**Post-Brexit, we should all be worried about our BITs**

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*Depending on the terms of Brexit, it is likely that the UK will need to renegotiate its trading relationships with a range of countries, and that should include any Bilateral Investment Treaty. argues Ruth Bergan. In this guest blog, Ruth, who is Coordinator of the*[*Trade Justice Movement*](http://www.tjm.org.uk/)*, revisits a talk she gave on the implications of these treaties at an ETI*[*Ethical Insights debate on what free trade agreements mean for workers*](http://www.ethicaltrade.org/events/what-do-free-trade-agreements-mean-workers)*.*

Negotiations on full trade deals can’t begin until we formally leave the EU. However, the UK has retained competence for its own **Bilateral Investment Treaties (BITs)**. Review and reform of our BITs would send a clear signal of the direction of travel of UK trade policy right now.

The UK has 106 BITs, the majority are with developing countries. The stated aims of these treaties were originally to protect foreign investors in countries where governance systems were felt to be inadequate and to increase flows of foreign investment.

**Business risk pushed from companies onto taxpayers**

We need to worry about BITs because what the treaties do in practice is push business risk from companies to taxpayers in the countries that are signatories to the deals.

In effect, BITs offer a kind of insurance into which companies pay nothing and taxpayers are fully liable. This creates an environment in which due diligence and risk assessment can become ‘nice to haves’ instead of important steps in the investment process.

Worse than this, the treaties are so poorly worded, allowing for such expansive interpretation, that companies have been able to challenge governments for a range of legitimate policy decisions.

The basic premise is that countries have an obligation to meet the ‘legitimate expectations’ of businesses.

But, these expectations seem to include the absence of any change in government policy – an entirely unrealistic expectation in the case of developing countries who by their very nature need to update or introduce new laws including for example on labour rights.

**BITs are binding and enforceable**

Unlike agreements on things like international development and (say) ethical trading practices, BITs are both binding and enforceable.

Furthermore, enforcement is placed firmly in the hands of companies: treaties offer them the ability to sue governments if a policy or its implementation negatively impacts the profitability of their investment.

***CASE STUDY: Veolia is challenging Egypt’s minimum wage increase***

*Companies have used this mechanism – ‘investor-to-state dispute settlement’ (ISDS) – to challenge a range of policies. For example, under the France-Egypt BIT, Veolia has challenged Egypt’s increase in its minimum wage. In 2001, Veolia took on the contract to manage waste water services in Alexandria. This was under the Mubarak presidency, a period in which the minimum wage was kept at poverty levels: an absurd US$6.50 per month until 2010 when it was raised to US$69, an amount which still left many workers unable to make ends meet. The revolution in 2011 led to strong demands for wage increases and the minimum wage was lifted to US$120 per month. Veolia responded by suing for compensation. In this case, it would appear that Veolia’s ‘legitimate expectation’ was that workers would continue to accept poverty wages. It also seems that Veolia had not considered the risks associated with doing a deal in the context of Egypt’s 20-year ‘emergency law’ used to suppress basic freedoms such as workers organising.*

To qualify for protection under the treaties, companies must do nothing other than invest. There is no requirement to adhere to the social or environmental standards of the country. There is finally no equivalent for communities affected by the activities of investors.

Importantly, BITs are by no means necessary to attract investment: Brazil, the world’s fourth-largest recipient of FDI has not one single treaty in force. There is also little evidence that the treaties have delivered on their promise of increased investment.

We can reform our BITs now to send a strong signal on the future of UK trade.

**Worrying signals about the future of UK trade**

To date, there is little indication that the UK government intends to reform its out-of-date BITs. Instead, the UK has said that if it does need to negotiate its own deals post-Brexit it may use CETA (the EU-Canada trade agreement) as a template.

Yet this poses a particular set of problems if it is used for deals with developing countries: most importantly, CETA covers more issues than developing countries have felt ready to address in negotiations to date.

Developing countries often do not have the capacity to negotiate on issues like procurement and competition policy, they also fear the impact on their domestic industries which may not be ready to compete. If rich countries agree on a new set of ‘gold-standard’ deals, developing countries will feel under increased pressure to include these issues in negotiations.

Deals that are not directly with developing countries can still have significant implications for them.

Studies of the impact of the Transatlantic Trade and Investment Partnership (TTIP – the EU-US deal) have found evidence of likely trade diversion, particularly for countries like Bangladesh, Pakistan, Cambodia and Ghana, who have substitutable products.

One study commissioned by DFID found that TTIP could cause a US$61 million loss to the already beleaguered Bangladeshi garment industry.

**Supporting commitments to developing world partners**

The terms upon which the UK will leave the EU are still unclear.

However, if it does need to develop its own trade relationships, it must do this in a way that supports its commitments to its developing country partners.

It can start this process now, by scrapping its out-of-date and damaging BITs. It should cease including ISDS in any deals and encourage companies first to perform adequate risk assessments and due diligence, and second to use the raft of other options available to them, such as commercial political risk insurance.

The UK also urgently needs to signal to developing countries that their interests will be protected: the UK must offer them no worse (and preferably better) arrangements than under the current EU system.

In the long term, the UK could craft an approach to trade that is genuinely supportive of development and other international commitments. It needs to grasp the opportunity.