



Open Rights Group submission to UK consultation on a new Free Trade Agreement with Australia

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We have general concerns about the process of trade policy, shared with much of civil society. Modern trade agreements regulate more than trade, covering a staggering range of public policy, as evidence in the list of topics presented in these consultations.

As a rights organisation we believe that a focus on trade weakens the wider international framework of rules. Trade treaties are easier to enforce than other types of international treaties and end up taking precedent. The special tribunals staffed by trade experts that can impose tariff sanctions on sectors not related to the original dispute are problematic. For example, the EU has been paying the US for years to avoid importing hormone-treated beef, while the US pays the Caribbean island of Antigua over restrictions on the burgeoning internet gambling industry based on the small nation.

As a digital rights organisation we find particularly worrying that the complex issues we deal with could be literally traded away by negotiators. This is particularly the case given the track record of secrecy surrounding trade deals, which create a democratic deficit, with the executive legislating through diplomacy without proper parliamentary input. This is being criticised in debates over the Trade Bill, with no sign of the government agreeing to give up their powers.

While thanks to grassroots pressure WTO proposals are now public, most Free Trade Agreements are secret and only made public once the consolidated texts have been agreed. At that point it is too late to make any modifications. We expect the UK government will be fully transparent and engage civil society.

Our main concern is digital trade. This is one of the most cutting edge and concerning aspects of future trade negotiations. There is evidence of a concerted global lobby by the "Big Tech" companies of Silicon Valley to rewrite the rules of trade to consolidate their

global position through the "e-commerce" or "digital trade" agenda.¹ In this they are copying the model that Big Pharma used 30 years ago to irreversibly rewrite the rule of intellectual property worldwide. Once that these treaties are fixed there are not sunset clauses, no proper courts to evolve jurisprudence or even strike treaties down.

Therefore we see the current discussion on digital trade deals as an existential threat to digital rights and are unambiguously opposed to its inclusion on any Australia-UK FTA.

We have submitted a response to the consultation on the US deal that summarises our general concerns with the digital trade agenda, but would be happy to engage in person to explain in more detail.

Our analysis in that document shows that, similarly to other areas such as agriculture or foods, many of the proposed items in the US digital trade agenda would create a fundamental regulatory conflict with EU policies and could lead to problems with future data flows with the EU, including jeopardising a UK future adequacy decision under GDPR.

Our main concern in a trade deal between the UK and Australia is the role that Australia has played in the expansion of the digital trade agenda. The RTA-exchange project found that as of September 2017, at least 69 Regional Trade Agreements exist which include an e-commerce chapter or article(s) dedicated to e-commerce.² They found that the triad of Australia, Singapore, and the US have been the critical driving force in the proliferation of RTAs with e-commerce chapters, while "no WTO member classified as a least developed country by the United Nations or as a low-income country by the World Bank has agreed to an RTA with an e-commerce chapter."

Given that the UK is negotiating trade deals with both the US and Australia we are concerned that any FTAs will include digital trade measures in the most extreme form. Trade between the UK and Australia is limited but the impact of such clauses could be felt more widely and shape future UK FTAs.

¹<https://www.theguardian.com/commentisfree/2018/may/22/data-big-tech-eu-regulation-gdpr>

²https://www.ictsd.org/sites/default/files/research/rta_exchange-digital_trade-mark_wu_final.pdf