

US Trade Deal? Not now.

Summary

Any trade deal that the UK negotiates should support efforts to tackle poverty around the world and respond to the climate crisis. The UK and the USA should not negotiate a trade deal while:

- The world is facing the immediate health and economic dangers of the coronavirus crisis
- The impact of any proposed deal on international development and the climate crisis is not fully understood
- There are no structures in place for a transparent and democratic trade negotiation

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Introduction

The UK and the USA began negotiations on a trade deal in early May 2020. Expectations of a deep and comprehensive deal are high. President Donald Trump tweeted in December 2019: “*Britain and the United States will now be free to strike a massive new Trade Deal after BREXIT. This deal has the potential to be far bigger and more lucrative than any deal that could be made with the E.U...*”¹ The British Trade Secretary Liz Truss was no less ambitious, claiming at the outset of negotiations that “*this deal with our biggest*

¹ <https://twitter.com/realDonaldTrump/status/1205368801438707713?s=20>

single trading partner will cut red tape for our small businesses, cut tariffs for our great products from dairy to cars and increase growth in all four nations.”²

A deal between two such major global powers would have significant implications for the rest of the world, setting the standards for future trade deals and altering the flows of goods and services. Modern trade deals are broad, and touch on everything from environmental regulations to access to public services. Any proposed deal should be assessed to make absolutely sure that it contributes to the achievement of international commitments, including the Sustainable Development Goals, the Paris Climate Agreement and the UN Guiding Principles on Business and Human Rights. Without such an assessment, no deal should be signed.

For a deal to meet even the minimum standard when it comes to development and sustainability requires transparent trade negotiations in which the government publishes thorough analysis of the likely impact of a deal. Businesses, trade unions, NGOs and the public need to have a meaningful say, and MPs should closely scrutinise any proposals.

None of this is happening. Instead, the UK-USA trade talks are going ahead at a time of profound global upheaval, while both countries are grappling with the impact of the coronavirus crisis. The attentions of all parties, from governments to other stakeholders, should be focused on tackling the health and economic emergency.

Negotiating at a time of crisis

The coronavirus crisis is unprecedented. As of mid-May 2020, hundreds of millions of people around the world are living in lockdown, and the global economy is starting to enter what is expected to be a deep recession. Even as countries are getting to grips with the immediate threat that the virus poses to human health, the impact on jobs and livelihoods is only just being understood.

The UK and the USA are the two worst-affected nations in terms of recorded deaths.³ International coordination is urgently needed, both to tackle what the International Rescue Committee has termed “*the biggest health crisis in 100 years*”⁴ and to deal with the huge rise in poverty as the fragile workings of the global economy are disrupted. In the world’s poorest regions, the crisis is predicted to set the clock back thirty years in the fight against poverty.⁵

At such a time, the UK and the USA should not be negotiating a trade deal behind closed doors. Energies should be devoted to solving the domestic health and economic crises, and to providing much-needed leadership on the global stage. The UK has always traded with the USA on WTO terms and will continue to do so after the end of the post-Brexit transition period in December 2020. Now is not the time to be focusing attentions on a trade deal which will provide only the most negligible

² <https://www.gov.uk/government/news/liz-truss-kick-starts-uk-us-trade-talks>

³ As of 26 May 2020

⁴ <https://www.bbc.co.uk/news/av/world-52308369/david-miliband-too-much-denialism-over-coronavirus>

⁵ <https://www.wider.unu.edu/publication/estimates-impact-covid-19-global-poverty>

economic benefit.⁶ Additionally, with the future shape of the UK economy so up in the air it is impossible to judge what the UK's trade interests will be in a year, let alone five years down the line. This is an uncertain basis on which to negotiate a trade deal with the world's largest economy.

Even if the UK government had the capacity to work on both a trade deal and the coronavirus crisis simultaneously, external scrutiny is vital. Businesses, civil society groups, trade unions and third-country representatives must contribute to impact assessments and closely analysing any proposals. This is currently impossible as all parts of society are rightly focused on tackling the global pandemic.

The coronavirus has also exposed the folly of prioritising a deal with Trump's America. The UK government has made much of its "*vision for a truly Global Britain*".⁷ Yet rather than championing international cooperation and multilateralism in the face of global crisis, President Trump de-funded the World Health Organisation. If the UK were to strike a trade deal with Trump, it could "*close the door on the 'Global Britain' agenda and draw the UK into an emerging US foreign and economic policy based on anti-China bilateralism*", according to a recent study by Harvard academics.⁸ All of this indicates that the UK should be far more cautious rather than attempting to rush through a deal.

Putting in place a process for transparent and democratic negotiations

Even if there were no other pressing priorities, these trade talks would still be cause for huge concern. They are being conducted largely in secret, with no mechanism for those outside government to provide meaningful input. This is bad politics. It suggests that the talks contain elements that the public would not be comfortable with – and early leaks from the talks support that impression.⁹ But it is bad policy too. Giving businesses, NGOs, trade unions and the public opportunity to offer their views throughout the negotiation process makes it more likely that a final deal will be acceptable to the country. The botched USA-EU trade talks are a clear demonstration that a deal without proper public support will be a non-starter.¹⁰

⁶ The UK government's own projections estimate that a trade deal will add 0.16% to the UK economy over 15 years. See p57,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869592/UK_US_FTA_negotiations.pdf

⁷ Article by Foreign Secretary Dominic Raab, September 2019, <https://www.gov.uk/government/speeches/global-britain-is-leading-the-world-as-a-force-for-good-article-by-dominic-raab>

⁸ p75, https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/136_Final_AWP.pdf

⁹ According to reports from the first week of talks, the USA is pushing to include a clause that would limit the UK's ability to strike deals with countries of which the USA did not approve, <https://www.theguardian.com/politics/2020/may/12/us-message-to-britain-in-bilateral-trade-talks-its-us-or-china>, and the UK is planning to slash tariffs on agricultural imports from the USA, which has caused alarm in the UK farming sector, <https://www.ft.com/content/e583b8a2-4074-4fa9-9c43-08a9979e0bee>

¹⁰ Discussions over the proposed Transatlantic Trade and Investment Partnership collapsed in part due to widespread citizen outrage at the secrecy of talks and the failure of both parties to consider key concerns over food standards and investor protection. More than 3 million European citizens signed the 'Stop TTIP' petition.

A transparent process

The UK needs to put in place a process to ensure transparent negotiations and meaningful scrutiny. Without this, continued negotiations are unacceptable. This must entail the publication of all official documents relevant to the trade negotiations, including assessments of the potential impact of proposals on a range of issues including consumer rights, labour rights, human rights and gender equality in the UK, and social and economic development in the Global South. And for any eventual deal to be fit for the 21st century, full consideration should also be given to how a deal would support the UK's ability to fulfill its international commitments to the Sustainable Development Goals, the UN Guiding Principles on Business and Human Rights and the Paris Climate Agreement.

The views of civil society should be actively sought in a structured way. This could take different forms. The Trades Union Congress, the Confederation of British Industry, the Federation of Small Businesses and others have proposed that stakeholder representatives could actively work alongside negotiators, feeding into the process via consultative committees.¹¹ The USA and Canada have both developed a structure of committees that, while not perfect, offer enhanced opportunity for civil society to shape the trade negotiations.¹² The UK is starting from scratch, having not negotiated trade deals directly during EU membership, and has the opportunity to put in place world-leading levels of transparency and consultation. Instead, it is rushing ahead with important negotiations behind closed doors.

Ensuring trade democracy

In January 2019, the House of Lords amended the Trade Bill to demand a proper democratic process for approving trade agreements. The government responded by quietly dropping the Bill in September 2019. Since there is no legally enshrined process for MPs to have a meaningful say on our trade arrangements, it is unacceptable for the UK to be entering into trade negotiations in the first place.

The only obligation that the government has to meet at present is to lay a final deal before parliament for 21 days. There is no guarantee of a debate or a vote, and no scope for MPs to amend the deal.¹³ This is democratically outrageous, and falls well short of the systems in place in the USA and the EU, where Members of Congress and MEPs respectively have far greater scope to scrutinise proposed trade deals.

¹¹ <https://www.tjm.org.uk/documents/briefings/2018-06-28-A-Trade-Model-that-Works-for-Everyone-Final-02.pdf>

¹² The USA has 28 advisory committees (<https://ustr.gov/about-us/advisory-committees>) while Canada has a structure of Sectoral Advisory Groups on International Trade (SAGIT sub-committees). The UK Department for International Trade has convened Expert Trade Advisory Groups, but these are voluntary with an unclear remit and no official right to provide input.

¹³ The limited ability of MPs to have a say on our trade deals comes from the Ponsonby Rule, a parliamentary convention dating from 1924.

Danger in the detail

The direct economic benefits of a UK-USA deal are likely to be negligible, with the government's own estimates suggesting only a 0.16% boost to the economy after 15 years of a comprehensive trade deal.¹⁴ The reason that transparent and democratic negotiations are so vital is that the implications of a UK-USA trade deal could be extremely significant. A deal could allow American healthcare providers greater access to the NHS or lead to a drop in food standards and environmental protections. And the potential global implications are similarly profound.

From an international development perspective, a proposed UK-USA trade deal poses three especially pressing concerns.

Preference erosion and trade diversion

Part of the aim of a free trade agreement is to lower tariffs on goods traded between the signatories. Lowering tariffs would make it cheaper to buy American goods on the British market and could leave exporters in poorer countries unable to compete. The UK offers tariff preferences to Least Developed Countries, but the value of these preferences would be eroded if the UK offered similar access to American exporters.

The potential impact of a UK-USA trade deal on other trading partners, including poorer countries, needs to be fully understood. For example, assessment of the proposed trade deal between the EU and the USA (TTIP) showed a drop in exports to the USA from some countries, with Niger (12%), Malawi (3%) and Ghana (1-2%) amongst the worst hit.¹⁵ When supply chains are disrupted, the impact on livelihoods can be severe. This has been amply demonstrated during the coronavirus pandemic, as the changes in global trade patterns have seen workers in sectors from Kenyan flowers to Bangladeshi garments plunged into further poverty and uncertainty.

Monitoring and understanding how a proposed deal is likely to affect trading partners in poorer countries is vital to ensuring that the UK meets its obligations to achieve the SDGs.¹⁶ Analysis should lead to the government taking action to change the content of the deal or otherwise alleviate the impact.

Investor protection clauses

Trade deals often include a clause affording disproportionate protections to international investors, such as Investor-State Dispute Settlement (ISDS). These allow corporations to sue governments if

¹⁴ p57,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869592/UK_US_FTA_negotiations.pdf

¹⁵ https://assets.publishing.service.gov.uk/media/57a08a09ed915d3cfd000560/61075-EU-US_trade_agreement_and_LICs_final_report_no_annexes_P1.pdf

¹⁶ Possible responses to any analysis could include changing the content of the trade agreement by inserting break clauses that would become effective if it was demonstrated that the deal was harming the achievement of the SDGs. Assessment of the impact of a UK-USA deal could also inform broader UK trade policy and aid policy.

they feel that public policy decisions are affecting their profits; they hugely curtail the ability of governments to legislate and regulate in the public interest. Such provisions have no place in any trade deal and must be rejected.

The inclusion of ISDS in a UK-USA trade deal would mean that an American corporation could sue the UK government for taking action to tackle the climate crisis.¹⁷ As well as being democratically outrageous, this would prevent the UK from being able to fulfill its obligations under the Paris Climate Agreement.

The coronavirus crisis has further exposed how damaging investor protection clauses really are. Nations taking steps to protect their populations (through measures such as imposing lockdowns or supporting access to food) are vulnerable to being taken to court for damaging corporate profits – indeed, global legal firms are already notifying their clients of future opportunities to cash in: a specialist law journal noted in April that “*for arbitration and litigation funders, the past few weeks may mark the beginning of a boom*”.¹⁸

Setting a precedent

Trade deals struck between richer countries set global norms for trade. In recent years the World Trade Organisation (WTO) has made little progress, constrained by a lack of international cooperation. So what progress there has been in developing new global trade rules has come from bilateral trade agreements, of which a UK-USA deal would be a major example. If the UK and the USA identify common ground on particular issues, they may use their influence to have these positions supported by WTO rules and enshrined in future agreements. This could pile pressure on poorer countries to privatise public services or open their markets to international companies, whether or not such an approach is in the development interest of those countries.

Conclusion

The UK has an opportunity to set a high standard in trade policy. Any trade deals must support the UK’s commitments to the two global priorities of tackling poverty and addressing the climate crisis. Negotiations should be conducted based upon a principle of transparency and democracy. Instead, the UK and USA are starting trade talks in the worst possible way. Talks are being conducted in secret, there is no public assessment of the potential impact of a deal on trade with poorer countries, and MPs have no meaningful role in scrutinising proposals. The potential negative impact of a bad deal is huge and the case for suspending negotiations is overwhelming.

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¹⁷ This is not theoretical. Friends of the Earth have shown how the threat of being sued under ISDS caused France to withdraw a proposed law limiting fossil fuel usage: http://www.foeeurope.org/sites/default/files/eu-us_trade_deal/2019/foe-red-carpet-courts-final-web1.pdf

¹⁸ <https://www.law360.com/legalethics/articles/1261213/third-party-funders-business-is-booming-during-pandemic>