particular tensions at the devolved level where in Wales the Well-being of Future Generations (Wales) Act mainstreams these in devolved views on trade. Responses to our request for input highlighted that without procedural and substantive reform, UK trade policy is expected to undermine pursuit of the wellbeing goals. Similar discussions inform Scottish analysis, which ultimately reflect trade negotiations and trade policy which are not sufficiently inclusive and sensitive to devolution. Stakeholder discussions in Wales note that a modern trade policy and modern trade negotiations could be a useful driver of numerous domestic policy ambitions, such as moving to net zero, providing healthy and nutritious food, and having a prosperous economy with well-paying technical jobs, however this is not currently the case as each body of trade negotiation appears siloed.

## Mechanisms for Intergovernmental Relations

When the UK withdrew from the EU in 2020, the review of Intergovernmental Relations had not yet been completed and intergovernmental relations were particularly challenging (owing inter alia, to the UK Internal Market Act). Nor was there a Wales office of the DIT. Relations between the UK and Welsh Governments in this area were at that time governed mostly by a Memorandum of Understanding on Devolution and a Concordat on International Relations which were not suited to the robust intergovernmental governance required by the UK's pursuit of an independent trade policy outside of EU membership. As a result, engagement between devolved institutions and the UK government were insufficient. This had a knock-on effect for stakeholders in Wales who maintain closer co-productive relationships with the Welsh Government and Senedd, which is often crucial in feeding into UK level policy and structures.

The landscape for devolved input into trade policy is somewhat different now since the development of the Common Frameworks, the Inter-ministerial Standing Committee, the Inter-ministerial Group on Trade and the establishment of a DBT engagement team in Cardiff. We find these have created new opportunity windows for input, but substantive challenges still remain.

- For example, some common frameworks have substantive policy overlap with trade, such as the procurement framework. Yet many of these are incomplete yet in force and are extremely challenging to scrutinise owing to transparency issues – there are no minutes, agendas or public records of their meeting – leading to accountability issues. Further, even though the provisional framework documents (like procurement) acknowledge the need for considering trade matters, there are disagreements between the devolved and central levels on whether this is a devolved matter – further frustrating meaningful discussion.
- Furthermore, despite procedural improvements brought about by the new IGR structures, the MoU and Concordat **which provide no commitments to substantive policy input and timely information sharing from the UK to devolved levels**, still appear to be the main vehicle governing discussions. Yet, these were drafted during EU membership and prior to the UK being able to pursue an independent trade policy. The context has dramatically changed, rendering these mechanisms unsuited to current policy aims and challenges.
- The resulting setup appears to be a series of intergovernmental meetings which provide a better platform for devolved governments to make views known and recorded. This has had a positive impact on relationship building and information sharing between officials but is still far from the consensus-based decision-making systems that we find are necessary for an inclusive approach to trade policy reflective of the UK's constitutional arrangements.

These substantive limitations are problematic because many areas of trade intersect with devolved competence and trade agreement implementation is devolved. This should justify a formal commitment to intergovernmental working providing for timely consultation and input into all areas of trade policy from the devolved level.

## 'What steps has the UK Government taken to address these challenges?'

We welcome the UK Governments growing recognition of wanting devolved representation on advisory groups and the establishment of a DBT engagement team in Cardiff. This has enabled regular contacts, communication and updates. The close working nature of FCDO and Welsh

Government overseas offices, the new Windsor Framework for Northern Ireland, and the introduction of the Electronic Trade Document Bill are also welcome to support the utilisation of Trade Deals once they have been put in place.

However, direct UK Government actions to address the gap in windows for substantive devolved input into trade policy have been limited, and some choices have actively frustrated devolved input. An established framework for regular, structured engagement is still lacking. **Furthermore, there is a gap between UK Government willingness to engage, and policy 'openness' to change.** It often seems that most of the policy or a specific trade agreement is finalised, before any engagement or consultation takes place – particularly given the extreme pace at which negotiations have taken place – making such engagement rather meaningless.

The lack of UK Government commitment to meaningful parliamentary scrutiny has also frustrated civic society input. For example, whilst the Grimstone letter states that Select Committees will have time to scrutinise new FTAs and produce reports on them before the CRaG period would be triggered, this did not happen during the UK-Australia deal process. The uncertainty of timelines and processes makes it very difficult for SMOs, with very limited resources, to plan for effective engagement. Welsh representation on the UK level Strategic Trade Advisory Groups and Trade Advisory Groups is also limited. The [call for applications](#) 'encouraged representation from the devolved administrations', however this was unclear because the membership of the group did not seem to include government officials. Assuming that it was actually encouraging for stakeholders from Wales, Scotland and Northern Ireland to apply for group membership, criteria like the seniority requirement are difficult to reconcile with the capacity gap in Wales. Policy expertise does not always rest with senior management in Wales where many organisations and businesses are small, medium or even micro in size.

## 'How have the UK's new international trading relationships affected you?'

Broadly – the UK's withdrawal from the EU has split UK and EU policy interests on international trade at the practical level, which has to some extent cut off partnerships with European civic society colleagues who would previously have led, with UK / Wales input – on trade. This has left a significant capacity gap.

The UK's pursuit of an independent international trading agenda, often *ad hoc*, has also triggered a rethink at the devolved level of structures for analysing, scrutinising and articulating Welsh views on trade. The lack of clarity in terms of the strategy and goals of a UK trade policy further impacts the knowledge, experience and practices required to effectively input in policy development.

The establishment of Trade Justice Wales is one small example of this. Funding for such initiatives is difficult to come by however, so maintaining even low levels of cross-sectoral coordinated capacity on trade in Wales is difficult. **Our work so far concludes that there is a significant lack of capacity in the sector, which is exacerbated by current governance and practice.**

The Welsh Government has established a Trade Policy Advisory Group which has become more inclusive to reflect the increasingly holistic way in which trade is viewed at the devolved level through the lens of the Well-being of Future Generations (Wales) Act. In this vein for example, Public Health Wales have also been developing a framework using this legislation to look at the Health implications of trade and have also been pioneering the use of Health Impact Assessments.

Similarly, the Senedd has established two committees with an active role in international trade – primarily the Economy Trade and Rural Affairs Committee, and to a lesser extent the Culture, Communications, Welsh Language, Sport, and International Relations Committee.

Further, when comments or consultations are open it is often on a single trade agreement. This means that in practice each organisation repeats similar points in different fora rather than providing input on an overall policy or strategy. This is rather cumbersome for civil society and leads to time and resources not necessarily best spent.

Overall, and yet again, all those mechanisms are informal leaving civil society to regularly look for opportunities to input into the decision-making process. The system should be streamlined and simplified. **And often it feels that when input is required the big decisions have already been taken. Engagement should be meaningful rather than simply a box-ticking exercise.**

## **'What do you need as part of future trade deals negotiated by the UK Government?'**

Both thematic and practical needs exist.

### **Thematic needs**

On initial consultation with stakeholders interested in trade who have participated in Trade Justice Wales, which includes academic, third sector, private sector and public-sector representatives, we concluded three priority asks as a part of the network's policy objectives.

The first of these highlights the need and importance of robust governance qualified by early, regular and meaningful stakeholder engagement, appropriate constitutional arrangements ensuring a voice for devolved legislatures and governments and holistic impact assessments of trade at all levels and stages.

We are concerned that the lack of a formal trade strategy and policy formulated following an inclusive consultation, and associated lack of appropriate structures for engagement and parliamentary scrutiny act as a significant barrier to the development of a modern, forward-looking and effective approach to trade. It also misses opportunities to pursue other policy ambitions in trade for example around climate change, biodiversity, labour, environmental standards and human rights. Many of these concerns are echoed by the International Trade Committee:

<https://committees.parliament.uk/publications/33653/documents/184038/default/>

Our response to this concern led the network's second main ask which is for trade to be viewed not as choice between economic opportunity and wider social values, but as a vehicle by which other policy areas like environmental policy, human rights, and sustainable development are advanced domestically and internationally.

Thirdly, and in line with the Well-being of Future Generations (Wales) Act, Trade Justice Wales concludes that it is important that UK trade policy recognises and assesses its impact on communities, not only within the UK, but also outside the UK.

### **Practical needs**

We would call on the UK Government to:



- Publish a Trade Strategy, following a UK wide consultation on the development of a UK trade strategy, fully and meaningfully engaging stakeholders across the UK and especially at the devolved level and recognising that while trade negotiations are reserved, many aspects of trade policy are devolved and/or implemented at the devolved level by devolved authorities.
- Would echo some the calls by the House of Lords and House of Commons committees on trade to strengthen parliamentary scrutiny over future trade agreements.
- Establish an inclusive stakeholder engagement strategy addressing all stages of the trade policy process (mandate formulation, negotiation and implementation).
  - Refresh consultations so that SMOs can easily understand and submit evidence.
  - Where required, ensure remuneration for representation on advisory groups.
- Develop an overarching trade policy with long terms goals and an inclusive engagement strategy, acknowledging the need for meaningful devolved input and established, debated and scrutinised following a public consultation.
- Develop a consistent and holistic approach to impact assessment paying particular attention to the social dimensions of trade.
- Slow down the pace of developing new trade agreements to ensure not only engagement in the decision-making process but also to focus on quality (rather than quantity).
- Produce things bilingually in English and Welsh.
- Reduction the number of NDAs to allow members who represent wider sectors to share with across sectors.
- Ensure that the criteria and procedures governing recruitment to and operation of the STAGs and TAGs is inclusive for representation at the devolved level. E.g. lessening requirements for membership of these bodies to be limited to senior representatives of organisations, as policy expertise may rest with less senior staff members in smaller organisations.
- Greater transparency in the decision-making process allowing more strategic and earlier input in negotiations rather than after major decisions have been settled.
- There is a lack of transparency regarding the establishment and composition of advisory groups and how stakeholders can apply for membership.
- Creation of a website with easily accessible data to keep stakeholders informed on the state of negotiations; which deals are being considered; what the UK priorities/goals are for its trade policy.
- Increased engagement with a wider range of Welsh organisations on trade missions to understand future opportunities earlier.
- An inclusive bottom-up approach to trade policy involving the devolved governments would also be welcome so that future deals align with devolved priorities.

- Fund organisations and networks to provide civil society and businesses training on trade agreements.
- Give careful consideration to the impact that future trade deals may have on the UK's alignment and divergence with major trading partners, recognising that businesses and organisations are supportive of high standards and that FTA mechanisms on technical barriers to trade and rights for international businesses to submit views on policy changes can have a regulatory chilling effect.