

**UK Trade Options beyond 2019 Inquiry**  
**Submission from Keep Our NHS Public**  
**January 2017**

1. We are writing on behalf of Keep Our NHS Public (KONP), a civil society group concerned about the future of the NHS as a comprehensive, publicly provided and publicly accountable health service, funded from public taxation and free at the point of use. The potential impact of new trade and investment agreements on the future of the NHS is a major focus for us.
2. We welcome the opportunity to contribute to this Inquiry: as the Chair of the International Trade Committee has said, “With the UK likely to leave the EU in 2019, trade relations between the UK and the EU, as well as the wider world, will have to start afresh”. We note from the Terms of Reference that the Inquiry will be looking at opportunities to negotiate new trading arrangements that allow industries success in reaching new markets. Our response urges the Committee additionally to consider ways of ensuring that future trading arrangements are in the public interest.
3. Our concerns are shaped by what we know of treaties currently under negotiation (such as the Transatlantic Trade and Investment Partnership or TTIP) or going through the process of ratification (namely, the Comprehensive Economic and Trade Agreement or CETA). Both CETA and TTIP negotiations have encountered considerable difficulties and may still fail to be agreed. One major problem has been the way that negotiations 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.<sup>1</sup> It has also come to light that the UK Parliament’s process for endorsing trade agreements is undemocratic: contrary to assurances, it has proved difficult to secure meaningful parliamentary debate on CETA and there appears to be no way for UK Members of Parliament to decisively veto a trade agreement, should they wish to.<sup>2</sup>

**We believe that new UK trade negotiations, to be successful as well as fair, should be based on transparency and meaningful public engagement. They should also be made subject to parliamentary scrutiny, in a democratic process that allows a trade agreement to be decisively vetoed.**

3. Public opposition to CETA and TTIP arose from a range of concerns, including
  - the extensive powers that these treaties would give to multinational corporations while negatively affecting public services such as the NHS through
    - the inclusion of an investment protection measure, such as Investment Court System (ICS), despite the fact that parties to these agreements have domestic courts that are fully able to protect the rights of investors; and
    - the potential for corporations to influence future government legislation through ‘regulatory co-operation’, privileging trade interests over others,

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<sup>1</sup> <https://corporateeurope.org/international-trade/2015/07/ttip-corporate-lobbying-paradise>

<sup>2</sup> <https://www.opendemocracy.net/ournhs/jan-savage-gay-lee/brexit-or-no-brexit-so-called-trade-deals-still-threaten-our-nhs>

such as environmental or consumer interests, as well as potentially bypassing parliamentary processes.<sup>3</sup>

- the meagre benefits to small and medium sized businesses, and the general public: for example, official predictions suggest CETA will encourage little more than 0.01% growth of the EU's GDP, while independent research indicates that the treaty will bring job losses, wage compression and loss of government revenue.<sup>4</sup>
- the 'dumbing down' of standards (eg labour rights, regulations on toxic chemicals, food safety rules, digital privacy laws and banking safeguards) and the potential loss of the precautionary principle as the basis for determining safety.

**We believe that new trade deals should not include investment protection measures such as ICS where the parties involved have mature judicial systems. The UK government should retain the ability to regulate in the interests of its people, free from corporate influence. Growth of GDP should not be at the expense of jobs or hard won protections such as labour rights. The precautionary principle should remain the measure for ensuring public health and safety.**

4. A major concern about CETA and TTIP has been the risks that they pose for the future of public services, not least the NHS – the NHS became a major focus for public opposition to these treaties.

These risks include: the access that CETA and TTIP would give to multinational corporations to procure goods and services on behalf of the UK government. This could restrict our government's ability to support local small businesses and not-for-profit providers. And price controls on goods such as medicines could be removed if these were seen as barriers to trade or limit the profits of transnational corporations, such as drug companies, with serious implications for the public purse.<sup>5</sup> In addition, CETA and TTIP negotiations have not considered the NHS in the broader context of the need to integrate health and social care services. Plus public health is integral to a well-functioning health system. However the principles and processes of these kinds of trade deals do not address health inequalities and social determinants of health. These types of trade deals may indeed obstruct public health efforts with their emphasis on profit making and deregulation.

The biggest risk however is to the future of the NHS as a publicly run, publicly provided service. Despite assurances to the contrary from different government representatives, the NHS has not been safeguarded from CETA and TTIP. This is because the Health and Social Care Act (2012) required the vast majority of NHS services to be put out to competitive tender. Previously, as a service "supplied in the exercise of government authority" (GATS Article 1:3b), the NHS was protected from inclusion in trade agreements, as long as it was "supplied neither on a commercial basis, nor in competition" (GATS Article 1:3c). Both CETA and TTIP have been based on negative listing (meaning that they cover everything that is not explicitly excluded), and they have not reserved the NHS or social care. CETA and TTIP, if finally agreed, will not only open up the NHS to transnational companies wanting NHS contracts. They also contain 'standstill' and 'ratchet' mechanisms that lock in the treaties' terms and make privatisation of the NHS permanent.

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<sup>3</sup> <http://ecologic.eu/10987>

<sup>4</sup> [http://www.ase.tufts.edu/gdae/policy\\_research/ceta\\_simulations.html](http://www.ase.tufts.edu/gdae/policy_research/ceta_simulations.html)

<sup>5</sup> <https://corporateeurope.org/sites/default/files/attachments/public-services-under-attack.pdf>

**We believe that future UK trade deals need to explicitly exclude the NHS to ensure the best use of public resources and ensure equity in access to health services. Because of the comprehensive nature of the NHS, exclusion needs to apply across all of a treaty's chapters, including those for government procurement, investment protection and regulatory cooperation (should these be included), as well as domestic regulation, intellectual property rights, pharmaceuticals, and medical devices.**

**5. In summary, we believe that future trade agreements should:**

- ❖ exclude any form of investor state dispute settlement where parties to the treaty have mature legal systems;
- ❖ exclude any form of regulatory cooperation that has the power to influence future government legislation and privileges the interests of transnational investors over the interests of the public;
- ❖ uphold the use of the precautionary principle to assess the safety of chemicals, pharmaceuticals, medical devices etc.;
- ❖ explicitly exclude public services (such as the NHS) from all chapters of future trade agreements (including chapters dealing with intellectual property rights, pharmaceuticals, domestic regulation);
- ❖ protect public procurement from enforced liberalisation;
- ❖ protect the rights of government, at both national and local levels to regulate in the interests of the public;
- ❖ protect labour rights and human rights, with effective measures to deal with corporations or states that fail to respect those rights; and
- ❖ ensure greater transparency during negotiations, including greater access to texts for parliamentarians; and
- ❖ be subject to a decisive UK Parliamentary veto where MPs have concerns about a treaty's terms.