



EDITORIALS

Is the NHS really “off the table” in post-Brexit talks with the US?

No, the UK risks losing control over critical elements of NHS policy

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Since leaked minutes of US-UK trade talks were made public on 25 November, a predictable war of words has been ongoing between the political parties and the media. But what do these revelations actually tell us about the possible impact of a post-Brexit US trade deal on the NHS? We have examined six sets of minutes¹ and find two clear messages.

Firstly, these documents make clear the extent and form of US interest in the NHS, and it seems unlikely that factors affecting the provision of health services would be excluded from trade agreement negotiations. The NHS as a whole may not technically “be on the table,” but depending how negotiations are concluded, there is real potential for an agreement that greatly undermines the UK’s sovereignty over policy decisions in this space and the government’s ability to determine spending on health and the NHS.

Sovereignty undermined

Reading these documents creates a sense of déjà vu relating to the recently aborted Trans Pacific Partnership (TPP) agreement,⁹ with the added irony that a trade agreement with the US could put the UK in a position that seems to be the opposite of the Brexit rhetoric of “taking back control.” In particular, proposals that we should give US drug companies greater market access and longer patent protection²⁻⁴ will result in higher drug prices and are likely to weaken the UK’s evidence based policy mechanisms, including the role of the National Institute for Health and Clinical Excellence (NICE). Mechanisms such as NICE, which determines the supply of medicines based on a technical rather than political review of evidence of benefit and cost, are an essential component of equitable, fair, and accountable decision making in the NHS. This would effectively decrease the UK’s sovereignty over healthcare.

The leaked papers are obviously chronicles of preliminary discussions. However, they leave little doubt about the extent to which intellectual property, especially in relation to medicines, is a central focus for the US in any free trade agreement with the UK. This position is consistent with a long

history of trade negotiations in which the US has sought to ensure market access and patent protection for the benefit of US corporations, with central considerations given to the US drug industry: five of the world’s 10 largest drug companies have headquarters in the US.¹⁰

Focus on medicines

Secondly, the leaked documents show the US trade negotiators’ clear focus on medicines and patents for medicines. There are repeated references to pharmaceuticals, patents, the length of patent protection, market access, and registration processes. The consistency with which patent protection, in particular, is referred to leaves little doubt that this is a priority for the US. Reference to the UK’s helpful talks with the Pharmaceutical Research and Manufacturers of America, which lobbies for the US drug industry, underlines this point.

The extent to which the US focuses on the UK’s patent systems and European regulation also suggests that weakening the UK’s patent system so that is more closely aligned with that of the US is seen as strategic, with potential implications for patent rules beyond the UK. Concerns have also been raised about the potential for US companies to mine and monetise NHS patient data.⁵

The proposals show a remarkable similarity to US negotiations with many low and middle income countries over the commonly termed “TRIPS-plus” protections.⁶ Literature relating to these experiences indicates the pressure placed on countries to offer patent and other measures that far exceed those required under the internationally agreed TRIPS system. It is sobering to reflect on this when considering how the UK’s NHS, as a weaker partner, may fare in trade negotiations with the US.⁷

Finally, governance mechanisms that allow companies to challenge public health regulations through trade disputes also raise the possibility of a “tit for tat” trade war around public health matters, adding considerable pressure to these deliberations.⁸ For example, the US may threaten to impose

restrictions on UK goods if it is argued that public health regulations are preventing free trade.

US success in securing longer patents would undoubtedly force the NHS to pay higher prices for medicines for longer. Beyond these headlines, however, we must not ignore the wider implications of a free trade agreement—loss of sovereignty and decision making power for the UK, including decision making on the NHS.

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