

Trade Bill

Committee Stage, House of Lords

29 September 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 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, prevent roll-back of privatisation and risk deterring, delaying or blocking public health improvement measures.
- Protections should be included in the Bill to ensure NHS price control mechanisms and the UK's current intellectual property regime 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.

Amendments to the Bill

The BMA encourages peers to vote in support of all amendments that address our key priorities including:

- **Amendment 35: New Clause “Parliamentary approval of trade agreements”** tabled by Lord Purvis of Tweed and Lord Fox, and Amendment 57 of the same name tabled by Lord Stevenson

and Baroness Finlay, which would ensure parliamentary approval is required of negotiating objectives and FTAs before the UK becomes a signatory to any agreement.

- **Amendment 51: New Clause “International trade agreements: health or care services”** tabled by Baroness Thornton, Lord Patel and Lord Fox that would protect the NHS and publicly funded health and care services in other parts of the UK from any form of control from outside the UK.
- **Amendment 56: New Clause “Import of agricultural goods after IP completion day”** tabled by Lord Grantchester, Baroness Jones of Moulsecoomb and Lord Rooker that would set a requirement for imported agricultural goods to meet animal health and welfare, environmental, plant health, food safety and other standards which are at least as high as those which apply to UK produced agricultural goods.

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.

Adequate scrutiny of trade 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. This could mean the UK enters into trade deals that have a significant impact on public health and the domestic healthcare sector without Parliament having a meaningful role in scrutiny. 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.

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

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.⁴ ⁵ The US trade representative, Robert Lighthizer, has made statements before congress calling UK food and agricultural

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

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](#)

standards “thinly veiled protectionism” and lobbied for the removal of such “barriers” in favour of a “science-based approach”.

The 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.⁶ 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 healthcare 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 Committee⁷, the Joint Committee on Human Rights⁸, the Constitution Committee⁹ and the Lords EU Committee¹⁰ 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 US, to guide and scrutinise trade negotiations.

Protecting the NHS

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.

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.

The Bill must rule out Investor Protection and Dispute Resolution mechanisms in UK trade deals to ensure that private foreign companies cannot sue the UK Government for legitimate public procurement and regulatory decisions. If a future government wants to change the structure of the NHS it must 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 foreign private health insurance firm after it decided to reverse privatisation of its national sickness insurance market.¹¹ Investor protection mechanisms have also been extensively used to challenge public health initiatives like tobacco plain packaging.¹²

It must also include protections ensuring that NHS price control mechanisms and the UK’s current intellectual property regime are maintained, so that patients continue to have access to essential and lifechanging medicine.

Food standards

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

⁷ International Trade Committee (Dec 2018) [UK trade policy transparency and scrutiny: sixth report of session 2017-19](#)

⁸ 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](#)

⁹ Constitution Committee (April 2019) [Parliamentary scrutiny of treaties inquiry](#)

¹⁰ Lords EU Committee (June 2019) [Scrutiny of international trade agreements: lessons learned](#)

¹¹ Court of Justice of the European Union, [Press Release 6 March 2018](#)

¹² Labonté, R., Schram, A., & Ruckert, A. (June 2016) [The Trans-Pacific Partnership Agreement and health: few gains, some losses, many risks](#)

As previously highlighted, the BMA is aware of countries pushing for approaches that would allow access to exports currently banned in the UK for precautionary health reasons, including fruit and vegetables with higher levels of pesticide residues,¹³ hormone-treated beef and chicken treated with chlorine and other antimicrobial washes.^{14 15}

The Government has promised to protect the UK from lower food standards in new trade deals and Ministers have argued that the sale of foods such as chlorinated chicken is already banned under the EU Withdrawal Agreement.¹⁶ However, such bans could be easily changed through secondary legislation and are also open to challenge under WTO (World Trade Organization) rules. This could allow entry of products such as chlorine-treated chicken, which is linked to substantially higher rates of salmonella infection in humans in countries such as the US,¹⁷ Australia¹⁸ and New Zealand¹⁹ than in the UK.²⁰

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¹³ PAN UK, Sustain and Dr Emily Lydgate (June 2020), [Toxic trade: How trade deals threaten to weaken UK pesticide standards](#)

¹⁴ BBC News (Jan 2019), [US firms seek changes to UK standards on beef and drugs](#)

¹⁵ BBC (June 2020) [US says a UK trade deal 'unlikely' before November](#)

¹⁶ International Trade Committee, Oral evidence session, Wednesday 24 June 2020

¹⁷ US Centers for Disease Control and Prevention (March 2018) [Salmonella](#)

¹⁸ Australian Government Department of Health (2018) [National notifiable diseases system](#)

¹⁹ Public Health Surveillance (2017) [Human Salmonella isolates 2016](#)

²⁰ Public Health England (May 2018), [Salmonella data 2007 to 2016](#)