

US-UK trade deal

Threats to the NHS and drug pricing

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In its negotiating objectives for a US-UK trade deal, the UK government has said that “...the National Health Service (NHS) will not be on the table. The price the NHS pays for drugs will not be on the table. The services the NHS provides will not be on the table. The NHS is not, and never will be, for sale to the private sector”.

On the surface, it may appear that the NHS and drug prices are no longer under threat from a US-UK trade deal. However, the risk is not that the government would sell off the whole institution to US healthcare firms but that modern trade deals include rules on

trading services, intellectual property rights, market access, investor protection and data flows – all of which pose threats to the extent that private firms can operate within the NHS as well as the prices it pays for drugs.

The government’s rhetoric is not fully backed up by its other negotiating objectives which do not explicitly rule out all these threats. And papers leaked from the trade talks that have taken place so far reveal that the rules which affect the NHS and drug prices have already been discussed.

Entrenching privatisation in the NHS

Private companies, including US healthcare firms, already operate in the NHS. Following the Health and Social Care Act 2012, market-based approaches were significantly extended with a large number of contracts being awarded to private providers. In 2018/19 alone, the NHS spent £9.2 billion on health services delivered by the private sector. According to World Trade Organisation rules, public services can only be excluded from trade deals where there is no competition. However the NHS competes both with private healthcare and through the introduction of an internal market.

If private companies can already operate within the NHS, what risk would a trade deal pose? A trade deal with the US would entrench this model of creeping private provision as trade rules would lock-in existing and future levels of privatisation in the NHS. This would tie the hands of future governments, making it extremely difficult to reverse privatisation in the NHS.

The leaked trade papers show that the US wants “total market access” as the “baseline assumption”. In other words all services would be included

in the trade deal unless they are specifically excluded – this is called negative listing. Excluding all the health services that the NHS represents is a complex process and relies on UK negotiators having detailed and expert knowledge of all aspects of the NHS to meticulously ensure each sector within the NHS is properly exempted.

Negative listing also means that future health services cannot be exempted as they are not known at the time of negotiation so will automatically be subject to trade rules. The UK negotiation objectives do not rule out negative listing. Indeed, the most secure way to ensure that the NHS and other public services are excluded from a trade deal is to apply a broad watertight carveout for public services based on the definition by the European Public Services Union.

Paying higher prices for drugs

The US pharmaceutical lobby has long complained about not getting high enough prices for its medicines in the UK – even though the UK drugs bill has risen 22% in the last five years and the NHS is increasingly having to reject or ration drugs because of high prices. The industry has been lobbying the US government to use US-UK trade negotiations as a way to force up drug prices.

This is reflected in the US negotiation objectives with demands to tackle “government regulatory reimbursement regimes”. This means that NICE (National Institute for Health and Care Excellence) which assesses new drugs based on their cost-effectiveness for the NHS in England and other price regulation schemes such as the Voluntary Scheme for Branded Medicines Pricing and Access which tries to keep the branded medicine bill affordable – are all under threat.

These schemes are seen by the US as ‘discriminating’ against high-priced US drugs and therefore prevent full market access for US drugs. Attempts to weaken NICE, for example by watering down the cost effectiveness criteria or making assessments non-binding, could potentially lead to higher prices for all drugs and not just US drugs as the criteria is used on all new drugs.

The leaked trade papers also reveal extensive discussions on strengthening monopoly protections for new drugs. These would extend the duration of monopoly protection over the most advanced class of drugs (known as biologics) forcing the NHS to keep paying high prices for such drugs and delay the ability to source cheaper alternatives.

The UK negotiating objectives say that the UK would “secure patents...that do not lead to increased medicines prices for the NHS”. Patents provide a minimum of 20-year monopoly for new drugs where no other company can make or sell the drug during that time.

Another form of monopoly protection is data exclusivity where a new drug’s clinical test data cannot be used by anyone else to register a generic drug (non-branded) for a certain period of time. Without access to this clinical data, it would be very difficult for other manufacturers to produce a version of the drug and so the effect of data exclusivity is to maintain higher prices for longer. Data exclusivity has been discussed in the trade talks so far but is not part of this commitment.

Giving US corporations the rights to sue the UK government

A trade deal with the US could include Investor State Dispute Settlement (ISDS). This is a parallel legal system which gives foreign investors the right to sue the UK government in exclusive corporate courts. If investors win a lawsuit, the government would have to pay out millions (and potentially billions) in compensation to US corporations. This would open the door for US healthcare firms

or pharmaceutical companies to sue the UK government for any policy changes in our NHS or any changes in drug pricing regulations.

The leaked trade documents revealed that the US negotiators are pushing for inclusion of ISDS in the trade deal and are adamant that even moderate reforms to the system proposed by the EU (known as Multilateral Investor Court) are completely unacceptable. Only the fullest, most pro-big business ISDS system would be acceptable. The UK negotiating objectives implies that the UK will be pushing for ISDS and has not explicitly ruled it out.

Losing control over NHS data

A US trade deal also poses risks to one of the NHS’s greatest assets - its health data. The NHS database is unique as it is centralised and comprehensive with high quality medical records of 55 million individuals that span decades. The value of NHS data has been estimated at £9.6bn a year and has the potential to fuel innovations in medical apps on smartphones, artificial intelligence-based diagnostics and new treatments and medicines.

A number of tech companies, including Google already mine small parts of the NHS dataset, US drug companies have been sold patient data and Amazon has been granted free access to NHS healthcare information. But the US government wants more and is pushing for unrestricted access to the NHS dataset. It has already identified the free flow of data as one of its key priorities in trade talks and this is confirmed by the leaked trade documents.

The US is also demanding that “data localisation” is ruled out, this would allow NHS personal medical data to be stored on US servers. The UK agrees with the US on these points and is also pushing for the free flow of data and a ban on data localisation requirements.

These rules raise concerns around privacy as well as questions around how we can protect the public value of data. Even if medical records are anonymised, they contain sensitive, personal information and if combined with other information, individuals could be identified and targeted online. We would also be handing over a highly valuable public resource to private US companies to exploit.

For example, an American drug company could use NHS data to research new medicines and then sell it back to the NHS at extortionate prices.

Including data rules in a US trade deal would lock-in privileges for corporations and severely constrain future government action on an issue that we are only just beginning to understand as a society.

Conclusion

The US government has already made clear its trade ambitions and its priorities reflect the demands of the US pharmaceutical, healthcare and technology industries who want to profit from the NHS. Even though the British government has claimed that the NHS is not on the table for a US trade deal, the government has already engaged in discussions on the topics that would threaten the NHS. There is a real concern that the UK government would capitulate to US demands, especially in a desperate bid to conclude a trade deal.

Government rhetoric that the NHS is not on the table is not enough to protect the NHS. At this point, to protect the NHS, we need to oppose this toxic trade deal. We also need to enshrine protections in domestic legislation that would keep it safe from these types of provisions in any trade deal, and call for parliamentary powers of scrutiny and democratic oversight over trade negotiations.

Take action To find out how you can help tackle corporate power and become part of a movement for real change visit globaljustice.org.uk or call 020 7820 4900.



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