

# UK trade negotiations: Agreement with India

## Friends of the Earth written evidence

10 February 2022

### About us

1. Friends of the Earth England, Wales and Northern Ireland was established in 1971. We have local groups in around 130 neighbourhoods, and support more than 260 Climate Action groups. We are part of an international network of 73 national groups, counting over 2 million members and supporters globally. Friends of the Earth supports strong environmental standards and alternative approaches to trade, which put the needs of local communities and our environment at the forefront.

### How adequately has the Government undertaken public consultation in formulating its strategic approach / negotiating objectives?

2. Friends of the Earth did not respond directly to the consultation, which appeared to be oriented towards business. Consultation questions and the accompanying information note focussed on economic issues and barriers to trade, with no meaningful discussion or exploration of the potential negative social or environmental impacts of increased trade. We note that due to a formatting error, the 'glossary of FTA chapter areas' provided in the information note failed to provide a relevant definition of an environment and climate change chapter<sup>1</sup>.
3. Opportunities to engage with the development of objectives via stakeholder fora have also been limited, with only high-level updates provided at quarterly stakeholder meetings and opportunities to engage further limited to organisations willing to sign restrictive confidentiality agreements. There has been no feedback to stakeholders that we are aware of on the ways in which specific concerns – for example around Investor State Dispute Settlement (ISDS) – have been reflected in UK policy or helped to shape objectives.
4. On January 13 2022, the Department for International Trade (DIT) published a Strategic Approach pack, outlining the government's proposed approach to negotiations. However, this document insufficiently reflects concerns raised by NGOs during the consultation process – and actions taken in response to such concerns, particularly on the environment, gender, and labour rights.
5. The approach taken with respect to this FTA is not unusual. Levels of transparency and meaningful engagement have been disappointing across the board. The lack of an overarching trade strategy or meaningful action to lay out UK core standards and guiding principles, combined with this lack of engagement, have hampered efforts to consider and debate the cumulative impacts of and precedents set by new FTAs.
6. It would be helpful if government could clarify if there are any proposals to pursue a civil society forum as part of this FTA, and if, as the number of new trade deals grow, additional Domestic Advisory Groups might be set up to assist with the monitoring of agreements, as DIT plans currently appear to point to only two – one to cover the EU-UK TCA and one to cover all rest-of-world agreements. The Government should consider what lessons might be learnt from engagement during the Australia negotiations, and outline how it will ensure civil society organisations can more effectively feed into negotiations of any UK-India FTA, and ensure adequate capacity is provided to the monitoring of implementation. A wider review

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/989234/dit-india-uk-consult-info-note.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989234/dit-india-uk-consult-info-note.pdf) (p31)

of the functioning of the Strategic Trade Advisory Group, Thematic Working Groups and quarterly update prior to the opening of further trade negotiations could also help ensure these structures operate more effectively in future.

### **How adequate and appropriate is / are the Government's strategic approach / negotiating objectives?**

7. **High standards and protections:** While we welcome the objective of 'not compromising on our high environmental protection, animal welfare and food standards' in relation to this FTA, we would like to reiterate our concerns (as raised in inquiries on the Australia and New Zealand FTAs) that it does not go far enough. Where the UK signs trade agreements with nations that produce goods to lower domestic standards, this presents the potential for UK standards to be undermined, and impacts to be outsourced. Better protection for the environmental and human health could be achieved by increasing the level of ambition on this objective to include safeguarding existing standards and tackling supply chain impacts.
8. **Environment and clean growth objectives:** It is disappointing that the objective of elevating climate action to the status of an 'essential element' within FTAs has not been adopted by the Government at this time. While objectives including the reaffirmation of international climate commitments and ensuring 'appropriate mechanisms' for dispute settlement under the environment chapter are welcome, if achieved these would still fall short of a binding guarantee of action. These objectives therefore do not equate to an 'adequate and appropriate' response to the climate crisis.
9. The strategic approach is overly focused on promoting trade in low carbon goods and services, to the detriment of setting out specific objectives around technology transfer and the exchange of expertise to support decarbonisation in both India and the UK.
10. It is positive to see that cooperation on animal welfare and antimicrobial resistance is identified as a specific SPS objective within this agreement. This should be an explicit concern in all future negotiations concerning SPS.
11. **Investor-State Dispute Settlement (ISDS):** Friends of the Earth have raised concerns on a number of occasions regarding the use of ISDS mechanisms within trade and investment agreements. ISDS, which allows firms to sue governments for implementing policies which harm their profits, has been used to challenge a range of environmental regulations, including the phase-out of coal-fired power stations in Europe<sup>2</sup>, fracking bans in Canada<sup>3</sup>, and action taken to protect human rights and biodiversity across Latin America<sup>4</sup>.
12. We are pleased that there is currently no specific negotiating objective relating to incorporating ISDS within this FTA. Such provisions would put both UK and Indian governments at risk of legal action in relation to domestic regulation to protect people, support biodiversity and tackle the climate crisis. However, the strategic approach document does not rule out ISDS and flags a UK objective to provide 'sufficient protections to UK investors' via the agreement. We urge the UK government to explicitly confirm that these protections will not include any form of ISDS mechanism, given the incompatibility of ISDS with the right of governments to regulate in the public interest.

### **What are the potential impacts of an agreement?**

13. The government's strategic approach document acknowledges that "consultation returns illustrated significant stakeholder interest in protecting both the UK and the global environment. Respondents would like to see an impactful climate and environment chapter in all FTAs, implemented effectively."<sup>5</sup>

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<sup>2</sup> <https://www.iisd.org/itn/en/2021/10/08/reform-or-withdrawal-from-the-ect-what-does-it-mean-for-coal/>

<sup>3</sup> <https://www.isds.bilaterals.org/?lone-pine-vs-canada-fracking>

<sup>4</sup> <https://miningwatch.ca/news/2019/5/2/new-report-exposes-mining-companies-suing-latin-american-countries-where-communities>

14. However, we believe that the potentially negative impacts outlined below would not deliver this protection, and the UK government's current approach to negotiation appears unlikely to deliver a sufficiently impactful climate and environment chapter to mitigate these risks.
15. **Climate:** The scoping assessment predicts a 0.08-0.14% increase in UK production emissions, and a 21-36% increase in transport emissions. As with similar assessments provided for Australia and New Zealand, no estimate is made of increases in Indian territorial emissions that might be associated with increased UK trade.
16. The government must make clear how it will address these increases to align with the UK's commitments under the Paris Agreement. The government must also outline how it will prevent carbon leakage occurring via the import of products produced in carbon-intensive ways – and do so in ways which acknowledge the UK's responsibility for historic emissions and support equitable decarbonisation.
17. **Standards.** There is a risk that negotiations could put pressure on the UK to reduce its product standards or allow imports of goods made using practices banned in the UK as part of seeking a trade agreement. For example:
  - a. **Animal welfare:** Standards are lower in India than the UK, with practices including the caging of laying hens, sow stalls and farrowing crates still authorised. India has an 'E' rating for farm welfare under the World Animal Protection Index<sup>6</sup>.
  - b. **Antibiotics use:** Antimicrobial resistance due to the overuse of antibiotics is a particular concern, with one 2019 study finding the highest levels of antimicrobial resistance globally in animals in India and China.
  - c. **Pesticides:** India follows a 'risk-based' approach to pesticide management, as compared to the UK's 'hazard' based approach. For example, food imported from India can contain residues of the fungicide propiconazole, which is not permitted to appear in food grown in the UK. Wheat grown in India can contain four times the amount of carbaryl. Both pesticides are classified as developmental or reproductive toxins and suspected endocrine disruptors. Overall, 91 Highly Hazardous Pesticides, including bee-harming neonicotinoids, are approved for use in India, compared to just 73 in the UK. A UK-India trade review<sup>7</sup>, leaked in 2018, suggested that the Indian government was keen for the UK to relax a number of existing standards when negotiations commence. This could threaten human health and environmental protections.
18. **Negative impacts beyond the UK:** This agreement also has the potential to drive negative impacts in India and export the UK's environmental impact, alongside increased transport emissions and the potential for future carbon leakage, as noted previously.
  - a. **Pollution and biodiversity:** The Indian textile and apparel industry is likely to be a main beneficiary of increased UK-India trade but is identified within the scoping assessment as a key contributor to air pollution, poor water quality and water stress. Increased agricultural production is also linked with air pollution and 'poor agricultural practices, such as stubble farming'. However, no mitigation measures are suggested in the UK government's approach at this point, beyond the potential for UK businesses to export goods to India to improve air quality. This should be urgently addressed.
  - b. **International Development.** India has high levels of poverty<sup>8</sup> and economic inequality, exacerbated by the continuing impacts of the caste system. Indian workers face challenges including insecure employment, the lack of a robust legal system to protect against labour abuses, and fluctuating goods prices. Any FTA which increases UK trade in these sectors has the potential to exacerbate existing abuses and inequalities.

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<sup>5</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1046839/uk-india-free-trade-agreement-the-uks-strategic-approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046839/uk-india-free-trade-agreement-the-uks-strategic-approach.pdf)

<sup>6</sup> <https://api.worldanimalprotection.org/country/india>

<sup>7</sup> <https://unearthed.greenpeace.org/2018/07/12/brexit-uk-india-trade-review-out-of-reach/>

<sup>8</sup> <https://ourworldindata.org/extreme-poverty>

- c. **Agriculture:** The government must ensure that the potential impacts of an FTA on Indian farmers and rural communities are carefully considered. The strategic approach document does not currently consider these impacts, instead focusing on the opportunities presented for UK business by the ‘reduction or removal of Indian tariffs on UK products in... agricultural sectors.’ However, with 70% of rural households in India dependent primarily on agriculture<sup>9</sup> for their survival, the removal of such tariffs on agricultural produce could have a dramatic impact on livelihoods across India. We urge the Government to adopt a more development-focused approach in the negotiations.

### **How should the Government communicate its progress in negotiations; and seek the views of stakeholders during those negotiations?**

19. The UK’s trade scrutiny processes are extremely weak. The capacity of parliamentary committees, including the International Scrutiny Committee, to conduct meaningful scrutiny, opportunities for the wider parliamentary membership to engage in meaningful debate as to the potential impacts of such deals are both extremely limited. We would welcome any moves to increase the capacity and time available for Committees and individual MPs to engage in scrutiny.
20. Although some verbal reassurances about scrutiny of new trade deals were offered by ministers during the passage of the Trade Act (2021), and some evidence of process is now available in relation to the progress of the UK-Australia FTA, the efficacy and depth of current scrutiny arrangements appear lacking in clarity and subject to the will of ministers.
21. The recent government response to scrutiny concerns raised by the Lords International Agreements Committee was particularly concerning, suggesting as it did that government commitments for improved scrutiny, known informally as the ‘Grimstone Rule’, are not a firm guarantee but rather a ‘demonstration of [...] ambition<sup>10</sup>’. It therefore remains unclear how a UK-India FTA will be scrutinised. Government should incorporate the following procedural safeguards as it begins negotiations:
- a. **During negotiations:** Government should provide regular updates to MPs and the public, with opportunities for questions. We note that updates provided during negotiations with Australia and New Zealand were extremely high level and would urge government to look for ways to share progress publicly in more detail. Texts from negotiation rounds should be released for confidential discussion via appropriate forums.
  - b. **After negotiations:** MPs should have a guaranteed debate and vote on the final deal, with the ability to reject it. This debate should be informed by a fully Sustainability Impact Assessment carried out by an independent body. In the case of UK-India trade negotiations, impact assessments should as a minimum cover sustainable development, impact on vulnerable communities, the environment and climate change, animal welfare, human rights, social justice between Global North and Global South countries, regional trade, and a response to the Covid-19 pandemic.
  - c. **At all stages:** Public consultation and two-way engagement opportunities should be provided for civil society groups and businesses, to ensure the deal has support from a variety of constituencies. Ongoing stakeholder engagement routes not subject to confidentiality agreements should be provided.

### **For more information please contact:**

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<sup>9</sup> <https://www.fao.org/india/fao-in-india/india-at-a-glance/en/>

<sup>10</sup> <https://committees.parliament.uk/committee/448/international-agreements-committee/news/160895/government-transparency-needed-for-effective-parliamentary-scrutiny-of-trade-agreements/>