EXECUTIVE SUMMARY

Future trade negotiations to which the UK is party are unlikely to be possible without significantly impacting politically sensitive issues such that, without innovative solutions, the government will find it increasingly difficult to be active in negotiations necessary to maintaining current UK access to foreign markets post-Brexit. There is a widening gap between the broadening scope of what is covered by ‘trade policy’ and the necessary knowledge base within not just UK society but also amongst key policy-makers. The UK needs to adopt a multi-level strategy for ensuring there is an ongoing national conversation on trade policy that is well-informed, that includes politicians at all levels of government, as well as civil society, but also new initiatives that allow the public to become sufficiently informed so as to ensure a nuanced debate on trade that curtails the risk of knee-jerk protectionism through being sensitive to societal concerns.

Introduction

The following evidence is based on 15 years’ academic experience studying the relationship between global trade politics, including research on the World Trade Organization (WTO) and the European Union as they relate to civil society, the public, as well as municipal government.

Why trade politics is sometimes controversial

Considering the terms of reference for this inquiry, to find the right level of transparency and scrutiny in future UK trade negotiations requires first acknowledging how global trade politics has changed over the last seventy years since the GATT’s founding. For much of that time, trade negotiations took place within a ‘club-like’ atmosphere, seen as a highly technical affair abstracted from everyday politics. That changed in the late 1980s due to a revolution, most visible in the GATT Uruguay Round, that expanded the field of ‘trade’ from a focus on goods to include newly established concepts like ‘services’ and ‘intellectual property’, as well as investment.

A common fallacy within trade discussions is that open markets and free trade require deregulation. Markets for trade-in-services or intellectual property would largely be impossible without extensive regulations to ensure, for example, firms are able to access business services of foreign origin and patents are protected. The role of the global trade regime is to harmonise those regulations so traders can reasonably predict the likely costs of their enterprise. Anyone working in, for example, the UK’s liberalised transportation sector knows that creating a market requires significant administration, even if it is often outsourced to consultancy firms. In addition, as the definition of ‘trade’ has grown, so too have the number of aspects within a society that are visibly affected by the various regimes.
that help regulate global trade. These developments explain why many groups previously interested in national legislation turned to include global trade within their campaign portfolios, with trade unions and environmentalists forming alliances to challenge bodies like the WTO and attract media attention worldwide.

Very few activists are specifically interested in trade regulations. What motivates them to campaign is the fear, whether justified or not, that contemporary trade negotiations risk prioritising certain economic interests over their own. For example, a defining issue for the European campaign against TTIP was the worry that the proposed deal with the US would shrink policy space for legislation intended to protect consumer health and the environment. These negative perceptions were compounded by the United States’ proposal that TTIP include a quasi-court mechanism – an investor state dispute settlement mechanism – to allow corporations operating across the Atlantic to claim compensation for economic injury related to future legislation, thus creating a likely pressure against new public-interest regulations.

UK public reaction to future trade negotiations
The United Kingdom government has been at the forefront of the global trade regime since its founding in the late 1940s, as well as being the Member-state most influential over EU trade policy and its representation at the WTO. The UK can be expected to remain a leader within key sectors, such as finance, even after leaving the EU, and it is therefore globally significant how the UK conducts its future trade negotiations.

With respect to how societal actors in the UK view trade politics, there is a gap where the public remain largely quiet but UK civil society groups are amongst some of the most prominent within global campaigns. Many groups, particularly in other EU Member-states, have relied extensively upon critical reports produced by their UK counterparts. As the UK government comes to act on its own, as opposed to working through the European Commission, there is some evidence this gap will lessen and UK trade policy will receive increased criticism from the public. For example, the projected UK-US trade agreement is likely to benefit from high levels of public goodwill towards the US and yet there are already signs it will hit difficulties as UK civil society groups have begun to successfully frame the future negotiations as threatening the arrival of ‘chlorinated chicken’ on UK shores.

Without being part of the EU market, UK negotiators will inevitably face more pressure from their US colleagues than experienced during the TTIP negotiations, unless the present US regime is open to concessions that run contrary to their stated interests. In that context, the UK government has to prepare for a challenging domestic context if it is to conclude a new trade deal with the US. The same expectation should be assumed for new trade deals with other major partners, including Canada and Japan despite initial promises that they will temporarily treat the UK after Brexit as if it were still party to the relevant agreements those two states have made with the EU.

Some further insight into the likely public reaction to future trade deals can be taken from the campaign period leading up to the UK’s referendum on EU membership where trade politics became relevant in the latter stages. Voter preferences indicated that, alongside a desire to ‘control migration’, supporters of the UK’s exit from the EU were motivated by a belief that they were reclaiming the UK’s ‘sovereignty’. Prominent politicians on the ‘Leave’ side explicitly referred to the US-EU TTIP negotiations as a challenge to the UK’s sovereignty, drawing upon an existing UK campaign which had promoted the claim that TTIP threatened the future of the NHS. For some of those politicians, this represented a
notable U-turn given that many of them had previously been outspoken supporters of the US-EU deal. TTIP was never a prominent part of the ‘Leave’ campaign but its use suggests the claim that ‘trade deals challenge sovereignty’ is likely to reappear in future negotiations.

UK civil society groups have, historically, utilized a ‘sovereignty’ frame when challenging trade deals but in those cases the target has been the European Commission. Observing recent changes to civil society campaigns, it appears that many groups are already responding to the increasingly visible role of the UK government in future trade negotiations, such as accusing relevant ministers of ‘selling out’ UK interests to foreign states. Although the UK public has been relatively quiet in earlier trade negotiations, the UK has a strong tradition of small but well-mobilised religious-based groups working on trade politics such that they are able to form comparatively large street marches outside national political party conferences. Though the marches are generally under-reported in the media, they show the existence of several networks across parts of the UK linking activists at different levels and with an existing focus on trade politics.

Obstacles to transparency and scrutiny in trade negotiations
The need for, and problems related to, transparency and scrutiny in trade negotiations can be well understood by looking at the example of the WTO. In the aftermath of the Seattle protests, in which the organisation found itself on the frontpage of newspapers globally, there was a concerted effort by subsequent Secretariats to challenge the claim made by protesters that it was a ‘threat to democracy’. These efforts included, amongst other initiatives: 1) a redesign of the WTO’s website with access to thousands of documents; 2) new NGO briefing papers intended to collect and present civil society positions to the Member-states delegations; 3) opening up of dispute settlement oral hearings to the public via online broadcasts; 4) the production of online available interviews with key delegates, Secretariat staff, committee chairs, etc; and, 5) new visual focus on the Director-General as a person. Also, in the context of the much discussed dispute settlement case where environmentalists claimed WTO rules threatened US regulations intended to protect turtles from Shrimp nets, the dispute settlement process created a new provision whereby non-state actors could submit evidence to proceedings (as amicus curiae) independently of the Member-states party to the dispute. Whilst the impact of these various changes has been debated, there is no doubt that the WTO is highly transparent compared to other international organisations, particularly given the competing interests involved and present inequalities in global power. However, this also shows the limits to transparency, in that the level of technical competence required to follow trade negotiations creates a high entrance bar to effective access. The fact remains that day-to-day trade politics is highly technical despite the results of that process affecting many in their everyday lives.

That said, civil society groups put much emphasis on the need to see early draft texts. Access to draft negotiating texts is often treated as the benchmark for ensuring public scrutiny, but it is also often viewed by diplomats negotiating trade deals as one of the most unrealistic demands given that it undermines their ‘poker-style’ strategies. Key ‘victories’ for civil society, such as the collapse of the OECD’s proposal for a ‘Multilateral Agreement on Investment’ (MAI) are often narrated as made possible through civil society acquiring draft texts via informal channels. Though the role of civil society in halting the MAI is debated, the public dissemination of the draft text helped exacerbate concerns within key national contexts such that France exited the talks and business groups lost interest. During the TTIP negotiations, the European Commission’s DG Trade offered a select group of civil society
actors access to the draft text, but only on conditions that proved impractical, such as that those individuals could not share knowledge of the text with their colleagues. Not being the government of a nation-state, the European Commission has no powers to enforce such a demand.

By contrast, the United States has the most institutionalised mechanisms by which civil society and other non-governmental actors can formally participate in trade policy. The US Trade Representative (USTR) typically organises a large number of advisory groups on specific aspects of a trade deal, with individuals invited as ‘experts’ rather than as representatives of their organisation. This greatly constrains the extent to which activists can scrutinise US trade policy as those individuals are required not to communicate anything that has been discussed within the group, even to their own colleagues, under the threat of imprisonment. For US civil society, the USTR advisory groups are seen as over-formalised and dominated by corporate interests to the detriment of societal concerns.

Though the European Commission has less mechanisms for formalised civil society involvement at the Brussels-level, recent agreements such as that with Canada involve a highly complex and multi-level process of ratification across not only the EU Member-states but also several regional parliaments. The Canadian-EU Trade Agreement (CETA) was temporarily halted when in October 2016 the Wallonia regional parliament threatened to block Belgium’s ratification, and the deal faced renewed uncertainty at the Member-state level in May 2018 after Italy’s ‘Five Star Movement’ threatened to block ratification. Though the future of CETA is not yet secure, the European Commission’s approach towards ratification is impressive given the number of multi-level governmental actors involved and provides an example for how to both complete a trade deal whilst ensuring at least formal scrutiny amongst many different actors.

Responses by CETA’s critics that Wallonia was ultimately forced to support the deal, or that those Member-states that have ratified are ignoring public concerns, point to the problem that formal ratification does not mean scrutiny if the latter term is taken to mean that those offering their support fully understand that to which they have given their consent. A common allegation voiced by civil society actors during the early 1990s when the North American Free Trade Agreement (NAFTA) was being signed was that very few of the legislators asked to vote on the deal had read the text. Global trade politics is particularly challenging for legislators since it is both increasingly all-encompassing in its scope but equally highly technocratic in its detail. Calls for increased scrutiny have, therefore, to consider how, and if, legislators can be better equipped to scrutinise trade deals.

Despite the obstacles faced by actors wishing to engage in global trade politics, Europe has witnessed growing interest from municipal level government. A visible aspect of the campaign against the TTIP, for example, were the hundreds of municipal governments across Europe that aligned with civil society groups by passing motions opposing the US-EU negotiations. Most prominent amongst these was Brussels, declaring itself to be a ‘TTIP-free zone despite hosting the negotiations. Typically, these municipal government motions did not challenge the trade liberalisation agenda of the negotiations but called for greater consultation with the national and European-level so as to ensure any agreement did not undermine their jurisdiction over local services. In the UK, 36 local councils passed motions critical of TTIP, which was comparably low in the European context but still shows that the UK municipal level has the potential to be further engaged within future trade discussions.

Ensuring that the UK has a knowledgeable community to scrutinise trade deals
The evidence presented thus far has made the case that global trade negotiations are increasingly technocratic that few can understand their implications whilst the widening definition of ‘trade’ means the results of those negotiations affect ever more aspects of our everyday lives. All future trade negotiations to which the UK is party will, inevitably, consist almost entirely of sectors that fall outside what much of the public understand to be ‘trade’. For all medium and major UK trade partners there is relatively little new access to be offered that does not impinge upon politically sensitive sectors, such as government procurement or the free movement of labour. The risk for the UK is that any subsequent public resentment spills-over into a general disdain for trade deals, with the result that it becomes increasingly untenable to maintain the UK’s existing access to foreign markets.

Whilst public scrutiny of trade policy is arguably important for making sure that the UK government protects societal interests, it has an even more important role where it maintains a nuanced and sophisticated debate that avoids a binary choice between being ‘pro’ or ‘against’ global trade. As has been stated, the UK is home to groups that have been at the forefront of European civil society campaigns on trade. Many of these groups have, whilst challenging the European Commission, also received funds from that same body as part of its attempts to develop a civil society focused on the EU. It would be wise for the UK government to do the same, even for those groups ideologically opposed to its policies but adhering to certain important ethical standards, such as those of the Charities Commission.

However, civil society on its own is insufficient. Few groups are able to maintain public interest in trade issues for more than a two-year period, operating as charities in a market competing for donations. Municipal government needs to be brought in more directly, not necessarily within negotiations, but through training so that existing civil servants are better equipped to critically debate trade policy and how it impacts the UK’s different regions.

Looking to how the EU and the US have developed relations with societal actors mobilised on trade is informative, but the UK would be better advised to develop new and more innovative solutions given that neither the EU or US have been successful in maintaining public support for global trade. Amongst those options available, and partially tested, are those initiatives that draw upon deliberative models of democracy developed by, for example, John Dryzek. In these models, generally the gap between complex global policies and a lack of public knowledge is bridged by creating an ‘informed public’ through randomly selecting individuals who are invited to join a regular series of meetings through which they first learn key information, debate policy with one another, and later co-produce a report to be treated as a position paper for consideration by decision-makers. Whilst unconventional, such initiatives acknowledge the present reality in which few actors in society have the necessary knowledge to ensure trade policy is scrutinised through an informed debate. These ‘citizen assemblies’ would exist not to make decisions, but rather as a bridge across the widening chasm between the growing complexity of global trade policy and the level of knowledge amongst both the general public but also policy-makers.

June 2018