

International Trade Committee Inquiry: UK-US trade relations inquiry
Written evidence submitted by Keep Our NHS Public
February 2017

Summary

We are writing on behalf of Keep Our NHS Public (KONP), a civil society group concerned to restore and protect the NHS as a comprehensive, publicly provided and publicly accountable health service, funded from public taxation and free at the point of use. Our concerns include the potential impact of new trade and investment agreements (such as between the UK and the US) on the future of the NHS.

We believe that negotiating a UK-US deal provides the opportunity to develop a new kind of trade policy that prioritises the public good, and not the profit of large corporations. To this end, it should aim for:

- *Greater transparency about, and broad and equitable consultation on, the principles and key proposals of any trade treaty, focusing on parliamentarians and interested members of the public and civil society groups. There should be equal opportunities with corporate lobbyists to address concerns and interests to negotiators, with no special favours given to US stakeholders;*
- *The use of democratic parliamentary processes, to ensure proper debate and a decisive veto over the final proposals of any treaty;*
- *Outcomes for the greater economic good of the general public as the main rationale of any US/UK treaty;*
- *Protection of governmental, labour and human rights;*
- *Maintenance of existing safeguards for workers, consumers and the environment, including the use of the precautionary principle and the protection of the right of government to regulate in the interests of the public;*
- *The protection of the rights of domestic courts to settle investment disputes. Both the UK and the US have mature legal systems that are fully able to protect the rights of investors. There is no need for any other dispute-resolution mechanism in any future UK/US trade deal;*
- *The upholding of the use of a positive listing approach, as opposed to 'negative listing';*
- *The protection of public services (particularly the NHS) and public procurement from liberalization;*
- *And specifically, the legally guaranteed protection for the National Health Service, which might otherwise expose it to takeover by US-based multinational corporations, or expose it to investment protection measures. The NHS needs to be explicitly excluded, from any UK/US trade deal.*

1. Introduction

1.1 Keep Our NHS Public (KONP), is a civil society group concerned to restore and protect the NHS as a comprehensive, publicly provided and publicly accountable health service, funded from public taxation and free at the point of use. Our concerns include the potential impact of new trade and investment agreements (such as between the UK and the US) on the future of the NHS.

1.2 We welcome the opportunity to contribute to the International Trade Commission's Inquiry particularly given, as the Committee's Chair notes, that a deal with the US is likely to be one of the UK's first steps in reshaping its economic relationship with the rest of the world.

1.3 Our submission addresses most of the Committee's areas of interest, but our focus is primarily on the NHS.

2. General priorities in negotiating a UK-US agreement

2.1 We believe the overarching priorities of a future UK-US trade agreement should be:

a) Transparency:

There should be broad consultation on the proposed remit of a UK-US treaty, and greater transparency during negotiations. For example, MPs should be given greater access to texts at earlier stages. Information made available to corporations should be equally available to the public.

b) Democratic process:

The process for the UK Parliament to endorse trade deals should be amended to ensure that proper parliamentary debate takes place (presently it rests on whether someone makes sufficient 'noise') and that a decisive veto is possible (currently, a vote against a treaty's endorsement just triggers another round of debate and votes).¹

c) Probity:

Negotiations for recent trade deals, such as the Comprehensive Economic and Trade Agreement (CETA) and Transatlantic Trade and Investment Partnership (TTIP), have been substantially shaped behind closed doors by corporate lobbyists, while the concerns of the public, their elected representatives and civil society groups have been given scant attention.² There should be restrictions on corporate lobbying, and equal opportunities for civil society groups to put their concerns to relevant officials. Every effort should be made to employ negotiators with civil service backgrounds (e.g. with experience from the EU) rather than hire expensive consultants from corporations. If consultants are hired, their backgrounds and interests should be made public and any consultancy fees made public on a regular basis.

¹ <https://www.opendemocracy.net/ournhs/jan-savage-gay-lee/brexit-or-no-brexit-so-called-trade-deals-still-threaten-our-nhs>

² <https://corporateurope.org/international-trade/2015/07/ttip-corporate-lobbying-paradise>

d) Equal partnership with the US:

The Committee's Chair acknowledges that negotiations on a UK-US deal will be a tough test for a newly formed department, especially as the US, under President Trump's leadership, "might not be expected to offer many concessions". The UK must be just as tough in negotiations, especially given that a UK-US agreement is likely to act as a precedent for subsequent UK trade deals with other countries.

e) Outcomes for the greater good:

Much of the support for recent trade deals from MPs, among others, arose from the belief that these would bring economic advantage to treaty partners. However, economic benefits from deals such as CETA and TTIP to EU citizens were insignificant. For example, with CETA, official predictions showed little more than 0.01% growth of the EU's GDP, while independent research indicated that the treaty would bring job losses, wage compression and loss of government revenue.³ We argue that that UK should not agree a trade deal with the US unless it is clearly in the public's interest.

3. The main objectives of a UK-US agreement

3.1 We believe that negotiating a UK-US deal provides the opportunity to develop a new kind of trade policy that prioritises the public good, and not the profit of large corporations. To this end, it should aim to:

i) protect the rights of government, at both national and local levels, to regulate in the interests of the public (see below);

ii) protect labour rights and human rights: we would want to see a UK-US treaty uphold the International Labour Standards developed by the International Labour Organisation, and provide effective measures to deal with corporations or states that fail to respect those rights.

iii) deliver decent jobs, and a fairer distribution of wealth;

iv) protect the rights of domestic courts to settle investment disputes (see below);

v) uphold the use of a positive listing approach, where only those sectors that are explicitly listed are included in the treaty (as opposed to 'negative listing', in which all sectors are covered unless explicitly excluded). The negative list approach radically expands the scope of trade agreement, covering areas that governments may not even be aware of at the time of negotiations, such as new services that emerge in the future.

vi) protect public services, particularly the NHS, and public procurement from liberalisation (see below);

vii) protect workers, consumers and the environment by safeguarding existing UK/EU safety standards and the use of the precautionary principle (see below).

3.2 We argue that CETA has not met many of these aims and so should not, as some suggest, be used as a template for a future UK-US agreement.

³ http://www.ase.tufts.edu/gdae/policy_research/ceta_simulations.html

4. Possible impacts on the NHS

4.1 The NHS will be at considerable risk if it is included in a UK-US trade deal. NHS services are vital to guarantee equal access to health care for all, as private services tend to cherry pick wealthier patients or those with lower health risks in order to make the most profit possible.

4.2 If included, the NHS will become prey to US-based multi-national corporations with huge resources to support the development of tenders and to employ loss-leader strategies to secure contracts: domestic companies (especially small businesses or NHS providers) will be put at a competitive disadvantage.

4.3 If the UK-US treaty includes an investment protection measure (such as ICS) or ratchet and standstill mechanisms that only allow further liberalisation, any future government with a mandate to reverse the privatisation of the NHS, or that needs to roll back failed privatisations, will be unable to do so. It will also be hugely difficult to introduce new regulations, even if these provide benefits for patients or staff. Price controls on goods such as medicines could be removed if these were seen as barriers to trade or limit the profits of US-based drug companies, with serious implications for the public purse.⁴

4.4 For these and other reasons we believe that the NHS needs to be explicitly excluded from a UK-US trade deal. Recently (e.g. with CETA and TTIP), Government has offered reassurances that the NHS will be protected. Legal opinion suggests otherwise. The NHS, like most public services, is only unambiguously excluded from free trade deals if 'supplied in the exercise of government authority', i.e. without any element of competition or commercial involvement. The NHS became a competitive market following the Health and Social Care Act (2012) and so, irrespective of any government's intentions, the NHS is not protected in trade deals unless explicitly and comprehensively exempted from all chapters of the treaty's text (including chapters dealing with intellectual property rights, investment protection, government procurement pharmaceuticals, regulatory cooperation and domestic regulation).⁵

5. Should the agreement open up markets in public services?

5.1 We have serious concerns about public services being opened up to US-based corporations. Opening up public procurement would mean that most public contracts for health-related goods and services, such as the direct provision of hospitals or care services; the purchasing of pharmaceuticals or medical devices; or the construction of health facilities, would be subject to tenders from US-based multinational corporations. It will allow the gradual transference of public services to for-profit providers, along with the transfer of thousands of staff who most likely would be carrying out the same work for lower pay and worse conditions.⁶

5.2 Recent proposed trade deals like TTIP have been criticised for potentially limiting a future government's control of public services: attempts to regulate such services in the public interest could be overturned on the basis that such regulation represents a

⁴ <https://corporateurope.org/sites/default/files/attachments/public-services-under-attack.pdf>

⁵ <http://www.unitetheunion.org/campaigning/stop-ttip-legal-advice/>

⁶ http://www.academia.edu/17303387/Empty_Promises_Impact_of_Outourcing_on_Delivery_of_NHS_services

'barrier to trade'. Opening up markets in public procurement would also lead to the UK government losing the power to define the terms and criteria for the assessment of contracts and whether, for instance, they are assessed narrowly for price or value for money, rather than quality of experience or the public interest. From an NHS perspective, this could have serious consequences for the quality of health services.

6. How an agreement should approach regulation?

6.1 We have serious concerns that measures to remove obstacles to trade, like harmonisation or mutual recognition of regulations, will lower existing standards in the UK, such as public health measures governing the use of food labeling, pesticides, hormones in meat etc. In the US it is assumed that products are safe until proved to be harmful, and research on safety can remain unpublished on the grounds of commercial confidentiality. We believe that the treaty should uphold the use of the precautionary principle to assess the safety of chemicals, pharmaceuticals, medical devices and so on, to ensure that products are proved to be safe before they are sold.

6.2 We also have anxieties about the possibility of 'regulatory cooperation', which "would unduly privilege trade interests over other interests such as environmental or consumer interests" and allow the undemocratic involvement of the corporate world in drawing up new regulations (and even before the UK parliament is involved).⁷

6.3 We believe the treaty should protect the right of government, at both national and local levels, to regulate in the interests of the public. A UK-US deal should not include any form of international regulatory cooperation that by-passes parliamentary processes, has the power to influence future government legislation, or privileges the interests of transnational investors over the interests of the public or domestic businesses.

7. What dispute-resolution mechanism should form part of any agreement?

7.1 Originally, dispute-resolution measures such as Investor-State Dispute Settlement (ISDS) were introduced to resolve disputes where treaties involved states that did not have mature or effective legal systems. Initially, it allowed investors to sue for the expropriation of physical assets, but later allowed redress for government actions, such as changes in taxation or the introduction of regulations that might damage investor's assets or profits. This has led to some massive claims against governments by large corporations, with 94% of all compensation paid going to corporations, especially those with more than \$10 billion in annual revenue.⁸

7.2 Investment protection measures like ISDS, or the more recent Investment Court System (ICS), stop governments moving public services out of markets where investors have substantial interests. They also give special privileges to foreign investors as domestic companies or UK citizens do not have access to the same course of action. We believe that a UK-US treaty should use domestic courts for settling disputes – particularly, as the EU Trade Commissioner has noted, there is no direct relationship between the inclusion of measures like ISDS in trade deals and increased foreign investment.⁹ Both the UK and the US have mature legal systems that are fully able to protect the rights of investors.

⁷ <http://ecologic.eu/10987>

⁸ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2713876

⁹ <http://www.euractiv.com/sections/trade-society/positive-effects-ttip-tribunals-investment-unclear-317665>

