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## BMA submission to the Public Bill Committee on the Trade Bill

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### About the BMA

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The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

### Background

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For over 45 years, the UK's international trade policy has been determined through its relationship with the EU. During this period, the UK has benefited from frictionless trade within the EU's single market and been protected by strong shared policies on trade with countries outside the EU and EEA. The EU agreements, which the UK has traded under, protect the NHS, safeguard the UK's right to regulate to protect public health and ensure high health and safety standards on imported products.

The Trade Bill sets out the key measures required for the Government to implement international trade agreements at the end of the transition period. We have serious concerns that in the rush to secure continuity of trade post-Brexit, as well as rapidly agree new trade deals to ease the economic burden not only of Brexit but also of COVID-19, the UK will come under significant pressure from its non-EU trading partners to liberalise aspects of its trade policy in ways that could negatively impact the healthcare sector and public health.

Parliamentary and public scrutiny would act as a critical safeguard against the potential negative impacts of trade agreements on health and the healthcare sector. Parliament currently does not have adequate powers to guide and scrutinise trade negotiations and there are no legal mechanisms to directly influence or permanently block trade agreements. **We believe additional scrutiny mechanisms are vital to protect the NHS and public health as the UK begins to negotiate independent free trade agreements in earnest.**

### Executive summary

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- The Trade Bill provides a legal framework, separate from the terms of the future relationship with the EU that are currently being negotiated, for the UK to trade independently when the Brexit transition period comes to an end.
- The EU agreements which the UK currently trades under provide vital protection to the NHS, safeguard the UK's right to regulate in the interest of public health and ensure high health and safety standards on imported products.

- To ensure that future Governments can reform the NHS and the interface with social care towards a more collaborative model, it is vital that the Bill excludes the health and social care sectors from the scope of any trade deal.
- The Bill must rule out Investor Protection and Dispute Resolution mechanisms which undermine the supremacy of UK courts and risk deterring, delaying or blocking public health improvement measures.
- Protections should be included in the Bill to ensure NHS price control mechanisms are maintained so that patients have access to essential and lifechanging medicine.
- The Bill presents an opportunity for the UK to present itself as a global leader on standards on food imports for the benefit of human, animal and plant health, and the environment. To fulfil this opportunity, it is vital that our current high standards are upheld and protected in any trade deals.
- The BMA are concerned that the Bill does not afford sufficient powers to guard against potential negative impacts on health and health services through scrutiny of trade negotiations. Without amendment the Trade Bill will not grant parliament the necessary powers to guide trade negotiations and have a meaningful role in approving the final agreements.
- There must also be a meaningful role for the devolved administrations where deals affect devolved matters, including the provision of health services, food standards and animal welfare.

### Adequate scrutiny of trade agreements

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Many areas within the scope of trade agreements, such as the procurement and provision of public services, investor protection, intellectual property rights, labour rights, food and agricultural standards and environmental protections impact on public health and the healthcare sector. The binding nature of trade agreements, therefore, determines policy on a range of issues that significantly influence health equity and the wider social determinants of health with far reaching implications for people both within the UK and globally. The World Medical Association recognises that trade agreements have the potential to enhance health if controls are put in place to ensure that economic gain is not given priority over health.<sup>1</sup>

**We are concerned that at present, Parliament does not have adequate powers to guide and scrutinise trade negotiations and the current process provides no legal mechanism to directly influence or permanently block trade agreements. This could mean the UK enters into trade deals that have significant impact on public health and the domestic healthcare sector without Parliament having a meaningful role in scrutiny.**

The Government has acknowledged that ‘substantive changes’ will be necessary to transition existing EU trade agreements to UK agreements.<sup>2</sup> The BMA is aware that some countries have already sought to use this rollover of agreements as an opportunity to seek more favourable conditions for their own exports, such as lowering regulatory barriers on product safety standards.<sup>3</sup> For example, agricultural lobby groups in both the US and Australia have pushed for the sale of hormone-treated beef to be available in the UK.<sup>4,5</sup>

Although the Government has promised to protect the UK from lower food standards in new trade deals, Ministers have recently failed to commit to ensuring current bans on imports of food that do

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<sup>1</sup> World Medical Association (April 2015), [WMA council resolution on trade agreements](#)

<sup>2</sup> House of Commons (March 2018), [Continuing application of EU trade agreements after Brexit](#)

<sup>3</sup> Politico (Feb 2018), [EU trade partners demand concessions for Brexit transition rollover](#)

<sup>4</sup> The Times (April 2018), [Australia to demand Britain accepts hormone-treated beef](#)

<sup>5</sup> BBC News (Jan 2019), [US firms seek changes to UK standards on beef and drugs](#)

not meet our standards are upheld. The Agricultural Bill, which passed Second Reading in the Lords on 11 June, contains no measures to prevent trade agreements that could allow lower-quality food into the UK. The latest dual tariff proposal recently adopted at ministerial level would see foods currently banned in the EU for health and animal welfare reasons allowed into the UK but charged a higher tariff to protect UK farmers from being undercut by cheap foreign imports.<sup>6</sup> This approach prioritises economic considerations at the cost of health. For example, one of the products which would be allowed into the UK under this proposal, chlorine treated chicken, is linked to substantially higher rates of salmonella infection in humans in countries such as the US,<sup>7</sup> Australia<sup>8</sup> and New Zealand<sup>9</sup> than in the UK,<sup>10</sup> leading to increased healthcare costs as well as deaths.

Current and planned future process for making new trade agreements under the Constitutional Reform and Governance Act (CRaG) does not give the UK Parliament adequate powers to guide and scrutinise trade negotiations.<sup>11</sup> Under the CRaG process, each agreement will be laid before Parliament with an Explanatory Memorandum alongside an additional Parliamentary report which details any significant differences from the original EU agreement. Although parliament has 21 days to consider the agreement and delay its ratification, there is no vote on the treaty itself and it is too late for parliament to influence the outcome. This is hugely problematic for trade agreements which, as previously stated, have a far-reaching scope into areas that impact on health and public health. The CRaG process will also apply to important new FTAs agreed with countries including the US, Japan and Australia. These agreements carry an even higher risk of unintended consequences than rolled over EU agreements.

The UK's proposed procedures for agreeing new trade deals go against the recommendations of the International Trade Committee<sup>12</sup>, the Joint Committee on Human Rights<sup>13</sup>, the Constitution Committee<sup>14</sup> and the Lords EU Committee<sup>15</sup> regarding transparency and the role of Parliament and civil society to guard against potential negative impacts of trade deals.

Parliamentary scrutiny is a critical safeguard against the potential negative impacts of trade agreements on health and the healthcare sector. It is vital that Parliament is equipped with the necessary powers, on par with legislators in the EU and United States, to guide and scrutinise trade negotiations, including:

- setting a clear negotiating mandate in advance of trade discussions
- access to full negotiating texts
- a guaranteed right to approve or reject the final text of agreements
- a guaranteed role for the devolved administrations

## Protecting the NHS

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<sup>6</sup> The Telegraph (June 2020) [Britain ready to allow import of chlorinated chicken from US](#)

<sup>7</sup> US Centers for Disease Control and Prevention (March 2018) [Salmonella](#)

<sup>8</sup> Australian Government Department of Health (2018) [National notifiable diseases system](#)

<sup>9</sup> Public Health Surveillance (2017) [Human Salmonella isolates 2016](#)

<sup>10</sup> Public Health England (May 2018), [Salmonella data 2007 to 2016](#)

<sup>11</sup> Department for International Trade (Feb 2019), [Process for making free trade agreements after the United Kingdom has left the European Union](#)

<sup>12</sup> International Trade Committee (Dec 2018) [UK trade policy transparency and scrutiny: sixth report of session 2017-19](#)

<sup>13</sup> Joint Committee on Human Rights (March 2019) Human rights protections in international agreements: seventeenth report of Session 2017-19 [Human rights protections in international agreements: seventeenth report of session 2017-19](#)

<sup>14</sup> Constitution Committee (April 2019) [Parliamentary scrutiny of treaties inquiry](#)

<sup>15</sup> Lords EU Committee (June 2019) [Scrutiny of international trade agreements: lessons learned](#)

The Government has repeatedly promised that the NHS will be “off the table” when it comes to trade negotiations. However, it is essential that this applies to all aspects of health and social care that could impact the NHS.

The Bill must protect the health and social care sectors by safeguarding future options for rolling back any privatisation of the NHS and restructuring health and social care towards a more collaborative model. Trade agreements must not be permitted to lock in current or higher levels of privatisation within the NHS in England, or lead to privatisation in the devolved nations.

Trade agreements are extremely complex and securing effective protections for public services can be challenging. The UK’s situation is further complicated by competition and privatisation in parts of the NHS, meaning that typical exemptions for public services would not apply to the whole NHS. To fully protect the NHS from liberalisation, the Bill must ensure that the health and social care sectors are excluded from the scope of all future trade agreements, including services and investment chapters. It is important to note that this will not stop trade in services in these sectors, as the UK’s GATS (WTO agreement on trade in services) obligations already grant foreign healthcare providers with a commercial presence in the UK full access to compete for UK health services which are open to competition. However, it will ensure that such rights are not locked in via common elements within free trade agreements, such as ‘standstill’ and ‘ratchet’ clauses, which would prevent the UK from restricting market access to foreign companies by rolling back competition in the future.<sup>16</sup> For example, such clauses are included in the recent Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU<sup>17</sup>.

The Bill must also include protections ensuring that NHS price control mechanisms are maintained, so that patients continue to have access to essential and lifechanging medicine. Any weakening of current cost containment mechanisms would increase overall NHS spend on pharmaceuticals, necessitating either increased funding or restricting the medicines the NHS can afford.

It is vital that Investor Protection and Dispute Resolution mechanisms are also be ruled out from all future trade agreements, to ensure that private foreign companies cannot sue the UK Government for legitimate public procurement and regulatory decisions. For example, if a future government wants to change the structure of the NHS it should not be prevented from doing so by trade deals. It is worth noting that an EU investment treaty recently resulted in the Slovakian Government being [ordered to pay €22.1 million](#) in damages to a Dutch private health insurance firm after it decided to reverse liberalisation of its national sickness insurance market. Investor protection mechanisms have also been extensively used to challenge public health initiatives like tobacco plain packaging.<sup>18</sup> The Bill should reinforce the supremacy of UK courts, reducing the risk that investor protection claims deter, delay or block public health improvement measures.

These protections are essential to ensuring the NHS is safeguarded from future liberalisation through trade agreements, as well as giving future governments options for rolling back privatisation of the NHS and restructuring health and social care towards a more collaborative model.

**For further information, please contact:**

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<sup>16</sup> European Commission (April 2016) [Services and investment in EU trade deals: using ‘positive’ and ‘negative’ lists](#)

<sup>17</sup> European Federation of Public Service Unions (April 2016) CETA and TTIP: Potential impacts on health and social services [https://www.epsu.org/sites/default/files/article/files/Health-social-Services%20in%20CETA-TTIP%20Executive%20summary\\_2016.04\\_EN.pdf](https://www.epsu.org/sites/default/files/article/files/Health-social-Services%20in%20CETA-TTIP%20Executive%20summary_2016.04_EN.pdf)

<sup>18</sup> Labonté, R., Schram, A., & Ruckert, A. (June 2016) [The Trans-Pacific Partnership Agreement and health: few gains, some losses, many risks](#)

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