

IND0032 Business & Human Rights Resource Centre

Business & Human Rights Resource Centre is a non-profit that tracks the positive and negative human rights impacts of more than 9,000 companies worldwide and, since 2015, has taken up more than 6,000 allegations of human rights violations with companies.

The Resource Centre also produces advice and analysis relating to the business practices and public policies that prevent and mitigate negative corporate human rights impacts. This includes studying the role that international trade agreements play in supporting human rights around the world. The Resource Centre has a global team of around 80 members based in over 20 locations in every region of the world.

Summary of points

- The UK should make all new Free Trade Agreements (FTAs) contingent on mutual commitment to implement core UN and ILO human rights conventions
- Any new FTA should include ambitious, clear and enforceable provisions on human rights, labour rights and the environment
- The UK should not agree any FTA containing investor-state dispute settlement (ISDS) provisions, which is incompatible with human rights and environmental protections.
- The UK should assess and mitigate the impact of an FTA with India on trade with vulnerable economies.
- To support access to medicines, a UK-India FTA should not contain intellectual property protections that go beyond the WTO's TRIPS agreement. In addition, the UK should support India's proposal for a TRIPS waiver for COVID-19 vaccines.

Human rights conditionality

1. Recent studies from the Business & Human Rights Resource Centre have highlighted ongoing violations of human rights and labour rights in India, including wage theft in the garment sector and labour abuses in tea supply chains that include forced labour, failure to pay the minimum wage, gender discrimination and suppression of freedom of association. The UK is a major

market for Indian garments, tea and other manufactured goods. UK sourcing companies purchasing from India are linked to these abuses and have a responsibility, articulated by the UN Guiding Principles on Business and Human Rights, to prevent and mitigate adverse human rights impacts.

2. A Free Trade Agreement between the UK and India should contain provisions to ensure rights are upheld and prevent further violations arising as a result of the enhanced trading relationship.
3. Cabinet Minister Dominic Raab argued during his time as Foreign Secretary “we shouldn’t be engaged in free-trade negotiations with countries abusing human rights”. The UK’s export strategy announces that “we will continue to ensure our trade supports environments which respect workers’ rights, and will work with our trading partners to uphold labour standards.” However, the UK government is yet to clearly lay out a consistent position for ensuring that trade deals are supportive of human rights.
4. Inserting human rights conditions into trade agreements is increasingly common. The UK Parliament’s Joint Committee on Human Rights has found “a strong case for requiring minimum standard processes, practices and clauses to protect and promote human rights in all international agreements”.
5. One effective way of using trade policy to support human rights would be to make any UK Free Trade Agreement conditional on the mutual ratification and effective implementation of core UN and ILO human rights conventions.
6. A model for this already exists in the UK’s Enhanced Framework, a scheme that offers poorer countries preferential access to the UK market on the condition of their having ratified 27 conventions relating to human rights, labour rights, good governance and the environment.
7. This approach could support genuine progress in the protection and promotion of rights. At present, India has not ratified the core ILO conventions on Freedom of Association and Collective Bargaining. Neither has it signed the UN Convention Against Torture. The Trade Union Congress has said: “Suppressing trade unions, forced labour, child labour and other workers’ rights abuses are all widespread in India. Until the Indian government acts, the government should not entertain a UK-India deal.”
8. Failure to require prospective FTA partners such as India meet the same standards as those laid out in the ‘Enhanced Framework’ would be a clear demonstration that human rights are subordinate to economic considerations in the UK’s trade policy.
9. The 27 conventions in the current ‘Enhanced Framework’ should be a minimum: the UK should seek to strengthen this list by including other vital commitments, such as the Paris Agreement. The EU-UK Trade and Cooperation Agreement, which is conditional on commitment to the Paris Agreement, provides a precedent.

Trade and Sustainable Development chapters

10. The UK should ensure that any new FTA includes, at the very least, the provisions on human rights, labour, gender and the environment that feature in recent EU FTAs. The opportunity now is to go beyond the EU's approach and ensure more binding and enforceable provisions to demonstrate global leadership in the protection of human rights and the guaranteeing of access to remedy.
11. Trade and Sustainable Development (TSD) chapters have been included in EU FTAs since the 2009 EU-South Korea FTA. These contain non-binding commitments to human rights and the environment. Having been party to these agreements as an EU member state, the UK has replicated the EU's TSD chapters in post-Brexit trade deals including those EU agreements that were 'rolled over' post-Brexit and the UK-Japan Comprehensive Economic Partnership Agreement.
12. However, there is no mention of a TSD chapter in the Department for International Trade's Strategic Approach. This is concerning. Rather than removing existing provisions on human rights, labour, gender and the environment, the UK should be using them as a baseline upon which to build stronger and more enforceable commitments.
13. TSD chapters have been broadly criticised, including by social justice organisations, trade unions and the governments of France and the Netherlands. Unlike the other chapters of Free Trade Agreements, there are no penalties or enforceable dispute settlement procedures in the case of non-compliance. There is huge scope for the UK to be world-leading by improving the effectiveness of TSD chapters, including more precise language and by subjecting commitments in the TSD chapter to the same level of enforcement as the other chapters of the FTA.
14. Domestic Advisory Groups, which are set up to monitor progress against the commitments in TSD chapters, should be given a broader mandate, including the power to trigger investigations, as well as more resources and institutional support, if they are to function effectively.
15. The UK should follow the important lead from the USA under Presidents Obama, Trump and Biden regarding import bans on goods at high risk of being produced with forced labour, unless the importer can demonstrate otherwise. The US 'Tariff Act' is having major positive impact in the repayment of recruitment fees to migrant workers, releasing them from their debt bondage. This would enhance greatly the impact of the Government's Modern Slavery Act.
16. Another approach would be to replicate the Rapid Response Mechanism within the USMCA trade agreement, which allows for preferential market access to be

swiftly removed in response to labour rights violations in specific factories, regions or supply chains.

17. These measures, along with urgent innovations to TSD chapters, should be part of an overarching strategy that is set with the input of stakeholders including NGOs and trade unions.
18. The UN Working Group on Business and Human Rights recently recommended that states “bring together trade and investment actors to set principles for creating trade and investment frameworks that respect human rights and the environment.” Engaging with this process could be a valuable part of a UK trade strategy fit for the 21st century.

Investor-state dispute settlement clauses

19. The UK should not agree any new FTAs containing investor-state dispute settlement (ISDS) provisions. These allow corporations to sue states through a private tribunal if public policies threaten their profits - even if those policies have a clear public interest justification. Corporations have already used ISDS to sue governments more than a thousand times, including over laws aimed at raising minimum wages, guaranteeing affordable water to citizens and phasing out the use of fossil fuels.
20. The ISDS system is incompatible with corporate accountability, human rights and the protection of the environment. It constrains the policy space of states to protect rights, and has recently been used to challenge green policies such as the Netherlands’ phasing out coal power.
21. The UK government has been a vocal supporter of the ISDS system, insisting that “we strongly believe that we have nothing to fear from ISDS”. By contrast, India has moved away from ISDS: the Indian 2015 Model Bilateral Investment Treaty contains only a limited form of ISDS, and the country is not party to the International Centre for Settlement of Investment Disputes convention. There is a risk that pressure from the UK during trade negotiations could lead to India reversing this progress. Any ISDS provision in a UK-India FTA would expose both Indian and UK governments to being sued by investors for public policy decisions.

The human rights risks of trade diversion

22. The government’s Strategic Approach document correctly identifies the risk of trade diversion resulting from a UK-India FTA: “We may therefore expect, in an ambitious scenario, an increase in UK imports of apparel from India which is

associated with a partial reduction in UK imports from neighbouring countries which export similar products.”

23. The garment sectors in countries such as Bangladesh and Cambodia are reliant on exporting to the UK market. Almost 11% of Bangladesh’s garment exports go to the UK (2018-2021) while the World Bank identifies the UK as Cambodia’s fourth most valuable export market for garments. An FTA with India that removes tariffs on Indian garments means that the value of the trade preferences of countries benefiting from the UK’s GSP frameworks will be eroded. This could have a damaging impact on livelihoods in garment sectors elsewhere in South Asia, South-East Asia and beyond, many of which are already experiencing poor labour conditions, suppressed rights and low wages. Preference erosion could create a further downward pressure on labour rights as countries engage in a race to the bottom on regulations and labour protections in a bid to gain a competitive advantage for their industries.
24. Having identified this risk, UK government should offer a clear transition strategy for ensuring that any deal does not carry disastrous consequences for incomes and livelihoods in the global garment sector outside India.

The human rights risks of intellectual property provisions

25. Access to affordable medicines is fundamental to the right to health, as noted by the UN Office of the High Commissioner for Human Rights. The Indian pharmaceutical industry is the world’s largest producer of affordable generic medicines for the domestic and international market, and is particularly important for access to medicines in Least Developed Countries. This is supported in part by India’s intellectual property rules, which provide for a shorter monopoly period, during which the manufacturer of a drug has exclusive rights to produce it, than many other countries. India also takes a strong stance on “evergreening”, the practice of drug companies making negligible changes to the manufacturing process of a drug in order to gain a new patent and extend their monopoly period.
26. India’s rules are compliant with the World Trade Organisation’s TRIPS agreement on intellectual property. However, UK pharmaceutical companies may want an FTA with India to include intellectual property protections that go beyond TRIPS.
27. This would threaten the functioning of India’s pharmaceutical industry, and as such would risk severe consequences for the access to affordable medicines of millions in India and other parts of the world.
28. Given the appalling human cost of the pandemic, and the threat of new variants globally, the UK Government should join the US administration and express support for the waiver of intellectual property provisions within the TRIPS

agreement to ensure equitable access to COVID-19 vaccines. The 'vaccine waiver' was proposed by India and South Africa, and now has the support of a wide range of other countries including the USA, as well as more than 170 former heads of state and government and Nobel laureates. The UK remains opposed