

JUST TRADING

WHAT WOULD A JUST TRADING SYSTEM LOOK LIKE?



INTRODUCTION

The system of rules that has been at the core of world trade for the past 70 years is at breaking point. Corporations have arrogated to themselves the power to challenge sovereign governments and undermine fiscal policy and public policy. China is emerging from non-market economy status with labour and utility costs that enable it to undercut Western markets. Meanwhile the US President is behaving like a unilateral wrecking ball, imposing arbitrary tariffs on aircraft, steel and aluminium and threatening to withdraw the USA from the World Trade Organisation (WTO) itself.

In the UK we have a government that is pulling out of the largest free trade grouping in the world and doing it paradoxically in the name of free trade! It has never been more important, therefore, for the Labour Party to articulate our support for an open and fair trading system that creates wealth and jobs for the many in a way that protects workplace rights, environmental standards and vital sectors of industry from unfair external competition.

The Labour Party has always been pro-trade and pro investment. Millions of

people's jobs depend on our continuing access to overseas markets. Hundreds of thousands more jobs depend on our success in attracting foreign direct investment from abroad. A Labour government will support British companies so that they can take full advantage of the opportunities available for international trade and investment, whether directly or in the supply chains of other companies, and we will place our focus on support to small and medium-sized businesses to boost their propensity to export.

Our internationalism means we have a long history of support for the mutual reduction of trade barriers. It was the Labour government of Clement Attlee that pressed successfully for the establishment of the General Agreement on Tariffs and Trade (GATT) as a central pillar of global economic reconstruction in the immediate aftermath of the Second World War. The GATT served as the forum for multilateral trade negotiations for almost fifty years until the birth of the WTO in 1995. The next Labour government will continue to support the WTO as the premier multilateral institution underpinning the

rules-based international trading system of today.

A Labour government will also negotiate new bilateral agreements with trading partners around the world. The opportunities for mutual benefit arising from such negotiations is unmistakable, and we will champion the interests of British producers in crafting the best possible agreements for the future, opening up new markets and making full and proper use of geographical indications to safeguard British products with protected status.

At the same time, we will ensure that new agreements cannot undermine social and environmental standards or in any way jeopardise our ability to regulate in the public interest or to protect public services. The Labour Party is committed to building human rights, workers' rights and social justice into our trade and investment policy, as well as ensuring that international trade can be undertaken within sustainable ecological boundaries and with particular reference

to the historical development needs of the countries of the Global South.

This document aims to initiate a new debate on what a just trading system should look like. It presents the Labour Party's existing policies and principles on trade, and it is meant as a 'green paper' to stimulate discussion and feedback, both in the UK and elsewhere. As a symbol of our desire to make this a truly international exercise drawing on input from colleagues around the world, I am launching it at the WTO in the company of legislators and other trade policy experts from both South and North. I look forward to working with all parties interested in forging a progressive trade agenda for the future.

A handwritten signature in black ink, reading "Barry Gardiner". The signature is written in a cursive style with a long horizontal stroke at the end.

Barry Gardiner MP
Shadow International Trade Secretary
October 2018

ONE

Just Trading

The Labour Party has a long history of support for a system of fair and open international trade, even when this was not the dominant orthodoxy that it is today.¹ Labour's belief in the rules-based international trading system stems from the economic benefits that trade can offer working people. Exports of goods and services account for around 30% of the UK's gross domestic product, and millions of jobs depend on continuing access to markets overseas. In goods trade alone, 147,000 companies were involved in exporting from the UK during 2016, with a total employee count of 9.7 million people.²

A Labour government will actively promote British exports in overseas markets, in goods and service sectors alike. We will extend the provision of export finance and other support measures (export credits, insurance and promotion) to actual and potential exporters, with a bespoke export

¹ B. Gardiner, 'Fair, Open and Progressive: The Roots and Reasons behind Labour's Global Trade Policy', in J. McDonnell (ed.) *Economics for the Many*. London: Verso, 2018; pp. 56-71.

² 'UK trade in goods statistics by business characteristics, 2016'. London: HM Revenue & Customs, November 2017.

incentive scheme for small and medium-sized enterprises (SMEs). While only 9% of British SMEs are directly engaged in exporting overseas, a further 15% are integrated into the supply chains of other businesses active in export trade – meaning that one in four British SMEs are involved either directly or indirectly in exporting overseas.³

A progressive trade strategy must be fully aligned with our industrial strategy, identifying the essential pillars of our domestic economy, seeking to support and protect them from unfair competition and to utilise those areas in which we have competitive advantage to boost our export growth. In order to ensure that the benefits of trade are shared across the country, Labour will also establish a network of regional champions to promote the export and investment interests of businesses throughout every part of the regions and nations of the UK. These regional

³ 'Estimate of the proportion of UK SMEs in the supply chain of exporters: methodology note'. London: Department for Business, Innovation and Skills, May 2016.

representatives will be included on international trade missions so they have direct access to new markets around the world.

Through mutually beneficial relations with trading partners abroad, we can develop the modern industrial base needed to deliver decent jobs and a secure future for working people in the UK. By sustaining the necessary levels of investment in people and skills we will be able to increase productivity without engaging in unsuccessful competition based upon low wages and lower rights. A Labour government will prioritise trade support to those high-productivity sectors of the economy identified for development in the industrial strategy, creating a coherent and mutually supportive relationship between export promotion and industrial growth.

That is why we are committed to ensuring that UK businesses can take full advantage of opportunities for the export of environmental goods, where greater liberalisation of trade could increase the availability of green technologies such as solar panels, wind turbines, recycling machinery and other waste management tools. The environmental goods and services sector contributed over £30 billion to the UK economy in terms of gross value added during 2015, and 335,000 full-time equivalent jobs. The sector contributed £5 billion in exports, almost 90% of which came from recycling and waste management activities.⁴ A

⁴ 'UK environmental goods and services sector (EGSS): 2010 to 2015'. London: Office for National Statistics, May 2018.

Labour government will support negotiations towards an Environmental Goods Agreement at the WTO, creating the potential for further expansion of UK exports at the same time as encouraging the global transition towards a low-carbon future.

The UK is primarily a services economy, with services accounting for 80% of all jobs and economic output. In terms of our balance of payments, the UK's surplus in services trade is an essential counterweight to the large deficit in goods trade – yet services represent just 45% of total UK exports.⁵ This is not enough. Services have long represented an essential element in trade agreements. A Labour government will focus on removing unnecessary barriers to international participation across all modes of supply. We will build on the liberalisation of trade in services that has already been achieved in multilateral and bilateral agreements, particularly maximising the opportunities that exist in emerging markets. The value of UK services exports to Asia saw an increase of 15.5% in 2016 alone, on top of an increase of 8.9% the previous year.⁶ This is a trend which Labour will encourage, support and continue.

True to its history, the Labour Party is a staunch supporter of multilateralism in trade negotiations. Multilateralism is the means to achieve mutual reductions in tariff and non-tariff barriers and to manage the process of economic

⁵ *UK Balance of Payments: The Pink Book*. London: Office for National Statistics, July 2018.

⁶ 'International trade in services, UK: 2016'. London: Office for National Statistics, January 2018.

liberalisation consistent with competing national interests and needs. In the wake of the Second World War, the Labour government of Clement Attlee persuaded the USA of the benefits of a multilateral trade forum to complement the new international financial architecture established at the 1944 Bretton Woods conference. Driven to its conclusion by Labour's lead negotiator Sir Stafford Cripps, the resulting General Agreement on Tariffs and Trade (GATT) would serve as the forum for multilateral trade talks until the birth of the World Trade Organisation (WTO) in 1995.⁷

A similar effort is required today. The Labour Party will support the WTO as the premier multilateral institution required to underpin the rules-based international trading system. Since its foundation, the WTO has played a crucial role as the ultimate dispute settlement body for that system; as a result of its unique power to authorise trade sanctions against its member states, the WTO's dispute rulings have historically boasted a high compliance rate of around 95%.⁸

The decision of the Trump administration to withhold US approval for the appointment of new members to the WTO's Appellate Body threatens to undermine the institution's dispute settlement function, and with it the rules-based system as a whole. A Labour government will work energetically with all other members of the WTO to ensure that it is able to continue its role as the

dispute settlement body for the world trading system into the future.

At the same time as supporting the rules-based multilateral system, a Labour government will seek to negotiate new bilateral agreements with the UK's trading partners around the world. Bilateral negotiations have demonstrated their importance in offering opportunities to reduce tariff and non-tariff barriers across a wide range of goods and service sectors, and UK firms have reaped significant rewards from the market access openings secured through such agreements. Notwithstanding this, there are two distinct areas where a Labour government will take a different approach:

1. We do not support the controversial 'new generation' agreements which failed to strike a balance between trade liberalisation on the one hand and the importance of regulation in the public interest, on the other. For this reason, the Labour Party was unable to support the EU's discontinued Transatlantic Trade and Investment Partnership (TTIP) with the USA, or the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada. In this we joined with millions of people from across Europe in calling for a new approach to bilateral negotiations and trade policy more generally.

⁷ R. Toye, 'The Attlee Government, the Imperial Preference System and the Creation of the GATT'. *English Historical Review*, Vol. 118, No. 478 (2003), pp. 912-939.

⁸ J.L. Goldstein and R.H. Steinberg, 'Negotiate or Litigate? Effects of WTO Judicial Delegation on US Trade Politics'. *Law and Contemporary Problems*, Vol. 71 (2008), pp. 257-282.

2. We do not support those bilateral trade agreements which have locked trade partners into exploitative relationships, often supplying commodities or basic goods at the bottom of the chain of production where little value is added in the originating country. The attraction of Western consumer markets to countries of the Global South is undoubtedly a lever in bilateral trade negotiations. It can be used exploitatively to drive down costs and perpetuate inequality; or it can be used as a positive incentive to foster labour rights, gender equality and environmental standards.

If trade is to work to reduce global poverty, it is essential that we build into our trading model strong rights-based values. That is why Labour is committed to systematically reviewing the bilateral trade agreements we have been a party to through the EU. We want to build wealth and economic growth in partner countries, which will then be better able to buy our goods and services. We will not continue the model that forces economically weaker nations to suppress wages, protections and rights for their own citizens.

Regulation in the public interest

The myth of the self-regulating market was exploded once and for all in the financial crisis of 2008. The extreme

market deregulation of the previous three decades caused the financial system to collapse under the weight of its own debt-fuelled speculation. Global trade experienced its steepest and deepest contraction since the Great Depression, and that turned the financial crisis into an economic crisis through loss of industrial production in all major trading nations of the world.⁹

Governments and international financial institutions sought to impose austerity programmes on those who had not been responsible for the crisis. Millions of working people were forced into deep poverty and those countries that were hardest hit by the crisis lost more than a decade of economic time.¹⁰

Not only necessary to prevent the recurrence of such crises, regulation is the precondition that stops free trade becoming anarchic, exploitative and ultimately self-defeating. Regulation that was once seen as a barrier to trade is in fact the only way to create the market place in which fair and open trade can take place.

There is now an open consensus that globalisation has produced both winners and losers. Labour understands the negative impacts of unregulated trade on jobs, wages and workers' rights. Last year's joint report from the WTO, IMF and World Bank acknowledged the "harsh" consequences for those who lose their jobs as a result of import competition and recognised that the negative impacts of

⁹ R. Baldwin (ed.), *The Great Trade Collapse: Causes, Consequences and Prospects*. London: Centre for Economic Policy Research, November 2009.

¹⁰ I. Ötoker-Robe and A.M. Podpiera, 'The Social Impact of Financial Crises: Evidence from the Global Financial Crisis'. Washington DC: World Bank, November 2013.

these permanent policy changes lead to “long-lasting displacements as well as large earnings losses” in the sectors most affected.

The report further noted that the costs tend to fall especially hard on women, older and less skilled workers, who can often find it more difficult to find alternative work, and that they have intergenerational impacts: “Such long spells of unemployment also lead to worse health outcomes, higher mortality, lower achievements by children of affected workers, and other adverse consequences.”¹¹

Official projections for TTIP suggested that at least one million people would lose their jobs in the resulting economic dislocation – 680,000 in the EU and 325,000 in the USA. The European Commission acknowledged there were “legitimate concerns” that many of those people would not find alternative sources of employment;¹² yet still it pressed ahead with 15 separate rounds of negotiation until it was forced to recognise that the deal had become politically unacceptable. Even where displaced workers do manage to find new jobs, these can often be at lower skill or wage levels: US workers forced out of manufacturing into service sector jobs as a result of trade liberalisation typically experience a decline in wages of between 6% and 22%.¹³

¹¹ *Making Trade an Engine of Growth for All: The Case for Trade and for Policies to Facilitate Adjustment*. New York: International Monetary Fund, World Bank and World Trade Organisation, March 2017.

¹² ‘Impact Assessment Report on the future of EU-US trade relations’. Commission staff working document

Labour’s progressive trade agenda will safeguard the policy space for governments to act in the public interest, ensuring that global markets function with reference to the higher social goals they are supposed to serve. That is why we have committed to ensuring that trade and investment agreements cannot undermine future governments’ ability to regulate on social or environmental grounds, and we will seek to promote the highest possible levels of regulation in trade negotiations, not the downgrading of standards as ‘barriers’ to trade.

This is a particularly important commitment in respect of the investor protection chapters of ‘new generation’ trade agreements, as described more fully below, and goes far beyond the simple insertion of clauses in trade agreements affirming the ‘right’ to regulate. In addition, a Labour government will seek to negotiate the UK’s independent membership of the plurilateral Government Procurement Agreement at the WTO, but on terms which safeguard the capacity of public bodies to make their own procurement decisions in keeping with public policy objectives.

A Labour government will guarantee that public services are fully protected from trade agreements. Despite repeated official assurances that public services are safe from free trade agreements, the EU’s own trade lawyers have confirmed that

SWD (2013) 68. Strasbourg: European Commission, March 2013.

¹³ *Trade and Employment: From Myths to Facts*. Geneva: International Labour Organisation, 2011.

progressive moves by future governments to reverse public service privatisations could fall foul of liberalisation commitments under international trade rules.¹⁴ While seeking to maximise the benefits of service market liberalisation, trade agreements must include watertight safeguards to guarantee that the delivery of public services in the public interest can never be jeopardised by treaty obligations undertaken at the international level, including investor protection measures.

An open trading environment requires controls to ensure that there can be no abuse of the system by producers that have been granted an unfair advantage by government subsidies or other means. Strangely, successive UK governments have argued against the imposition of higher anti-dumping duties on countries found to be breaking the rules, advocating instead the use of the 'lesser duty' rule that limits the level of response available. Working together with business and trade union representatives, a Labour government will develop a full range of trade remedies necessary to support those sectors of the UK economy affected by unfair trading practices, and the capacity to use those remedies effectively.

A Labour government will also safeguard the interests of Britain's high-quality agricultural producers in future trade agreements. Uniquely among major EU member states, the UK government failed to promote the interests of British

producers in the CETA negotiations between the EU and Canada, which offered protection on the Canadian market for national products with geographical indications at a comparable level to that offered in the EU. While other EU member states listed their national products for protection, the UK government failed to register a single one of the dozens of British products that qualify for protected geographical status.

A Labour government will seek proper recognition in future trade agreements for quality products such as Scotch beef, Scotch lamb, Scottish salmon, Welsh beef, Welsh lamb, Stilton cheese, Melton Mowbray pork pies and the many other British specialities designated as having protected status.

Human rights and social justice

Trade is not only an important source of social and economic empowerment for working people. Whilst this is the primary rationale for the Labour Party's support for an open, rules-based trading system, far too many people have found themselves locked into situations of extreme exploitation. This is a particular threat to workers at the bottom of global value chains, producing goods for distant retailers that enjoy ultimate control over the terms and conditions under which their suppliers operate.

At the same time as recognising that trade and investment can make a significant contribution to decent jobs and social empowerment, the

¹⁴ 'Reflections paper on services of general interest in bilateral FTAs (applicable to both positive and negative lists)'. Brussels: European Commission, February 2011;

'Commission proposal for the modernisation of the treatment of public services in EU trade agreements'. Brussels: European Commission, October 2011.

International Labour Organisation (ILO) notes that trade via global supply chains “tends to generate economic benefits for firms (in terms of higher productivity) but not necessarily for workers (in terms of wages)”.¹⁵

The impacts of trade on women workers have been particularly keenly felt. In countries where women have not previously enjoyed other employment opportunities, jobs in export-oriented industries have provided unprecedented economic independence. In Bangladesh, for instance, formal employment in the ready-made garment industry has provided millions of women workers with a regular source of independent income which has allowed them to enhance their social status and political participation beyond anything their grandmothers could have dreamed of.¹⁶

Yet rather than empowerment, far too often incorporation into global supply chains has resulted in women being trapped in jobs that are characterised by poverty wages and dangerous working conditions. The death of 1,135 workers – the vast majority of them women – in the Rana Plaza disaster of April 2013 remains the most horrific reminder of a world in which the profit-making imperative has too often taken precedence over the most basic workers’ rights.

¹⁵ *Assessment of Labour Provisions in Trade and Investment Arrangements*. Geneva: International Labour Organisation, July 2016.

¹⁶ N. Kabeer, S. Mahmud and S. Tasneem, ‘Does Paid Work Provide a Pathway to Women’s Empowerment? Empirical Findings from Bangladesh’. Brighton: Institute of Development Studies, September 2011.

In addition, many women have been negatively affected because of the expansion of global trade rules into areas of their social and reproductive lives which had previously been protected from the threat of international market forces. The displacement of local food production and the creeping privatisation of land, seeds and essential services have all had disproportionately negative effects on women. Failure to recognise these realities was the principal reason that a coalition of over 160 women’s rights and allied organisations from around the world called on WTO members to reject the Joint Declaration on Trade and Women’s Economic Empowerment that was presented for adoption by the WTO at its Buenos Aires ministerial conference in December 2017.¹⁷

The Labour Party has made a commitment to build human rights and social justice into trade policy, and to support a progressive trade and investment agenda that “protects and promotes skilled jobs, human rights and workers’ rights based on internationally recognised labour standards”.¹⁸

As a first step, a Labour government will ensure that trade agreements cannot undermine human rights and labour standards. Yet the traditional mechanism of including non-binding social clauses and sustainable development chapters in

¹⁷ ‘164 Women’s Rights Groups call on Governments to Reject the WTO Declaration on “Women’s Economic Empowerment”’. Buenos Aires, 13 December 2017.

¹⁸ NEC Statement on International Trade adopted by Labour Party conference, Liverpool, September 2016.

free trade agreements has not been effective in achieving such an aim.¹⁹ Labour will ensure that all new treaties are subject to rigorous impact assessment early in their negotiation, and a Labour government will seek ways to include binding social clauses in future UK trade agreements (see also the section on investment, below). The ILO has found that including labour provisions in trade agreements increases the value of trade by 28% on average, compared to 26% for treaties without such provisions.²⁰

As part of its commitment to building human rights and social justice into trade policy, the Labour Party will address the historical development needs of the world's most vulnerable countries and communities in its trade and investment policy. This means guaranteeing the countries of the Global South access to the UK market under at least the same terms they have enjoyed while the UK has been part of the EU.

Foremost among these is the need to maintain duty-free and quota-free access for exports from the world's least developed countries (LDCs), a specific target included under Goal 17 of the Sustainable Development Goals adopted by the international community in 2015. The Labour Party included this pledge in its 2017 general election manifesto, and the new UK government announced

shortly after the election that it would adopt Labour's policy.²¹

The UK must maintain and develop its relations with trading partners beyond the LDCs, recognising the historic failings of established models and ensuring that we do not repeat the mistakes of the past. Much damage was done to the economies of Africa and Latin America in the 1980s and 1990s as a result of their being compelled to open up their markets under the structural adjustment programmes of the World Bank and IMF. The policies imposed on those countries led to such widespread deindustrialisation, unemployment and poverty that even the IMF itself would later admit that it had got it wrong on trade.²² The Labour Party has repeatedly affirmed that it will never use aid conditionality to force countries to open up their markets to foreign competition.

Reciprocal UK trade agreements with other trading partners must also take into account the needs of more vulnerable countries and communities if they are not to harm their long-term interests. Even trade agreements between OECD states can have negative impacts on third countries through trade diversion, where less powerful producers risk losing market share as they are brought into direct competition with the world's largest multinationals. Equally, the blanket liberalisation of tariffs in richer

¹⁹ J. Harrison et al, 'Taking Labour Rights Seriously in Post-Brexit UK Trade Agreements: Protect, Promote, Empower'. Coventry: University of Warwick, CSGR Working Paper 284/17, July 2017.

²⁰ *Assessment of Labour Provisions in Trade and Investment Arrangements*. Geneva: International Labour Organisation, July 2016.

²¹ 'Government pledges to help improve access to UK markets for world's poorest countries post-Brexit'. UK government press release, 24 June 2017.

²² *IMF Involvement in International Trade Policy Issues*. Independent Evaluation Office evaluation report. Washington DC: International Monetary Fund, 2009.

economies can lead to unintended losses for those countries that see their preferences eroded; Commonwealth exporters, for instance, currently benefit from their preferential access to the UK market by as much as £600 million per year.²³

Likewise, it is a mistake to think that the poorest countries can simply ‘trade their way out of poverty’, as some political figures still maintain. The World Bank’s former research director, Paul Collier, warned of the perils of export orientation in his best-selling book *The Bottom Billion*, concluding that a simple reliance on trade under prevailing conditions is “more likely to lock yet more of the bottom-billion countries into the natural resource trap than to save them through export diversification”.²⁴

The pursuit of export markets at all costs has also been responsible for significant human rights abuse, as in Cambodia, where preferences granted to LDCs under the EU’s Everything But Arms scheme have encouraged the expansion of industrial sugar plantations and the forced displacement of hundreds of thousands of peasant farmers from their land.²⁵

Notwithstanding the above caveats, well-managed trade and investment can form an important part of a country’s

development strategy, leading to poverty reduction and social empowerment. On the micro-economic level, fair trade has shown how access to markets on equitable terms can transform the lives of local producers and their communities. A Labour government will use UK ‘aid for trade’ to support the development of local markets and regional trading opportunities as the most sustainable building blocks of economic growth, as well as strengthening fair trade schemes for wider export.

On the macro-economic level, Labour will look to build on the EU’s existing Generalised System of Preferences (GSP) for low-income and lower-middle-income countries.²⁶ Many other industrialised nations already operate such non-reciprocal preference schemes for vulnerable countries, which are permitted under the WTO’s Enabling Clause as long as they are based on objective criteria. In addition, some countries run targeted schemes (such as the USA’s African Growth and Opportunity Act) via renewable WTO waivers.

The UK has long provided preferential access under the EU’s schemes, and should continue to do so after it leaves the EU. A Labour government will review the conditionalities attached to the EU’s GSP+ scheme, opening a debate on how best to build human rights and social

²³ C. Stevens and J. Kennan, ‘Trade Implications of Brexit for Commonwealth Developing Countries’. London: Commonwealth Secretariat, August 2016.

²⁴ P. Collier, *The Bottom Billion: Why the Poorest Countries are Failing and What Can be Done About It*. Oxford: Oxford University Press, 2007; p. 87.

²⁵ *Bittersweet Harvest: A Human Rights Impact Assessment of the European Union’s Everything But Arms Initiative in*

Cambodia. Phnom Penh: Equitable Cambodia and Inclusive Development International, 2013.

²⁶ M. Mendez-Parra, D.W. te Velde and L.A. Winters (eds.), *The impact of the UK’s post-Brexit trade policy on development*. London: Overseas Development Institute, September 2016.

justice into the UK's own platform for non-reciprocal preferences.²⁷

Harmful trade

Not all trade is beneficial. The harmful effects of the international trade in endangered species have long been recognised, and the CITES convention has been in force for 45 years precisely in order to put an end to such trade. A Labour government will ensure that the UK's trade agreements are fully consistent with the country's international obligations on environmental protection, biological diversity, animal welfare and climate change.

Increased trade in fossil fuels threatens to undermine the transition to renewable energy that the planet so desperately needs, just as the devastating ecological and human consequences of failure are making themselves known. If we are to have any chance of restricting the average temperature increase to just 2 degrees Celsius this century, then one third of known oil reserves and half of known gas reserves must remain in the ground.²⁸

One of the principal environmental concerns surrounding TTIP was its stated objective of achieving a massive increase in the export of fossil fuels from North America to Europe – in particular, shale gas from the US fracking boom and oil from the notoriously dirty Canadian tar

sands. The European Commission recognised the negative ecological consequences of increasing the EU's long-term dependence on such damaging fossil fuels but refused to reconsider its negotiating stance, saying that it had made clear from the beginning its intention to use the TTIP process to open up the US energy market.²⁹

The new EU-US trade deal agreed by Jean-Claude Juncker and Donald Trump in July 2018 has revived the spectre of this increased trade in fossil fuels, in that the EU has pledged to increase its imports of natural gas from the USA and to embark on a new programme of terminal construction for that purpose. The vast sums required for such infrastructural development will require decades of continued operation in order to recoup the initial investment, locking the EU into long-term dependence on fossil fuels at precisely the moment when it needs to be transitioning to a low-carbon future. Public opinion understandably finds it difficult to reconcile such a trade agenda with official statements that the EU is prioritising the fight against irreversible climate change.

A Labour government will review how the UK's use of export finance and other support can be targeted towards trade in renewables rather than fossil fuels, as well as other projects to mitigate the effects of climate change. According to research from the Overseas Development

²⁷ B. Richardson, J. Harrison and L. Campling, *Labour Rights in Export Processing Zones with a focus on GSP+ beneficiary countries*. Brussels: European Parliament Policy Department, June 2017.

²⁸ C. McGlade and P. Ekins, 'The geographical distribution of fossil fuels unused when limiting global warming to 2°C'. *Nature*, 8 January 2015, pp. 187-190.

²⁹ D. Rosário, 'The European Commission consults all stakeholders on TTIP, not just business'. *The Guardian*, 1 December 2015.

Institute, a staggering 99.4% of UK export finance provided to the energy sector during the five years of 2010-2014 went to fossil fuel projects.³⁰

This support for carbon-intensive energy generation shows a marked lack of coherence with government ministries such as the Department for International Development, which spent considerably more of the aid budget on supporting renewable energy projects than on fossil fuels.

A Labour government will also require the UK's international trade agreements to be consistent with international humanitarian law so that there can be no question of the UK's entering into an agreement with a trading partner that might undermine such a critical pillar of the international order. One example of what happens when this principle is ignored can be found in the ongoing crisis caused by Morocco's attempts to include the farming and fishing rights of the Saharawi people in its trade agreements with the EU.

The European Court of Justice has repeatedly ruled that the EU has no right to negotiate trade agreements with Morocco covering the land or waters of occupied Western Sahara, a territory that the UN has confirmed must be granted the right to self-determination but where the Saharawi population have lived under Moroccan military occupation since 1975.

³⁰ 'Chaos for climate goals as figures show government spent twice as much on fossil fuels as renewables'. London: CAFOD, 11 August 2017.

³¹ D. Dudley, 'EU Fisheries Deal with Morocco Sparks Criticism over Inclusion of Western Sahara Waters'. *Forbes*, 24 July 2018.

In February 2018, the European Court of Justice ruled that any EU fisheries agreement with Morocco would be illegal under international humanitarian law if it included the territory of occupied Western Sahara.

Despite this, the European Commission announced on 20 July 2018 that it had negotiated a new fisheries agreement with Morocco, with Moroccan officials confirming that the area covered by the agreement once again includes the territorial waters of occupied Western Sahara.³¹

The UK was the largest arms exporter in Europe over the 10-year period of 2007-2016, according to government figures, and the second largest in the world.³² This record brings with it an added responsibility to ensure that no British arms exports can be used in violation of human rights or international humanitarian law.

The export of arms to countries where there is a clear risk that they might be used for internal repression or external aggression is expressly prohibited under the Consolidated Criteria that form the backbone of the UK's arms export controls.³³ Yet the government's failure to apply the criteria properly has undermined the integrity of the system, as noted by Dr Anna Stavrianakis in her written evidence to the 2018 parliamentary inquiry undertaken by the

³² 'UK Defence & Security Export Statistics for 2016'. London: Department for International Trade, 25 July 2017.

³³ J. Lunn, *The legal and regulatory framework for UK arms exports*. London: House of Commons briefing paper 2729, September 2017.

Committees on Arms Export Controls, where she concludes that “ongoing arms exports to Saudi Arabia show the UK licensing system to be failing to the point it is no longer credible”.³⁴

A Labour government will implement the UK’s arms exports controls to the highest standard, ceasing arms exports to any country where there is concern that they will be used to violate international humanitarian law. The Labour Party has already pledged to suspend arms sales to Saudi Arabia pending a full review into their possible use in the Saudi-led war on Yemen, and has called for a review of UK arms sales to Israel to ensure that no British weaponry has been employed in the lethal force used against Palestinian protestors in Gaza.³⁵

Transparency and accountability

Trade agreements are international treaties that establish binding commitments on future government administrations. They are unlike national legislation, which can be repealed when it is found to be technically inadequate or politically unacceptable, and as such they deserve the most rigorous process of transparency and scrutiny. Yet in many national instances – including the UK – these binding international treaties are subject to the least parliamentary oversight or external consultation of all government initiatives. Future generations are signed up to lasting obligations without even the rudiments of democratic accountability.

The Labour Party has committed itself to redressing this situation. A Labour government will approach all new trade negotiations with a presumption of the maximum possible transparency, including both parliamentary scrutiny and external consultation with interested stakeholders. This includes the creation of formal structures of consultation with business, trade unions and civil society organisations that will continue independently of the launch of trade negotiations.

New negotiations will be informed by means of a comprehensive and genuinely independent sustainability impact assessment commissioned at the outset. They will be subject to public consultation prior to the launch of negotiations. Any mandate for negotiations will be approved by parliament, and parliament will have full scrutiny powers throughout the process of negotiations and up to the moment of ratification. All consolidated texts will be made publicly available as and when they become available and there will be comprehensive reviews of the impact of trade agreements after the event.

Without proper transparency and accountability, public bodies and civil society organisations will remain sceptical of government intentions in negotiating international trade agreements behind closed doors, and rightly so. This is one reason for public concern at the plurilateral Trade in Services Agreement

³⁴ ‘Written evidence submitted by Dr Anna Stavrianakis to the Committees on Arms Export Controls (CAEC) on UK arms exports during 2016’, January 2018.

³⁵ Statement by Jeremy Corbyn in support of the UN Secretary-General’s call for an independent inquiry into the killing of protestors in Gaza, 7 April 2018.

(TiSA), which has been negotiated behind a wall of secrecy outside the WTO. The only sight that the public has had of the text of TiSA has come through leaked documents, despite fears that its use of the negative list for 'national treatment' commitments could expose domestic

service providers to irreversible changes in the functioning of their markets.³⁶ This clandestine and anti-democratic approach cannot be a correct way to handle serious international trade negotiations that could have lasting consequences for people's lives.

³⁶ 'All About TiSA: Everything you didn't know about the Trade in Services Agreement'. Brussels: International Trade Union Confederation, October 2016.

TWO

Just Investment

No country better exemplifies the potential benefits of foreign direct investment than the UK. Inward investment has sustained hundreds of thousands of jobs over many decades and remains a critical factor in the country's economic success. The positive links between inward investment, innovation and productivity are well attested, as is the trade dividend: over 50% of foreign-owned companies in Britain are exporters, compared with 10% of UK-owned firms.³⁷ A Labour government will develop the full range of capital investment schemes and other incentives to encourage investment into the UK, especially into those target areas identified as priorities by our industrial strategy.

A Labour government will also seek to maximise the mutual benefits of outward investment from the UK to other countries. Too many of the poorest countries have been denied their just share of the proceeds from extraction of their natural resources by multinational companies, while tax dodging – including

transfer pricing in intra-corporate trade – still costs the countries of the Global South billions every year in much needed government revenue.

Most of the UK's investment treaties with these countries date back to the 1980s and 1990s and are in urgent need of revision.³⁸ A Labour government will review the 94 bilateral investment treaties which the UK currently has in force to ensure they are fit for purpose in the 21st century, rebalancing the rights and responsibilities of investors to ensure that host communities can derive equal benefit from the opportunities that foreign investment provides.

A Labour government will open a dialogue with trading partners on alternative options to provide investor protection other than the controversial investor-state dispute settlement (ISDS) mechanisms included in many 'new generation' trade agreements. Upholding the right to regulate in the public interest requires a fair and balanced legal framework within which to adjudicate any

³⁷ 'Exporters and Importers in Great Britain, 2014'. London: Office for National Statistics, November 2015.

³⁸ L. Poulsen, 'British Foreign Investment Policy Post-Brexit: Treaty obligations vs bottom-up reforms'. London: UCL European Institute, July 2017.

disputes with overseas investors. Yet trade agreements such as TTIP and CETA have included sweeping powers for foreign investors to challenge host governments in their own parallel judicial systems, offering them the prospect of substantial awards if they can argue successfully that they have been denied 'fair and equitable treatment' through having to abide by social or environmental regulations.

The damage that can be caused by offering foreign investors such exclusive powers has been amply demonstrated in the more than 850 ISDS cases that are known to date. Even where the final settlement goes in favour of the host country rather than the foreign investor, the threat of potential challenge before an investor-state tribunal can exert its own 'chilling effect' on governments, dissuading them from introducing even the most beneficial public policies and regulations.

In keeping with more and more governments around the world, the Labour Party rejects the model of investor-state dispute settlement that grants foreign investors such treaty rights. Already countries such as India, South Africa and Indonesia have taken action to remove ISDS clauses from their trade and investment agreements, while many Latin American states never included such clauses in the first place. We note also the decision of the Labour government in New Zealand to resile from the inclusion of ISDS provisions in that country's trade and investment

agreements, and its successful signing of 'side letters' with five other member states of the Trans-Pacific Partnership to mitigate the impact of the ISDS mechanism in that agreement.

No other European country ranks higher than the UK in the index measuring quality of judicial process in the enforcement of contracts, so foreign investors can have full confidence that they will be able to secure justice in the same way as domestic British businesses, in the same courts.³⁹

The Labour Party has committed to building human rights and social justice into investment policy as well as trade policy. Indeed, a rebalancing of investor rights and responsibilities may well offer a more effective vehicle for enhancing labour standards, human rights and environmental protection than the inclusion of social clauses in trade agreements.

The distribution of power within global value chains mean that UK-based companies exercise significant control over the practices of their suppliers and subsidiaries around the world. As a result, even the most progressive employers at the bottom of the value chain can find themselves severely constrained if UK buyers will not guarantee their ongoing support for improved conditions and the extra costs they can entail.

Conversely, positive action from UK companies can bring immediate benefits throughout the value chain. A Labour

³⁹ *Doing Business 2018: Reforming to Create Jobs*. Washington DC: World Bank, 2018.

government will work with business to explore ways to enhance accountability for human rights and environmental sustainability throughout their spheres of influence.

The absence of binding rules on corporate behaviour at the international level has long been recognised as a major failing of global economic governance. Professor John Ruggie, the UN Secretary-General's former special representative on business and human rights, concluded that it is precisely the "permissive environment" created by relying on corporate social responsibility and other voluntary mechanisms over the past four decades that has allowed global corporations to commit human rights abuses with impunity.⁴⁰

The UN Human Rights Council adopted Ruggie's 'Protect, Respect and Remedy' Framework for Business and Human Rights in June 2011. The framework rests on three pillars: (1) the duty of states to *protect* against human rights abuse by third parties, including business; (2) the

responsibility of business to *respect* human rights; and (3) the provision of effective *remedy*, both judicial and non-judicial, for victims of human rights violations. Crucially, however, the framework failed to introduce any mechanism of accountability, leaving it instead to individual governments to develop their own national action plans to enforce its provisions.

The UK was the first country to publish a National Action Plan on Business and Human Rights, but even its most recent update contains no binding mechanism for corporate accountability.⁴¹ The Labour Party has pledged to work with business to tighten the rules governing corporate accountability for abuses in global supply chains, and a Labour government will actively support the working group on human rights and business set up by the UN Human Rights Council in 2014, whose mandate is "to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises".

⁴⁰ J. Ruggie, 'Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts'. UN document A/HRC/4/035, 9 February 2007.

⁴¹ 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights'. London: HM Government, May 2016.

THREE

Next Steps

The Labour Party has an internationalist vision that seeks to promote mutual benefit through our commercial relations with peoples across the world. We uphold the conviction that global trade can and should be a win-win proposition, building shared prosperity and fostering peaceful relations between nations.

For this to be a reality, we need to create a just trading environment that maximises the opportunities of global markets, not a self-defeating race to the bottom. The task for the international community is to articulate this progressive vision of an open, rules-based international trading system for the 21st century and to put it into practice.

This document has been produced in order to stimulate debate on what a just trading system would look like. It has outlined some of the key principles that the Labour Party has already adopted, and it points to further work that will be necessary to develop those principles into policies for adoption by the next Labour government.

We welcome input from all who share our conviction that trade and investment can be open, fair and progressive. All contributions should be emailed to **barry.gardiner.mp@parliament.uk**; while we are unable to respond to submissions, we will take them into account as we develop our policies into the future.

