Traidcraft submission to the Foreign Affairs Committee Inquiry into Global Britain

Introduction to Traidcraft

1. Traidcraft includes a medium size UK plc with a turnover of £11 million. For over 35 years we have imported grocery and homeware products from suppliers in over 30 developing countries. We operate on fair trade terms which include provision of advance credit, minimum pricing, development premiums, and long term stable trading partnerships.

2. Traidcraft also includes a development charity, Traidcraft Exchange, which provides support to small enterprises and farmers groups in East Africa and South Asia. Our policy team conducts research and advocates on trade and investment policy and corporate accountability issues.

3. Traidcraft welcomes the opportunity to make a submission to the Foreign Affairs Committee’s consideration of the trade related aspects of Global Britain. Traidcraft sees trade as the long-term route out of poverty, and more sustainable than aid. Traidcraft considers that both market access and accountable business practices are needed, if trade is going to contribute to development. “Global Britain” policy approach needs to address both.

What would be required to make ‘Global Britain’ a credible strategy, and to what extent are those elements already in place?

How should elements of foreign policy such as rule of law, cultural influence and military interests be balanced against the trade aspects of ‘Global Britain’?

4. For Britain to be truly global it must ensure that it maintains a commitment to uphold the highest standards in relation to human rights, environmental protections, labour rights, consumer protections including international conventions including the UN Guiding Principles on Business and Human Rights, the Paris Climate Agreement and the Sustainable Development Goals.

5. Trade policy has a significant influence on Britain’s ability to fulfil these commitments and in turn significant relevance for foreign policy.

6. With the right approach trade can contribute towards economic and social development, can help tackle inequality and can promote the rule of law and protection of human rights. But for this to be achieved it requires a proactive approach from government to set the framework, incorporation of these commitments into government policy and enforcement to ensure that UK businesses adhere to the highest standards.

7. Modern trade agreements have significant implications for public policy and the concessions sought by prospective trading partners could undermine Britain’s ability to fulfil the international obligations outlined above. Therefore, trade and foreign policy should be subservient to these international obligations.

8. Ensuring the right frameworks are in place to prioritise human rights and sustainable development should enable Britain to influence prospective trading partners. This should serve to improve standards within those countries.

9. The Government has indicated that it views the Global Britain strategy as one that respects the international rules-based order. This includes multilateral fora such as the World Trade
Organisation (WTO), and the operation of the United Nations, including the International Labour Organisation.

10. At forums such as the WTO, or in multilateral agreements the UK should support developing countries to participate in and influence global trade negotiations and rules setting. It should promote approaches which respect the policy space of developing country governments, particularly their ability to nurture nascent industries and protect domestic producers from premature competition. It should further respect the policy space needed to promote regional trade and integration which is usually better for phased development.

11. One clear example of how the UK can support the rule of law is to remove investor to state dispute settlement mechanisms (ISDS) from its trade and investment agreements. The potential inclusion of ISDS mechanisms gives rise to several significant principled and procedural concerns.

12. ISDS mechanisms provide protection to foreign investors not available to domestic investors creating unequal access to justice and distorting markets.

13. ISDS Cases are presided over by for profit lawyers and do not meet judicial standards of transparency or prevention of conflict of interest.

14. Cases can cost millions, sometimes billions of dollars. For example, Tanzania has suggested, in relation to a case brought against it by Standard Chartered Bank, that the legal costs alone will exceed US$8 million. In 2014 Yukos Universal (registered for tax purposes in the Isle of Man) was awarded US$50 billion against Russia. Governments have been sued for measures designed to increase social development in the areas of public health, environmental protection and labour rights.

15. In addition to being undemocratic these parallel legal systems undermine domestic legal systems and access to justice and remedy for citizens.

16. Any credible global strategy must ensure a coherent approach to the UK’s role in the world. For example, foreign policy should be formulated with consideration given to the potential impacts on the UK’s ability to fulfil its commitments within the SDGs. As should Trade and development policies.

17. With the UK embarking on the process of developing an independent trade policy, the Government has a unique opportunity to adopt world-leading trade for development policies and ‘reset’ our trading relationship with several important economies.

18. The UK should utilise this opportunity to reset trade with developing countries by establishing comprehensive Trade and Development Partnerships which address trade and development in a holistic way. This could be regional, for example a UK-East Africa partnership or a continental partnership.

19. Market access to enable produce from developing countries to enter the UK without the imposition of import duties would form one key pillar of this with trade related assistance and broader development assistance forming other key pillars. This would require a coherent cross-governmental approach including a key role for the Foreign Office, Department for International Trade, Department for International Development and other departments.
20. As already stated, it is vital for the UK to ensure policy coherence across government. One way this can be achieved is to ensure that impact assessments are conducted for all potential trade negotiations identifying, among other things, the impacts on the Government’s commitment to the Sustainable Development Goals, economic and social impacts on developing countries, action to tackle climate change alongside protection of the environment, human rights, labour rights, consumer rights and regulatory standards.

21. This will help to ensure that the impact of the UK’s aid and development programmes is not being undermined by political desires to secure quick trade deals which might undermine development outcomes.

22. Whilst Global Britain might be stated as a policy approach, the ambassadors for such an approach are not only the FCO but UK linked businesses which operate overseas. In recognition of the importance of UK business activities, the UK government was the first in the world to produce a National Action Plan on Business and Human Rights. If human rights remain an important policy issue under Global Britain, then the role that UK-linked businesses can play in advancing or undermining human rights internationally needs to be addressed.

23. Currently businesses can operate in the UK and benefit from the UK’s capital markets (listing on FTSE or AIM), business markets, and consumer markets. Each of these UK markets can be lucrative and are based on businesses having confidence in corporate governance, contract law, and the effectiveness of our legal system. However, businesses benefiting from UK markets may not be conducting business in a manner that is consistent with UK’s foreign policy, British values, nor supportive of enhancing human rights.

24. UK businesses can conduct their direct operations in developing countries, and with developing country business partners in a manner that enhances and respects human rights. Such good practice, has a considerable positive effect. Traidcraft is aware anecdotally from our own work that workers, share news of good practice employment conditions with their neighbours, and this in turn leads their neighbours to ask their managers in different businesses to improve their practices. To counter these positive dynamics, there is currently negative peer pressure which operates in some markets, where the competitors exert pressure on each other not to treat workers or farmers or local communities well. UK businesses which encourage and continue to collaborate with better businesses in developing countries play a positive ambassadorial role for UK’s foreign policy.

25. However, there are situations where UK-linked businesses are unfortunately implicated in severe human rights violations, and the continued operation of these businesses, and the lack of accountability these businesses face, undermines the UK’s leadership role envisaged under the “Global Britain” approach.

26. The Business and Human Rights Resource Centre (BHRRC) recorded 303 allegations of human rights abuses made against 127 UK-linked companies between 2004-2014. Despite it being clear that some companies are serial offenders there have been zero corporate criminal prosecutions. Nearly half of the allegations (47%) were made against extractive companies. The vast majority of cases related to allegations of cross-border abuse, mostly in the global south, with 29% relating to Africa and 24% relating to Asia.

UK businesses could be said to be currently implicated in the following crimes.

a. Theft, where UK-linked businesses are involved in taking land and possessions away from community members and where businesses purchase large volumes of product
from land, where the ownership is contested. Purchasing from businesses who have dubiously gained access to land, and frequently violently evicted the members of a local community is not a business practice which enhances improved human rights outcomes.

b. Deaths and injuries. In the worst cases, UK businesses are known to have facilitated access of or directly paid for armed security personnel who have used live ammunition on members of a local community.

27. In each of the above situations the UK businesses could be playing a positive ambassadorial role, or undermining how Britain’s respect for human rights is perceived.

28. To bring UK businesses practices into alignment with an intended Global Britain policy, there is a need for UK-linked businesses to be held to account. Currently UK linked businesses can count on the “rule of law” when advancing their investment and business interests, however victims of human rights violations overseas are unable to effectively hold UK businesses to account. Please see our response in paragraph Error! Reference source not found. onwards on actions MoJ & BEIS could take in support of Global Britain and paragraph 33 on a UN process the FCO should support to improve UK business accountability.

29. A further way this can be achieved is to ensure a shared commitment towards promotion and protection of human rights across government with clear structures and processes to ensure that human rights do not fall between the gaps of departments such as the Department for International Trade, Business Energy and Industrial Strategy, Ministry of Justice and the Foreign and Commonwealth Office.

Which metrics can the success of ‘Global Britain’ can be assessed against?

30. As outlined above trade can either be a force for good or can come with negative impacts.

31. Metrics to assess whether ‘Global Britain’ has had a positive impact is to assess progress towards achieving the SDGs. These could include:

   a. Share of global exports originating from developing countries
   b. The increase in the value and volume of processed (added-value) products being imported.
   c. the number of developing countries receiving duty-free, quota-free market access to the UK.

32. In addition to trade related metrics, it would also be worth analysing the possibility of overseas stakeholders, impacted by UK-linked companies’ being able to hold them to account. Due to the existence of persistent UK rogue businesses, now it is therefore appropriate to measure the viability of overseas stakeholders being able to hold to account those UK businesses which either commission or benefit from severe human rights violations. In the short term therefore, we would want to see metrics which record court cases advancing through the UK courts in relation to severe cross-border human rights violations. Metrics to assess this include:

   a. An increase in cross-border investigations, followed by prosecutions of companies which have commissioned, or benefited from severe human rights violations – theft, injuries and deaths. Data would be available from Crown Prosecution Service, Serious Fraud Office, police and courts.
   b. An increase in the number of solicitors able to take civil cases on behalf of overseas victims of UK Companies’ poor business practices. Data would be available from courts.
c. A reduction in the number of UK businesses involved in human rights violations overseas. The Business and Human Rights Resource Centre website would be one source of data.

Please see Paragraphs 36 onwards for suggestions as to how government departments could deliver towards the metrics suggested above. Obviously longer term, once it was possible for victims to bring cases, we would want to see a reduction in the number of cases brought against UK companies for their involvement in human rights violations, assuming this reflected improved practice.

Which regions, countries and multilateral organisations should the UK should, and what policy and resource trade-offs may be involved?

33. If the UK is to meaningfully support the rules-based system, the UK should continue to play a proactive role within the UN, and promote existing human rights law and develop new law where gaps exist. In particular the UK should engage constructively with the open-ended intergovernmental UN working group on transnational corporations and other business enterprises with respect to human rights\(^1\). This process was initiated to explore the development of a treaty which would enable victims to hold companies based overseas to account.

34. Traidcraft would like to highlight the policy and practice tension which currently exists between respecting human rights, and the current FCO priority of promoting UK Businesses overseas.

35. Currently UK-linked companies conduct business with their partners who are based in countries who have varying records on their respect for different human rights. Traidcraft would like to see the FCO guiding UK-linked businesses to work with business partners in countries with good respect for human rights and swift and independent justice systems. Where UK-linked businesses are considering working with business partners in countries with poor human rights records, then the FCO has a responsibility to advise these UK businesses of this, and the recommendation that the business will need to undertake additional actions to ensure that its operations do not harm citizens of that country.

The capacity of the Foreign and Commonwealth Office and other relevant government departments to deliver upon Global Britain.

36. If Britain aspires to play a global leadership role, the UK needs to model good practice. For this to happen the UK needs to ensure that there is a functioning accountability framework which results in UK-linked companies operating and transacting with business partners overseas in a manner that respects human rights, and contributes to improved livelihoods for vulnerable people in developing countries. UK linked companies should to be held to account if they commission or benefit from severe human rights violations. (See paragraphs 26 above.) To put in place an accountability framework Ministry of Justice needs to complement BEIS and FCO in relation to delivering Access to Justice within the UK’s National Action Plan that operationalises the UN’s Guiding Principles on Business and Human Rights.

37. There are several legal and practical barriers to UK companies being held to account for their role in causing severe harms to vulnerable individuals overseas. The nature of these harms would be regarded as criminal by most jurisdictions in the world. Some of these harms arise out of negligence and so can also be brought to UK civil courts as a breach of tort.

\(^1\) [http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWOnTNC.aspx](http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWOnTNC.aspx)
38. In relation to criminal law, Ministry of Justice needs to reform the law to propose a new Corporate crime offence. It is currently recognised that where a company commissions a crime, then the company has committed a crime. However, the key impediment to prosecuting companies relates to the current wording of the law which undermines the prosecution’s ability to bring forwards a successful case. To prove a company has committed a crime, the prosecution needs to prove that the “controlling mind” of a company was involved in making the decision. This is called the “identification principle”. For large companies where decision making is disbursed identifying the controlling mind may not be possible. Both the Serious Fraud Office and Crown Prosecution Service have proposed that a new offence be drafted to replace the identification principle. Traidcraft supports their proposal that a better formulation would be “a failure to prevent” offence, which builds on both Bribery and Tax evasion laws. Traidcraft would welcome companies putting in place adequate procedures to avoid being involved in commissioning or benefiting from serious human rights violations (similar to those put in place to avoid bribery and tax evasion). Please see Above the Law² and Traidcraft’s response to MoJ’s Economic Crime consultation for more information.

39. There are also barriers to holding highly resourced companies to account through civil courts for their cross-border human rights violations. MoJ needs to address these barriers so that high risk, public interest cases, are taken forwards by a range of solicitors’ firms, so that there is a realistic prospect of rogue UK-linked businesses being held to account if they severely harm others overseas.

40. BEIS, as the custodian of company law and corporate governance, also has a role to play in modernising directors duties³, so that directors have to act, not just “have regard to” employees, suppliers, customers, community, environment, high standards of business ethics and long-term impacts. Please see Traidcraft’s Response to BEIS Green Paper on Corporate Governance Reform.⁴

ENDS

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³ http://www.legislation.gov.uk/ukpga/2006/46/part/10/chapter/2/crossheading/the-general-duties
Companies Act 2006 Part 10 Chapter 2 The general duties 172 Duty to promote the success of the company
(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—
(a) the likely consequences of any decision in the long term,
(b) the interests of the company's employees,
(c) the need to foster the company's business relationships with suppliers, customers and others,
(d) the impact of the company's operations on the community and the environment,
(e) the desirability of the company maintaining a reputation for high standards of business conduct, and
(f) the need to act fairly as between members of the company.