

The Rt Hon Kemi Badenoch MP  
Department for International Trade  
Old Admiralty Building  
Admiralty Place  
London  
SW1A 2DY

2nd November 2022

Dear Secretary of State,

**Re: UK-India Free Trade Agreement and access to medicines**

We are writing to express our deep concern at the contents of a leaked intellectual property (IP) chapter,<sup>1</sup> which we believe formed the UK's opening proposal for the UK-India Free Trade Agreement (FTA). In the interests of patients of the NHS and across the world, the UK must urgently rethink its approach and open negotiations to full public transparency and parliamentary scrutiny, including meaningful engagement on intellectual property provisions.

India's long standing ability to produce quality-assured, affordable medicines for HIV, TB, viral hepatitis, malaria and other diseases, medicines that save millions of lives globally every year, relies upon its carefully drafted intellectual property laws and medical regulatory processes which balance the monopoly rights of manufacturers with everybody's right to health.

India also supplies our NHS with 25% of all the medicines used to treat patients here in the UK.<sup>2</sup> Any action that curtails India's ability to produce quality, cost-effective medicines also threatens the financial sustainability of our health service, and ultimately puts patients' lives at risk.

We were therefore troubled to read what appears to be a leaked document detailing an FTA IP chapter text which, if agreed and enacted, could require India to change its national IP laws, and do devastating damage to India's ability to produce affordable life saving drugs. The IP provisions in the text, reported to be the UK's opening negotiating position, go way beyond what is required under international trade rules - namely the World Trade Organisation's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights<sup>3</sup> (TRIPS). Among the dangerous "TRIPS-plus" measures included in the text are:

- A greenlight for 'evergreening' patents for medically inconsequential changes, allowing pharmaceutical corporations to extend their monopolies and keep prices artificially high for years beyond the end of the original 20-year patent term.
- Closing down the opportunity to block unjustified patents before they are granted, meaning more products will be awarded unjustified patent monopolies.

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<sup>1</sup> <https://www.bilaterals.org/?uk-india-fta-draft-intellectual>

<sup>2</sup> Four out of five drugs used in the NHS are generics, a third of these generics are produced in India - 25% of the total. <https://www.telegraph.co.uk/business/2021/05/29/indian-crisis-risks-severing-supply-vital-drugs-uk/>

<sup>3</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm)

- New monopoly protections on the clinical data used to prove a medicine is safe and effective, delaying the advancement of medical science by blocking others from using this evidence to produce generic medicines.
- Removing the requirement for patent holders to reveal to the Indian authorities information relating to relevant patent applications in other countries, and whether patents are being ‘worked’, i.e. are the patented products being supplied and sold to Indian patients. This would make it more difficult to challenge unethical exploitation of patent monopolies.

A wide range of other terms in the document would further undermine vital public health safeguards that India has implemented via its intellectual property law. It would be irresponsible for the UK government to seek to impose such terms in this trade agreement with India, in the knowledge it would reduce access to medicines and corrode health outcomes for patients of the NHS and around the world.

The UK’s apparent approach to the FTA IP chapter is only beneficial to one group - the pharmaceutical industry and their shareholders. These requirements go far beyond global requirements and norms, and have no evidential basis or proven public policy benefit.

The government has received significant criticism, including from its own backbenches and no fewer than five parliamentary committees, for the inadequacy of current scrutiny arrangements. Full and meaningful public and parliamentary engagement in trade agreements would strengthen the UK’s hand in negotiations and provide confidence that the deal being sought is in the best interests of citizens of the UK, India, and the wider world.

The government has already stated that it will:

*“Uphold the [...] manifesto commitment that the National Health Service (NHS), its services, and the cost of medicines are not on the table. To this end we will not accept any provisions that would increase the cost of medicines for the NHS. Protecting the NHS is a fundamental principle of our trade policy, and our commitment to this will not change during our negotiations with India.”<sup>4</sup>*

The leaked document appears to show that this commitment is not being upheld. The serious concerns raised in this letter cannot be ignored. We ask that you:

- Immediately rethink your approach to IP trade agreements to prioritise the NHS and preserve affordable access to medicines globally.
- Refrain from proposals that include TRIPS-plus provisions that may have an impact on the production, registration and supply of affordable, lifesaving essential medical products for the NHS and around the world.
- Ensure full freedom to utilise all available TRIPS flexibilities for public health and access to medicines, as previously committed to by all countries.
- Ensure that, as a result of the FTA with India, neither of the parties are required to amend their IP laws and policies in relation to medical technologies, including devices, patient data, pharmaceuticals and biological medical products.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1046839/uk-india-free-trade-agreement-the-uks-strategic-approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046839/uk-india-free-trade-agreement-the-uks-strategic-approach.pdf)

- Open up all negotiation texts to public transparency and parliamentary scrutiny throughout negotiations, and commit to allowing full meaningful debate and votes in parliament on all aspects of the agreement. No agreement should be signed without this basic democratic oversight.

We ask that you and your team agree to meet with representatives of this coalition and wider civil society urgently to further discuss these issues and to plot a new course that safeguards the lives in the UK and abroad currently threatened by your government's apparent approach.

We look forward to hearing from you soon on this crucial matter.

Yours,

Kitty Arie, CEO, RESULTS UK  
Ruth Bergan, Director, Trade Justice Movement  
Nick Dearden, Director, Global Justice Now  
Martin Drewry, Director, Health Poverty Action  
Diarmaid McDonald, Director, Just Treatment  
Mike Podmore, Director, STOPAIDS  
Amy Randles, Coordinator, Students For Global Health  
Natalie Roberts, Executive Director, MSF UK  
Danny Sriskandarajah, CEO, Oxfam GB