

Trade Bill

Consideration of amendments

2 February 2021

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:

- With the transition period now over, and the establishment of a UK independent trading policy, the Trade 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 is 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.
- 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.
- 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 BMA has consistently called for the Bill to 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.

Amendments to the Bill

The BMA urges peers to vote in favour of amendments to the Bill that would deliver on our priorities, including:

- **Baroness Thornton's motion to insist on Lords Amendment 4 "International trade agreements: health, care or publicly funded data processing services and IT systems in connection with the provision of health and care".** We are clear that the only way to fully protect the NHS from any unintended consequences through trade deals is to exclude the health and social care sectors from the scope of any trade deal.
- **Lord Lansley's amendment 'Parliamentary approval of international trade agreements and treaties' tabled in lieu of previous Lords amendments 1 and 5.** This would give Parliament a guaranteed say on all new deals, by providing for the following:
 - Before negotiations: a debate and vote for MPs on the government's negotiating objectives

- Consultation with devolved authorities on objectives
- A requirement for the government to publish the impact of a new deal on implementing legislation
- After negotiations: a vote in the House of Commons on a final deal, prior to ratification
- The power for relevant committees to recommend new deals for debate in either House and extend the scrutiny period to allow for this

Background

For nearly 50 years, the UK's international trade policy has been determined through its relationship with the EU. EU agreements, which the UK previously traded under, protected the NHS, safeguarded the UK's right to regulate to protect public health and ensure high health and safety standards on imported products.

With the transition period over and the UK having established an independent trading policy, the Trade Bill puts in place provisions to give effect to this, including the videos for the 'rolling over' of some 40 trade agreements to which the UK was party through EU membership.

Protecting the NHS

The Government has repeatedly promised that the NHS will be "off the table" when it comes to trade negotiations. **However, to ensure this is the case and that future Governments are able to reform the NHS and the interface with social care towards a more collaborative model, 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.**

Existing competition and privatisation in parts of the NHS mean that typical exemptions for public services would not apply to the whole NHS. Unless the health and social care sectors are specifically 'carved out' from the scope of deals, common elements within free trade agreements, such as 'standstill' and 'ratchet' clauses, could lock in and deepen fragmentation of services. This could block development of new models of care that can help improve the health of the country. Another unintended effect could be to prevent NHS Hospitals from bringing support services which have been contracted out, such as cleaning staff, back in-house. This has been shown to improve infection control,¹ and hospitals need the freedom to take such measure where appropriate. To effectively protect the NHS, an exemption needs to cover the whole of the health and social care sectors.

This must include ruling 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.² Investor protection mechanisms have also been extensively used to challenge public health initiatives like tobacco plain packaging.³

The BMA therefore believes Lords Amendment 4 is a necessary safeguard to ensure that the NHS is fully protected from any unintended consequences that may result in current levels of privatisation being locked in or deepened.

Adequate scrutiny of trade agreements

¹ University of Oxford (December 2016), NHS hospitals that outsource cleaning 'linked with higher rates of MRSA'

² Court of Justice of the European Union, [Press Release 6 March 2018](#)

³ Labonté, R., Schram, A., & Ruckert, A. (June 2016) [The Trans-Pacific Partnership Agreement and health: few gains, some losses, many risks](#)

The BMA is 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.

The BMA does not believe the current and planned future process for making new trade agreements under the Constitutional Reform and Governance Act (CRaG) gives the UK Parliament adequate powers to guide and scrutinise trade negotiations.⁴ ⁵ Although parliament has 21 days to consider the agreement and delay its ratification, there is no vote on the treaty itself, and Parliament has no ability to directly influence or permanently block a deal that could be harmful to the nation's health. We also have concerns about the limited role of the devolved administrations given that future trade agreements are likely to affect devolved matters, including provision of healthcare services, animal welfare and environmental policies.

The proposed process for agreeing new trade deals under CRaG falls short of the democratic process used by comparable democracies, notably the US and EU, but also Australia and Canada where territorial administrations play a more significant role. We are concerned this may place the UK at a disadvantage when negotiating with other trading blocs where representatives do have this power. We further note that the proposed procedures go against the recommendations of the International Trade Committee⁶, the Joint Committee on Human Rights⁷, the Constitution Committee⁸ and the Lords EU Committee⁹ regarding transparency and the role of Parliament and civil society to guard against potential negative impacts of trade deals.

The BMA urges peers to vote in favour of Lord Lansley's amendment that would guarantee Parliament a debate and vote on any new trade deal.

Food standards

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,¹⁰ hormone-treated beef and chicken treated with chlorine and other antimicrobial washes.¹¹ ¹²

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.¹³ However, such bans could be changed through secondary legislation and are also open to challenge under WTO (World Trade Organization) rules. This could allow entry of products such as

⁴ Department for International Trade (Feb 2019), Process for making free trade agreements after the United Kingdom has left the European Union

⁵ CAN YOU INSERT A REF TO TRUSS STATEMENT <https://hansard.parliament.uk/commons/2020-10-12/debates/20101231000012/UK-JapanComprehensiveEconomicPartnershipAgreementTransparencyAndScrutiny>

⁶ International Trade Committee (Dec 2018) UK trade policy transparency and scrutiny: sixth report of session 2017-19

⁷ 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)

⁸ Constitution Committee (April 2019) Parliamentary scrutiny of treaties inquiry

⁹ Lords EU Committee (June 2019) Scrutiny of international trade agreements: lessons learned

¹⁰ PAN UK, Sustain and Dr Emily Lydgate (June 2020), [Toxic trade: How trade deals threaten to weaken UK pesticide standards](#)

¹¹ BBC News (Jan 2019), [US firms seek changes to UK standards on beef and drugs](#)

¹² BBC (June 2020) [US says a UK trade deal 'unlikely' before November](#)

¹³ International Trade Committee, Oral evidence session, Wednesday 24 June 2020

chlorine-treated chicken, which is linked to substantially higher rates of salmonella infection in humans in countries such as the US,¹⁴ Australia¹⁵ and New Zealand¹⁶ than in the UK.¹⁷

It is a welcome step for the Government to introduce a Trade and Agriculture Commission, put it on a statutory footing and ask it to lay written reports before parliament. However, we are concerned that it currently has no public health representative. Filling this gap would be a welcome signal from Government that intends to protect the public health in trade.

¹⁴ US Centers for Disease Control and Prevention (March 2018) [Salmonella](#)

¹⁵ Australian Government Department of Health (2018) [National notifiable diseases system](#)

¹⁶ Public Health Surveillance (2017) [Human Salmonella isolates 2016](#)

¹⁷ Public Health England (May 2018), [Salmonella data 2007 to 2016](#)