

Leaked papers from the US-UK trade talks: A guide to the revelations

Global Justice Now briefing
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Documents have been leaked from six rounds of trade talks between the UK and the US. We look at what the documents say and what it means.

1) This is a trade deal on Trump's terms - including on Brexit

What the documents say

"USTR (US Trade Representative) were also clear that the UK-EU situation would be determinative: there would be all to play for in a No Deal situation but UK commitment to the Customs Union and Single Market would make a UK-U.S. FTA a non-starter."¹ (10 July 2019)

"Significant US interest in the degree of regulatory flexibility the UK currently has, and will be seeking in future, from our relationship with the EU."² (24-25 July 2017)

What it means

The US is using these trade talks to pressure the UK government into as hard a Brexit as possible. They want the UK to adopt US standards and regulations so that it is easier for US corporations to move into the UK market, and for that they need the UK to break with EU standards. The papers show the US threatening that the trade deal will be off if the UK agrees a Brexit deal that keeps it aligned with the EU.

From the very first meeting, the papers show US representatives speaking dismissively of any reason for the UK to "take on all the EU's 'dirty laundry'".³ In a later meeting, US officials repeatedly expressed concern at Theresa May's

¹ 6th working group, p2

² 1st working group, p10

³ 1st working group, p22

'Chequers' proposal, calling it a "worst case scenario"⁴ for food standards in particular because it would involve keeping the UK's existing standards. In the most recent meeting, the US is again hammering home the same message.

This echoes comments that Trump has made,⁵ and confirms this was not an off-hand comment but a deliberate, long term tactic on the part of the US administration.

We have also seen the UK comply with this. One of the biggest changes Boris Johnson made to May's Brexit proposal was to remove the long-term linking of British and European standards.

What the documents say

"UK welfare and GDP increased less under the hard Brexit scenario."⁶ (2 November 2018)

What it means

The US's initial economic modelling suggests that a hard Brexit scenario would be good for the US but not for Britain.

What the documents say

"Clear that for the US the priority is securing guaranteed market access for US firms into the UK market and ensuring the services and investment rules that protect this access are as strong as possible, including capturing any future liberalisation. While valuable this means it will be a steep ask to secure any new economically meaningful access to the US on priority UK services asks."⁷

(21-22 March 2018)

"benefits tend to filter through to company profit margins rather than a full pass-through rate to consumers"⁸ (10-11 July 2018)

What it means

The papers question whether there will be any value to a trade deal at all, for the UK or for the public generally.

⁴ 4th working group, p26

⁵ Eleni Corea, "Trump: Brexit deal 'precludes' US-UK trade agreement", *Politico*, 31 October 2019, <https://www.politico.eu/article/trump-brexit-deal-precludes-us-uk-trade-agreement/>

⁶ 5th working group, p99

⁷ 3rd working group, p48

⁸ 4th working group, p79

What the documents say

“being able to point to advanced negotiations with the UK was viewed as having political advantages for the President going in to the 2020 elections.”⁹ (10-11 July 2019)

What it means

The US even makes clear the opportunities a US-UK trade deal would present for Donald Trump’s re-election.

Additional points

Beyond the issue of Brexit, the US dominates the talks in these papers at every level. They dictate what should be discussed, what they want included in a trade deal, how the deal should be done, and explain the meaning of terminology to their UK counterparts. The power imbalance is clear. The talks are clearly reinforcing US interests and US ways of doing trade deals.

2) Medicine prices for the NHS are already on the table in US-UK trade talks

What the documents say

“We have reached a point (for Patents in Pharmaceuticals/Health) where beyond specific policy details in niche areas, we are awaiting the clearance to negotiate and exchange text to really take significant further steps.”¹⁰ (10-11 July 2018)

What it means

Medicine prices for the NHS have been on the table throughout these talks and are actually one of the most fully developed issues.

From the second meeting onward, the topic of pharmaceutical patents has been a major item on the agenda, with a particularly in depth look at the issue in the fourth working group. The two sides have effectively concluded all the preliminary negotiations they need on this subject and it is noted that they are ready to begin agreeing text for the final deal.

What is being proposed is the extension of monopolies for big drug companies, particularly on new ‘biologic’ medicines - an advanced class of effective drugs

⁹ 6th working group, p1

¹⁰ 4th working group, p132;

used to treat autoimmune diseases and cancers. This could massively increase the cost of medicines for the NHS. The NHS spent £18.9bn this past year on medicines¹¹ and the NHS is increasingly having to reject or ration medicines because of spiralling prices.

What the documents say

“The US said there is a lot of conversation on drug prices and looking at what other countries pay and this is causing angst. There are worries that the US is not getting a good deal in pharmaceutical industries.”¹² (13-14 November 2017)

What it means

The papers also refer obliquely to US concerns that the NHS currently does not pay, in its view, enough for medicines. At present the NHS’s bulk purchasing power allows it to negotiate prices, while the regulator, NICE, assesses whether medicines are effective enough to justify their price. Trump considers this to be ‘freeloading’ and has asked trade negotiators to do something about it.¹³

What the documents say

“The IP session was followed by a series of positive bilateral stakeholder meetings with the American Creative, Technology, and Innovative Organisations Network (ACTION) for Trade, the Pharmaceutical Research and Manufacturers of America (PhRMA), the Association of American Publishers (AAP) and the Association for Accessible Medicines (AAM). DIT and IPO met with representatives from each organisation to discuss USMCA and priorities for each stakeholder for future trade agreements.”¹⁴ (2-7 November 2018)

What it means

The trade talks were combined with lobby meetings from pharmaceutical industry bodies and others on at least one occasion.

¹¹ NHS, *Prescribing Costs in Hospitals and the Community 2018 - 2019*, 14 Nov 2019, <https://digital.nhs.uk/data-and-information/publications/statistical/prescribing-costs-in-hospitals-and-the-community/2018-2019>

¹² 2nd working group, p48

¹³ B Jopson, D. Crow, “Trump blames ‘freeloading’ foreign countries for high drug prices”. *Financial Times*, 11 May 2018, <https://www.ft.com/content/5ec2c642-54b0-11e8-b3ee-41e0209208ec>

¹⁴ 5th working group, pp43-44

3) The British government has discussed how to sell chlorinated chicken to a sceptical public in US-UK trade talks

What the documents say

“The US repeatedly emphasised their view that the UK should seek regulatory autonomy following EU Exit to allow us to evaluate methods/products independently.”¹⁵ (13-14 November 2017)

“Chequers and the UK’s decision to attempt to align with the EU on Agri-food and SPS is the “worst-case scenario” for a UK-US FTA.”¹⁶ (10-11 July 2018)

What it means

The US wants radical changes to the UK’s food system. The US is deeply hostile to a Brexit proposal that would keep the UK in a common rulebook with the EU or a level playing field on standards, precisely because that would limit the ability of the US to change UK food standards.

What the documents say

“The US understood that the UK used PRTs (pathogen reduction treatments, such as chlorine) until 2003, and wondered if there would be an interest in bringing them back post-EU Exit.”¹⁷ (13-14 November 2017)

“US to share their public lines on chlorine-washed chicken to help inform the media narrative around the issue.”¹⁸ (13-14 November 2017)

What it means

Chlorinated chicken has been discussed, and the US offered to help the UK government ‘sell’ it to the British public.

What the documents say

“The FDA’s typical approach is:

- a) Risk based
- b) Flexible – “least burdensome”
- c) Fee supported – a lot of activity depends upon industry fees. Industry gives the FDA a direction every 5 years on how it should spend the money.

¹⁵ 2nd working group, p41

¹⁶ 4th working group, p26

¹⁷ 2nd working group, p42

¹⁸ 2nd working group, p43

- d) Transparency – everything should be open to notice and comment.
- e) Voluntary use of standards – companies are welcome to demonstrate their products are safe and effective in other ways.
- f) Preference for standards and guidance over regulations.”¹⁹
(21-22 March 2018)

What it means

The US are clear that they want to change the UK’s precautionary approach to food regulation - in which products need to be proved safe before going on the market. Instead they want the UK to move to the US system where things are assumed to be safe until damage or harm is proved. They also have a clear preference for voluntary standards, created by big business, rather than government regulation. Such a model in the US has allowed the flourishing of industrial farming, with animals pumped with steroids, hormones and antibiotics and farmed in atrocious conditions.

What the documents say

“The US view the introduction of warning labels as harmful rather than as a step to public health.”²⁰ (13-14 November 2017)

“Whilst they follow the guidance set by WHO, they are concerned that labelling food with high sugar content (as has been done with tobacco) is not particularly useful in changing consumer behaviour.”²¹ (13-14 November 2017)

What it means

Public health measures to tackle the obesity crisis through improved labelling could be at risk, as is labelling to inform the public of the presence of genetically modified organisms.

What the documents say

“US raised expected concerns with EU’s system for Geographical Indications and pressed the UK to move away from current EU approach on generic terms.”²² (24-25 July 2017)

¹⁹ 3rd working group, p68

²⁰ 2nd working group, p41

²¹ 2nd working group, p43

²² 1st working group, p43

What it means

Terms such as Cornish pasty, Melton Mowbray pork pie or Scottish wild salmon, which are used to promote local products, would be at risk. American companies would be able to produce and sell 'Cornish pasties' themselves.

4) A US-UK trade deal could give US corporations massive new powers to secretly sue the British government in 'corporate courts'

What the documents say

"There is value in including ISDS in an investment chapter. The causality is not provable, but even if disputes do not proceed to claims, the presence of a backstop is invaluable in resolving things – including the possibility of Posts reminding a host state of their obligations."²³ (10-11 July 2018)

What it means

Investor-state dispute settlement (ISDS), or corporate courts, allow foreign corporations to sue governments in secret courts outside of the national legal system. The US would like to include it in a US-UK trade deal.

Cases have been brought over a huge range of issues, including health warnings on cigarette packages, a fracking moratorium, a sugary drinks tax and environmental concerns on mining. Currently a case is being threatened over the Netherlands government's plans to phase out fossil fuels in light of the climate crisis.

The amounts involved can be massive and even the threat of a case can have a chilling effect, as the US official refers to here.

What the documents say

"The US was particularly robust on the opposition to the EU's proposed Multilateral Investment Court (MIC) ('a seriously flawed approach') and that adopting such an approach in a future UK-US FTA is 'untenable with US preferences'. They were clear that the 'traditional ad hoc tribunal' approach is their favoured method, particularly as it is the system in which they have won 17/18 litigation cases. US equally clear that a 'one size fits all approach' MIC, which can 'enshrine misunderstood precedents', is not the

²³ 4th working group, p98

way forward and they would look to 'convince the UK otherwise' in any negotiation. If the UK preferred a court mechanism it would be a 'high level concern' for USTR and Ambassador Lighthizer personally."²⁴ (2-7 November 2018)

"The US continued to have severe concerns with respect to the EU's proposals for a Multilateral Investment Court (MIC) and reiterated previous statements that the US Government would be very concerned at any indication that the UK was in favour of a MIC, they were clear that this would undermine the ability of the US to work with the UK in other forums including in the context of the FTA."²⁵
(2-7 November 2018)

What it means

The US is adamant that even moderate reforms of the corporate court system proposed by the EU (MIC, which would introduce more transparency into the process and to guarantee the right of governments to appeal) are unacceptable. Only the fullest, most pro-big business ISDS system would be acceptable. If the UK were to support the reformed version in a UN forum, the trade deal might be off.

5) The US has banned any mention of climate change in US-UK trade talks

What the documents say

"UK inquired about the possibility of including reference to climate change in a future UK-US trade agreement given that the UK has a strong historical stance on climate change and pushed strongly for the Paris Agreement. UK also highlighted the pressure for this that would come from civil society and NGOs. US responded emphatically that climate change is the most political (sensitive) question for the US, stating it is a 'lightning rod issue', mentioning that as of 2015, USTR are bound by Congress not to include mention of greenhouse gas emission reductions in trade agreements. US stated this ban would not be lifted anytime soon."

²⁴ 5th working group, p30

²⁵ 5th working group, p35

What it means

The US is banning consideration of climate change in the trade deal discussions. Trade deals can increase trade in dirty fossil fuels and fossil fuel intensive sectors, block climate action and undermine a just transition. In the face of the climate emergency it should be an integral factor in any government discussions.

6) The US is demanding protections for Big Tech companies like Amazon, Google and Facebook in trade talks with Trump

What the documents say

“The US has spent a long time looking at intermediary liabilities for platforms. This is a large part of the US economy, with many US companies relying on the ability to provide internet platform services on a large scale. US domestic law has provided these firms with immunity from liability for the behaviour of their users.”²⁶

(21-22 March 2018)

What it means

The big tech platforms such as Amazon, Google and Facebook are increasingly facing challenges around issues such as responsibility for false advertising, especially political advertising, sharing of child pornography, hate speech and bullying. Our societies are just trying to work out how best to tackle this, but the trade deal could prevent attempts to hold these immensely powerful platforms to account.

What the documents say

“The US has had some specific concerns with how GDPR is being implemented.”²⁷ (10-11 July 2018)

What it means

The US wants to get rid of the consumer rights and privacy protections of the General Data Protection Regulation (GDPR).

²⁶ 3rd working group, pp30-31

²⁷ 4th working group, p23

7) The NHS and other public services could be at risk from the US's 'total market access' approach

What the documents say

"The US thinks the NCM (negative list) approach incentivizes freer trade, because the assumption is that everything is included unless something is explicitly excluded. This is the opposite of the assumption made by a positive list. The NCM approach makes total market access the baseline assumption of the trade negotiations and requires countries to identify exclusions, not the other way around."²⁸ (21-22 March 2018)

"USTR had "endless fun" with the EU over their refusal to commit on various sectors. The EU could never wrap their minds around this situation. They kept asking for US priorities, which was not something the US was asking for, and therefore not something we would or could offer up. The US wanted total market access to be the baseline, and the EU simply didn't understand that."²⁹

(21-22 March 2018)

What it means

The US wants the entire service sector to be open to US corporations in a trade deal, unless specific exceptions are made. This is known as a 'negative list' approach, where everything is on the table unless it is specifically taken off, as opposed to a positive list, where only the things you deliberately choose to offer are on the table. The UK seems open to this.

Many aspects of our public services are likely to be opened up to access by US corporations - in particular those aspects of services such as the NHS that are already contracted out or competitively procured from the private sector. In the case of the NHS this covers vast areas of the health system worth around £9 billion.

There is a general exemption for public services but they are very narrowly defined to only apply to services not provided on a commercial basis or in competition with any other supplier. This does not apply to the NHS, particularly because of its internal market, so it remains on the table.

The government could then specifically exempt services such as the NHS, however in previous trade negotiations between the EU and the US, the UK

²⁸ 3rd working group, p41

²⁹ 3rd working group, pp41-42

chose not to do so - it exempted ambulance services but nothing else. Water services in Scotland, which are still in public hands, could also be at risk.

These rules would also make it harder to bring services such as the railways back into public hands.

The negative list approach also means that any new services would be automatically subject to free trade provisions. That could include potential new online services aspects of public services such as broadband.

What the documents say

“Clear that for the US the priority is securing guaranteed market access for US firms into the UK market and ensuring the services and investment rules that protect this access are as strong as possible, including capturing any future liberalisation. While valuable this means it will be a steep ask to secure any new economically meaningful access to the US on priority UK services asks.”³⁰

(21-22 March 2018)

What it means

The UK is doubtful of achieving anything on services in exchange for what it might have to give up.

8) The governments are bending the rules to keep the US-UK trade talks away from public scrutiny

What the documents say

“USTR Legal Counsel briefed the group on recently agreed information handling arrangements, which allowed both sides to share documents without them being disclosed via the US Freedom of Information Act.”³¹ (13-14 November 2017)

“Until the start of the formal trade negotiations, the rules set out in the legislation (including in TPA) will not apply.”³² (13-14 November 2017)

³⁰ 3rd working group, p48

³¹ 2nd working group, p5

³² 2nd working group, p8

What it means

The UK and US have taken steps to ensure that the trade talks are not covered in standard Freedom of Information rules. Because these are informal trade talks, the US government is sidestepping its usual requirement to report to Congress and the public on them.

9) A US-UK trade deal could be TTIP on steroids

What the documents say

“The US did not think TPP (Trans-Pacific Partnership) was a high water mark of ambition on ‘good regulatory practice’: TTIP (Transatlantic Trade and Investment Partnership) was more ambitious, but UK/US could go further.”³³
(13-14 November 2017)

What it means

The EU-US trade negotiations, TTIP, a few years ago were hugely controversial and failed due in large part to public outcry. A US-UK trade deal could be TTIP on steroids!

³³ 2nd working group, p59