

## International Trade Committee Inquiry on Trade and Foreign Policy

### Written evidence from the UK Trade Policy Observatory (UKTPO)

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#### About UKTPO

- The UK Trade Policy Observatory (UKTPO), a partnership between the University of Sussex and Chatham House, is an independent expert group that initiates, comments on and analyses trade policy proposals for the UK; and trains British policymakers, negotiators and other interested parties through tailored training packages.
- The UKTPO is committed to engaging with a wide variety of stakeholders to ensure that the UK's international trading environment is constructed in a manner that benefits all in Britain and is fair to Britain, the EU and the world. The University of Sussex has the largest collection of academic expertise on the world trading system in the UK, with specialists on trade policy, trade law and trade politics and European law and economy. The team includes experts in economics, international relations and law.

This written evidence responds to the question: *Should, and how could, UK trade policy be used to bolster the rules-based international order, such as through strengthening multilateral organisations, and promoting predictability in international relations?*

#### Summary

- I. In the absence of a rules-based international order, international relations become more power-based. Substituting power for rules raises major problems for middle-sized powers. So, yes, the UK should use its trade policy to bolster the rules-based international order.
- II. The UK is perceived by many international trade players as too ready to see itself in a leadership position rather than stressing the cooperation involved in, and coherence of, the multilateral processes
- III. Even though the UK will sign lots of FTAs, it depends on the multilateral system, not least because the deals that the UK can negotiate depend heavily on the attractiveness of the fall-back option, the multilateral rules. FTAs have a role, but ultimately, because they are discriminatory in most regards, they fragment the world economy rather than unify it.
- IV. The UK has been too ready to ignore trading rules, multilateral or bilateral, specifically in relation to the ruling of the Trade Remedies Authority on Steel and the Northern Ireland Protocol.
- V. Countries can advance rules-based multilateralism by working with groups of like-minded countries to improve on specific rules and practices in a non-discriminatory way. E.g. the Ottawa Group, MPIA, ACCTS or by signing so-called 'plurilateral' agreements.
- VI. Open plurilateral agreements (OPAs) that are fairly narrowly focussed and commit a subset of WTO Members (and only them) to take on new obligations offer a potential lifeline to the WTO, provided that they meet a series of criteria discussed below. The UK should advocate for such conditions.

### **Full response**

1. The rules-based international order was perhaps the greatest innovation of the post-war period. It was (is) very far from perfect but the political stability it helped to create was of huge significance from both a humanitarian and an economic perspective. Political strife is one of the surest ways of curtailing development. In addition, the settlement created the IMF to ease macro-economic stresses, the World Bank which facilitated development finance and the GATT (later the WTO) which substantially insulated international trade from arbitrary and political interventions. In terms of this Committee's brief, it is difficult to overstate the importance of the last.
2. In the absence of a rules-based international order, international relations become more power-based. In trade, this may not be a matter of critical significance to large powers (China, the USA, the EU), which have enough economic mass to achieve much of what they want independently.<sup>1</sup> It may not be of great practical significance to very small countries: they have little independence anyway but, because they are small enough to pose no economic threat to larger powers, they do not attract much attention or face much constraint from those powers (nor, incidentally, from any multilateral rules either). Substituting power for rules is, however, a major issue for middle-sized powers, which are large enough to create economic waves but too small to exercise much power themselves. This may help to explain why countries such as Japan, Canada and Australia pay so much attention to the world trading system. The UK is now a member of this club – the multilateral trading system is vital to UK interests, and so the answer to the first part of this question is: 'yes, the UK should use its trade policy to bolster the rules-based international order'.<sup>2</sup>
3. How can the UK bolster the rules-based international order? We distinguish rhetoric and action. The UK Government tells a good story on multilateralism, but the mask periodically slips and its talk guides its action too infrequently. In what follows we discuss UK Government rhetoric about the multilateral trading system, UK actions on multilateral trade, UK actions on bilateral trade and finally, a means to make progress in at least some areas where trade policy/rules can be brought into the twenty-first century.

### **UK Government rhetoric about the multilateral trading system**

4. Rhetoric matters partly to try to create norms for and foster cooperation among the countries of the world and partly to reinforce support for cooperation among the British electorate which has many other concerns on its mind. We point to two examples.
5. First, the UK is perceived by many international trade players as too ready to see itself in a leadership position rather than stressing the cooperation involved in, and coherence of, the multilateral processes. Contrast the announcements of the Canadian and UK Governments of the agreement of the WTO Joint Statement Initiative on 'Services – Domestic Regulation' in December 2021. The Canadians, long advocates, indeed leaders, of multilateralism started

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<sup>1</sup> This is not to deny that such powers benefit from a stable rules-based order, as the USA realised when, immediately after the world war, it voluntarily curbed the use of its own trading might by agreeing to the GATT – Goldstein and Gowa (2002). Trading requires investment in building up relationships and possibly in equipment and this will be discouraged if countries fear that their partner will take advantage of them by demanding better terms once the investment has been made (the so-called hold-up problem in economics).

<sup>2</sup> It is not a riposte to this argument that the UK will sign lots of FTAs: the deals that the UK can negotiate depend heavily on the attractiveness of the fall-back option, the multilateral rules.

with the headline 'World Trade Organisation Joint Statement Initiative on Services Domestic Regulation' and continued

- a. On December 2, 2021, Canada along with 66 other World Trade Organisation (WTO) Members endorsed a Declaration announcing the conclusion of negotiations for the Joint Statement Initiative on Services Domestic Regulation (JSI DR).<sup>3</sup>
6. The UK Government headline was 'UK helps broker ground-breaking WTO agreement ...' and the opening paragraph said '...the UK has advocated for deal [sic] and driven consensus...'<sup>4</sup>
7. I have personally heard the irritation that this tone caused and conclude that, if it had any effect, it reduced the chances of future cooperation. The report by the Kennedy School of Government at Harvard University on 'Finding Global Britain' – Balls et al (2021) - stressed the widespread view among senior policy makers in the UK and world-wide that the UK was hubristic and must become more humble if it is to succeed with 'Global Britain', and by extension, multilateralism: the word 'humble' is mentioned 10 times.
8. Second, the Government constantly stresses the centrality of bilateral trade agreements (free trade agreements - FTAs) to its objectives and its delivery of benefits for the British people, rather than recognise the foundational role of the multilateral system and the need to support and strengthen it.<sup>5</sup> FTAs offer preferences to one or a closed group of favoured trading partners; they are permitted under WTO rules, but they actually undermine non-discrimination, the key characteristic and objective of the rules-based multilateral trading system. FTAs have a role, but ultimately, because they are discriminatory in most regards, they fragment the world economy rather than unify it.
9. To give one example, in a much-promoted speech on free trade in November 2021, the Secretary of State for Trade said 'So far we have agreed trade deals with 70 countries plus the EU - trade worth a whopping £766 billion every year.'<sup>6</sup> A Government serious about the multilateral system would have added or substituted 'we have a trade deal (the WTO) with 162 countries – trade worth a whopping £1,415 billion every year'.<sup>7</sup>

### ***UK actions on multilateral trade***

10. The multilateral system is broken at present, with the notification of trade measures incomplete, negotiations proceeding at a snail's pace or slower, and the dispute settlement procedure hamstrung by the collapse of its ultimate arbiters. The WTO takes most decisions by unanimity (strictly the absence of dissent), but, because its membership contains such a wide variety of countries with different objectives and mutual antagonisms, universal agreement on anything seems a distant dream. However, one can still advance rules-based multilateralism by working with groups of like-minded countries to improve on specific rules

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<sup>3</sup> [https://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/wto-omc/domestic-interieure.aspx?lang=eng](https://www.international.gc.ca/world-monde/international_relations-relations_internationales/wto-omc/domestic-interieure.aspx?lang=eng)

<sup>4</sup> <https://www.gov.uk/government/news/uk-helps-broker-groundbreaking-wto-agreement-set-to-cut-cost-of-global-services-trade-by-113-billion>

<sup>5</sup> As noted above, the deals that the UK can negotiate depend heavily on the attractiveness of the fall-back option, the multilateral rules.

<sup>6</sup> <https://www.gov.uk/government/speeches/anne-marie-trevelyan-delivers-speech-on-free-trade-at-centre-for-policy-studies>

<sup>7</sup> Data for 2019 (being more 'normal' than 2020); 162 WTO members is the 164 members of the WTO less the UK and the EU, which sits in the WTO in addition to all its member states.

and practices in a non-discriminatory way. We discuss four cases where the UK has had this opportunity.

11. First, in October 2019, Canada led a group of WTO members devoted to ‘to address[ing] specific challenges that are putting the multilateral trading system under stress’ – the so-called Ottawa Group.<sup>8</sup> Specifically, they initially focused on ‘safeguarding and strengthening the dispute-settlement mechanism; reinvigorating the negotiating function, including how the development dimension can be best pursued in rule-making efforts; and strengthening the deliberative function of the WTO, or the way in which WTO committees operate.’ The members were Australia, Brazil, Canada, Chile, European Union, Japan, Kenya, South Korea, Mexico, New Zealand, Norway, Singapore and Switzerland – no UK, although it would undoubtedly have been invited. However, in March 2021, the UK did join, which was a step in the right direction.
12. Second, the UK Government is perfectly cognisant of the importance of the WTO’s Dispute Settlement Procedure and its current failure because the USA will not permit the appointment of members of the Appellate Body, which is essentially the WTO’s highest court. Nonetheless, when a number of WTO members sought to restore the rule of law by voluntarily agreeing a WTO-consistent temporary alternative until the Appellate Body was restored, the UK stood back, saying it preferred a long-term solution.<sup>9</sup> The arrangement is known as the Multi-Party Interim Appeal Arrangement (MPIA) and the members currently subscribing to it are: Australia; Benin; Brazil; Canada; China; Chile; Macao, China; Colombia; Costa Rica; Ecuador; the European Union; Guatemala; Hong Kong, China; Iceland; Mexico; Montenegro; New Zealand; Nicaragua; Norway; Pakistan; Peru; Singapore; Switzerland; Ukraine and Uruguay.
13. In March 2021, the Secretary of State was reported to say that the UK wished to become ‘a bridge between the scepticism expressed by the US on the Appellate Body issue .... and the views of the progressive would-be reformers.’<sup>10</sup> To our knowledge there has been no further statement of policy. This is a missed opportunity to promote and live by a rules-based system.
14. In both these cases, the UK has aligned itself with the USA rather than with a broad group of similar and generally like-minded countries. While close adherence to the USA may be appropriate in many areas, it is important to remember that the USA has always been distrustful of external constraints on its policy-space and that over the 2000s it has turned from being the champion and guardian of the rules-based trading system to being among its most hostile critics. The process was already underway in 2016, but it accelerated under President Trump, and President Biden has done little to reverse it.<sup>11</sup> The US position on the trading system is not a good guide for the UK as a mid-sized, traditionally open, country.
15. Third, during early 2021, the UK Government considered whether to join the Agreement on Climate Change, Trade and Sustainability (ACCTS). Created by five countries - Costa Rica, Fiji, Iceland, New Zealand and Norway - the ACCTS promises to cut barriers to trade in

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<sup>8</sup> <https://www.canada.ca/en/global-affairs/news/2019/05/ottawa-group-and-wto-reform.html>.

<sup>9</sup> [https://trade.ec.europa.eu/doclib/docs/2020/april/tradoc\\_158731.pdf](https://trade.ec.europa.eu/doclib/docs/2020/april/tradoc_158731.pdf)

<sup>10</sup> <https://borderlex.net/2021/03/24/united-kingdom-finds-its-role-as-critical-friend-of-world-trade-organization/>

<sup>11</sup> Mattoo and Staiger (2020) offer an insightful analysis of the USA slide from rules-based to power-based trade policy. They argue that it is an understandable (albeit still highly regrettable) reaction to the USA declines from total domination of the world economy to one where it may still be the largest power, but not by very much. Essentially the USA’s benefits of tying its hands to ‘good’ behaviour decline as its relative size falls and eventually become lower than the benefit of exerting substantial, if waning, power.

environmental goods and services, phase out fossil fuel subsidies, and promote voluntary eco-labelling programs and mechanisms – all on a non-discriminatory basis.<sup>12</sup> The objectives accord with UK policy aims, and the addition of a mid-sized power like the UK would have provided the ACCTS with some momentum; however, the UK decided not to proceed with membership ‘because it wants to keep the subsidies and certain tariffs on environmentally-friendly green goods and services the deal would eliminate. The UK wants to use those tariffs as bargaining chips in future trade negotiations’.<sup>13</sup> It is difficult to imagine a stronger statement of the primacy of bilateralism over multilateralism in Government thinking.

16. Finally, WTO rules allow governments to impose temporary protection in the face of unfair trade practices or such great competitive pressure from imports as to threaten domestic crises. The European Commission administers these trade defence measures for its members, and so, after Brexit, the UK required its own regime. It provided this by means of the Trade Remedies Authority (TRA), which was quite carefully designed to respect WTO rules. In the first major case in which the TRA ruled – the continuation of safeguards protection for several types of steel - the Government ignored the TRA’s recommendation, broke its own rules of procedure for when Government wishes to reject a recommendation and violated WTO rules.<sup>14</sup> Such behaviour shows scant regard for rules per se and the multilateral trading rules in particular. It undermines the talk about multilateralism.

### ***UK action on bilateral trade***

17. Bilateral free trade agreements are conditionally compatible with multilateralism, but they are not multilateralism per se. A last example, however, exhibits how far the UK Government has drifted from rules-based trade relations. It is not directly one of trade policy, but it is intimately tied up with trade policy – the Protocol on Ireland/Northern Ireland of the UK-EU Withdrawal Agreement. This agreement quite clearly entailed imposing both trade-policy controls on goods passing from Great Britain and Northern Ireland - because such goods could potentially pass further into the Republic of Ireland (i.e. the European Union) - and also constraining subsidies that might affect such trade. The UK Government declared the Protocol to be an excellent deal when it was made,<sup>15</sup> but within eight months had proposed to violate it in a “specific and limited way” through the Internal Markets Bill. Such cavalier behaviour shows how little respect the current UK Government has for ‘rules-based’ trade policy, and undermines any case it makes for rules-based multilateralism or even rules-based bilateralism.

### ***18. Recommendation on moving the multilateral trading system forward***<sup>16</sup>

19. The challenge with updating the multilateral trading rules of the WTO is that all changes have to be agreed by unanimity (or more precisely, with no dissenters). With such a diverse

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<sup>12</sup> <https://www.iisd.org/articles/time-accts-five-countries-announce-new-initiative-trade-and-climate-change>

<sup>13</sup> <https://www.politico.eu/article/uk-trade-pact-fossil-fuel-subsidies-tariffs-green-goods/#:~:text=British%20ministers%20and%20officials%20say,services%20the%20deal%20would%20eliminate.>

<sup>14</sup> [https://blogs.sussex.ac.uk/uktpo/2021/07/08/safeguard-tariff-rate-quotas-on-steel-imports/#more-6065.](https://blogs.sussex.ac.uk/uktpo/2021/07/08/safeguard-tariff-rate-quotas-on-steel-imports/#more-6065)

<sup>15</sup> [https://twitter.com/itvnewspolitics/status/1336366522856591360.](https://twitter.com/itvnewspolitics/status/1336366522856591360)

<sup>16</sup> This section is based on Hoekman, Winters and Ayele (2021) and a brief blog by Hoekman and Winters [https://blogs.sussex.ac.uk/uktpo/2022/01/13/wto-reform-plurilateral-agreements/.](https://blogs.sussex.ac.uk/uktpo/2022/01/13/wto-reform-plurilateral-agreements/)

membership of 164, this is difficult to achieve at the best of times, and these are not the best of times. One solution is to facilitate those within the WTO who want to change particular rules to proceed among themselves by signing so-called 'plurilateral' agreements. The WTO foresees two types of plurilateral agreements, depending on whether what is agreed applies on a discriminatory or non-discriminatory basis.

20. FTAs are one form of discriminatory plurilateral agreement: subject to conditions, they do not require agreement from the WTO membership, but as argued above, they tend to be discriminatory and exclusionary. The other class of discriminatory agreement is issue or sector-specific agreements where disciplines and benefits apply only to signatories. These need approval by consensus to be incorporated into the WTO, which explains why there is presently only one such agreement in the WTO while there are hundreds of FTAs among subsets of WTO members.
21. The near-impossibility of obtaining consensus on new discriminatory plurilaterals means that the only currently feasible ones bind only signatories but extend their benefits on a non-discriminatory basis to all WTO members. Such 'critical mass' initiatives, which have long featured in the General Agreement on Tariffs and Trade (GATT) and WTO, may pertain to the elimination or reduction of trade barriers or to regulatory policies and their administration. Their common feature is that benefits extend to all countries, not just participants.
22. There are at least twenty such plurilateral initiatives under the WTO, of which nine were launched after 2017.<sup>17</sup> Hoekman, Winters and Ayele (2021) argue that open plurilateral agreements (OPAs) that are fairly narrowly focussed and commit a subset of WTO Members (and only them) to take on new obligations offer a potential lifeline to the WTO *as long as* signatories:<sup>18</sup>
  - a. ensure that the OPA does not curtail other Members' existing rights but rather adds to them,
  - b. accept that they may be challenged within the WTO if they do not honour the agreement; and
  - c. guarantee that membership is genuinely open, including, where appropriate, through commitments to provide technical assistance to help developing countries to bolster their capacity to meet the obligations of the agreements.
23. Defining a code of conduct that committed signatories to these requirements should be a priority matter for WTO reform, as should an agreement on procedures that will apply to the incorporation of non-discriminatory OPAs into the WTO.<sup>19</sup> Additionally, reform discussions should also consider:
  - a. creating a mechanism, involving transparency, information exchange and dialogue to resolve tensions within each OPA before they became full-blown WTO disputes,
  - b. supporting early analysis to optimise the design of OPAs in ways which were seen to be even-handed, and
  - c. establishing a means for the WTO to monitor the performance and effects of OPAs.
24. The UK Government should prioritise persuading G7 members that any plurilateral in which they engaged would respect an agreed set of governance principles (an enforceable code of conduct) together with actively promoting items (1) - (3). Doing so would go a long way

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<sup>17</sup> The Joint Statement Initiative Services Domestic Regulation referred to above is one of these. This was a long-standing negotiation where a multilateral agreement proved impossible, motivating a shift to a plurilateral negotiation in 2017. The agreement will be applied on an MFN basis.

<sup>18</sup> Hoekman, B. and C. Sabel (2021) discuss the possible contents of such a code of conduct.

<sup>19</sup> See Hoekman and Sabel (2021) and Mamdouh, H. (2021), who discusses the need for revising the WTO to facilitate incorporation on non-discriminatory OPAs.

towards convincing non-signatories that they had sufficient protections. This would give WTO Members as a group the confidence to welcome OPA proposals from subsets of Members to advance on certain rules and thus start the process of updating the WTO for the twenty-first century.

### **Recommendations on Multilateralism**

25. If the UK Government is to use its trade policy to advance the case for a rules-based multilateral system it must:
- a. Be more vocal and explicit in arguing the advantages of multilateralism and recognise that being a strong and reliable member of the multilateral community is worth more than claiming to lead it. In this environment, leadership is more likely to succeed if it comes without posturing.
  - b. Take opportunities to act multilaterally or in groups of like-minded countries that are offering non-discriminatory trade liberalisation and/or rules-based arbitration of trade disputes.
  - c. Use diplomatic efforts and trade negotiations to advance the case for an enforceable code of conduct on OPAs, that would reassure non-participants that their interests are protected.
  - d. Take more seriously the self-restraint that supporting rules requires, foregoing the perceived short-run advantages of breaking the rules in favour of the more secure long-run advantages of maintaining them and establishing them as the norm of behaviour.

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