

# The NHS in trade agreements

April 2020

*We welcome the government's commitment to keeping the NHS off the table in trade deals. This briefing is intended to set out some practical, legally secure ways for Parliament to keep that promise, through the mechanism of amendments to the Trade Bill.*

Civil society organisations, particularly trade unions<sup>1</sup> and health organisations<sup>2</sup>, have long warned of the inclusion of health services - and public services in general - in trade agreements.

In response, the UK government has promised that the NHS is 'not for sale' and 'not on the table' in trade deals. This is a welcome commitment, but a difficult promise to keep without legislation. MPs should table and support an amendment to the Trade Bill which proactively protects the NHS from the following threats:

- The NHS is reliant on a wide range of public sector institutions and services, such as public health provision, social care and emergent technology. The US is likely to insist on '**negative listing**' which means everything is on the table unless it is explicitly excluded. We would have to list a huge range of NHS related services in order to exclude them from a trade deal. It also means we wouldn't have protection for new, unforeseen services and technologies that could be central to the way we access healthcare in the future.
- The **Investment** chapters of trade deals, including the notorious Investor-State Dispute Settlement (ISDS) corporate court system, automatically apply to all sectors including healthcare, and there is no accepted way in trade deals to specify exceptions to these rules. NHS and related services are, therefore 'on the table' if they are run by US firms, or have US-based shareholders. If ISDS is included in the deal, the UK government could be sued by US firms in international corporate courts for any changes they make to the health system that harm investors profits.
- **Access to medicines** could be restricted by a trade deal. US politicians have already made clear they want to "pressure" the UK through trade negotiations to "pay more" for drugs.<sup>3</sup> What's at stake here is the NHS's ability to hold down drug prices and demand cost-effectiveness before approving their use.

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<sup>1</sup> <https://www.unison.org.uk/news/press-release/2019/06/nhs-cant-post-brex-it-bargaining-chip-trade-deals-says-unison/>

<sup>2</sup> <https://www.healthpovertyaction.org/news-events/report-launch-trading-up-for-health/>

<sup>3</sup> <https://www.telegraph.co.uk/news/2018/05/15/trump-threatens-use-us-trade-talks-force-nhs-pay-drugs/>



- **UK patient data** is very comprehensive and therefore of great interest to corporations developing global business models for new markets. US trade negotiators want US firms to be able to harvest this data freely and sell back products made from it to the NHS and globally at a premium, through “state-of-the-art rules to ensure that the UK does not impose measures that restrict cross-border data flows”.<sup>4</sup>
- **Safety standards** for drugs, new technology, and the numbers, skill levels and pay and conditions of staff could be dropped to make our NHS more profitable to US firms. The language of the US negotiating objectives clearly indicates this is their goal. Indeed, this is already underway and needs to be reversed.

**We are calling upon MPs of all parties to table an amendment to the Trade Bill (2020) which comprehensively protects the NHS and the UK’s wider health and social care sectors from the effects of trade agreements.**

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<sup>4</sup> US-UK Negotiating Objectives Summary, p6:  
[https://ustr.gov/sites/default/files/Summary\\_of\\_U.S.-UK\\_Negotiating\\_Objectives.pdf](https://ustr.gov/sites/default/files/Summary_of_U.S.-UK_Negotiating_Objectives.pdf)