

UK-US trade negotiations
Evidence from the Trade Justice Movement
Lords International Agreements Sub-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 sets out TJM's written evidence to the House of Lords International Agreements Sub-Committee Inquiry on UK-US trade negotiations. Our response includes answers to most of the questions asked in the Inquiry's Terms of Reference.
3. TJM firmly believes that the UK needs a new framework for parliamentary scrutiny of international trade agreements. While this inquiry is welcome, Parliament must be empowered to properly scrutinise new trade deals, through full debates and votes on the government's negotiation objectives, transparency and access to texts during negotiations, and a debate and vote in Parliament after deals are signed. 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.

Does the Department for International Trade (DIT) have the right objectives in mind for UK-US negotiations?

4. 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.
5. The objectives themselves fail to account for a number of concerns among civil society organisations, businesses and the general public. First, the sequencing of deals with the US and the EU is of critical importance. A No-Deal EU exit could lead to border disruption and create significant uncertainty for UK businesses, possible tensions in Northern Ireland and regulatory divergence between the UK and the EU. TJM, trade unions and many environmental NGOs are supportive of the EU's proposals for a Level Playing Field, to ensure common adherence to key environmental and labour regulations.¹
6. Second, the objectives prioritise agri-food trade with the US, which 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;² and (b) a downwards-pressure on food and farming standards in the UK, which is currently a world-leader in animal welfare and sustainable farming. The UK's prioritisation of agri-food trade with the US puts UK farming, animal welfare, human health and environmental sustainability at risk.

¹ Trade Justice Movement, '[Why the EU's request for a level playing field is in all our interests](#)', March 2020

² Agriculture Bill, '[Written Evidence Submitted by Compassion in World Farming](#)', February 2020

7. Third, the objectives prioritise liberalisation of services, including public services. This is in line with the UK's 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.³
8. Fourth, the objectives do not rule out investor protection measures, such as Investor-State Dispute Settlement (ISDS), 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 been used to challenge environmental regulations.⁴
9. Fifth, there is a general lack of attention given to important rights and regulations. For instance, the UK's climate ambitions barely receive a mention, despite evidence that trade has an important role to play in climate policy. Similarly, the objectives do not convincingly outline how the government will protect workers' rights, gender rights, health regulations and other rights, and how the deal will affect international development, since a UK-US FTA could erode trade preferences currently given to developing countries.

What main points of disagreement have emerged in recent US trade negotiations?

10. The lack of transparency around UK-US negotiations means it is difficult to know what the main points of disagreement are. Documents leaked to the general public during the 2019 General Election revealed that US negotiators expressed demands on various issues including healthcare, climate change, food standards, public services and investment which are deeply concerning.⁵
11. US negotiators demanded, for instance, 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.
12. As mentioned in answer to the earlier question, there is also likely to be disagreement between the UK and the US on food standards and health services. 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.⁶ 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.
13. Access to US public procurement markets is likely to be a high priority for the UK,⁷ for two reasons: (1) the US has a large procurement market (valued at around US\$1.7 trillion) covering

³ Trade Justice Movement, '[Protecting the NHS in UK Trade Policy](#)', May 2020

⁴ Trade Justice Movement, '[Investor-State Dispute Settlement \(ISDS\) - Briefing](#)', March 2019

⁵ See full leaked documents hosted on [Global Justice Now's website](#)

⁶ Telegraph, '[Britain ready to allow import of chlorinated chicken from US](#)', 3 June 2020

⁷ Lords European Union Committee, '[The Transatlantic Trade and Investment Partnership](#)', 2014

both national and state level.⁸ (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.⁹ 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.

Might the UK-US pursue a mini deal instead of a comprehensive FTA?

14. It is likely that the UK and US administrations will see political benefit in agreeing a mini-deal, while maintaining a more long-run ambition for a comprehensive FTA. There are a number of reasons for this. First, the UK and US both face short term political obstacles, with the US Presidential Election in November this year, and the UK's EU exit transition period concluding at the end of the year. The Covid-19 pandemic adds a further complication, as any meaningful progress on a comprehensive FTA is unlikely while both administrations prioritise the immediate public health and economic challenges facing both countries.

15. Second, both the UK and US executives would probably like to have something agreed sooner rather than later. President Trump may wish to point to a mini-deal with the UK during his election campaign. He has previously used mini trade-related agreements with Japan and China, both of which were short of full FTAs, as evidence of his administration's achievements on trade policy.¹⁰ ¹¹Similarly, Prime Minister Johnson may use such a mini-deal to make the argument that trade with the EU is less essential, as the talks with the EU reach a crunch point.

16. Third, a mini-deal might be able to avoid more rigorous scrutiny procedures in the US Congress, if it is not comprehensive enough to qualify for the usual 'fast-track procedure' applied to FTAs. Congress may reject a UK trade deal for a number of reasons, but there have been particular concerns raised by senior Democrat representatives, including Speaker Pelosi, about the impact of a hard border on the island of Ireland.¹² It is likely that many Congressmen would like to see the UK establish its border arrangements with the EU first before pursuing a full FTA with the UK.

Could UK-US trade negotiations impact negotiating deals with the EU and other countries?

17. UK-US trade negotiations could definitely impact other trade negotiations, most importantly with the EU. TJM and other organisations have called for the EU deal to be negotiated first, in order to avoid these problems.

18. The most significant factor is regulation. If a deal with the US leads the UK to align its regulations more closely with the US, such as by relaxing EU bans on certain US imports, this will make it harder to align regulations with the EU. An example is agri-food products, where the EU currently bans certain goods such as chlorine-washed chicken and hormone-treated beef. The UK government has already signalled that it will relax these bans (albeit with a dual-tariff) as part of a US trade deal. This would signal divergence from the EU regulatory regime and increase the need for border checks between the UK and the EU. Conversely, if the UK agrees a deal with the

⁸ 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

⁹ Institute for Government, '[Government Procurement: The scale and nature of contracting in the UK](#)', 2018

¹⁰ Financial Times, '[Japan ratifies US trade deal in record time](#)', 4 December 2019

¹¹ Guardian, '[Trump signs China trade pact and boasts of 'the biggest deal ever seen'](#)', 15 January 2020

¹² Guardian, '[No chance of US-UK deal if Northern Ireland peace at risk – Pelosi](#)', 15 August 2019

EU first, this is likely to include some kind of Level Playing Field arrangement which would restrict the UK's freedom to align regulations with the US.¹³

19. Negotiating a deal with the US first would also signal to the EU and the rest of the world that the UK is de-prioritising trade with the EU. This will affect negotiations with other partners, such as Japan and Canada, both of which have delayed their 'rollover' trade deals with the UK on the grounds that they want the UK to sort out its relationship with the EU first.^{14 15} Prioritising a deal with the US is therefore likely to slow down trade negotiations with other trade partners.
20. Prioritising a US deal would also signal to trade partners that the UK's trade policy is dictated more by political objectives - such as sending a strong message to the EU - rather than economic benefit, since the comparative benefits of a US deal are small, especially compared to the risk of a No Deal exit from the EU. This is shown by the government's own economic estimates.

What provisions should the UK seek on tariffs for agriculture goods imported to the UK?

21. Where imported agricultural goods do not meet the UK's high standards, or when they are produced using practices which are currently banned in the UK, the UK should use regulations to restrict these imports. We believe that this is a more efficient and sustainable way of protecting high standards, compared to tariffs. While tariffs can provide short term relief for UK agricultural producers, they are no guarantee of protection, since tariffs can be easily changed by the executive without any parliamentary oversight. TJM therefore believes that proper regulation, rather than tariffs, are the best way to ensure high standards and protect UK producers.
22. Another problem with tariffs is that they often become the currency of trade negotiations. The government could see it as beneficial to lower tariffs, for example as part of a trade deal with the US, to secure its offensive interests. It is likely that in UK-US negotiations, US negotiators will push hard for the UK to lower any tariffs on US agricultural goods in return for offering the UK market access on financial services, digital trade and other services. Tariffs are therefore no guarantee of protection for the UK food sector.
23. Evidence from the consumer group Which?¹⁶ shows that there is a preference among consumers for regulations, rather than tariffs, to be used to maintain high standards. Similarly, evidence from the IPPR¹⁷ shows that 82% of the British public would prefer to have no US trade deal at all than one which lowers food standards.

Could there be competition or opportunity for agriculture and food industries under a deal?

24. TJM is very sceptical that a UK-US trade deal will be beneficial to UK agriculture and food industries. US farming is intensive, large-scale and more lightly regulated than farming in the UK. These factors reduce the cost of US food production, at the cost of animal welfare, environmental and health standards, and give US producers a comparative advantage over UK producers. While the UK financial, digital and other services sectors may benefit from increased trade with the US, it is likely that UK agriculture is the price that is paid for this benefit.

What would be the effects if the cap on NHS drug prices were removed or raised?

¹³ Trade Justice Movement, '[Why the EU's request for a level playing field is in all our interests](#)', March 2020

¹⁴ Guardian, '[Japan seeking big concessions from Britain in trade talks](#)', 9 February 2019

¹⁵ Express, '[Brexit blow: Canada refuses to roll over EU trade deal for UK - trade officials 'furious'](#)', 4 July 2019

¹⁶ Food Navigator, '[US trade deals risk sending food standards to pre-mad cow disease levels, Britons warned](#)', 15 June 2020 (quote from Which?)

¹⁷ IPPR, '[Public willing to sacrifice US trade deal to protect food safety](#)', April 2018

25. 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.¹⁸
26. The US administration has publicly stated that they wish to use a trade deal to challenge this purchasing model. This could be done 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.
27. 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.
28. There are also wider concerns about the effects of a US trade deal on NHS liberalisation. Services chapters of trade agreements often contain standstill and ratchet clauses, which make it difficult for governments to reverse liberalisation measures. For example, 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”,¹⁹ 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.²⁰

What are the opportunities and risks in agreeing new provisions on digital trade and services with the US?

29. 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 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.
30. 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.²¹

Do the devolved nations of the UK have any specific interests that need to be protected as part of the negotiation of a UK-wide trade deal with the US?

¹⁸ European Pharmaceutical Review, ‘[Report shows US brand-name drug prices ‘highest in the world’](#)’, May 2019

¹⁹ Telegraph, ‘[NHS ‘off the table’ in US trade talks, says Government](#)’, 2 March 2020

²⁰ See full leaked documents hosted on [Global Justice Now’s website](#)

²¹ For an overview of algorithmic systems that have caused social harm, including discriminatory search engine results, racists and sexist image and gender classification systems, object recognition systems with higher error rates for pedestrians with darker skins 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. Available at <https://www.nature.com/articles/s42256-019-0084-6> Accessed 14/04/20

31. Devolved nations have very little say in the development of trade policy, since it is a UK-wide competence held by the Executive. This means that trade deals may not adequately take into account the impact of provisions on devolved nations, and may not represent the industries or preferences of those in devolved nations.
32. One particular area where trade rules interact with devolved competencies is Investor State Dispute Settlement (ISDS). 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.²² 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.

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²² UNCTAD Investment Policy Hub, [Lone Pine vs. Canada](#), 2013