

Trade Bill

Second Reading, House of Commons 20 May 2020

About the BMA

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.

Key points:

- 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 the NHS can be publicly funded, publicly provided and publicly accountable and guard against liberalisation, 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.
- 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.

Background

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 UK Government to implement international trade agreements at the end of the transition period. We have serious concerns that in the clamour 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. **As the Trade Bill is currently the only legislative vehicle for Parliament's oversight of trade negotiations, 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.**

Adequate scrutiny of trade agreements

Part 1 of the Bill sets out regulations relating to the Implementation of International Trade Agreements.

Clause 1: Implementation of the Agreement on Government Procurement enables the UK and devolved authorities to make changes to domestic law which will be necessary for the UK to meet obligations arising from its independent membership of the GPA at the end of the transition period. This implementation power uses the negative resolution procedure.

Clause 2: Implementation of international trade agreements gives the Government and devolved authorities the power to implement UK trade agreements with partner countries with which the EU has existing trade agreements as at 31 January 2020. This power will allow the Government and devolved authorities to use the affirmative resolution procedure to implement changes to domestic law which will be necessary for the UK to meet obligations flowing from these agreements.

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.

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.¹

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

The government has acknowledged that ‘substantive changes’ will be necessary to transition existing EU trade agreements to UK agreements.² 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.³ 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.⁴⁵

Moreover, the command paper published by the previous Government signalled that no legislation would be brought forward setting out the process for negotiating and scrutinising new trade agreements, which carry a higher risk of unintended consequences than rolled over EU agreements.⁶

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.

Protecting the NHS

It is vital that the Bill protects the health and social care sectors by safeguarding future options for rolling back 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.

To do this, 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 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 must 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. The Bill should reinforce the supremacy of UK courts, reducing the risk that investor protection claims deter, delay or block public health improvement measures.

For further information, please contact:

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

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

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

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

⁶ Dept for International Trade (Feb 2019), [Process for making free trade agreements after the United Kingdom has left the European Union](#)