

## Introduction

*The TUC exists to make the working world a better place for everyone. We bring together more than 5.5 million working people who make up our 48 member unions.*

1. The TUC welcomes the opportunity to respond to the House of Commons International Trade Select Committee's inquiry into the UK-New Zealand free trade agreement.<sup>1</sup>
2. The TUC believes that parliamentary scrutiny and consultation of social partners – employers and trade unions – is crucial to ensure trade negotiations promote good jobs, workers' rights and the public good.
3. The TUC regrets that trade unions were not consulted on the text of the UK-New Zealand trade agreement and, consequently, the Agreement in Principle contains several concerning features, detailed below. The TUC is calling for the government to consult trade unions on the text of the UK-New Zealand trade agreement to ensure the final agreement addresses these concerns.
4. The TUC is concerned that the government has directed significant resources towards the UK-New Zealand trade deal yet the government forecasts that it will contribute negligibly to the UK GDP - between 0 – 0.2%– and cost jobs in some sectors including agriculture and semi-processed food.<sup>2</sup>
5. The TUC believes the government should prioritise fixing the holes in the UK-EU Trade and Cooperation Agreement which is far more significant for the economy and protecting good jobs in the UK. The TUC has outlined the key areas that need improving in the UK-EU Trade and Cooperation Agreement which include expanding market access and frictionless trade and ensuring stronger protections for workers' rights.<sup>3</sup>
6. The TUC works very closely with our counterpart organisation the New Zealand Council of Trade Unions (NZCTU) in our advocacy on the UK-New Zealand trade deal. In September 2020 the TUC released a joint statement with NZCTU calling for any trade deal between the UK and New Zealand to contain enforceable commitments to labour standards, promote good jobs and protect public services and democratic decision making.<sup>4</sup> The statement also flagged concerns with the Comprehensive and Progressive Transpacific Partnership (CPTPP) which the UK government has stated it will use the trade agreements with Australia and New Zealand - both CPTPP members - as stepping stones to join.

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<sup>1</sup> International Trade Select Committee (2021) 'Call for evidence: Agreement with New Zealand', available at: <https://committees.parliament.uk/call-for-evidence/608/?slug=uk-trade-negotiations-agreement-with-new-zealand>

<sup>2</sup> Department of International Trade (2021) 'UK-New Zealand free trade agreement', available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/901870/uk-strategy-uk-nz-free-trade-agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901870/uk-strategy-uk-nz-free-trade-agreement.pdf)

<sup>3</sup> TUC (2020), 'The TUC's ten point plan to protect jobs, rights and public services after Brexit', available at: <https://www.tuc.org.uk/sites/default/files/2020-12/postbrexitdeal10pointplan.pdf>

<sup>4</sup> TUC, ACTU and NZCTU (2020), 'Statement on UK trade talks', available at: [https://www.tuc.org.uk/sites/default/files/2020-09/ACTU\\_NZCTU\\_TUC\\_Statement\\_UK\\_Trade\\_Talks\\_p3.pdf](https://www.tuc.org.uk/sites/default/files/2020-09/ACTU_NZCTU_TUC_Statement_UK_Trade_Talks_p3.pdf)

## Key concerns

### Labour standards

7. The TUC believes the government must use trade negotiations to ensure respect for International Labour Organisation (ILO) core conventions to prevent trade deals making it easier for capital to move to countries where it is easier to exploit workers, driving a race to the bottom that harms all workers.
8. While it is welcome that the Agreement in Principle contains a 'recognition of the importance of working towards ratification and implementation of the core conventions of the ILO in accordance with their national conditions, circumstances and priorities', it does not require all the core ILO conventions to be ratified. This is particularly problematic given the fact New Zealand has not ratified two core ILO conventions – those on freedom of association and child labour. The agreement, therefore, cannot be used to hold the New Zealand government to respect these fundamental conventions.
9. The TUC is also concerned that the UK-New Zealand Agreement in Principle states it will 'adopt [...] CPTPP consultation and enforcement provisions' for labour commitments. Trade unions globally have expressed concern that the CPTPP enforcement provisions are not effective due to the fact that they require proof that labour violations have been committed in a manner affecting trade or investment.<sup>5</sup> This requires a standard of proof that is very difficult to provide in practice. Similar provisions in other trade deals have prevented penalties being applied on governments violating labour standards as there was not sufficient proof that violations were committed in a manner that affected trade and investment – as was the case in the US government's case against Guatemala in 2017.<sup>6</sup>
10. Furthermore, the CPTPP enforcement process is also flawed as trade unions are not involved in the process.
11. The TUC and New Zealand Council of Trade Unions are calling for the UK-New Zealand trade agreement to establish a Labour Council to oversee commitments to labour standards in the UK-New Zealand agreement. It would have equal numbers of seats for unions, employers and civil society groups and be co-chaired by representatives of UK and New Zealand governments. It would operate as follows:
  - a. any employer, trade union or civil society group would be able to refer a complaint to the Labour Council if they suspect there has been a violation of labour commitments in the agreement;
  - b. complaints would be referred to a dispute panel if a majority of the Council agree;

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<sup>5</sup> CPTPP (2019) 'TPP labour chapter scorecard', available at: [https://www.ituc-csi.org/IMG/pdf/trans\\_pacific.pdf](https://www.ituc-csi.org/IMG/pdf/trans_pacific.pdf)

<sup>6</sup> International Labour Rights Forum (2018) 'Wrong turn for workers' rights: The US-Guatemala CAFTA arbitration ruling – and what to do about it', available at: <https://laborrights.org/publications/wrong-turn-workers%E2%80%99-rights-us-guatemala-cafta-labor-arbitration-ruling-%E2%80%93-and-what-do>

- c. an independent panel of labour and human rights experts should be assembled by the Parties to the agreement to hear such disputes;
- d. if a complaint is brought to the Labour Council, it will within 60 days make a decision whether or not to refer the complaint to the panel;
- e. if a complaint is referred to the panel it will, within a further 60 days, issue conduct an investigation and issue a report to the Parties to the agreement making recommendations to address the violation;
- f. if the Council agrees that the Party under investigation has not addressed the violation after 30 days, the independent panel will recommend a penalty to be imposed by the Party not being investigated. This recommendation will be made public.

### Public services

12. The TUC is concerned that the Agreement in Principle states it will take a 'negative list' approach to service listing which could lock in privatisation in part-privatised public services. This is due to the fact that the negative list approach requires governments to explicitly list any part-privatised public services they wish to exclude from liberalisation commitments in the agreement. In practice it is very difficult to list all part-privatised public services, particularly as some services (such as digital services) that have not yet been invented may in the future be part of public service provision. By including part-privatised services in the deal governments could be prevented from renationalising these public services or regulating them in certain ways.
13. The TUC and unions internationally are calling instead for a 'positive list' process to be adopted in all trade deals. This provides protection for public services as it requires the government to explicitly list all the services that will be locked into liberalisation commitments in a trade deal.
14. While it is welcome the Agreement in Principle does not contain Investor-State Dispute Settlement (ISDS) provisions, if the UK joins CPTPP it will be subject to ISDS unless it asks for an exemption for this, which the government has not indicated it will do. This would mean the UK government could be sued by a company situated in any member state of CPTPP for actions that threaten its profits, which could include renationalising public services that have not been explicitly exempted from the agreement. This not only would undermine sovereignty but also public finances. For example, Australia was sued by Philip Morris for introducing plain packaging for cigarettes via ISDS clauses in the Australia-Hong Kong bilateral investment treaty. While a court ruled against Philip Morris in 2015, the Australian government still had to pay \$24 million in legal fees.<sup>7</sup>
15. The TUC is opposed to the inclusion of ISDS in any trade agreement.

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<sup>7</sup> Patricia Ranald (2019) 'When even winning is losing. The surprising cost of defeating Philip Morris over plain packaging', *The Conversation*, available at: <https://theconversation.com/when-even-winning-is-losing-the-surprising-cost-of-defeating-philip-morris-over-plain-packaging-114279>

### Data privacy

16. The TUC is concerned the Agreement in Principle states it will 'enable cross-border data flows' and 'reduce barriers to digital trade.' While the Agreement also states the agreement will 'ensure [...] governments can enact measures in respect to data protection, privacy and other legitimate public policy objectives', there is a danger that government regulation to prevent the misuse of personal data and require transparency in the ways companies use data will be regarded as a breach of its commitment to enable unimpeded cross-border data flows. This could result in the government weakening GDPR data protection legislation that is vital to prevent the abuse of data and companies misusing personal data to discriminate against workers.
17. The TUC is calling for trade deals to ensure transparency and protection for personal data in all trade agreements.<sup>8</sup>

### Government procurement

18. The TUC is concerned that the Agreement in Principle states that the agreement will 'include new and expanded rules in the text, and market access that goes beyond the WTO Government Procurement Agreement (GPA).' This raises the risk that UK and New Zealand government's will be restricted in the way they can award procurement contracts.
19. The TUC is particularly concerned this could prevent governments using public procurement to promote social goals. While the Agreement in Principle states that it will 'consider... environmental, social and labour outcomes in procurement' this does not guarantee it will be possible to include these in procurement criteria.

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<sup>8</sup> TUC (2021) 'Dignity at work and the AI revolution', available at:  
[https://www.tuc.org.uk/sites/default/files/2021-03/The\\_AI\\_Revolution\\_20121\\_Manifesto\\_AW.pdf](https://www.tuc.org.uk/sites/default/files/2021-03/The_AI_Revolution_20121_Manifesto_AW.pdf)