

TAKING LABOUR RIGHTS SERIOUSLY IN A UK-EU TRADE AGREEMENT:

PROTECT PROMOTE EMPOWER

If the UK and the EU negotiate a free trade agreement or customs union, how should labour rights be addressed? We examine what the protection of labour rights could achieve, as well as the dangers of not including significant commitments in a post-Brexit trade deal. We argue that **'protect, promote, empower'** provides a framework for taking labour rights seriously in the trade negotiations to come.

WHAT ROLE COULD LABOUR RIGHTS PLAY WITHIN A UK-EU TRADE AGREEMENT?

Leaving the EU means that the UK will not be required to protect the extensive range of labour rights contained in EU law. A UK-EU trade agreement is unlikely to provide the same level of protection on labour rights as EU membership. But the political climate in the UK and the EU does suggest that labour rights should play an important role in negotiations.

The UK government has pledged to improve domestic labour rights and EU negotiators have indicated they will demand strong labour standards in a UK-EU trade agreement.

What kind of provisions will satisfy these commitments?



“Under my leadership, not only will the Government protect the rights of workers’ set out in European legislation, we will build on them.” *Theresa May, UK Prime Minister, 'Plan for Britain' Speech, January 2017*¹



“That partnership [between the UK and the EU] could be based on an ambitious free trade agreement, provided that it ensures fair competition and guarantees high environmental, social and consumer protection standards.” *Michel Barnier, Chief Negotiator for the EU in Brexit negotiations, March 2017*²

A UK-EU trade agreement could itself undermine labour rights, for instance, if governments believe that relaxing labour laws will boost competitiveness.

Can this be prevented?



“Labour will build human rights and social justice into trade policy. We will ensure that trade agreements cannot undermine human rights and labour standards.” *Labour Party 2017 General Election Manifesto, May 2017*³



“[In a UK-EU trade deal] the highest standards of worker, consumer and environmental protection must lie at its heart.” *Frances O’Grady, General Secretary of the TUC, February 2017*⁴

Both the UK and EU have committed to tackling labour abuses in global supply chains beyond their own immediate bilateral trading relationship.

Could an UK-EU trade agreement support this?



“Modern slavery is international and requires an international response...we need a radically new, comprehensive approach to defeating this vile and systematic international business model...and we need to flex the muscle of all parts of the UK government and collaborate with international partners.” *Theresa May, UK Prime Minister, July 2016*⁶



“We need supply chains that are responsible...The inclusion of ambitious chapters on sustainable development [in EU trade agreements] is a first vital step.” *Cecilia Malmström, EU Commissioner for Trade, December 2015*⁷

The UK-EU trade agreement is likely to be the first post-Brexit trade agreement the UK signs.

Could it become a model for how to protect labour rights in other future trade agreements?



“We encourage the Government to use the opportunity of Brexit to set higher human rights standards in future trade agreements.” *Joint Committee on Human Rights’ report on human rights and business, March 2017*⁵

ARE LABOUR RIGHTS COMMON IN TRADE AGREEMENTS?

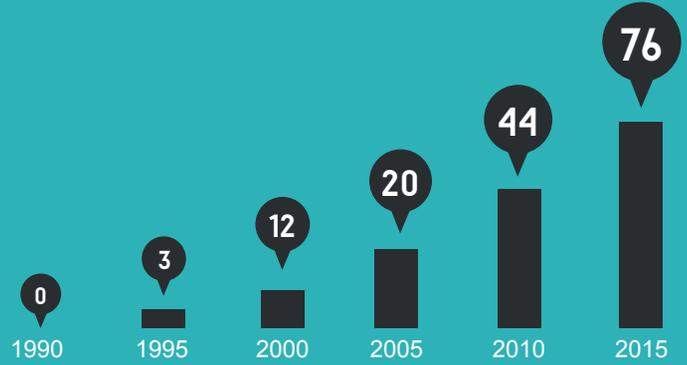
According to the International Labour Organisation (ILO):



“ Since the beginning of the 1990s, the need to create a minimum social foundation for the development of trade ... has resulted in the signing of an increasing number of Free Trade Agreements (FTAs) which include a labour dimension.”⁸

FTAs with provisions on labour standards are now a basic component of all EU and US trade agreements. Globally 107 countries have at least one trade agreement containing labour standards provisions. Research from the International Labour Organization concluded they ‘do not harm or divert trade’.⁹

FTAs with labour standards provisions



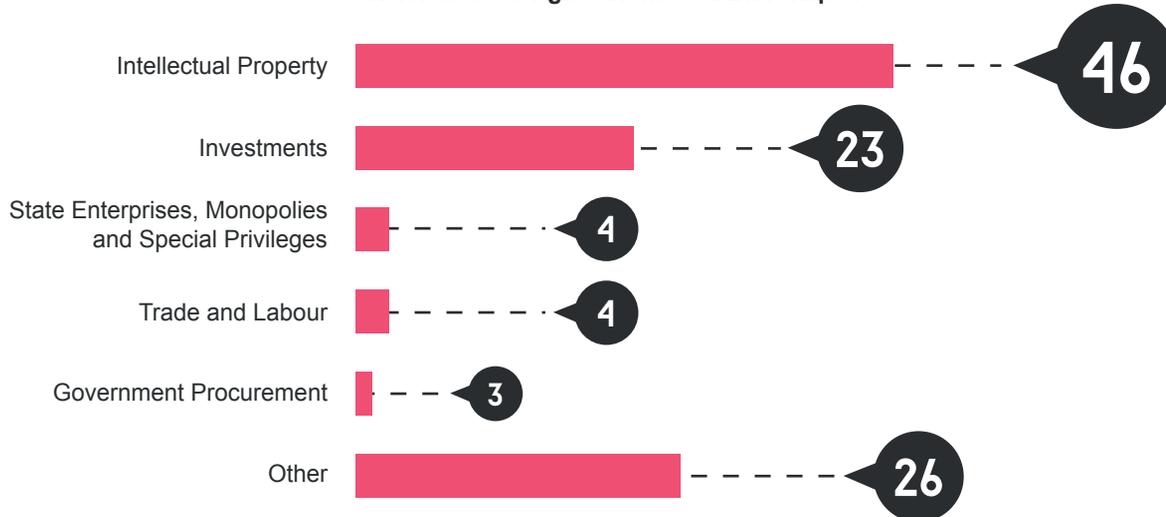
Source: Authors based on ILO (2016) Handbook on Assessment of Labour Provisions in Trade and Investment Agreements. Geneva: ILO, pp. 9-10

SHOULD LABOUR RIGHTS BE IN TRADE AGREEMENTS?

Linking trade to labour rights has been considered by some as a form of disguised protectionism. This stems from concerns that a ‘social clause’ would be used unfairly to sanction an entire country. However, many ways of linking trade and labour are possible, and representatives of workers, including in developing countries, often support some form of linkage.

References to ‘rights’ are not alien to trade agreements. The 30 chapters of the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU contains over 100 mentions of the term ‘rights’, used chiefly in relation to the rights of investors and patent holders.¹⁰

References to rights in the 30 CETA chapters



Source: Author's own

¹ <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

² Barnier, M., ‘Europe Will Be Transparent and Fair in Brexit Talks’, Financial Times, 26 Mar

³ <http://www.labour.org.uk/page/-/Images/manifesto-2017/labour-manifesto-2017.pdf>

⁴ <http://touchstoneblog.org.uk/2017/02/free-trade-take-get-union-backing/>

⁵ <https://www.publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf>

⁶ <https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article>

⁷ http://trade.ec.europa.eu/doclib/docs/2015/december/tradoc_154020.pdf

⁸ <http://ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/lang--en/index.htm>

⁹ http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_498944.pdf

¹⁰ Only chapters where rights are mentioned are included.

¹¹ http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155238.pdf

HOW HAS THE EU ADDRESSED LABOUR RIGHTS IN ITS TRADE AGREEMENTS?

The EU has included the same basic labour rights provisions in all of its FTAs, and in the proposed reform of the Customs Union with Turkey.¹¹ They are likely to be the starting point for negotiations between the EU and the UK. The EU's labour provisions are usually incorporated in a chapter on Trade and Sustainable Development (TSD), which includes provisions to protect and promote labour standards as well as provisions to protect the environment. There is some variation between agreements, but the TSD chapters share three main types of labour provisions:

SUBSTANTIVE COMMITMENTS

- Core labour standards as embodied in the ILO fundamental conventions
- ILO Decent Work Agenda

PROCEDURAL COMMITMENTS

- Dialogue and cooperation between the Parties
- Transparency in introducing new labour standards domestically
- Monitoring and review of sustainability impacts of the FTA
- Upholding levels of domestic protection on labour standards

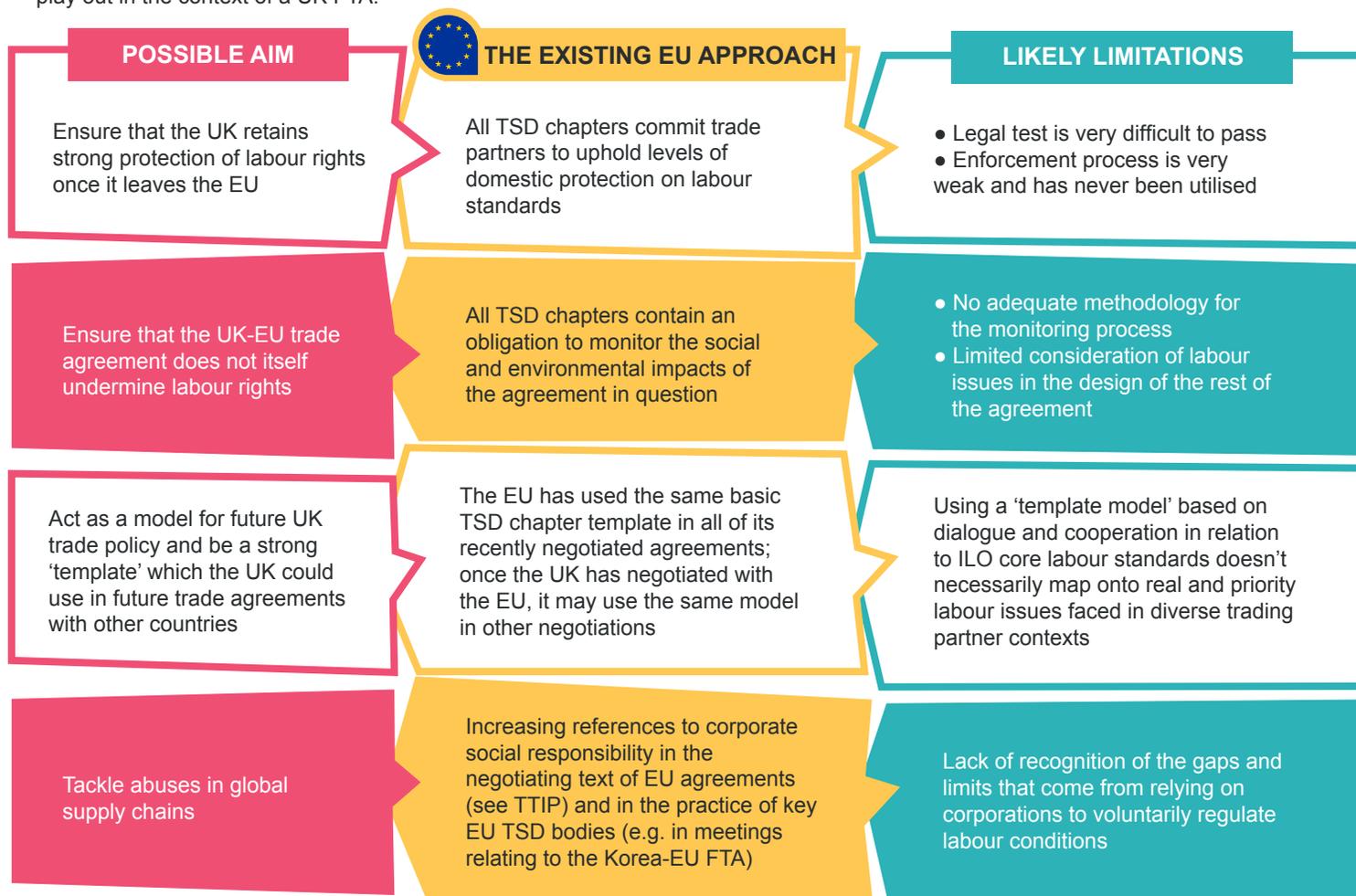
INSTITUTIONAL MECHANISMS

This diagram represents the institutional model set up in the South Korea-EU FTA. Other agreements vary slightly.



HOW EFFECTIVE WOULD THIS APPROACH BE IN A UK-EU TRADE AGREEMENT?

Based on our research of how the EU model has worked in trade agreements with other countries, we can hypothesise how this would play out in the context of a UK FTA.



HOW COULD A UK-EU TRADE AGREEMENT BETTER SUPPORT LABOUR RIGHTS?

PROTECT PROMOTE EMPOWER

Separate consideration of the various aims that a UK-EU trade agreement might reasonably seek to pursue with regard to labour rights is required. Detailed thought is needed about how each can best be achieved. The framework set out below would help to ensure that this happens:

AIM OF PRINCIPLE

Uphold existing labour rights in the UK and EU by:

- creating meaningful and enforceable commitments on governments to uphold existing levels of domestic labour rights protection
- ensuring that the trade agreement itself does not undermine labour rights



PROTECT

POLICIES TO ENACT THE PRINCIPLE

- Create safeguards against the lowering of labour protections which are potentially actionable
- Create strong investigative and targeted enforcement mechanisms related to those safeguards so effective action can be taken where violations have occurred
- Establish and apply an effective monitoring process which also empowers civil society actors engaged in the institutions of the trade agreement
- Include strong provisions that provide governments with the defensive policy space to protect the rights of workers without fear of breaching other obligations in the agreements
- Exclude provisions that might threaten the rights of workers (e.g. particular investment protection obligations)

AIM OF PRINCIPLE

Strengthen existing levels of labour rights protection in the UK, EU and beyond by:

- targeting the labour issues of particular concern in each trading partner, and continuing to review these over time
- creating political, financial and legal mechanisms most likely to be effective in bringing about change in the UK, EU and beyond



PROMOTE

POLICIES TO ENACT THE PRINCIPLE

- Identify the labour issues that are of particular concern in the UK and EU context (e.g. the rights of migrant workers, precarious work) and create measures which specifically address those issues
- Look at the entire agreement through a 'labour rights lens' and attempt to negotiate the agreement with a view to enhancing labour rights in both parties (e.g. the creation of differentiated tariff rates and/or more relaxed rules of origin for companies that demonstrate enhanced labour rights protection)

AIM OF PRINCIPLE

Support elected representatives, trade unions and other civil society actors representing and campaigning on behalf of workers' rights throughout the negotiation and implementation of future trade agreements



EMPOWER

POLICIES TO ENACT THE PRINCIPLE

- Create institutions which allow trade unions and other civil society actors representing and campaigning on behalf of workers' rights to meaningfully engage with the negotiation, implementation and monitoring of the UK-EU trade agreement
- Empower international labour rights initiatives which are tackling workers' rights issues in global supply chains (e.g. Electronics Watch, the Clean Clothes Campaign etc.) and consider ways in which such mechanisms can be used to monitor effective implementation of labour commitments

How do I find out more?

For a more extensive analysis, see the working paper 'Taking Labour Rights Seriously in Post-Brexit UK Trade Agreements: Protect, Promote and Empower', available at: <http://www.geog.qmw.ac.uk/research/beyondtheborder/>. The research was conducted as part of an ESRC-funded project entitled 'Working Beyond the Border: European Union Trade Agreements and International Labour Standards' (award number: ES/M009343/1). The project team are Prof. Adrian Smith, Dr James Harrison, Dr Liam Campling, Dr Ben Richardson and Dr Mirela Barbu. Please contact Dr James Harrison j.harrison.3@warwick.ac.uk for more information.

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