

# UK Trade Negotiations Inquiry

## Evidence from the Trade Justice Movement

### International Trade Committee



June 2020

1. The Trade Justice Movement (TJM) is a UK-wide network of sixty civil society organisations calling for trade rules that work for people and planet. Our members include trade unions, NGOs, consumer groups and faith organisations.
2. This document makes up part of TJM's written evidence to the International Trade Committee's Inquiry on UK trade negotiations, with a focus on the UK-US trade agreement. TJM will send in further evidence on different subjects or trade agreements as the inquiry continues.

### UK-US Trade Agreement

3. The UK and US administrations have begun negotiations towards a Free Trade Agreement. The expressed intention on both sides is for the deal to be comprehensive, ambitious and agreed quickly. However, there are already a number of sticking points about what should be covered in the deal, as well as political obstacles (most notably the US Presidential Election) which will slow down any progress.
4. TJM has a number of concerns about a US-UK trade deal. These concerns are about: (i) the level of democratic oversight and transparency involved in the deal; (ii) the impact on UK environment and food standards; (iii) the risk posed to public services, particularly the NHS; (iv) the impact on labour rights; (v) the impact of digital services provisions; (vi) the impact on international development; and (vii) the inclusion of Investor-State Dispute Settlement (ISDS) clauses.

#### (i) Democratic scrutiny

5. TJM firmly believes that the UK needs a new framework for parliamentary scrutiny of international trade agreements. While the International Trade Committee's inquiry is welcome, select committee scrutiny must be supplemented by debates on the floor of the House, public engagement, and a method by which MPs can hold the government to account.
6. A UK-US trade agreement has the capacity to impact on a wide range of policy areas, including food standards, environmental regulation, workers' rights, public services and public health, among other things. It is therefore essential that Parliament has a say in the content and approval of this trade agreement.
7. Parliament must be empowered to properly scrutinise new trade deals, through: (1) full debates and votes on the government's negotiation objectives; (2) transparency and access to texts during negotiations; and (3) a debate and vote in Parliament after deals are signed. In addition to this, the government should produce an independent impact assessment for each trade deal which looks at social and environmental factors, and includes consultation with civil society organisations.
8. The UK government's objectives for a UK-US FTA were published at short notice before negotiations began. This gave parliamentarians, businesses and civil society organisations very little opportunity to scrutinise the negotiation objectives or comment on them. There was no public consultation on the objectives after they were published, and very little opportunity for

engagement with the Department for International Trade. Their 'Expert Trade Advisory Groups', for instance, of which TJM is a member, meet infrequently and provide limited opportunity for critical engagement with the negotiation objectives.

## **(ii) The environment, food and animal welfare**

9. The US administration has made clear that one of their main priorities for the UK-US FTA is agri-food trade. This could lead to (a) the importation of food which is produced using methods and practices which are illegal in the UK, such as chlorine-washing chicken, hormone-treated meat, the use of certain pesticides, the excessive use of antibiotics and a host of animal welfare concerns;<sup>1</sup> and (b) downwards-pressure on food and farming standards in the UK, which is currently a world-leader in animal welfare and sustainable farming.
10. The UK government appears to have moved towards the US's demands on food standards already. Early in June, the government revealed that it would not ban the importation of chlorine-washed chicken or hormone-fed meat, but would instead impose a dual tariff regime which would make these products less competitive and indirectly support UK producers.<sup>2</sup> The concern with this move is that it is very easy for the government to reduce tariffs in the future, and it is almost certain that the US will make this a key demand in negotiations.
11. Evidence from the consumer group Which?<sup>3</sup> shows that there is a preference among consumers for regulations, rather than tariffs, to be used to maintain high standards. Similarly, evidence from the IPPR<sup>4</sup> shows that 82% of the British public would prefer to have no US trade deal at all than one which lowers food standards.
12. Another area of concern is climate change. In leaked documents which detailed conversations between UK and US negotiators, US negotiators demanded that the FTA makes no reference to climate change. This is consistent with the Trump administration's attitude towards climate issues, as shown by the US's failure to sign the Paris Climate Change Agreement. Since the UK has committed to net-zero carbon emissions by 2050 and hopes to host the delayed COP conference next year, it is difficult to see how the US's demands square with the UK's desire to be a leader in the global response to climate change.
13. More generally, there is an increasing tendency for trade agreements to be 'living agreements', where there is ongoing dialogue between regulators in both countries. One problem with this is that it encourages governments to harmonise and lower regulations with limited public scrutiny. Regulatory cooperation between the UK and US could put downwards pressure on a range of environmental, food and animal welfare standards.
14. Investor-State Dispute Settlement (ISDS, explored further below) is also a threat to environmental protection. The majority of ISDS cases are used to challenge environmental measures.
15. A UK-US trade deal puts the UK's high standards at risk. The government must draw clear red lines on food import standards and ensure non-regression in environment, food and animal welfare regulation. Ideally, this would be protected in primary legislation, and through some 'level playing field' type provisions in the UK-EU deal, to ensure dynamic alignment with European

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<sup>1</sup> Agriculture Bill, [Written Evidence Submitted by Compassion in World Farming](#), February 2020

<sup>2</sup> Telegraph, ['Britain ready to allow import of chlorinated chicken from US'](#), 3 June 2020

<sup>3</sup> Food Navigator, ['US trade deals risk sending food standards to pre-mad cow disease levels. Britons warned'](#), 15 June 2020 (quote from Which?)

<sup>4</sup> IPPR, ['Public willing to sacrifice US trade deal to protect food safety'](#), April 2018

partners. The EU's precaution-based approach to environment, food and health regulations is preferable to the US's more market-focused approach. There should be no regulatory cooperation in a US-UK trade agreement.

### (iii) Public services and procurement

16. A UK-US trade deal could lead to the liberalisation of services, including public services. This is in line with the both parties' longstanding commitment to liberalisation of services through FTAs, but is a particular risk with the US, due to the US's expressed aim of changing the NHS's drugs purchasing model. Trade agreements can lock in privatisation through 'standstill' and 'ratchet' clauses, which make it difficult for future governments to nationalise or regulate public services.<sup>5</sup>
17. A particular concern is how public services could liberalise the NHS. Standstill and ratchet clauses could mean that if parts of the NHS were privatised while a UK-US trade agreement were in force, a ratchet clause could make it difficult for a future government to reverse that privatisation without facing a challenge from the US in international trade law. Although the government claims that the NHS is "off the table",<sup>6</sup> they have not protected the NHS from trade agreements in law, and there is evidence that they discussed health services with US negotiators in documents leaked during the 2019 election.<sup>7</sup>
18. The US has also expressed a desire to change the NHS's medicines purchasing model. The NHS uses a centralised system to purchase medicines which means it can benefit from a monopsony effect and ensure prices are kept low. This means the prices of individual drugs are often far lower in the UK than in the US. Evidence shows that, after rebates, the US had average drug prices 3.6 times higher than the UK.<sup>8</sup> The US could change this through specific market access provisions or other clauses aimed at the pharmaceuticals industry. This has the potential to greatly increase the cost of medicines, making some vital treatments unaffordable for the NHS. The removal or raise of the NHS drugs price cap would be bad for the NHS, patients and the taxpayer. Since this is a key objective for the US administration in UK-US trade talks, TJM is very concerned about the impact of this deal on medicines prices.
19. Access to US public procurement markets is likely to be a high priority for the UK,<sup>9</sup> for two reasons: (1) the US has a large procurement market (valued at around US\$1.7 trillion) covering both national and state level.<sup>10</sup> (2) The US's "Buy America" provisions require states to give a price advantage to local suppliers – because the market is relatively closed to most countries, concessions could give UK companies a lucrative advantage. However, it seems unlikely that the UK will get what it wants. At £284 billion (approximately US\$350 billion) the UK procurement market is only a fraction of that of the US.<sup>11</sup> UK procurement markets are also already significantly more open than US markets, which means that US companies often do not need a trade deal to tender for UK contracts.
20. The UK should exclude government procurement from the US trade agreement. There seems to be a mismatch between the government's domestic policy, which seeks to use procurement to 'level up' various parts of the economy, and its trade policy, which includes

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<sup>5</sup> Trade Justice Movement, '[Protecting the NHS in UK Trade Policy](#)', May 2020

<sup>6</sup> Telegraph, '[NHS 'off the table' in US trade talks, says Government](#)', 2 March 2020

<sup>7</sup> See full leaked documents hosted on [Global Justice Now's website](#)

<sup>8</sup> European Pharmaceutical Review, '[Report shows US brand-name drug prices 'highest in the world'](#)', May 2019

<sup>9</sup> Lords European Union Committee, '[The Transatlantic Trade and Investment Partnership](#)', 2014

<sup>10</sup> US Government Accountability Office, '[International Trade: The United States and the European Union Are the Two Largest Markets Covered by Key Procurement-Related Agreements](#)', 2015

<sup>11</sup> Institute for Government, '[Government Procurement: The scale and nature of contracting in the UK](#)', 2018

restrictions on the extent to which governments can use procurement to support their objectives.

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#### **(iv) Labour rights**

21. A US-UK trade deal could impact on labour rights in several ways. Despite the reference to International Labour Organization (ILO) conventions in its mandate for negotiations with the UK, the US has one of the lowest levels of ratification of ILO standards in the world: it has ratified only 14 of the 189 Conventions and only two of the eight core Conventions that would most likely form the basis of a labour chapter.<sup>13</sup>

22. Not only has the US not ratified important ILO Conventions, it has also been criticised for failing to uphold equivalent standards. Work by the ILO Freedom of Association Committee has shown that it falls far short of ILO standards on freedom of association and collective bargaining. Specifically, it has found that the US has denied the right to freedom of association to public sector workers;<sup>14</sup> denied trade union officials access to workplaces while trying to organise workers for collective bargaining purposes;<sup>15</sup> and denied workers the right to strike by allowing lawful strikers to be permanently replaced.<sup>16</sup>

23. Regulatory cooperation between the UK and the US could put a downwards pressure on UK labour standards to be aligned with lower levels of regulation in the US. Labour chapters in trade agreements can only go so far in mitigating this risk - they are often very difficult to enforce. A better protection for labour rights would be to ensure a level playing field with the EU as part of the UK-EU future relationship; the EU's existing proposals on this include labour provisions.

24. As with environmental policy, investment protection provisions can impact on labour regulation. The number of known cases challenging labour regulation under ISDS is limited, however, it is clear that challenges are possible. For example, when Egypt raised its minimum wage, which had previously been kept unsustainably low by the Mubarak regime, it was sued by Veolia. Although the government won on this occasion, the case took six years and whilst the cost to the government hasn't been made public, it is likely to have been in the region of US\$8 million.<sup>17</sup>

25. In order to send a clear signal about the direction of travel of UK labour law, the UK should accept the EU's Level Playing Field proposal and align with EU regulations as its baseline. This is essential for ensuring that labour rights are insulated from any pressure within a US deal.<sup>18</sup>

#### **(v) Digital services**

26. TJM has a number of concerns about digital trade provisions in the UK-US trade deal. This is a relatively new and unexplored area of trade policy, and merits careful parliamentary and public

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<sup>12</sup> Trade Justice Movement, '[A US-UK trade deal: issues from a civil society perspective](#)', June 2020; see section on 'Government Procurement'

<sup>13</sup> Weissbrodt, D. (2014) '[Compliance of the United States with International Labor Law](#)', *98 Minnesota Law Review*

<sup>14</sup> International Labour Organisation (1993) 'Committee on Freedom of Association', Report No 291, Case No 1557 (United States), International Labour Organisation: Geneva

<sup>15</sup> International Labour Organisation (1992) 'Committee on Freedom of Association', Report No 284, Case No 1523 (United States), International Labour Organisation: Geneva

<sup>16</sup> International Labour Organisation (1991) 'Committee on Freedom of Association', Report No 278, Case No 1543 (United States), International Labour Organisation: Geneva

<sup>17</sup> [Veolia Proprete v. Arab Republic of Egypt](#), ICSID case no ARB/12/15; UNCTAD (November 2017) '[Improving Investment Dispute Settlement: UNCTAD policy tools](#)', *IIA Issues Note: Issue 4*.

<sup>18</sup> Trade Justice Movement, '[A US-UK trade deal: issues from a civil society perspective](#)', June 2020; see section on 'Labour Rights'

scrutiny. One concern is around data and privacy. Leaked negotiating documents show that the US has raised concerns about the UK's data protection policy, currently the EU's GDPR, which suggests that the US could be aiming to weaken these privacy controls.

27. A separate concern is around the government's ability to regulate technology firms and control data flows. A trade agreement might aim to restrict the government's ability to control data flows. Since data held by public bodies is often highly valuable, rules mandating free flow of data could therefore lead to a huge loss of value to UK public services. Similarly, there is evidence that the US hopes to ban obligations to reveal the source code and algorithms within products. This could make it harder for governments to uncover unfair, discriminatory and illegal practices concealed in companies' algorithms.<sup>19</sup>

28. Digital trade provisions in a US-UK trade agreement could lock-in deregulation and give secrecy rights to software creators even where this risks social harm. The USMCA digital chapter that the US and UK hope to 'go beyond' offers nothing to improve regulation of the digital landscape, while presenting many serious risks. These digital rules should therefore be excluded from any US-UK trade deal by scrapping the digital chapter.<sup>20</sup>

#### **(vi) International development**

29. There are various ways in which a UK-US deal could impact on international development. The UK-US deal could influence trade norms for all, through undermining efforts towards a multilateral, rules-based trading system. In the absence of a functioning WTO, the danger is that richer countries develop global norms for trade deals that do not reflect the interests of developing countries.

30. Other concerns include trade diversion and preference erosion. This is where some developing country products lose their market share to US and UK producers or existing preferential agreements become less beneficial because similar arrangements are offered to other partners. Evidence from the proposed TTIP trade deal (between the EU and the US) shows that this was a real concern for many developing countries.<sup>21</sup>

31. The Covid-19 pandemic might hit developing economies particularly badly, and it is important that governments are able to control their health systems and support their domestic economies without risk of contravening trade rules. The UK must include sustainable development factors in assessing all new trade agreements, and must consider the impact of a US trade deal on commitment to the UN Sustainable Development Goals (SDGs).

#### **(vii) Investor-State Dispute Settlement (ISDS)**

32. Neither the UK nor the US has ruled out investor protection measures, such as Investor-State Dispute Settlement (ISDS). These are provisions in trade agreements which allow foreign investors to sue governments for measures which affect their profits. US firms have used ISDS aggressively against trade partners, leading to lawsuits which cost taxpayers millions and have the potential to 'chill' important policy decisions for fear of litigation. ISDS has particularly

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<sup>19</sup> For an overview of algorithmic systems that have caused social harm, including discriminatory search engine results, racist and sexist image and gender classification systems, object recognition systems with higher error rates for pedestrians with darker skin tones, and racist and classist decision support systems in social welfare see Sloane, M. and Moss, E. (2019) '[AI's Social Sciences Deficit](#)', *Nature Machine Intelligence*, Vol 1, p.330.

<sup>20</sup> Trade Justice Movement, '[A US-UK trade deal: issues from a civil society perspective](#)', June 2020, see section on 'Digital rights'.

<sup>21</sup> *Ibid.*, see section on 'International Development'.

been used to challenge environmental regulations.<sup>22</sup>

33. ISDS could have a particular impact on devolved nations and the environment. ISDS clauses in trade deals allow investors to sue governments for measures which harm their profits. Historically this has been used to challenge the policy decisions of regional governments; for example, US firm Lone Pine sued the Quebecois government for introducing a moratorium on fracking.<sup>23</sup> While devolved governments have no say in the approval of ISDS provisions, they can end up bearing the costs of cases brought against them for policy areas over which they have competence.
34. ISDS must be excluded from the US-UK trade agreement. The government should review all investor protection arrangements in existing FTAs and Bilateral Investment Treaties (BITs) and seek to remove ISDS provisions.

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<sup>22</sup> Trade Justice Movement, '[Investor-State Dispute Settlement \(ISDS\) - Briefing](#)', March 2019

<sup>23</sup> UNCTAD Investment Policy Hub, [Lone Pine vs. Canada](#), 2013