

Institution: University of Liverpool		
Unit of Assessment: UoA 18 Law		
Title of case study: Informing, Developing, and Delivering the UK's Trade Policy		
Period when the underpinning research was undertaken: September 2012 – September 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Dr Gregory Messenger Dr Mavluda Sattorova	Senior Lecturer in Law Reader in Law	2015-present 2010-present
Period when the claimed impact occurred: September 2018 – December 2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact <p>For the first time in 50 years, the UK has had to develop its own trade policy outside of the EU. As a core part of the government's Global Britain strategy, trade policy has taken centre stage. In quick succession the UK has had to: (i) build trade capability across the civil service; (ii) develop an independent trade policy; (iii) negotiate a large set of new trade agreements; and (iv) deliver its trade programme in the face of a US-China trade war and COVID19.</p> <p>The authors' research on the development and implementation of trade and investment law has directly informed and improved the quality of policy formation and delivery in all of these areas. The authors have delivered in-house expertise at the heart of the UK government on a Research Council-funded scheme, providing analysis and advice to senior officials and ministers in the Foreign, Commonwealth & Development Office (FCDO). The authors have advised and supported officials through designing and delivering comprehensive hands-on training to over 600 civil servants working on trade policy in the FCDO and 31 other government departments and agencies. They have worked hand-in-glove with government officials to deliver key trade policy objectives – including direct involvement in the negotiation and conclusion of 4 trade agreements covering over £2bn in annual trade for the UK.</p>		
2. Underpinning research <p>The authors' research examines the design, development, and implementation of international economic law by political actors. Their underlying research covers three core themes. It examines how trade and investment law: (i) develops as part of a quasi-judicial process embedded within national and international political institutions; (ii) is implemented and operationalised by policy actors 'on the ground'; and (iii) interacts with other key policy areas such as the environment, industrial strategy, energy policy, and human rights.</p> <p>Two key findings of that body of research have been instrumental in shaping the development and delivery of trade policy in government: first, on the effective design and development of trade rules at the international level; second, on the successful implementation and delivery of trade policy at the national level.</p> <p>First, to design effective rules, policymakers must understand how trade and investment rights and obligations are created within politically and culturally embedded institutions [3.1]. By drawing on philosophical and sociological schema, the authors' research has identified where the practice of trade and investment law often runs counter to the expectations of those who draft new rules or create institutions. By analysing how legal processes (such as judicial interpretation) take place in a network of non-legal political and economic activities, the authors explain how the expectations of actors creating new rules in trade and investment are frustrated. This research stresses the need for policymakers to understand the political context of a country's domestic and constitutional space in concert with its overlapping international commitments if they are to design effective trade regimes [3.2]. By capturing the interaction between legal, political, and economic systems, the authors have identified more effective methods for</p>		

designing trade rules and institutions. Their work on sustainability in trade, for example, has shown how different policy areas can be leveraged *across* institutions such as the World Trade Organization (WTO) and free trade agreements (FTAs) to further priorities in negotiations on eliminating subsidies that contribute to illegal, unreported, and unregulated fishing [3.3].

Second, **that successful implementation of international rules on investment and trade need an understanding of the national political and legal context** [3.4]. The authors' research has shown through detailed and innovative empirical investigation interviewing officials across Eastern Europe, Middle East, and Central Asia how 'nationally felt' responses to international rules are central to understanding whether or not they will be implemented in a meaningful way [3.5]. This novel empirical data-set has exposed a range of socio-economic and cultural factors underpinning governments' willingness to either adopt and comply with international rules or violate them. By drawing on the experiences of officials implementing investment policy on the ground, the **authors have shown how gaps in the analysis between the conclusion of a treaty and its actual implementation by governments has consequences for both national policy and the stability of the international investment system**. They have shown how shared cultural regional experiences shape responses to seemingly uniform global rules, for example in Latin America where trade agreements containing almost identical provisions to EU law have been implemented in a distinctive way as a result of different traditions of regional integration [3.6].

As a consequence of these insights, the authors have developed practice-oriented tools to better understand how institutions of investment and trade (at the international and national levels) create and implement rules in **specific areas of substantive policy**. This includes specific insights into services liberalisation [3.1], tariff policy [3.6], subsidies [3.1], energy policy [3.5], sustainable development [3.3], food safety [3.1], compliance challenges, [3.5] and dealing with public backlash in reforming investment policy [3.2, 3.4].

3. References to the research

1. G Messenger, *The Development of World Trade Organization Law: Examining Change in International Law* (Oxford University Press 2016). Monograph [REF 2].
2. M Sattorova, 'Reassertion of Control and Contracting Parties' Domestic Law Responses to Investment Treaty Arbitration: Between Reform, Reticence and Resistance', in A Kulick (ed), *Reassertion of Control over the Investment Treaty Regime* (Cambridge University Press 2016) [Book chapter](https://doi.org/10.1017/9781316779286) in edited collection (<https://doi.org/10.1017/9781316779286>).
3. G Messenger, 'Sustainable Development and the Commodities Challenge: The Eventual "Greening" of the World Trade Organization?' IX *Trade, Law and Development* 2 (2017). Journal article [REF 2].
4. M Sattorova, 'UK Foreign Investment Protection Policy Post Brexit', & G Messenger, 'Membership of the World Trade Organization' in M Dougan (ed) *The UK After Brexit Legal and Policy Challenges* (Intersentia 2017). Book chapters in edited collection (<https://doi.org/10.1017/9781780685953>).
5. M Sattorova, *The Impact of Investment Treaty Law on Host States: Enabling Good Governance?* (Hart 2018). Monograph [REF 2].
6. G Messenger, 'Reappraising the Jurisprudence of MERCOSUR: An Exercise in Regional Innovation or *Malinchismo*?' 5 *Transnational Dispute Management* (2016). [Journal article](#) [Available from the University on request].

4. Details of the impact

With its emphasis on evidence-based and bottom-up formation of trade and investment policy, the authors' research has long supported the work of policymakers. This has included parliamentarians confronting challenges of industrial strategy and UK trade policy [5.1] and international organisations such as the United Nations (UN) and Organisation for Economic Co-operation and Development (OECD) on the adoption and implementation of international rules governing foreign investment [5.2, 5.3].

Their policy-oriented work culminated in their appointment as AHRC-ESRC-Foreign & Commonwealth Office Knowledge Exchange Fellows working on trade and investment policy at the heart of Whitehall. Embedded within a cadre of Research Analysts, the authors have worked with policy teams in the FCDO and other government departments, including diplomats at UK embassies, to inform and stimulate the development of trade and investment policy by providing research-based analysis, challenge, and training. As subject specialists within a predominantly generalist civil service, the authors have been uniquely positioned to foster change through:

- **Improving the quality of government decision-making by increasing government capabilities in trade and investment.**

By using the insights from their research on the importance of developing trade and investment regimes as political-embedded systems, the authors have designed and delivered training to civil servants in 32 government departments and agencies and **‘personally increased HMG’s capability on trade.’** [5.4] Their training has ensured that civil servants and diplomats are (in the words of the Head of the Trade Policy & Negotiations Faculty, FCDO) **‘best prepared to meet the unprecedented challenges and opportunities they currently face in the field of trade policy.’** [5.5] For the period of July-September 2020, of civil servants polled on this trade training, ‘90% stated that, three months after their training, the training enabled them to do their jobs effectively. Meanwhile, 95%... state that they have a good or excellent understanding of the content covered and can apply it without assistance and over 80% either regularly or frequently apply what they have learned in their current role.’ [5.5]

Specifically, working with the Trade Policy & Negotiations Faculty in the FCDO (the provider of trade training across the UK government and for devolved administrations), the authors have designed and delivered workshops to train officials on the nature and practice of trade, personally training **over 550 civil servants in London**, and **more than 60 abroad** in [text removed for publication]. The authors have also designed **online training modules** on technical barriers to trade, trade remedies, and investment policy to support training of officials in the UK and abroad to improve their ability to develop and deliver UK trade policy [5.5].

Tailored training has also been designed and delivered for **over 60 senior officials**, including [text removed for publication] to support their preparation for handling complex trade issues in a fast-paced environment. *Ad hoc* training has been designed and delivered for civil servants on specific issues such as investment liberalisation, investment screening, trade and climate, subsidies, tariff policy, and food safety. This **‘unique and high quality training’** [5.5] for civil servants at all levels has been designed with an understanding of the core political issues at stake, as framed in their underlying research. These officials have subsequently drawn **‘on their training to improve the delivery and development of evidence-based policy in the field of trade.’** [5.5] Officials trained by the authors identified over 70 specific examples of how they have applied their new knowledge to deliver UK government policy more effectively, including: assessing offers made in trade negotiations with [text removed for publication], preparing negotiating mandates with [text removed for publication], identifying market access challenges with [text removed for publication], preparing for talks at the WTO over [text removed for publication], and how best to coordinate with colleagues in different government departments to present a coherent position on food safety in negotiations with [text removed for publication]. In the words of one official: ‘There have been countless examples in my work where I have been able to apply learning from the workshop.’ [5.5]

- **Improving the quality of trade policy creation and development**

By applying the insights from their research on the institutional dimensions of trade and investment law and policy, the authors have supported the work of policy teams working on specific issues such as national security, regulatory barriers to trade, and climate policy. They have done this through producing research papers, feeding back on proposals, testing thinking, and commenting on ‘write rounds’ (interdepartmental agreements that confirm policy positions across government). They contributed to briefings on trade policy for senior civil

servants and ministers on a weekly basis over 2.5 years [5.6, 5.7]. The reach of their work **‘made a real difference’** to trade policy thinking across government, in the FCDO and the UK’s overseas network of embassies and consulates general as well as the Department of International Trade, Cabinet Office, the Department of Business, Energy, & Industrial Strategy, and Number 10 [5.4, 5.6, 5.7].

Embedded in the cross-Whitehall policy development process, the authors have been able to improve the quality of government policy by making substantive contributions as trade and investment specialists on (*inter alia*) services, climate, trade remedies, food safety, sustainability, investment liberalisation, investment screening, tariff liberalisation, and human rights [5.4, 5.6, 5.7]. Their ‘excellent and extremely helpful’ research has, in the words of the Head of the FCDO Trade Diplomacy Department, been **‘instrumental in preparing advice for ministers’** and has been **‘influential at the highest level.’** [5.4, 5.7] Their work filled a clear gap where other officials, including legal advisors, would not otherwise be in a position to respond at pace in a fast-moving political environment [5.6, 5.7].

Their research on the interaction between trade and non-trade issues such as the environment, energy policy, and climate change has been used to test cross-Whitehall policymaking around trade and climate, a Government priority ahead of the UK’s hosting of the UN climate conference COP26 in 2021. This has been identified as just one area where their work has **‘help[ed] drive cross-Whitehall policy development’** and structured ongoing discussions around priorities for UK policy [5.6]. The authors’ work on [text removed for publication] was used by civil servants to better understand the competing political and economic concerns in the formulation of UK trade policy and challenge internal positions **before being presented to ministers and Number 10** [5.4, 5.6].

In their work supporting the design of the UK’s new policy on [text removed for publication], Sattorova has **‘played a central role in helping develop a proposal to amend the UK’s** [text removed for publication]... She “quickly established [officials’] needs and deployed her subject expertise in a way that really benefited [the] policy and negotiation discussions”. [Sattorova] “inputted into [the] evolving policy position ... often interject[ing] at crucial points to provide missing information on trade law or precedent, or suggest[ing] helpful additions to ministerial submissions. Her involvement **“made a real difference to how [policy has been] and continues to [be] shape[d]...”** [5.5].

The authors have ‘enriched FCO thinking on a broad set of issues relating to the development of the UK’s independent trade policy and [...] **supported the design of the most effective strategies for delivering trade policy.** In working closely with policy teams, [have]... been a key resource for officials. [Messenger’s] **extensive knowledge of trade law has had a uniquely significant impact on informing the FCO’s policy process during this unique period.**’ [5.6]

- **Improving the quality of trade policy delivery and implementation**

The authors’ research on how best to implement trade and investment treaty commitments has been used to resolve specific legal and policy challenges facing teams during negotiations. As members of a team covering talks with countries in [text removed for publication], they have provided detailed analysis and developed proposals on liberalisation of services, rules on subsidies, sustainability obligations, customs facilitation, tariff policy, safeguards for national security and investment policy, to improve the quality of policy delivery in negotiations [5.5, 5.7, 5.8]. As key members of the negotiating team, the authors have contributed to each stage of negotiations by analysing proposals, devising responses and counter-proposals, drafting legal treaty text to resolve challenges, preparing negotiators for discussions, engaging with departments across Whitehall to support coordination on complex policy issues, and presenting UK positions at negotiations. This includes being present and participating in negotiations with foreign officials and ministers in London and foreign capitals [5.8]. Their involvement **‘strongly supported [the team’s] ability to advance and ultimately complete agreements’** [5.8] including 4 trade agreements covering over £2bn in annual trade

for the UK: [text removed for publication]. In the words of the Lead Negotiator: '[c]oncluding [text removed for publication] **was a strategic priority for the UK and something in which the PM took a strong personal interest. The work [Messenger] undertook... was crucial to us reaching a deal.**' [5.8]

The authors have also advised other negotiators and civil servants, supporting them in talks with international partners including [text removed for publication]. They helped improve officials' understanding of the issues and the quality of UK responses to proposals. This empowered negotiators and other civil servants to articulate complex legal issues relating to tariffs and market access, regulatory barriers to trade, and investment (among others) with clarity and accuracy [5.4, 5.5, 5.7, 5.8]. For example, one senior civil servant stated '[Sattorova's] analysis of how countries have implemented [text removed for publication] policies at the national level **have had a real impact on negotiating positions**. FCDO legal advisers appreciated the chance to have detailed discussions about her expertise in wider issues of investment treaty law as HMG's position has evolved. In the words of one of the team leads, [Sattorova] has shown real awareness "of how best to use her expertise to make policy making more informed and more cogent" and **her research expertise "made a real difference to shaping our policy positions in FTAs."**' [5.7]

In the wake of the COVID19 pandemic, governments across the world introduced restrictions on trade and investment. The authors were part of a new FCDO unit, advising on policies to support UK interests in business, trade, and public health at a time of global crisis. This entailed close involvement in policy development and challenge in the FCDO and other government departments such as the Department of International Trade and the Treasury, in particular in preparation for international events such as [text removed for publication]. The authors have improved the quality of trade policy delivery abroad, demonstrating global reach through working with the government's overseas network. Engaging with trade policy 'on the ground', the authors worked closely with teams in or covering [text removed for publication] to both resolve market access challenges abroad as well as support them to understand local concerns over UK policy positions [5.4, 5.5, 5.6, 5.7, 5.8].

5. Sources to corroborate the impact

1. '[UK trade options beyond 2019](#)', Report of the House of Commons International Trade Committee (1 March 2017).
2. [OECD Report](#) on Societal Benefits and Costs of International Investment Agreements (2018).
3. European Parliament, INTA Committee, [EU investment protection after the ECJ opinion on Singapore: Questions of competence and coherence](#) (2019).
4. Appraisal Form setting out Messenger's activities in FCDO 2018-19.
5. Collated testimonials from Head of the Trade Policy & Negotiations Faculty, FCDO including information on numbers and feedback from officials that have been trained.
6. Testimonial from Head, Trade Diplomacy Department, FCDO setting out Messenger's involvement in supporting development and delivery of UK trade policy.
7. Testimonial from Head, Trade Diplomacy Department, FCDO setting out Sattorova's involvement in supporting development and delivery of UK trade policy.
8. Collated testimonials from Lead Negotiator for [text removed for publication], FCDO detailing involvement of Messenger in treaty negotiations.
9. ILA Committee on Sustainable Development and the Green Economy in International Trade Law, [Interim Report](#) (2018), & ILA Committee on Sustainable Development and the Green Economy in International Trade Law, [Interim Report](#) (2020).
10. Testimonial from UNCTAD Secretariat and *Note Verbale* regarding Sattorova's role in the development and adoption of [Guiding Principles for Investment Policymaking](#).