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Consultation on Government engagement with business and civil society groups on implementation of the Trade and Cooperation Agreement

1. We welcome the opportunity to respond to the UK Government consultation on Government engagement with business and civil society groups on implementation of the Trade and Cooperation Agreement (TCA). This response has been coordinated by WCVA and the Wales Governance Centre on behalf of the four national membership bodies for the voluntary sector across the UK and represents the views of the four institutions:
 - Wales Council for Voluntary Action (WCVA)
 - Scottish Council for Voluntary Organisations (SCVO)
 - Northern Ireland Council for Voluntary Action (NICVA)
 - National Council for Voluntary Organisations (NCVO)

2. While it was not possible for us to consult our sector widely in the time provided, we are grateful to the following organisations who also have contributed input and supported this response:
 - Charity Finance Group
 - Charities Aid Foundation
 - Cytûn Working Group on Europe
 - Human Rights Consortium Scotland
 - The Human Rights Consortium (Northern Ireland)

3. **WCVA** is the national membership organisation for the voluntary sector in Wales. Its vision is for a future where the third sector and volunteering thrive across Wales, improving wellbeing for all. Its purpose is to enable voluntary organisations to make a bigger difference together.

4. **SCVO** is the national membership body representing the voluntary sector in Scotland. Along with our community of 2,500+ members, we believe that charities, social enterprises and voluntary groups make Scotland a better place.
5. **NICVA** is the umbrella body for the voluntary, community and social enterprise (VCSE) sector in Northern Ireland with over 1,100 members. NICVA represents and supports the wider NI VCSE sector which comprises over 6,000 organisations providing a wide range of public services and benefits including health and social care, advice, counselling, community development, peace-building, environmental protection and management, to the promotion of arts, cultural, sporting activities.
6. **NCVO** is a membership body for charities and voluntary organisations in England. It has over 16,000 members, ranging from community groups to household name charities.
7. The **WGC** is a research unit sponsored and supported in the School of Law and Politics, Cardiff University. It undertakes innovative research into all aspects of the law, politics, government and political economy of Wales, as well the wider UK and European contexts of territorial governance.

Introductory comments

8. The inclusion of civil society engagement mechanisms has been common practice in EU trade agreements since the 1997 Mexico Agreement.¹ This approach was expanded to include new institutions in the 2002 EU-Chile Agreement,² and the specific use of Domestic Advisory Groups (DAGs) and Civil Society Fora (CSFs) started with the 2011 EU-South Korea Trade Agreement.³ There are several preliminary lessons to be learned from the EU and its trading partners' use of these systems to engage civil society organisations (CSOs).
9. A clear understanding of the purpose of the DAGs and CSF should be established. This purpose needs to be suitably reflected in how they operate and be explicitly written into the the operational guidelines. The TCA contains few details about the functions of these institutions beyond stating that they facilitate consultation with civil society and that the CSF specifically will 'conduct a dialogue on implementation'. We believe they should serve deliberative, information exchange, monitoring and policy influencing purposes. For the latter two functions to be effectively implemented there will need to be formal feedback loops: a commitment to receive and respond to views submitted to the UK Government by the DAG, and for the Parties to respond to the views of the CSF. These formal feedback loops should be provided for and expanded on in the DAG and CSF operational guidelines.⁴

¹ EU – Mexico Economic Partnership, Political Coordination and Cooperation Agreement, article 36, [\[2000\] OJ L 276/52](#).

² Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part. Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC_2&format=PDF

³ EU-South Korea Free Trade Agreement, [2007] [OJ L 127](#), articles 12 and 13.

⁴ Lessons from the EU's other trade agreements suggests that the lack of structured dialogue between domestic governments and CSOs typically frustrates the effective implementation and use of DAGs and CSFs.

10. In agreeing a clear purpose for the DAG and CSF, both bodies should be open to improving their substantive and procedural operation on an ongoing basis.
- 10.1 If it proves beneficial to their operation, the DAG and CSF should be able to agree reforms extending as far as their representativeness and substantive scope. We note in particular that the CSF's remit has been limited to part two of the TCA, while the DAG's scope is much broader. Yet representation on the CSF also includes, for example, groups active in the area of human rights. This seems inconsistent with the CSF's more limited scope considering that part three (law enforcement and judicial cooperation) also has human rights dimensions. It is also likely that civil society organisations will have useful insight for the CSF in other parts of the treaty, such as on participation in EU programmes. CSOs will welcome a transnational space for cross-border dialogue on dimensions of the UK / EU relationship wider than part two of the TCA.
- 10.2 The suggested frequency of DAG meetings appears quite low. If meetings are to take place only once or twice a year, it will be even more important for the UK Government to foster an overarching environment for continuous dialogue and engagement with civil society on the TCA in between DAG and CSF meetings. This is necessary to ensure that stakeholders, including organisations not directly represented on the DAG and CSF, remain engaged and can feed in knowledge and experience and so that actions and discussions continue and are followed up on.
- 11 In terms of representation on the DAG and CSF, **the voluntary sector should have the same level of representation as the other parts of UK civil society**. We also believe that provision should be made in both institutions and in the UK Government's wider engagement with civil society around the TCA, **for devolved voices to be heard**. The territorial governance of the UK is changing as the UK Government is now fulfilling roles that used to be undertaken at the EU level and is establishing new teams in the devolved nations. **This shift should bring with it a new more regular and structured approach to devolved / UK government civic society dialogue**.
- 12 Due to the key role played by the UK Government in the DAG and CSF, this step change in how it engages with the voluntary sector across the UK will be necessary to ensure that the work of these bodies is representative and effective. This is because:
- 12.1 **There will need to be engagement with civil society groups who are not represented on the DAG and CSF as a part of the work of both bodies**. We welcome the acknowledgment of this in the consultation document, however, we do not think this should be exclusively via 'existing arrangements' as there is currently a lack of systematic and structured engagement between the UK Government and the voluntary sector on emerging opportunities. This will be particularly helpful as the sector learns to operate within and around these new bodies and post-Brexit opportunities.

See generally the work of Jan Orbie, Deborah Martens and Lore van den Putte on this, for example: J. Orbie, D. Martens, L. Van den Putte, 'Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation', Centre for the Law of EU External Relations papers 2016/3, Available at: https://www.asser.nl/media/3044/cleer16-3_web.pdf.

- 12.2 **There will need to be continuous engagement between the UK Government, civil society groups and the DAG, around and in between the infrequent formal DAG and CSF meetings.** This regular engagement will be essential to ensure that groups not represented on the DAG and CSF can nevertheless support their work with evidence gathering. Not all DAG members will have the resources to carry out significant research and outreach themselves. There will need to be reliance on a suitably resourced secretariat and regular working with organisations who themselves can consult widely from outside the DAG.
- 12.3 There is currently no provision at the UK level for the UK Government to engage with the voluntary sector or civil society more broadly in a regular and structured fashion. **We believe the establishment of a new body – a UK Civil Society Forum, bringing together different branches of civil society in the UK - could usefully serve as a platform to structure these engagement activities and would facilitate UK / EU civil society engagement around the TCA outside of the DAG and CSF systems.** Any such body should operate on the basis of a one third representation for trade unions, businesses and the voluntary sector including charities, social enterprises, community interest companies, and generally organisations for social change and should be recognised by the UK Government as a regular interlocutor. The absence of such a body, as well as the abovementioned lack of continuous wider engagement with the voluntary sector and civil society is a common challenge faced by domestic governments and stakeholders in implementing the civil society mechanisms of modern trade agreements.
- 13 On an organisational level the operation of the DAG and CSF should be transparent, with membership, contact details, schedule of upcoming meetings, agendas and minutes made available publicly to enable CSOs to follow and feed into their work. It is also important to raise awareness of their function so that the voluntary sector can become familiar with the role it can play in the democratic governance of the UK's new external relationships.
- 14 We have some concerns about the suggested timeframe for organising the first CSF in 2021. For these consultation exercises to be useful, the voluntary sector needs time to consult stakeholders and members, to gather evidence and to brief representatives. We would ideally require publication of suggested operational guidelines for both the DAG and CSF before undertaking these activities. Further time is required to establish the DAG, for the sector to engage with it and its members, and for the UK / EU DAG-to-DAG activities to take place prior to the CSF, which itself needs to occur before the Trade Partnership Committee and Partnership Council meetings if they are to take on board DAG and CSF views. Even if the work of the DAG and CSF is decoupled, it seems reasonable to coordinate their discussions as these are likely to be complementary.
- 15 This timeline is extremely tight if the first Forum is to take place in 2021. We agree with the point made in the consultation document that we need to take the necessary time to establish appropriate and ambitious structures and procedures, however we do not feel that the pace of developments has thus far reflected this ambition. We therefore recommend that further time be taken to work with civil society and the EU establishing appropriate mechanisms prior to hosting the first CSF.

- 16 The variety of civic society interests reflected in articles 13 (1) and 14 (3) including sustainable development, social, human rights, environmental and other matters should be given equal priority in discussions both in the DAG and CSF.
- 17 It is important for the UK Government to provide a clear vision on the future role for the voluntary sector and wider civil society in the democratic governance of the UK's new trading relationships. We recognise that during the Brexit process the necessary pace of developments required that consultations be rapid and that groups be established quickly. However, now that the pace has slowed we believe it would be useful for the UK Government to work with civil society on framing the institutional post-Brexit role the sector can play in the democratic governance of the UK's external relationships.
- 18 For example there are still questions around the engagement of CSOs on ongoing trade negotiations as well as the role of civic society in roll-over trade agreements. Some of these, like those with Chile and Canada, or the agreement with Japan, also contain provisions on civic society engagement. Is the intention to implement these, as well as those from all EU trade agreements that were rolled over? If so, how? If not, why not? We very much welcome discussions on the civic society engagement in the TCA but it would be helpful if this formed part of a wider vision. Could the same groups, or at least the same procedures, established for the TCA be used in the context of other agreements as well? If so, this should potentially be considered at inception.

How should the UK Government engage formally on TCA implementation issues through a domestic advisory group? The Government is planning a meeting once or twice a year with one group and would welcome your comments on the format, scope, and other ways of consultation. How do you see this group operating effectively?

- 19 It is common practice in EU trade agreements that the wording on DAG composition reflect a 'balanced' representation of civil society. We would welcome clarification from the UK Government on what the intention was behind the removal of this wording in the TCA (despite it being retained for representation on the CSF). We believe that the voluntary sector should have one-third representation on the DAG and CSF to ensure parity of representation alongside business and trade union stakeholders. We are concerned that voluntary sector representation will be underprioritized relative to business and trade union groups who, thus far, have been far more involved in the UK Government's Trade Advisory Groups. We believe ensuring this level of representation will also be helpful in facilitating the DAG's work with:
 - 19.1 wider CSOs who can play a valuable role in feeding in information on the impact of the TCA on people's lives
 - 19.2 the EU's DAG in the DAG-to-DAG system as sectoral representation will be similar.

- 20 As an institutionalised body bringing together governments and civil society from across the UK for structured meetings on a specific topic, the DAG represents an exciting post-Brexit opportunity for deeper reform to how the UK Government engages with civil society factoring in devolution and the emerging new territorial governance of the UK. The structure and operation of the DAG should reflect this territorial governance and allow for devolved voices from both CSOs and devolved governments to be heard. **Given the unprecedented breadth of the TCA, we recommend that thematic sub groups be established within the DAG with explicit provision in the operational guidelines for representation from each of the four parts of the UK.** This would allow for a finer break down in terms of both thematic and geographic representation. The importance of regional input and coordination into these types of structures has been shown in previous study of civic society involvement in trade agreements. The experiences of Peru / Columbia and the CARIFORUM states provide an example.⁵
- 21 The DAG should be established and operate in such a fashion that organisations which are not directly represented are able to engage with its work, its members and the secretariat. This requires a baseline level of operational transparency and the timely notification of upcoming meetings, agendas and minutes. We also recommend that the DAG system make judicious use of digital meetings as this will:
- 21.1 increase accessibility
 - 21.2 reduce costs (which could be redirected to increasing engagement and to supporting the secretariat)
 - 21.3 more easily facilitate the provision of non-participative observers so that information can be more easily trickled down communication chains.
 - 21.4 make it easier to organise additional online meetings and to bring in organisations on an *ad hoc* basis if experience and expertise on specific issues are required.
- 22 **It is crucial that an appropriately resourced and staffed secretariat for both the DAG and CSF that is open, transparent and accessible to civil society be established.** Insufficiently resourcing domestic DAGs and their secretariat is another common challenge highlighted in comparative studies.⁶ Yet the secretariat could play an important role in:
- 22.1 ensuring that actions are progressed in between meetings
 - 22.2 providing a much-needed contact point within the UK Government specifically on engagement around the TCA
 - 22.3 and overall ensuring that continuous dialogue in between DAG and CSF meetings is taking place, for example by facilitating UK Government involvement in *ad hoc* meetings with stakeholders.

⁵ N. Ashraf and J. van Seters, 'Making it count: civil society engagement in EU Trade Agreements', 2020 ECDPM Discussion Paper No. 276, p.8. Available at: <https://ecdpm.org/publications/making-count-civil-society-engagement-eu-trade-agreements/>; D. Martens, J. Orbie, L. Van den Putte and Y. Williams, 'Civil Society Meetings in EU Trade Agreements – Recommendations and Lessons from EPAs', Briefing Note 93, September 2016, p.6. Available at: <https://ecdpm.org/publications/civil-society-meetings-eu-trade-agreements/>

⁶ See for example: M. Westlake, 'Asymmetrical institutional responses to civil society clauses in EU international agreements: pragmatic flexibility or inadvertent inconsistency?', 2017, College of Europe, Bruges Political Research Papers n.66, p.9-10, Available at: <http://aei.pitt.edu/93140/>

- 23 We believe that DAG meetings once or twice a year with only a single group will likely be too limited to provide useful and timely insights in response to issues requiring swift solutions. If the DAG is to meet so infrequently, this will increase the importance of ensuring regular dialogue between DAG members, wider CSOs, EU counterparts and the UK Government. We also recommend against the suggestion of having a straightforward single group. It will be challenging to cover the wide range of topics that are within the DAG's scope and reflect the wide variety of thematic and geographic interests that this system could usefully bring together. **See our recommendation for sub-groups within the DAG at point 20.**

If a selection had to be made, what further criteria, additional to those set out in Article 14 of the TCA, could be prioritised to decide the members of the UK delegation to the Civil Society Forum, e.g. the size of the economic or public interest, geographical interest, trade knowledge and experience or ability to protect and represent the UK's interest effectively?

- 24 We recommend that the selection of participants **include a balance of societal and environmental interests beyond trade** as well as **private and non-private sector representatives** with experience and insights relevant to the economic, social and environmental impacts of TCA implementation decisions. Selected members should also have strong working links across civic society and their own sector to consult and engage widely in the preparatory phases for the DAG and CSF.
- 25 The recruitment process should be open and transparent, and financial support should be made available to allow organisations with contributions to make but less capacity to participate.
- 26 The inclusion of wider representatives who may not have specific trade knowledge and experience is important because parts of the voluntary sector that are called upon in the TCA (for example around human rights) may not have needed to develop significant capacity around trade owing to previous reliance on EU level expertise in this area. We have found that even some UK groups with a trade specialism have relied on EU networks. This was understandable while the centre of decision making was at the European level, but with its return to the UK it will take time for organisations to adjust to having a role in the democratic governance of trading relationships (similar to how the UK Government has had to invest in training on trade for staff).
- 27 There are three aspects of the CSF's governance in the TCA that we believe should be addressed in the operational guidelines and/or recognised by the parties.
- 27.1 The TCA is lacking in precision on the purpose of the CSF – noting only that it should 'conduct a dialogue'. The UK and the EU could recognise in the guidelines that the parties are open to receiving input from Forum representatives and commit to considering issues raised by the Forum at the Trade Partnership Committee and Partnership Council.
- 27.2 The consultation document frames the UK delegation's aim on the CSF as protecting and representing the UK's interests. We believe it is important to highlight that the UK's

interests in this specific forum are best served by meaningful civic society consultation and engagement in the true spirit of cross-border collaboration to identify and jointly address impacts of the TCA on certain groups. Indeed, many of the interests civil society organisations work on are shared across borders and are best addressed collaboratively. The purpose of the CSF and the aims of the UK and EU's delegations should be articulated around this spirit of collegiality.

- 27.3 The limitation of the CSF's scope to part two of the treaty (trade) should be softened in the CSF's operational guidelines to reflect a wider variety of social interests. **We have noted interest in our exchanges with organisations for structured transnational dialogue on wider aspects of the new UK / EU relationship.**
- 28 In the same vein as with the DAG, the UK's delegation on the CSF should include representation from all four parts of the UK. The selection for representation on the CSF should involve intergovernmental collaboration between the UK and devolved governments. The selection process could be run in partnership.
- 29 We recommend that provision be made for organisations to be able to request observer status at the CSF. This will allow for organisations to be less directly involved but to nevertheless mobilise feedback after the event, consult members and follow-up on points with a view to eventually feeding into formal and informal domestic and transnational discussions - thereby also supporting the development of wider UK / EU Civic society relationships outside the scope of the DAG and CSF system.

What role should the UK Government play in supporting interactions between UK and EU stakeholders on TCA implementation, in addition to the sharing of contact information under the terms of the TCA and facilitating the CSF meetings?

- 30 We welcome the Government's acknowledgement of both the merit of UK / EU CSOs developing relationships outside of these formal structures, and of the need for the UK Government to engage domestically with civil society – though as we noted at 12.1, we believe this engagement should go beyond existing channels. The UK Government needs to facilitate an environment and architecture for ongoing dialogue that enables organisations to complement and feed into the work of the DAG and CSF. Experience of these structures in other trade agreements shows that their success is **dependent on the domestic government's willingness to engage in continuous, meaningful and structured dialogue with civil society**. Dialogues, actions and evidence gathering activities need to be progressed outside of relatively infrequent formal meetings and the UK Government has a role to play in supporting this.
- 31 This should include facilitating and participating in ad hoc meetings and ongoing channels of communication and information exchange between UK and EU CSF and DAG members, as well as engaging with organisations who are not represented on these bodies but who can support their work. UK Government representatives involved in work on the TCA and civil society could usefully attend and contribute to sector meetings and roundtables on the implications of the TCA – further contributing to the ongoing civic society dialogue that needs to occur in between

and around formal meetings. **A contact point for this is needed and could sit with the UK secretariat for the DAG and CSF.** Its details should be made available and easily locatable online.

- 32 The UK Government should undertake this role in partnership with the devolved governments who in turn should be active participants in and around these conversations, listening and responding to feedback regularly. Evidence suggests that this two-way channel of ongoing communication and formal recognition of feedback loops is key for these structures to be useful to the parties of the TCA and to retain the interest of CSOs.⁷
- 33 The CSF and DAG are both vehicles to enable the UK Government and the EU to listen to and take on board the views of civil society in understanding the impact the new relationship is having on organisations and communities. It will take some time for both parties and stakeholders to adjust to their implementation, particularly as the TCA is so novel. However, EU Civic Society already has the benefit of institutionalised forms of engagement in this area via the European Economic and Social Committee and the European Commission's Civil Society Dialogue procedures. The UK Government will need to reform its approach to engagement, particularly with regard to the voluntary sector, if stakeholders in the UK are to be on a level playing field with their counterparts engaging in these structures at the European level. **The UK currently lacks institutionalised channels for engagement and information exchange between civic society and the UK Government that is representative across sectors and geographies. These challenges will be compounded if the voluntary sector is less represented on the DAG and CSF than businesses and trade unions.**
- 34 **As a final note we reiterate that we believe the formation of a new UK level body bringing together the different branches of UK civic society that is recognised as an interlocutor by the UK Government would help address some of these challenges.**

⁷ L. Van den Putte, 'Involving Civil Society in Social Clauses and the Decent Work Agenda' (2015) 6(2) GLA p.226.