



HOUSE OF LORDS

European Union Committee –
International Agreements Sub-Committee

House of Lords
London
SW1A 0PW

Tel: 020 7219 4840
Fax: 020 7219 6715
hlintlagreements@parliament.uk
www.parliament.uk/lords

Rt Hon. Elizabeth Truss MP
Secretary of State for International Trade and President of the Board of Trade
Department for International Trade
King Charles Street
London SW1A 2AH

31 July 2020

Trade negotiations between the UK and the US

Dear Secretary of State,

Thank you for coming to speak to us on 23 July about the negotiations for free trade agreements with both the US and Japan. I am writing to you separately regarding the latter.

As you know, our inquiries into FTA negotiations will run until the end of the CRAG scrutiny period for any agreed deal. Although we covered some important issues in your evidence, as I indicated at the end of that session, we have further questions for you regarding the talks with the US in the light of the evidence that we have received to date. We hope for a timely and detailed response to this letter's conclusions and further questions, set out in bold, we would ask by no later than **18 September**. We will be publishing this letter on our website today, where the evidence received to date is also available.¹

The scrutiny process

We heard from Lord Grimstone in a private briefing at the start of our UK-US inquiry but have not to date sought to hear in private from the negotiators involved in the US talks, as the Commons International Trade Committee has done. We hope that, should we make such a request regarding this FTA or others in the future, the Department will be able to facilitate it. I am sure you will agree that it is essential that parliamentary scrutiny committees in both Houses have access to the necessary information to carry out our work effectively, while recognising that such information may be provisional while negotiations are ongoing.

Several of our witnesses have argued for greater parliamentary involvement in trade negotiations and stronger powers for Parliament in scrutinising final deals,² some of which

¹ <https://committees.parliament.uk/committee/448/eu-international-agreements-subcommittee/publications/>

² See, for example, evidence from the Trade Justice Movement (UST0007), the British Medical Association (UST0029), Global Justice Now (UST0033), Ms Linda Kaucher (UST0037), and the NFU (UST0046).

signed the recent letter to you from environmental and animal welfare groups on this subject.³ As I am sure you are aware, we recently published our *Treaty scrutiny: working practices* report,⁴ which addresses some of these issues, and we look forward to the response from the Government and debate on these issues in early September, after which we may wish to discuss with you further the provisions for parliamentary scrutiny of international trade.

Our witnesses have also raised concerns about the sequencing of the US talks alongside those with the EU, Japan, Australia and New Zealand, and a number of other countries as part of the ongoing continuity programme.⁵ We note the recommendation from the BritishAmerican Business group that “the ambition for a comprehensive free trade agreement should not be pursued at the cost of damaging what is already a very healthy and successful trade and investment corridor”,⁶ and we have also paid close attention to the discussions the US Trade Representative, Ambassador Lighthizer, has had with the US Congress about the UK-US talks, including his view that the UK’s negotiations with the EU and the US were “hard to do at the same time”.⁷

We asked you about this on 23 July, and you explained how the teams working on each set of talks were remaining joined up. **We were pleased to hear that, but must tell you that we continue to have concerns about how the ongoing negotiations with the EU on a future relationship may impact on negotiations with the US on a trade deal. We would welcome more detail on how you will manage this and would ask what detailed assessment you have made of major trade-offs that may need to be made between the UK-EU and UK-US talks.** We will continue to keep a close eye on how parallel talks are proceeding and will also, as appropriate, raise these issues with the Chancellor of the Duchy of Lancaster and Mr Frost through the EU Select Committee, which is following closely the UK-EU talks.

We are also conscious that, when any deal is done, it will not only be Parliament that must act swiftly to scrutinise the final agreement, but also stakeholders across the UK.

How much time will be given for post-agreement consultation with stakeholders on what is a potentially far-reaching agreement with legal implications? We know that the Government intends to produce an impact assessment on the final text, but is the Government planning to commission any independent studies on the likely

³ [Letter to the Secretary of State regarding climate, environment and sustainable development goals](#), dated 10 July. Those signatories that have provided written evidence to the Committee are: Traidcraft Exchange (UST0011), Compassion in World Farming (UST0016), Pesticide Action Network UK (UST0025), and WWF UK (UST0032).

⁴ [Treaty scrutiny: working practices](#) (11th Report, HL Paper 97)

⁵ Several witnesses have said the UK should prioritise talks with the EU over other FTAs, either on the basis of the volume of trade or on the basis that the future UK-EU relationship will have a significant impact on what the UK can agree bilaterally with other countries. See, for example, evidence from the Trade Justice Movement (UST0007), Global Justice Now (UST0033), the National Farmers’ Union (UST0046), and Cornwall Council (UST0051).

⁶ As set out in BAB’s 2019/2020 Trade Policy Agenda: <https://www.babinc.org/wp-content/uploads/2019/06/Time-To-Act-BAB-Policy-Agenda-2019-20-Spreads.pdf>

⁷ The USTR made this point in a 17 June hearing with the Ways and Means Committee in the House, in response to a question from Congressman Ron Kind (D-WI).

effects of the agreed provisions, which might inform parliamentary and public scrutiny of the deal? How will the Government engage industry bodies to understand and prepare for the consequences of a deal?

We also discussed with you on 23 July how the Government works with stakeholders through its strategic and expert trade advisory groups, and the concern of some participants about non-disclosure agreements relating to that work. We understand that the Government intends to review the membership of these groups soon.

The issue of how the Government engages with stakeholders is a vital one, and we urge you to find pragmatic solutions for allowing stakeholders and Parliament to understand and contribute to the Government's negotiation positions. We would be grateful to know which individuals and bodies participate in your strategic and expert trade advisory groups, and how many meetings each group has had since it was formed.

During negotiations, how is the Government communicating with industry on the more detailed chapters where different views exist, such as intellectual property or voluntary standards? Will industry be provided with a detailed rationale of how and why certain provisions have been agreed, and will this same information be provided to Parliament? Will the Government publish such explanatory material?

Finally, we discussed with you on 23 July the schedule for a UK-US deal, and you told us that you were not setting deadlines for trade talks.⁸ We agree with this approach. **However, could you confirm that you do not expect to conclude a deal with the US this year? How will the Government incorporate any deal done with the EU into its US negotiating strategy and objectives?**

The remainder of this letter addresses the three areas on which we have initially focused our evidence-taking – agri-food, healthcare and drug pricing, and digital trade – followed by some observations and questions relating to overarching issues and other emerging themes.

Agri-food

We have received a large number of submissions relating to this topic, and we know that it is a key area for the US negotiators.⁹ What we have heard raises concerns about how the interests of UK food producers and manufacturers will be safeguarded in any trade deal with the US.

We welcome the establishment of the Trade and Agriculture Commission, representing farmers, retailers and consumers, and the fact that its membership includes representatives of the agricultural sectors from all four nations in the UK. It is vital that the unique concerns and

⁸ Q57 on 23 July

⁹ Marjorie Chorlins, speaking to us on 16 July, noted that US trade agreements have typically led to “the elimination of roughly 99% of agricultural tariff lines” and “strong provisions on sanitary and phytosanitary standards” in line with WTO standards (Q40).

interests of Wales, Scotland and Northern Ireland are heard and acted upon in this area, as agriculture represents a larger part of their national economies than in England. However, we note that this is also true for some regions of England, as Cornwall Council has pointed out to us in evidence.¹⁰ We also note that no agricultural economists have been appointed, and the criticisms of the Commission's composition by organisations such as the RSPCA. **We hope that the Commission will receive the expert advice that it requires to fulfil its duties.** We also note the short time the TAC has to do its work. **How does the Government plan to deal with the issues it's handling after its six-month term has ended?**

Witnesses from the agricultural and food manufacturing sectors have told us that they see a number of significant risks that might arise from a UK-US FTA and more modest opportunities, although we note the Government's review of modelling led by Professor Tony Venables, announced on 1 July. This section therefore focuses particularly on the UK's defensive interests. We have received several submissions that make detailed proposals regarding tariffs, which we do not rehearse here, but we will be scrutinising this issue closely as talks progress.

A number of witnesses have expressed concern that a deal will allow US agriculture to "undercut" UK producers,¹¹ with some noting that a dual-tariff system would offer UK producers only partial protection.¹² As well as raising questions about whether UK farmers would be able to compete for market share domestically after a deal, this also suggests that the economic opportunities for UK farmers to export to the US will be slim, although possibly a little greater if geographical indications are protected.¹³ Dr Ludivine Petetin of Cardiff University has noted the potential new burdens for SMEs that could arise if products being sold to the US were to require different labelling, for example on geographical indications, than products destined for the UK or EU markets.¹⁴

¹⁰ UST0051

¹¹ This point has been raised with us by a significant number of witnesses, including Mr David Partridge (UST0001), the RSPCA (UST0004), the National Sheep Association (UST0006), the British Veterinary Association (UST0009), Compassion in World Farming (UST0016), Dr Ludivine Petetin of Cardiff University (UST0021), Pesticide Action Network UK (UST0025), WWF (UST0032), the NFU (UST0046), Cornwall Council (UST0051), and Michael Haverly of The Andersons Centre (Q3 on 1 July).

¹² Compassion in World Farming (UST0016) suggests that "both tariff and non-tariff protection" is needed, and that it would be better for the UK to be able to "refuse to import products produced to standards below those of the UK" than to impose tariffs on non-conforming imports. The National Sheep Association (UST0006) has suggested that it would be "inappropriate" for imported goods to have to meet lower standards, and that a tiered tariff structure would "provide some protection" but "would not provide the long-term security that the industry needs". The Trade Justice Movement has said it would provide only "short-term relief" because tariffs "can be easily changed by the executive without any parliamentary oversight" (UST0007), which WWF's submission echoes (UST0032). Dr Ludivine Petetin has pointed out that high tariffs on US products might help "protect farmers and the agri-food supply chain from US imports" but could lead to increased consumer costs (UST0021).

¹³ The need to protect geographical indications was raised by the National Sheep Association (UST0006), which highlighted GIs as "an important part of devolved nationality and agricultural policy in the UK", as well as the Fresh Produce Consortium (UST0013), Dairy UK (UST0026), Ms Linda Kaucher (UST0037), the NFU (UST0046), and Cornwall Council (UST0051).

¹⁴ UST0021

We are struck by the comparatively small figures that the Government's own calculations suggest will be gained from a deal, and some of our evidence has highlighted the global competition that UK producers might face were they to gain access to the US market. For example, Mr Haverty of The Andersons Centre gave us the example of Ireland's veterinary standards agreement with the US in 2015, which was anticipated to bring in sales of up to €100 million a year but resulted in significantly lower amounts – in the region of a tenth of that figure – because of the competition for supplying grass-fed beef from Uruguay, Australia, and domestic producers in the US.¹⁵ Even those who see a US FTA as providing significant further export opportunities, such as the National Sheep Association (NSA), which sees potential opportunities for exporting UK sheep genetics,¹⁶ or Dairy UK, note that it might also “pose a major competitive challenge”.¹⁷

When we spoke to you on 23 July, we asked how the Government would ensure that UK agriculture was not a ‘loser’ in this deal, for the sake of ‘winners’ in the services industry. You told us that you and the Government were committed to ensuring that a deal worked for all sectors of the UK, and that you were looking at the positive opportunities for UK farming as well as impacts on all sectors within that industry.¹⁸

Has the Government yet ruled out any specific provisions because they would not sufficiently protect UK producers? Could you explain in further detail your position of not lowering food standards to help us and those potentially affected understand what it might mean in terms of protecting UK producers? For example, can the use of tariffs adequately protect the UK's SPS standards in the longer term? Do you think that a dual-tariff system is a plausible way to achieve that goal, and how would such a system work in practice?

We would also be grateful to know what compensatory funding you propose to make available to help support any affected agriculture sectors to raise productivity and meet regulatory obligations if any US deal poses a major competitive risk to vital food production domestically.

We have heard from a number of witnesses their concerns about US farming practices, in particular those that require chlorine-washes for chicken, or involve the battery caging of hens, the use of sow stalls in pig farming, hormone treating beef, or the use of ractopamine in pigs.¹⁹ There appears to be general concern that the sanitary and phytosanitary standards (SPS) currently in place in the UK might be undermined by a UK-US deal, as well as criticism of the

¹⁵ Q4 on 1 July; similarly, WWF has noted that Australia and New Zealand provide 99% of lamb imports to the US, and that the UK's upland hill farmers might struggle to compete in this market, even if the small ruminants rule was removed as a non-tariff barrier (UST0032), and the NFU has told us about the competition that the UK might face in exporting lamb or beef (UST0046).

¹⁶ UST0006

¹⁷ UST0026

¹⁸ Q63 on 23 July

¹⁹ These issues are highlighted by Mr David Partridge (UST0001), the RSPCA (UST0004), the British Veterinary Association (UST0009), Compassion in World Farming (UST0016), Dairy UK (UST0026), WWF (UST0032), and the NFU (UST0046).

US' "science-based approach" to regulating, which WWF has argued gives inappropriate weight to studies conducted by companies seeking to sell certain products that may be harmful to human health.²⁰ Conversely, Marjorie Chorlins told us that "American companies have no interest in seeing the UK lower its health and safety standards", but that "to the extent that those standards" are not "based on sound science" or "truly risk based in their construction", they should be looked at.²¹

The British Veterinary Association told us that existing animal health and welfare standards should be regarded as "public goods" and that they could be undermined by free trade agreements. The value that current food standards seems to offer for UK exporters was highlighted by the BVA as part of "Brand Britain",²² while Elsa Fairbanks of the Food and Drink Exporters' Association highlighted the importance of the UK's "really strong reputation for high-quality food" in the US,²³ and Nick von Westenholz of the NFU agreed that further exports of "high-quality, high-value and high-end UK produce" would be the primary opportunity for producers.²⁴

The Fresh Produce Consortium has noted the importance of the UK's "high regulatory standards" for "consumer confidence",²⁵ which the NFU echoed, citing recent research by Which? about UK consumers' attitude towards food standards.²⁶ Dairy UK has called for the Government to undertake strong public communications about the UK dairy industry's higher standards in the event of a UK-US deal that allows US dairy products produced to a lower standard onto the UK food market.²⁷

What assessment has the Government made of the value that the UK's current high food standards create? Has the Government undertaken any analysis of whether UK food produced to what consumers might perceive to be lower standards would be as competitive on the global market?

Our witnesses have also raised with us the environmental and social consequences of a US deal, beyond the purely economic consequences.

As well as noting the absence of UK objectives for securing environmental protections or ensuring that the US and the UK both meet their commitments on climate change,²⁸ which we explore in more detail below, witnesses have raised the issue of ensuring food security, both by

²⁰ UST0032; see also evidence from Ms Linda Kaucher (UST0037)

²¹ Q43 on 16 July

²² UST0009

²³ Q2 on 1 July

²⁴ Q10 on 1 July; see also written evidence from Cornwall Council (UST0051)

²⁵ UST0013

²⁶ UST0046

²⁷ UST0026

²⁸ WWF (UST0032) notes the disparity between the UK's objectives for talks with the US and objectives for talks with Japan, with the latter including "ensur[ing] both parties meet their commitments on climate change."

supporting local food production²⁹ and by supporting innovation across the UK agriculture sector through enabling enhanced use of biotechnology.

Some witnesses have raised concern about the types and residual levels of pesticides that the US regulatory system permits, and the potential consequences for the environment if the UK were to modify its own rules in that direction.³⁰ Pesticide Action Network UK has noted this as a “key sticking point” for the US, as relative permitted levels of residue on UK and US produce vary significantly.³¹ Evidence received from the American Pistachio Growers argues for the UK diverging from the EU’s maximum residue level policy as such levels change frequently, making it “difficult for ... producers to comply” and “discouraging when those changes are made during a growing season and not based on scientific risk”.³² Instead, they propose that Codex Alimentarius standards should be used instead, which Pesticide Action Network UK’s submission has argued against.³³

As with other issues relating to agri-food standards, there are opposing views about how to approach the regulation of pesticides. How is the Government weighing the evidence in this regard, and what conclusions have you drawn about what provisions to rule out of any US deal on the grounds of public health or environmental concerns? What is your assessment of the Codex standards and whether they could or should replace existing UK rules?

The Agricultural Biotechnology Council has criticised current regulation that it says has inhibited the UK’s private sector advanced plant genetics base, arguing that Australia, Brazil, Canada and New Zealand have all safely introduced gene-edited plants “to the benefit of farmers and their food sector”.³⁴ In oral evidence, the NFU told us that the EU’s position had been “too precautionary” on this issue, and that genetic modification of plants could introduce “traits ... that are very beneficial from an environmental perspective”, such as by “reduc[ing] the requirement for pesticides and use of water”.³⁵ The Grain and Feed Trade Association has also told us that gene editing could contribute to sustainability and tackling other “production and environmental challenges”, highlighting the current divergence between the UK and the US on approving genetically modified organisms (GMOs), defining gene-editing techniques, and the acceptable levels of low-level GMO presence.³⁶

²⁹ For example, Dr Ludivine Petetin has suggested to us that a UK-US FTA “should aim to increase environmental, food and social resilience rather than being short-sighted and focusing mainly on the positive economic consequences” of any deal (UST0021). See also Cornwall Council (UST0051).

³⁰ Pesticide Action Network UK (UST0025) and the WWF (UST0032) have raised this issue with us.

³¹ UST0025

³² UST0018

³³ UST0025

³⁴ UST0031

³⁵ Q8 on 1 July; see also the NFU’s written evidence, which notes US farmers’ “access to a larger crop protection toolbox” and criticises “the EU’s overly precautionary and bureaucratic system for regulating plant protection products” (UST0046).

³⁶ UST0010

We note the importance of ensuring domestic food security and the potential risk that allowing UK agriculture to lose out from a trade deal will pose to this objective.

Some of the differences between UK and US agriculture merit wider public debate, including the question of whether or how GMOs can contribute to the UK's agriculture and food sectors. What is your assessment of the arguments for changing how the UK approaches this issue? How does the Government propose to consult the public and stakeholders on any relevant provisions that might emerge from talks with the US? To what extent should such commitments be included in trade agreements, rather than being solely a matter for domestic policy making? What assessment has the Government made of any possible impact for UK-EU trade of a UK-US deal that might allow GMOs or gene-edited crops into the UK market?

We have also received some evidence about the potential effects on human health of reduced animal welfare and food safety standards.

While the British Veterinary Association noted that US products might be “safe from a public health point of view”,³⁷ the British Medical Association has suggested that the different UK and US food standards might lead to different levels of risks to human health, providing an analysis of the rates of salmonella infection in several countries including the UK and the US.³⁸ The BMA has also highlighted to us that free trade deals could affect the UK's efforts to tackle childhood obesity, citing research on the North American Free-Trade Agreement (now superseded by USMCA) on the consumption of high-fat, high-salt or high-sugar products and obesity rates in Canada and Mexico.³⁹

There are also other potential impacts for human health. In their evidence, the British Veterinary Association noted the crucial leadership that the UK has shown in tackling antimicrobial resistance through preventing the widespread preventative use of antibiotics in agriculture.⁴⁰ Those who have highlighted the US' objective of securing changes to UK pesticide standards have also indicated the potential harm to human health, as well as the environment.⁴¹

In presenting any trade deal to Parliament and the country, the Government must be able to demonstrate through expert analysis that the deal will not negatively affect human health, either directly (for example, through the risk of salmonella) or

³⁷ UST0009

³⁸ UST0029; on these grounds, the BMA argues against a dual-tariff system that would allow food produced to lower standards into the UK at higher prices.

³⁹ The BMA cites a 2017 Canadian Medical Association Journal paper ([Impact of the North American Free Trade Agreement on high-fructose corn syrup supply in Canada: a natural experiment using synthetic control methods](#)) and a 2018 paper from the National Bureau of Economic Research ([Weight gains from trade in foods: Evidence from Mexico](#)). Ms Linda Kaucher (UST0037) has told us that poverty in the UK might “effectively force” people to buy “cheaply-produced, low standard US agricultural product[s]” with “negative effects on, and increased costs for, public health”.

⁴⁰ UST0009

⁴¹ Pesticide Action Network UK (UST0025) and the WWF (UST0032)

indirectly (for example, through rolling back measures to prevent overuse of antibiotics). We would be interested to know what research the Government has undertaken or commissioned to examine the potential effects of agri-food or other provisions that form part of the US' objectives on public health in other countries with which it has a trade deal.

Healthcare and drug pricing

Our witnesses have drawn to our attention a lack of detail underpinning the Government's high-level published objectives in this area. In their written submission, the Nuffield Trust has noted, for example, that "the role of NICE ... really relates to approval or otherwise" and not "actual price negotiation", such that its role "might therefore not be covered by the pledge" that "the price the NHS pays for drugs will not be on the table".⁴²

We are inclined to agree that, while the Government has set out its aspirations quite clearly, it has given little detail for those of us who wish to scrutinise how it will achieve those goals in practice. We urge the Government to set out more detail about how it intends to achieve its high-level goals in this area, including in responses to the further questions below. For example, in which chapters of a deal will the Government be seeking specific exemptions for the NHS? And how will the Government ensure that any such exemptions to protect the NHS do not undermine some of the UK's own goals, for example in relation to regulatory cooperation or supporting the UK medical devices industry?

Our witnesses express concern about the US' objective to secure what it sees as fairer drug pricing, which might lead to increased costs in the UK.⁴³ Witnesses have highlighted the higher prices for medicines in the US compared to the UK, which the Nuffield Trust puts at "an average of three to four times" higher for the same branded products,⁴⁴ and which the British Association of European Pharmaceutical Distributors attributes to US regulators "fail[ing] to emphasise cost-effectiveness" for medicines and "limited competition" between pharmaceutical companies there.⁴⁵ The British Medical Association has warned that "economic gain" from an FTA could be "given priority over health", making healthcare a potential 'losing' sector in any UK-US deal.⁴⁶

We heard from Professor Karl Claxton, a professor of health economics at the University of York, long-standing member of NICE's Appraisal Committee and a member of the National Decision Support Unit, that he was concerned that the US goal of the NHS paying higher prices for pharmaceuticals could be achieved without technically increasing prices (i.e. amending the

⁴² UST0024

⁴³ See submissions from the Trade Justice Movement (UST0007), Keep Our NHS Public (UST0008), the British Association of European Pharmaceutical Distributors (UST0019), the Nuffield Trust (UST0024 and oral evidence of 8 July), the British Medical Association (UST0029), and the Confederation of British Industries (UST0041)

⁴⁴ UST0024

⁴⁵ UST0019

⁴⁶ UST0029

list price of drugs), for example by “restricting the way in which NICE makes its decisions or restricting the way in which the PPRS operates”.⁴⁷

However, the Institute of Economic Affairs has suggested that “increased competition and more choice would drive down prices and raise quality, as in any other sector”, as US drug companies could not “sell medicines to the NHS at a higher price than the UK currently pays” because the NHS could continue to “buy drugs worldwide” and would be a “large buyer with substantial purchasing power”.⁴⁸ The British Association of European Pharmaceutical Distributors also used its submission as an opportunity to highlight the interconnected nature of UK-US talks on healthcare and drug pricing and the UK’s discussion with the EU regarding exhaustion of rights, highlighting the role of parallel imports in keeping the cost of medicines down.⁴⁹

What elements of the NHS’ complex drug-pricing system has the Government ruled out making changes to as a result of a UK-US deal? What steps is the Government taking to ensure that parallel imports for medicines can continue, with a view to maintaining competition and affordable pricing for drugs?

The health sector is one in which some witnesses have advocated for greater regulatory cooperation, with the Association of British HealthTech Industries suggesting that the US Food and Drug Administration and the UK’s Medicines and Healthcare products Regulatory Agency should establish a joint committee on this topic.⁵⁰

The outcome of the US-Australia FTA, which has been drawn to our attention by the Nuffield Trust, included such a provision – a Medicines Working Group comprising federal officials from both countries – as well as revised procedures that included the opportunity for companies to attend hearings with Australia’s Pharmaceutical Benefits Advisory Committee and a new independent review process.⁵¹ Nuffield Trust notes that it is unclear whether those outcomes resulted in a difference in how drugs were priced in Australia.⁵² More broadly, Mark Dayan of the Nuffield Trust told us in oral evidence that, in scrutinising any UK-US deal, we should attend to the “new rights and duties” that it establishes, for example “rights to appeal decisions” about whether a drug will be funded.⁵³

What options are the two countries actively considering in the area of regulatory cooperation, such as mutual recognition of approvals of medicines and medical devices? How might any agreement with the US affect – if at all – the UK’s participation in a regional European exhaustion of rights regime for medicines?

⁴⁷ Q14 on 8 July

⁴⁸ UST0040

⁴⁹ UST0019

⁵⁰ UST0017

⁵¹ These provisions align with the US Trade Representative’s published objectives, and Marjorie Chorlins told us on 16 July that “more transparency in the process for pricing and reimbursement” is the US’ goal, “including the provision of an appeals process for prices that may not reflect the value of the investment and innovation that a new drug or new medical device represents” (Q48).

⁵² UST0024

⁵³ Q14 on 8 July

We have also received a significant amount of evidence regarding intellectual property and drugs and medicines, and about whether the prices that are paid in the UK for medicines disincentivise research and the development of effective medicines.

The Nuffield Trust has suggested that increased prices would, in fact, “weaken” incentives for companies to conduct such research, as the connection between “saving and improving lives” and “the ability to charge higher prices” would be eroded.⁵⁴ The British Generic Manufacturers’ Association also noted that the UK already enjoys “very high levels of innovation and research” and “the lowest generic prices in Europe”, which it attributes less to the cap on NHS drug prices for branded drugs and more to the UK’s system that allows “earlier competition from generic and biosimilar medicine”.⁵⁵

Regarding patent and exclusivity periods, our witnesses express concern about the US’ stated objective of extending these, including through grace periods for pharmaceuticals. For example, the BMA argues that the UK’s current intellectual property regime for medicines should be maintained,⁵⁶ with which the Association of the British Pharmaceutical Industry agreed.⁵⁷ The British Generic Manufacturers’ Association has told us that it is “the expiry of the exclusivity period” of any drug that “motivates originator companies to develop new drugs”, “not longer periods of exclusivity”, arguing that the UK should resist the application of any “grace period” to patent durations, or any “mandatory notification” system whereby a generics manufacturer has to notify the originator of its intention to launch a generic product.⁵⁸

We also note, as the Nuffield Trust and BGMA have pointed out, that the US Congress opposed increased patent/exclusivity periods in the USMCA because of their effects on the domestic market, and that even if the UK and US agreed an extension this might not eventually make it into a final deal because of opposition in the US.⁵⁹

Has the Government ruled out extending the patent period for pharmaceuticals or the exclusivity period for biologic medicines? Is this a high priority for the Government? What assessment has the Government made about the relationship between patent/exclusivity periods, innovative research, and ultimate health outcomes for patients? And, more broadly, to what extent is the Government willing to commit to specific UK legislation through a US trade deal?

We have also received evidence about the regulation of medical devices, with the Association of British HealthTech Industries arguing for a medical device annex in a UK-US FTA and “mutual recognition of quality management system audits that conform to the Medical Device

⁵⁴ UST0024

⁵⁵ UST0035

⁵⁶ UST0029

⁵⁷ UST0049

⁵⁸ UST0035

⁵⁹ UST0024, UST0035

Single Audit Programme” (MDSAP), the arrangement between the US, Canada, Japan, Brazil and Australia that allows regulators to approve products for all five markets simultaneously.⁶⁰

Marjorie Chorlins noted that “a number of other markets base their own country registration and approval process on the process utilised by the US FDA” and that the UK could expand its acceptance of medical devices to include those “that have received clearance or approval from the US FDA as well as those that have received the EU’s CE mark”. She also told us that “it would be extraordinarily helpful” if the FDA and MHRA “were able to co-operate and to recognise each other’s regulatory decisions”.⁶¹ The BGMA has also expressed support for mutual recognition of medicines regulation, “echoing the US Food and Drug Administration’s mutual recognition approach with the European Medicines Agency”, and has suggested that the UK should promote the development of a “single global technical dossier” to other regulatory authorities, such as Japan and Australia.⁶²

What consideration is the Government giving to how mutual recognition of medical devices might operate between the UK and the US, including conforming to the existing MDSAP provisions as part of a UK-US deal? What would the potential benefits and drawbacks of these steps be?

How are UK-US talks on this issue interacting with the parallel UK-EU talks on the issue of medical devices approvals? And, more broadly, how might mutual recognition of the regulation of medicines and medical devices between the UK and the US influence regulation internationally? Does the UK aspire, for example, to the approach of a “single global technical dossier” recommended by some of our witnesses, given that the UK has parallel FTA negotiations open with a range of countries?

Some of the evidence to us has raised concerns about the consequences of a UK-US deal that effects drug pricing for TRIPS flexibilities, which allow lower-income countries to access essential medicines in an affordable way. The BMA has drawn our attention again to the US-Australia trade agreement, which it says “severely curtailed Australia’s ability to amend its domestic legislation in the future to support procurement of generic medicines under TRIPS provisions”.⁶³ The EU Select Committee previously scrutinised the Protocol amending the TRIPS Agreement (CP 10, 2019) under CRAG.⁶⁴ In its Explanatory Memorandum to that Protocol, the Government said it was “sympathetic to the needs of developing countries to secure access to essential medicines” and had “taken into consideration the concerns of the research based pharmaceutical industry that their IP rights should not be undermined”.⁶⁵

⁶⁰ UST0017; the Nuffield Trust (UST0024) noted in its evidence the uncertainty about whether the UK will remain in the EU system for approving medical devices or seek alignment with the MDSAP.

⁶¹ Q48 on 16 July

⁶² UST0035; see also Marjorie Chorlins on 16 July (Q48), as quoted above

⁶³ UST0029

⁶⁴ [Treaties considered on 5 February 2019](#) (27th Report, Session 2017-19, HL Paper 282)

⁶⁵ <https://www.gov.uk/government/publications/ms-no32019-protocol-amending-the-trips-agreement>

Does the Government remain committed to supporting lower-income countries to access generic medicines under the TRIPS Agreement? How has this issue informed the Government’s development of its objectives for trade talks with the US, and with other trading partners?

Finally, the Association of the British Pharmaceutical Industry has drawn our attention to the UK’s offensive interests in this area, noting that, in 2019, the UK exported £23.3bn in pharmaceutical goods, 26% of which was to the US, and that “US non-tariff barriers impose a cost burden to European pharmaceutical companies equivalent to a tariff of 19%”.⁶⁶ **We would be grateful for further information about how the Government proposes to tackle US non-tariff barriers that affect UK exports in pharmaceutical goods. Is it possible in these talks to achieve exemptions for our own regulatory system to protect the NHS without also exempting the US’ regulatory system?**

Investor-state dispute settlement mechanisms

Before moving on to our third focus area – digital trade – we set out here some of the evidence that we have received regarding investor-state dispute settlement (ISDS) mechanisms. We have sought evidence from witnesses about whether any ISDS mechanism in a UK-US FTA might have consequences for NHS drug pricing or the provision of public health services more broadly, and have also received additional evidence about how an ISDS mechanism might affect the UK’s environment and climate goals.

While some of our witnesses have argued in favour of an ISDS mechanism to provide support for investors,⁶⁷ we have heard other arguments that ISDS provisions no longer serve their intended purpose, and that they are not needed in circumstances where both parties have robust and reliable domestic legal systems.⁶⁸

The Institute of Economic Affairs proposes that the TTIP negotiations “provide a template for ringfencing public healthcare from an ISDS”.⁶⁹ However, the Nuffield Trust has noted that, according to analysis done during the TTIP negotiations, ISDS provisions “may prevent the UK from reducing the access private companies have to the health service in future”.⁷⁰ This restriction on the Government’s right to regulate has also been raised as a concern by other

⁶⁶ UST0049

⁶⁷ See, for example, Marjorie Chorlins (Q50), which echoes the US Chamber of Commerce’s private-sector priorities document on the UK-US talks: https://www.uschamber.com/sites/default/files/u.s.-uk_trade_-_private_sector_priorities_-_2020_update.pdf

⁶⁸ Simon Lester of the Cato Institute has argued that “concerns about protection of foreign investment are minimal” between the UK and the US and an FTA should not include an ISDS provision (UST0002). The Columbia Centre on Sustainable Investment has argued that “ISDS is a tool that was crafted decades ago and no longer deserves a place in modern trade and investment agreements” (UST0036). Traidcraft Exchange has suggested that ISDS provisions offer “disproportionate protections” to investors (UST0011).

⁶⁹ UST0040

⁷⁰ UST0024

witnesses, including the BMA, which notes the potential high costs of even unsuccessful challenges for a public health service.⁷¹

Several witnesses have argued against ISDS provisions for a range of reasons,⁷² including that it could impinge on the UK's right to regulate, and the US Trade Representative's objectives do not include an ISDS provision.

Your Department's strategic approach document highlights "the interest that UK businesses have in guaranteeing that a UK-US FTA ensures that UK investors operating in the US receive the same standard of treatment as US investors investing in the UK" and "notes the range of perspectives regarding the potential inclusion of investment protection and an associated Investor State Dispute Settlement (ISDS) mechanism". It then states that, "if it is deemed that a legal mechanism is appropriate for resolving investment disputes, it must reflect modern practice, deliver fair outcomes of claims, require high ethical standards for arbitrators and include transparent proceedings".⁷³ The Nuffield Trust told us that DIT's provisions in this regard were "challenging to interpret" and that "at no point" does the UK's strategic approach "explicitly commit to exempt decisions about health care provision from investment protection provisions".⁷⁴

We asked you about this on 23 July. You told us that the inclusion of an ISDS was still under negotiation, but that over 90 investment treaties to which the UK is a party included such a provision and that the UK had never lost a case under those provisions.⁷⁵

It is not clear under what circumstances it might be "deemed ... appropriate" to include an ISDS provision in the UK-US deal. How will you reach a conclusion, and what criteria will you be using to make this decision?

There are two key questions surrounding ISDS – the protections that are guaranteed for inwards investors, and how those rights are vindicated. Can you clarify what the Government's position is about how both of those distinct issues might be approached in the UK-US deal?

Regarding the potential consequences of an ISDS mechanism for the UK's environment and climate goals, one area of concern raised by several witnesses is whether such a mechanism could threaten the UK's ability to implement further environmental protections or enforce existing ones. The Aldersgate Group has argued that an ISDS mechanism might have a "chilling

⁷¹ UST0029

⁷² Including Simon Lester (UST0002), the Trade Justice Movement (UST0007), Keep Our NHS Public (UST0008), Traidcraft Exchange (UST0011), the Aldersgate Group (UST0014), Compassion in World Farming (UST0016), the Nuffield Trust (UST0024), the British Medical Association (UST0029), Global Justice Now (UST0033), the Columbia Centre on Sustainable Investment (UST0036), and Ms Linda Kaucher (UST0037).

⁷³ [UK-US Free Trade Agreement](#), p.22

⁷⁴ UST0024

⁷⁵ Q69 on 23 July

effect’ on implementing stringent climate regulations” in the UK.⁷⁶ Several witnesses have referenced cases such as *Lone Pine v Canada* (2013) as illustrative of the sort of challenges that the UK might see from US companies to its environmental regulations.⁷⁷

We do not at this stage take a view about whether an ISDS mechanism should be included in a UK-US FTA. However, we would be interested to know whether the Government intends to seek an ISDS provision with the US, and in coming to any decision on this issue, what consideration the Government has given to investor-state disputes raised by US companies’ against other national governments, and their effects?

Digital trade, including related intellectual property provisions

This was the third initial focus area for our inquiry, and a topic on which we have received several positive submissions. Professor Susan Ariel Aaronson, Director of the Digital Trade and Data Governance Hub at George Washington University, has advocated a digital trade chapter that helps to “build trust” and that goes beyond the standard template of a chapter “built on one service (e-commerce)”.⁷⁸ As Marjorie Chorlins has told us, in the area of digital trade, provisions are commonly more about preventing barriers from being put in place as technological changes emerge, rather than removing them.⁷⁹

Digital trade provisions are potential enablers, offering what AT&T call “important multiplier effects”,⁸⁰ but may not lead to a significant amount of economic benefit in and of themselves. For example, one area in which witnesses thought there could be increased opportunities for digital trade was in the field of telemedicine, particularly in the light of the COVID-19 pandemic and the increased use of virtual consultations by medical professionals. However, while digital trade provisions could facilitate this, there are other barriers that would need to be addressed, for example surrounding the mutual recognition of professional qualifications.⁸¹ Similarly, the City of London Corporation has argued that the UK-US deal should “break new ground in frontier areas such as in data and digital trade” to allow financial and professional services providers to “evolve with technological changes in the markets”, but such benefits are not guaranteed.⁸²

⁷⁶ UST0014

⁷⁷ In which the US company Lone Pine Resources sued over the revocation of oil and gas exploration permits (held by a wholly-owned Canadian subsidiary) by the Government of Quebec ([ICSID Case No. UNCT/15/2](#)). Evidence from the Trade Justice Movement (UST0007) and Global Justice Now (UST0033) mentions such cases as part their submission relating to investor protections and the right to regulate. Other examples given include [Infinito Gold v Costa Rica](#) (2014), [Vattenfall v Germany II](#) (2012), [Cargill v Mexico](#) (2005), and [Ethyl v Canada](#) (1997).

⁷⁸ UST0028

⁷⁹ Q45 on 16 July

⁸⁰ UST0047

⁸¹ We discussed this issue with both our panels on 8 July, in particular with Mark Dayan of the Nuffield Trust and Ziyang David Fan and Jimena Sotelo of the World Economic Forum. See Q22 and Q31. AT&T has also suggested that telemedicine is an important opportunity for a UK-US FTA (UST0047).

⁸² UST0030

What tangible benefits are you expecting a digital trade chapter to provide to UK businesses? How will the Government ensure that all sectors benefit from digital trade provisions?

We have heard from some witnesses about e-commerce and online marketplaces specifically. The British Toy and Hobby Association has expressed “significant concern about the role of online market places and how they protect [intellectual property] and consumer safety”. It has told us that online marketplaces can threaten intellectual property (IP) protections, arguing that the UK should resist any ‘safe harbour’ provisions that the US might wish to introduce, similar to those in USMCA, as they would “significantly reduce” the Government’s flexibility to tackle online harms and IP infringement, or to protect consumer safety.⁸³

The USMCA’s ‘safe harbour’ provisions have been the subject of several critical submissions, which often highlight them as a threat both to intellectual property and to tackling online harms. The Digital Policy Alliance has noted the different cultural approaches to balancing freedom of speech and online harms in the US and Europe, including the UK, and argued that the UK’s efforts to prevent online harms must be “fully respected in any trade agreement” so that they “cannot be circumvented”.⁸⁴ The IEA has suggested, on tackling online harms, including child sexual exploitation, that “establish[ing] improved law enforcement cooperation” with the US would be more effective than the Government’s current online harms proposals.⁸⁵ Sabina Ciofu of techUK pointed out to us in oral evidence that similar provisions to ‘safe harbour’ already exist in the EU e-commerce directive, and she argued that the principles of limited liability in the USMCA “have been a massive enabler of innovation and of SMEs growing online”.⁸⁶

The Design and Artists’ Copyright Society has also highlighted the need for the UK-US deal to actively “promote [a] beneficial system of copyright licensing for AI developers that fairly remunerates creators”. DACS criticises the US’ current ‘fair use’ exemptions to copyright and raises a concern that the US lacks an Artist’s Resale Right (ARR) provision, such that online marketplaces hosted in the US can avoid paying royalties to artists when art is resold.⁸⁷ Similar arguments have also been raised by the Alliance for Intellectual Property, which supports an ARR, criticises the US’ ‘fair use’ exemptions, and argues that “it is vital” “that the protection and promotion of IP is at the heart of UK trade policy”.⁸⁸

Both AT&T and the Motion Picture Association also support the UK maintaining its current high standards of IP protections.⁸⁹ The MPA argues that the UK’s “robust copyright framework” has been “critical in creating an environment conducive to investment and growth”, and that preventing illegal and copyright-infringing content should be a priority for a

⁸³ UST0015

⁸⁴ UST0045

⁸⁵ UST0040

⁸⁶ Q25 on 8 July; see also Marjorie Chorlins, Q47 on 16 July

⁸⁷ UST0023

⁸⁸ UST0034

⁸⁹ UST0047, UST0044

UK-US FTA. It argues that the UK should oppose “broad liability shields for online intermediaries”, such as through section 230 of the US Communications and Decency Act 1996.⁹⁰

The British Phonographic Industry recommends the protection of “the UK’s existing rights and enforcement framework”, highlights the US’ “overbroad” ‘fair use’ exemptions, and recommends that the UK should press for copyright rights holders to be able to seek injunctive relief against intermediaries that might be protected by ‘safe harbour’ provisions,⁹¹ a provision with which the MPA agrees.⁹² The BPI also recommends a UK-US intellectual property working group should be established “to consider copyright protection, including with respect to third countries, data sharing and enforcement against infringement”.⁹³ The CBI has also supported retaining the UK’s current IP provisions, as well as maintaining “UK commitments to existing treaties including the European Patent Convention”.⁹⁴

We discussed this with you on 23 July, when you and the Director General of Trade Policy told us that the Government would not include “photocopies” of provisions from the USMCA, and that the Government was committed to ensuring that having our own online harms regulations was not affected by a UK-US deal.⁹⁵

What discussions have the US and the UK had so far about any ‘safe harbour’ provision, similar to that in the USMCA? If one were to be included, what further provisions does the Government intend to seek to help copyright holders enforce their rights? And what additional provisions, if any, does the Government think will be needed to enable it to tackle online harms according to its current plans?

Is the Government pressing the US to introduce an Artist’s Resale Right provision? Has the Government ruled out extending its existing copyright terms in line with the US’ provisions? And does the Government intend to establish a UK-US intellectual property working group?

Our witnesses largely argue against data localisation provisions, with TheCityUK suggesting that the UK and US could “work together to craft an agreement with unprecedented restrictions on localisation”.⁹⁶ Professor Aaronson has recommended that, as well as considering such bans and exceptions, the UK-US deal should clarify what “digital protectionism (barriers to cross-border data flows) and data/digital sovereignty” look like in practice, arguing that “US competitiveness in digital trade is declining and protectionist strategies have not helped”.⁹⁷ Marjorie Chorlins has suggested an “affirmative right for companies” in all sectors “to transfer data across borders”.⁹⁸

⁹⁰ UST0044

⁹¹ UST0027

⁹² UST044

⁹³ UST0027

⁹⁴ UST0041

⁹⁵ Q62 on 23 July

⁹⁶ UST0052

⁹⁷ UST0028

⁹⁸ Q45 on 16 July

How is the Government seeking to ensure that the digital trade provisions in this FTA go beyond e-commerce and tackle some of the major issues regarding the digital elements of trade that touch every sector? For example, will this FTA show leadership in defining digital protectionism? What offensive interests is the UK pursuing in this area to help break down any digital protectionism in the US?

The transfer of data across borders has led to some expressions of our concern from our witnesses about certain types of data. In particular, Keep Our NHS Public has questioned whether allowing the free flow of data between the UK and the US could result in the NHS paying to “buy back” diagnostic tools, medical technologies and expertise from US tech companies built using “exported NHS data”.⁹⁹ Global Justice Now also argues that a UK-US deal is a “risk to one of the NHS’s greatest assets – its health data”.¹⁰⁰

In our discussion with them, Sabina Ciofu of techUK noted the “very clear guidance from NHS Digital” that required UK healthcare data to only be hosted in the UK, the EEA, and countries deemed adequate by the EU, while Ziyang David Fan noted that some in the healthcare data area were “exploring the approach of a federated data model” that would retain “the actual data, the specific details ... in-country” but allow them to be “fed into a model, for example for artificial intelligence analysis”, allowing benefits to be achieved without transferring specific data.¹⁰¹

The Association of British HealthTech Industries has argued that a UK-US deal “should allow for the transmission of information across borders to maximise patient benefit and facilitate beneficial medical research and clinical trials whilst still protecting privacy”,¹⁰² and Marjorie Chorlins told us that the US Chamber of Commerce’s members believed that a UK-US FTA “should promote the sharing of data and test results both between companies and between our Governments in order to encourage the development of new medical products and to measure the effectiveness of various treatments as they are being developed”, “while adequately protecting patient privacy”.¹⁰³ The IEA has suggested that the UK could benefit from both data imports and exports, and that possible template provisions, such as those in the USMCA, should not be seen as undermining privacy.¹⁰⁴ Ziyang David Fan of the World Economic Forum set out for us the different approaches taken by the EU and US to ensuring privacy, with their individual demerits, describing the EU *ex ante* approach as leading to a higher “cost of compliance” and the US approach as having “a lack of coherence”. He noted that, ultimately, however it was achieved, privacy was essential for trust, which was in turn essential for digital trade.¹⁰⁵

⁹⁹ UST0008

¹⁰⁰ UST0033

¹⁰¹ Q28 on 8 July

¹⁰² UST0017

¹⁰³ Q48 on 16 July

¹⁰⁴ UST0040

¹⁰⁵ Q26 on 8 July

We agree that trust is a key issue for digital trade, and that privacy underpins that public confidence. What measures does the Government think they could take via a UK-US free trade agreement to reassure the public that privacy will be protected in cross-border data transfers?

More broadly, there are questions emerging from our evidence about how the UK-US deal will handle the mixing of public and personal data, which Professor Aaronson has noted is “crucial to the future of AI, the [Internet of Things], and smart cities” as well as other technological developments.¹⁰⁶ Professor Aaronson has noted the example of the Digital Economy Partnership Agreement between New Zealand, Chile and Singapore (DEPA), which might serve as a model. Several other witnesses have also pointed us to DEPA’s provisions, including Jimena Sotelo of the World Economic Forum, who noted its “provisions on co-operation” in areas “key to ensuring market access and consumer welfare”, and its provisions on “paperless trade” using “data exchange mechanisms”.¹⁰⁷

What assessment has the Government made of the prospective value to US companies of UK health data? How accessible is such data already to such private firms that might be seeking to build diagnostic or other medical tools, and how accessible do the UK and US hope to make it in the future via an FTA?

More broadly, what provisions is the UK proposing to help tackle the combination and recombination of public and personal data that underlies many new technologies? How far are other new digital trade agreements, including the recent US-Japan ‘mini-deal’ and DEPA, informing the Government’s approach to these issues?

Data adequacy is of course also a key concern in the UK’s talks with the EU, and the IEA has noted to us that both Canada and Japan have data adequacy determinations with the EU and digital trade deals with the US.¹⁰⁸ We discussed this with the World Economic Forum and techUK, who told us that an EU data adequacy decision was “of utmost priority”, and that whether or not the UK could replicate the success of Canada and Japan in having deals with both the US and the EU would depend on “how adequacy is decided”, with Sabina Ciofu of techUK noting that Canada’s data adequacy decision is partial, and “only for commercial actors”.¹⁰⁹ You yourself noted Canada’s position as illustrative of what the UK might be able to achieve.¹¹⁰

What assessment has the UK Government made of how Canada and Japan manage data so as to satisfy both the EU and the US? Will these examples form a model for the UK post-transition period?

¹⁰⁶ UST0028

¹⁰⁷ Q25 and Q30 on 16 July; we explore the issue of facilitating trade of physical goods through technology further below.

¹⁰⁸ UST0040

¹⁰⁹ Q27 on 8 July

¹¹⁰ Q62 on 23 July

We have also noted the recent judgment in the Schrems II case, invalidating the EU’s adequacy decision for the US’ Privacy Shield, which had facilitated transatlantic data transfers. The Government has said that it is reviewing the details of that judgment. We asked you about this on 23 July, when you told us that the Government is “determined to protect data privacy through our deal with the US”.¹¹¹

What consequences might the Schrems II judgment have for a UK-US deal? How is it being addressed in bilateral talks, if at all, at this stage?

We have also heard mixed evidence about source code and algorithm protections. For example, Keep Our NHS Public has argued that source code protections could render the NHS dependent on US companies for maintaining complex healthcare software, such as that used for MRI machines, which they argue should be open-source as a public good.¹¹² However, the Association of British HealthTech Industries and CBI have argued against provisions mandating the disclosure of source code or algorithms as forms of intellectual property that underpin firms’ competitiveness.¹¹³ Sabina Ciofu of techUK told us that the EU also has similar provisions in its deals, and that “this is an issue that a lot of the western world agrees on”.¹¹⁴

What risks does the Government see, if any, of protections for source code, including algorithms? Who benefits from these protections, on both the UK and the US sides?

Our witnesses so far have agreed that there should be no customs duties on digital products.¹¹⁵ We have also taken evidence about the consequences of a UK-US deal for the UK’s Digital Services Tax (DST), including asking witnesses about the consequences of the US walking away from the OECD talks on this issue. The IEA has argued that the DST is “complex” and “will yield relatively little revenue”, so the UK should scrap it to “demonstrate commitment to digital services trade” in negotiations.¹¹⁶ The CBI has concurred with that sentiment, saying that the DST may “send a message contrary to the aspiration of the government’s Industrial Strategy and its Digital Strategy to ‘make Britain the best place to start and grow a digital business’”.¹¹⁷ Meanwhile, Marjorie Chorlins has urged OECD-level talks to continue and reach an “effective international agreement on the proper terms for taxation in a digitalised international economy”.¹¹⁸

¹¹¹ Q62 on 23 July

¹¹² UST0008

¹¹³ UST0017, UST0041; see also evidence from Jimena Sotelo of the World Economic Forum and Sabina Ciofu of techUK (Q29 on 8 July)

¹¹⁴ Q29 on 8 July

¹¹⁵ See submissions from the Association of British HealthTech Industries (UST0017), the Confederation of British Businesses (UST0041), and the Motion Picture Association (UST0044).

¹¹⁶ UST0040

¹¹⁷ UST0041

¹¹⁸ Q46 on 16 July; this echoed evidence from Sabina Ciofu of techUK and Ziyang David Fan of the World Economic Forum on 8 July (Q32).

Does the Government consider preserving its DST to be a key defensive interest? What priority might it have over other defensive interests? And, more broadly, what steps is it taking to ensure that the US returns to the table and continues OECD talks to find a multilateral solution for taxing digital services?

We have also heard from several witnesses that the UK-US deal should seek to make provision for “improved and streamlined customs clearance procedures”, using digital technology, including “automation of import, export, and transit processes”, “supply chain integration”, reduced paperwork at borders, and “enhanced harmonization of customs data requirements and advance rulings”.¹¹⁹ The Confederation of British Industries has noted that such provisions would particularly benefit SMEs.¹²⁰

How will the UK-US FTA address issues such as customs and import/export processes to take best advantage of new technology and digital trade provisions?

Other matters

Several other themes have arisen during our evidence-taking, and many of these are illustrated in the supplementary Call for Evidence that we are launching today. **We would be grateful for a written response from the Government to that Call, and our previous one, by the closing date set for all submissions. We also set out below some short conclusions and requests for further information about specific issues, to which we would appreciate a response as part of your letter to us on or by 18 September.**

Right to regulate

Several witnesses have raised with us the issue of the ‘right to regulate’, that is a country’s right to regulate domestically in the public interest. This is often discussed in relation to the effects of investor protections, and we have covered this issue briefly above. This section covers the right to regulate more generally, including the use of ‘standstill’ or ‘ratchet’ clauses that might limit the UK’s ability to roll back previous regulation, as several of our witnesses have argued.¹²¹

The UK’s strategic approach states: “the Government will ensure that the right to regulate in the public interest, including for environmental and other public purposes, is maintained

¹¹⁹ Association of British HealthTech Industries (UST0017); see also Maltsters Association of Great Britain (UST0020), which argues for “streamlined trade flows” that “minimis[e] unnecessary administration”, and evidence from Ziyang David Fan of the World Economic Forum (Q24 on 8 July) and Sabina Ciofu of techUK (Q30 on 8 July).

¹²⁰ UST0041

¹²¹ The Trade Justice Movement has argued that such clauses could limit the UK’s ability to nationalise or regulate public services should it so choose (UST0007). UNISON’s submission concurs, arguing that such clauses should be avoided where they might affect public services (UST0039). Both UNISON and Global Justice Now (UST0033) have argued in favour of model clauses proposed by the European Federation of Public Services Unions:

https://www.epsu.org/sites/default/files/article/files/Study%20M%20Krajewski_Model%20clauses%20for%20the%20exclusion%20of%20public%20services_2016.pdf.

through any agreement and will also ensure that public services, such as the NHS, continue to be protected”.¹²²

However, our witnesses have raised questions about whether, in securing a deal with the US, the UK Government will lose some of its freedom to determine its own rules in a number of areas, including animal welfare, running the NHS, and climate and environment.¹²³

For example, in the areas of animal welfare and environmental protections, Compassion in World Farming has suggested that “regulatory coherence with the US will make it very difficult for the UK to adopt good new legislation on farm animal welfare”.¹²⁴ On 8 July, Mark Dayan of the Nuffield Trust told the Committee that the Government’s position on the right to regulate public services was “not completely clear”,¹²⁵ echoing the Trust’s written evidence, which suggests that there is a general lack of clarity in DIT’s strategic approach in this area in particular and has informed our specific questions regarding healthcare above.¹²⁶

We discussed this topic with you on 23 July, when you told us that the UK’s right to regulate had not been undermined by existing investor protection mechanisms and that you would not accept any clauses that would limit the UK’s sovereignty. However, trade deals always involve give and take, and the full implications of a trade agreement can be complex. They contain various overlapping provisions and may give rise to unexpected or unintended consequences that are not clear until some years after they enter into force.

What steps will the Government be taking to ensure that a US deal is explicit in protecting the UK’s right to regulate in key areas?

Witnesses have also highlighted to us the particular devolved national interests in respect of the right to regulate. For example, the RSPCA’s submission relating to agri-food has highlighted the need to establish “an agreed mechanism to monitor a UK trade policy between the four devolved nations”,¹²⁷ and WWF has drawn attention to the devolved nations’ environmental commitments – such as the Well-being of Future Generations (Wales) Act 2015¹²⁸ – as well as their agricultural policies.¹²⁹ Particular concerns have been raised in public about how a US trade deal might affect the freedom of the administrations in Wales, Scotland and Northern

¹²²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869592/UK_US_FTA_negotiations.pdf, p.22

¹²³ See, for example, submissions from the Trade Justice Movement (UST0007), Traidcraft Exchange (UST0011), Global Justice Now (UST0033), the Columbia Center on Sustainable Investment (UST0036), and Ms Linda Kaucher (UST0037).

¹²⁴ UST0016

¹²⁵ Q21 on 8 July

¹²⁶ UST0024

¹²⁷ UST0004

¹²⁸ This Act requires public bodies in Wales to think about the long-term impact of their decisions, to work better with people, communities and each other, and to prevent persistent problems such as poverty, health inequalities and climate change.

¹²⁹ UST0032

Ireland from regulating within their devolved competences. Green House has also highlighted concern that the pressure to “lower standards or jobs will be lost” might also act as a constraint on the right to regulate.¹³⁰

We are aware that there is currently an open consultation on how to manage the UK’s internal market, focusing on the principles of mutual recognition and non-discrimination, with a consultation period closing on 13 August,¹³¹ and we have seen the exchanges of correspondence between your colleague, the Chancellor of the Duchy of Lancaster, and the Cabinet Secretary for the Constitution, Europe and External Affairs in the Scottish Government about some of these issues. We are also aware, as you mentioned to us on 23 July, that your colleague, the Minister of State for Trade Policy, convenes a group including all relevant ministers from the devolved administrations to discuss trade and other issues.

We would be grateful to know how the Department for International Trade specifically cooperates with the relevant ministers in the devolved administrations during live negotiations. What mechanisms does DIT use to ensure that the relevant devolved ministers can understand and provide feedback on the progress of negotiations to help to ensure that the deals that are agreed act in the interest of all four nations, and how regularly do these contacts take place?

Standards and regulation

We have addressed the evidence on SPS in the agri-food section above, but we have also received several submissions relevant to the UK and US systems for standards and regulation covered in the technical barriers to trade chapter, for example on product safety. Many of the issues are analogous to those raised regarding food and animal welfare standards. The ongoing uncertainty about whether the UK will continue to recognise the European CE mark has also informed our witnesses’ submissions.

The British Toy and Hobby Association has argued in favour of alignment with the EU, including using the EU’s EN-71 standard, as, “despite the [significant compliance] burdens, maintaining this set of standards gives the opportunity to access the most markets”.¹³² It has also argued that accepting current US standards would result in “significant unfair advantage for US companies”.¹³³

The British Standards Institutions has criticised how the US identifies standards that it calls ‘international’ and the lack of any single US national standard,¹³⁴ a point also raised with us by the National Consumer Federation.¹³⁵ The BSI has cautioned against USMCA being treated as a template for “how standards relate to regulation” and argued that “recognising private US

¹³⁰ UST0048

¹³¹ <https://www.gov.uk/government/publications/uk-internal-market>

¹³² UST0015

¹³³ UST0015

¹³⁴ UST0038

¹³⁵ UST0042

standards alongside international standards for the purposes of regulatory compliance would be to weaken the ability of UK stakeholders including business, consumers and regulators to shape the standards that support regulation in the UK”, resulting in UK manufacturers facing “unfair competition” domestically, “which could not be reciprocated by the US” because standards are commonly governed at a sub-federal level.¹³⁶ The National Consumer Federation has noted that while UK consumers could theoretically participate in US standards-setting, this would not be practical.¹³⁷

Dr Ludivine Petetin of Cardiff University has suggested that it might be “difficult to find agreement on ... regulatory cooperation”, but that increased cooperation and communication through information exchanges could be effective, suggesting that regulatory cooperation is “emerging as a new law-making stage” between countries.¹³⁸

When we discussed this on 23 July in the context of the sequencing of trade talks with a range of partners, and you told us that the UK’s clear intention to establish its own independent regulatory regime mean that “the areas of conflict” in our current trading negotiations were “relatively limited”.¹³⁹

How advanced are your discussions with the US about regulations and standards? If the UK is not to commit to any changes to its standards, will this limit the scope of the deal? Does the Government intend to use a UK-US deal to promote international standards to help resolve some of the issues relating to conflicting approaches to standards setting?

What discussions are you having with the US about regulatory cooperation beyond the technical barriers to trade chapter? Are there any particular areas in which the UK thinks regulatory cooperation with the US would be especially crucial?

Broadcasting

The CBI has highlighted the UK’s “competitive strength as a low-tax destination for film production” as “frustrat[ing]” that sector in the US, and also noted the UK’s “license payer fees” system for national networks as a potential US offensive interest.¹⁴⁰ In our discussion with her, Marjorie Chorlins noted that the aim of US businesses was “by no means to undermine the BBC”, but was “to ensure that there is open opportunity for fair competition”.¹⁴¹

The Producers Alliance for Cinema and Television has argued that “any weakening or undermining” of the public-service broadcaster (PSB) system in the UK “runs the risk of damaging smaller companies, especially those in the Nations and regions”, “making it more

¹³⁶ UST0038

¹³⁷ UST0042

¹³⁸ UST0021

¹³⁹ Q58 on 23 July

¹⁴⁰ UST0041

¹⁴¹ Q39 on 16 July

difficult for the UK Government to achieve its goal of ‘levelling up’ the UK economy”, as PSBs are the primary source of revenue for smaller producers based in those locations.¹⁴² PACT also notes that the relatively small size of the UK market, compared to the US market, means that producers “invest their revenues in research and development of ideas to win PSB commissions”, and “this investment in R&D has led to a UK market which is both highly competitive and innovative”.¹⁴³

The Motion Picture Association has also noted the “vitally important” role of UK PSBs, recommending that the UK and the US negotiate non-conforming measures” (NCMs) that “accommodate distinct UK and US government policies related to the AV sector, including the UK PSB model”.¹⁴⁴ When we discussed this issue on 23 July, you told us that the Government would “look at protecting [the UK’s] valued institutions”, including public-service broadcasters, in any deal.¹⁴⁵

Is the Government negotiating non-conforming measures that would accommodate the UK’s national public-sector broadcasters, as recommended by our witnesses? How will the Government ensure that a UK-US deal continues to allow the audiovisual sector to thrive, including smaller regional companies? What steps might the Government be able to take to ensure that British audiovisual producers can benefit both from UK and US sources of funding?

One of the UK’s most successful industries is the creative and cultural sector. Our current EU trade arrangements provide extensive ‘cultural exemptions’, which help protect those industries. However, in recent US trade deals, like USMCA, trade partners have had to relax such protections to open up digital and electronic trade, limiting their ability to manage their traditional creative industries.

Is the US looking for similar concessions from the UK that might increase the amount of US TV programming shown in the UK by undermining our current rules requiring public-sector broadcasters to show high levels of UK content?

Climate and the environment

Witnesses have raised with us both the absence of an objective in the UK’s strategic approach on mutual commitments in this area, and the risk of a US deal undermining environmental regulation.

¹⁴² UST0043

¹⁴³ UST0041

¹⁴⁴ UST0044

¹⁴⁵ Q59 on 23 July

The Trade Justice Movement has suggested that “it is difficult to see how the US’ demands square with the UK’s desire to be a leader in the global response to climate change”,¹⁴⁶ and this concern is echoed in several other submissions that we have received.¹⁴⁷

We do note the point raised by the CBI, that there is “no reason” *prima facie* why ambitious climate goals might be blocked as a result of a UK-US FTA, arguing that “USMCA did not have an ambitious climate chapter but did not seek to reign in Canada or Mexico from pursuing green policies either”.¹⁴⁸ Dr Ludivine Petetin has pointed out that a UK-US FTA could “increase environmental, food and social resilience” and allow the UK to “use its economic and political powers to foster global values such as tackling the biodiversity and climate crises (including net-zero ambitions)”.¹⁴⁹

The Aldersgate Group has also recommended goals that could “encourage trade in low-carbon goods and technologies” by lowering tariffs and removing non-tariff trade barriers,¹⁵⁰ while Green House has suggested that the UK should introduce “‘climate tariffs’ on international travel and products from abroad” to help offset increased greenhouse gas emissions from international trade and transport of goods.¹⁵¹ Marjorie Chorlins told us that “lowering not just duties but barriers on environmental goods and services” was “extremely important”, but that addressing broader issues that “go beyond the remit of trade negotiators” was hard to do in an FTA.¹⁵² Cornwall Council has highlighted to us that “promoting renewable and low carbon technology and research between the UK and US” is a priority for them.¹⁵³

When we discussed this with you on 23 July, you drew our attention to the work of your colleague, the Secretary of State for Business, Energy and Industrial Strategy, directly on COP26 and assured us that you were “absolutely determined” that trade deals would not jeopardise the UK’s net-zero targets.¹⁵⁴

We share our witnesses’ broad concern that the UK is missing an opportunity to use its trade policy to demonstrate its global leadership in this area, particularly given the UK’s responsibility for hosting the COP26 meeting, now scheduled for 2021. We expect a full environmental impact assessment to be completed on any final trade deal and will be looking closely at this area in our continuing scrutiny.

How is the Government ensuring that its trade policy supports its ambitious net-zero goals? How is the UK Government getting the message across to negotiating

¹⁴⁶ UST0007

¹⁴⁷ See, for example, those from Traidcraft Exchange (UST0011), the Aldersgate Group (UST0014), Dr Ludivine Petetin (UST0021), WWF (UST0032), Global Justice Now (UST0033), Green House (UST0048), and Cornwall Council (UST0051).

¹⁴⁸ UST0041

¹⁴⁹ UST0021

¹⁵⁰ UST0014

¹⁵¹ UST0048; Cornwall Council (UST0051) has also raised the issue of environmental impacts from increased traffic across the Atlantic and on UK and US roads.

¹⁵² Q53 on 16 July

¹⁵³ UST0051

¹⁵⁴ Q64 on 23 July

partners that it takes its own, and its partners’, multilateral and domestic commitments in this area seriously? What steps is the UK taking to ensure that a UK-US deal has a net-positive environmental impact?

Financial and other services

Financial services is a key industry for the UK in all of its trade negotiations. However, while the financial services industry may benefit from general FTA provisions, such as on digital trade, it is unusual for an FTA to liberalise financial services. As TheCityUK notes, currently UK and US “financial and related professional services firms enjoy a relatively good level of market access” bilaterally.¹⁵⁵ However, there is always more that could be done to support services exporters.

When we spoke to her, Marjorie Chorlins of the US Chamber of Commerce suggested that a UK-US deal would be an opportunity “to set global standards that will promote efficient capital markets, including in sustainable finance” and “enhance the ability of both economies to raise capital”.¹⁵⁶ In their evidence, the City of London Corporation has encouraged “greater regulatory coherence and minimising fragmentation”, such as through mutual recognition provisions.¹⁵⁷ It also advocates for the UK prioritising talks through the US-UK Financial Regulatory Working Group, and for establishing a formal mechanism to allow services providers to engage with that Group to allow the industry to identify technical areas where greater coherence and cooperation is needed.¹⁵⁸ TheCityUK has also pointed out the work of the joint UK-US FRPS Coalition “as a private sector counterpart to the FRWG”, but has recommended that the UK and US consider establishing “a formal framework” through their FTA for future regulatory cooperation.¹⁵⁹

The CBI has suggested that financial and telecoms services might benefit from “more ambitious efforts to achieve alignment in prudential regulation”, which would benefit British financial providers, and reducing barriers in the “‘last mile’ of telecom infrastructure”.¹⁶⁰ The Motion Picture Association has recommended that the UK make trade in audiovisual services a priority for trade agreements as it “represents a significant growth opportunity”.¹⁶¹

Finally, Sabina Ciofu of techUK argued that financial data should not be treated differently from other categories of data, as the competitiveness of the UK’s “thriving financial services and growing fintech sector” might be negatively affected by such a carve-out.¹⁶²

¹⁵⁵ UST0052

¹⁵⁶ Q43 on 16 July

¹⁵⁷ TheCityUK argued for a similar approach (UST0052).

¹⁵⁸ UST0030

¹⁵⁹ UST0052

¹⁶⁰ UST0041

¹⁶¹ UST0044

¹⁶² Q28 on 8 July; see also TheCityUK’s evidence (UST0052)

More broadly regarding services, several of our witnesses have recommended positive listing as the approach that the Government should take to agreeing services provisions with the US, rather than negative listing, which would specifically exclude certain services but allow market access to all others by default.¹⁶³

Can you clarify for us what areas relevant to financial services are being included in the FTA talks, and which are being pursued in parallel through other channels? What consideration is the Government giving to broadening the FRWG to allow services providers to use it as a forum to identify technical areas where further work may be needed? Does the Government seek to establish a more formal framework for regulatory cooperation on financial services through the FTA with the US?

Can you confirm whether the Government is pushing for a positive or negative listing approach on services?

Public procurement

One area in which the UK might have a particular offensive interest is in gaining further access to public procurement opportunities in the US, with TheCityUK advocating for “zero restrictions on competition for government procurement” as a result of an FTA.¹⁶⁴ However, this objective may be hampered by rules at sub-federal (i.e. state or local) level.

Some of our witnesses have expressed scepticism about the possibility that a UK-US FTA could do anything to help break down these protectionist barriers in the US. Marjorie Chorlins noted that these were not “true trade barriers” as they applied to US companies in other US states as well as companies in other countries, and that they were founded in “constitutional prerogatives” about subsidiarity that an FTA could not “override”.¹⁶⁵ The Trade Justice Movement suggests that the UK is “unlikely” to gain such access, noting the asymmetry whereby the UK market is already relatively open to US companies,¹⁶⁶ while both Global Justice Now and the CBI have noted that ‘Buy American’ provisions in the US are unlikely to be eroded by a UK FTA.¹⁶⁷ The CBI also noted addressing the application of the Jones Act, which restricts cabotage (shipping between points in the US on a journey) to US-built ships, as a potential offensive interest for the UK.¹⁶⁸

We discussed this issue with you on 23 July, and you told us that procurement was a priority, as at the moment the UK only has access to approximately one-third of the US market, and

¹⁶³ Global Justice Now has noted that DIT’s strategic approach “do[es] not rule out negative listing” (UST0033). UNISON has also argued in favour of positive listing (UST0039).

¹⁶⁴ UST0052

¹⁶⁵ Q51 on 16 July

¹⁶⁶ UST0007

¹⁶⁷ UST0033, UST0041

¹⁶⁸ UST0041

that you hoped that states opting in to the government procurement chapter of a deal would enable this opening up to happen.¹⁶⁹

We share your desire to see a UK-US deal open up public procurement opportunities for UK businesses operating in the US, but this is just one area in which sub-federal regulation in the US means that it will be difficult for a UK-US FTA to deliver meaningful opportunities for UK businesses. We would be grateful for more information about the steps the UK will be taking to ensure that a government procurement chapter works for UK businesses, and to encourage individual states to opt in to that chapter.

In particular, small and medium-sized enterprises could benefit from the opening up of US public procurement to UK business, but it is not clear to us whether an SME chapter in a UK-US deal will be able to secure those opportunities. What practical assistance will a deal give to UK SMEs? For example, will the UK be seeking an exemption for UK SMEs from the ‘Buy American’ provisions in the US? Are there any other steps that could be taken in a UK-US deal to help ensure that UK SMEs are treated in a non-discriminatory fashion?

Visas and mobility issues

We have received submissions from several witnesses highlighting the difficulties that US visa restrictions can impose for those wishing to travel short-term for business purposes, with PACT noting that this is one of the few non-tariff barriers currently affecting the cinema and television industries,¹⁷⁰ and TheCityUK highlighting that “mutual access to talent between the UK and the US is an issue of prime importance” for the financial and related professional services industry.¹⁷¹

The Law Society of England and Wales has highlighted barriers to UK lawyers’ ability to practise in the US, including rules on foreign legal consultants and the need for UK lawyers to requalify in individual states, noting that legal services regulation is a state, rather than a federal matter. It recommends that any UK-US negotiated commitments should include the state supreme courts, represented by the Conference of Chief Justices, in order to be binding and have tangible benefits for UK lawyers.¹⁷² TheCityUK has highlighted to us the similar issues that accountants face,¹⁷³ and we have addressed above the issue of mutual recognition of professional qualifications as it relates to telemedicine.

The CBI has suggested that, while an FTA cannot open up state-level requirements, it could serve as a “springboard”, for example by addressing visa provisions that might improve UK business travel, such as removing the ESTA application requirement for short stays, improving

¹⁶⁹ Q60 on 23 July

¹⁷⁰ UST0043

¹⁷¹ UST0052

¹⁷² UST0022

¹⁷³ UST0052

the application process for short-term visas, and establishing a new residential visa category for British nationals.¹⁷⁴

The Incorporated Society of Musicians has highlighted the challenge for musicians acquiring the necessary visas, as well as customs checks that make the transportation of instruments and sound equipment difficult, including leading to the seizure of instruments containing ivory or certain types of wood.¹⁷⁵ Relatedly, the Motion Picture Association has argued for “temporary, duty-free entry of professional equipment including press, television and cinematographic equipment”, citing CPTPP as a possible template.¹⁷⁶

How far are mobility issues – including the issues that our witnesses have raised with us – being addressed in negotiations? Will there be a chapter on labour mobility that addresses what UK industries, in particular services providers, have highlighted as impediments to the free flow of talent? What are the UK’s specific offensive objectives here, if any, and what assessment have you made of how important this might be to the US as a defensive interest?

Regional imbalances

We have noted elsewhere in this letter the interests of the devolved nations. In evidence from Cornwall Council, we have heard concerns that the regional imbalance in benefits from an FTA could lead Cornwall and the Isles of Scilly, which has the lowest GVA in England, to “fall further behind”.¹⁷⁷ However, we do note the IEA’s view that the potential mobility of businesses and people can make assessing economic impacts at a geographically granular level difficult.¹⁷⁸

We would also draw your attention to our conclusion in our *Treaty scrutiny: working practices* report that it is important that the Crown Dependencies and Overseas Territories are fully consulted at the earliest possible stage to allow them time to consider the implications of having any treaty extended to them.¹⁷⁹

As part of our scrutiny, we will be paying close attention to how a deal might affect all four nations of the UK, the regions within those nations, and the Crown Dependencies and Overseas Territories. We would welcome further information about how DIT is assessing the potential regional impacts of provisions as negotiations progress, as well as confirmation of whether the Government has set any red lines in negotiations on the basis of potential negative effects on one nation or region?

¹⁷⁴ UST0041

¹⁷⁵ UST0012

¹⁷⁶ UST0044

¹⁷⁷ UST0051

¹⁷⁸ UST0040

¹⁷⁹ Para. 53 of our *Treaty scrutiny: working practices* report

Effects of trade deals on international development

Our Committee's remit pertains specifically to international agreements, including trade agreements, and other committees in Parliament, including the International Relations and Defence Committee in the Lords, concern themselves with international development issues. However, as the issue of the effects of trade deals on international development has been raised with us, we highlight it here, as we have highlighted the TRIPS flexibilities above.

Traidcraft Exchange has raised particular concerns about preference erosion for developing countries, arguing that the UK lowering tariffs for US exporters could have negative consequences for Least Developed Countries that currently benefit from tariff preferences.¹⁸⁰

As the UK pursues new FTAs, how does it intend to ensure that Least Developed Countries do not lose out by diverting trade? What further steps might the UK Government take to mitigate any negative impacts for developing countries that might arise from a final UK-US deal?

Existing trade disputes

Some of our witnesses have raised concerns relating to existing trade disputes, including the EU-US Airbus-Boeing dispute, in which the UK is involved, and the US' approach to trade with China.

The Committee has heard about the difficulties being experienced by UK firms, in particular in the food and drinks sector, from the Food and Drink Exporters Association,¹⁸¹ the Maltsters Association of Great Britain, Dairy UK, and the National Farmers' Union.¹⁸² We are aware of the calls from the UK Spirits Alliance and Scotch Whisky Association's statements asking the Government to "act now to #CallTimeonTariffs before it's too late",¹⁸³ and seeking "urgent government help" to address the sharp decrease in exports since the US imposed a 25% tariff as a result of the Airbus-Boeing dispute, which the Scotch Whisky Association warns will "take years to rebuild".¹⁸⁴

We discussed this issue on 23 July, when you told us that these tariffs risk the British public losing their support for a UK-US deal.¹⁸⁵ **We urge you to continue your efforts to address these tariffs as a matter of urgency.**

¹⁸⁰ UST0011

¹⁸¹ Q2 on 1 July

¹⁸² UST0020, UST0026, UST0046

¹⁸³ https://spiritsuk.co.uk/?utm_source=POLITICO.EU&utm_campaign=e008cdd0fc-EMAIL_CAMPAIGN_2020_07_13_06_03&utm_medium=email&utm_term=0_10959edeb5-e008cdd0fc-190187369

¹⁸⁴ <https://www.scotch-whisky.org.uk/insights/us-tariffs/#:~:text=What's%20happening%3F,Malt%20going%20into%20the%20US.>

¹⁸⁵ Q60 on 23 July

Global Justice Now has highlighted the risk that a US deal might “constrain” the UK’s relations with China.¹⁸⁶ We asked Marjorie Chorlins of the US Chamber of Commerce about this issue, and she argued that “there is a strong benefit if the US and the UK can work together to update global trade rules that will allow us to deal with the constraints—or the challenges, frankly—which a non-market economy such as China represents”.¹⁸⁷

While we have not sought detailed written evidence on this point yet, and we note that the UK’s relationship with China and Chinese companies is currently evolving, in particular in relation to Hong Kong and telecommunications infrastructure, we discussed potential FTA provisions that might limit the UK’s ability to make deals with China on 23 July, when you told us that the UK would not accept any agreement that limited the UK’s sovereignty or room for manoeuvre with trading partners. However, you would not commit to ensuring that text similar to that of USMCA 32.10 is not included in a UK-US deal.¹⁸⁸ **We’d be grateful to know how you will ensure that the UK will not be required, as part of these talks, to accept provisions that might have the effect of undermining the UK’s ability to negotiate and conclude deals with other countries?**

Finally, there are several areas on which we have yet to take significant evidence, including labour provisions, good regulatory practice, and a US potential ask for changes to the UK’s *de minimis* tax rule. These are areas that we expect to consider in-depth in the future, as we prepare to scrutinise a final FTA agreement, but if you have any points that you wish to share with us regarding the Government’s objectives and the progress of negotiations with the US on these matters, we would be grateful to hear them.

Yours sincerely,



Rt Hon. the Lord Goldsmith QC
Chair of the House of Lords International Agreements Sub-Committee

Annexes:

- A: Members’ declarations of interests
- B: List of evidence received to date
- C: Supplementary call for evidence

¹⁸⁶ UST0033

¹⁸⁷ Q42 on 16 July

¹⁸⁸ Q61 on 23 July

Annex A: Declarations of Members' Interests for the UK-US trade negotiations inquiry

Lord Foster of Bath

- *No relevant interests*

Lord Fraser of Corriearth

- *No relevant interests*

Lord Gold

- *David Gold & Associates LLP*

Lord Goldsmith

- *Partner, Debevoise & Plimpton LLP (in this capacity the member advises clients on investor-state disputes from time to time)*

Lord Kerr of Kinlochard

- *Chairman, Centre for European Reform*
- *Deputy Chairman, Scottish Power plc*
- *Member, Scottish Government's Standing Council on Europe*

Lord Lansley

- *No relevant interests*

Baroness Liddell of Coatdyke

- *No relevant interests*

Lord Morris of Aberavon

- *No relevant interests*

Lord Oates

- *Chair, Advisory Committee, Weber Shandwick UK*
- *Director, H&O Communications*
- *Director, Centre for Countering Digital Hate*

Lord Robathan

- *No relevant interests*

The Earl of Sandwich

- *Adviser, Christian Aid*

Lord Watts

- *No relevant interests*

The Specialist Adviser for the inquiry declared the following interests:

David Henig

- *Director of the UK Trade Policy Project, European Centre for International Political Economy*
- *Analytical consultancy services for Liverpool University, the Commonwealth Secretariat and Which?*

A full list of Members' interests can be found in the Register of Lords Interests:

<https://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Annex B: List of written evidence submissions to the US inquiry received to date

- UST0001 – **David Partridge**
- UST0002 – **Simon Lester**, Cato Institute
- UST0003 – **Glyn Hughes**
- UST0004 – David Bowles, **RSPCA**
- UST0005 – **Professor Stephanie Rickard**, Professor of Political Science at the LSE
- UST0006 – Philip Stocker, **National Sheep Association**
- UST0007 – David Lawrence, **Trade Justice Movement**
- UST0008 – Dr John Puntis, **Keep Our NHS Public**
- UST0009 – **British Veterinary Association**
- UST0010 – **Grain and Feed Trade Association**
- UST0011 – Thomas Wills, **Traidcraft Exchange**
- UST0012 – **Incorporated Society of Musicians**
- UST0013 – Sian Thomas, **Fresh Produce Consortium**
- UST0014 – Kate Young, **Aldersgate Group**
- UST0015 – Natasha Crookes, **British Toy and Hobby Association**
- UST0016 – James West, **Compassion in World Farming**
- UST0017 – Richard Phillips, **Association of British HealthTech Industries**
- UST0018 – Richard Matoian, **American Pistachio Growers**
- UST0019 – Richard Freudenberg, **British Association of European Pharmaceutical Distributors**
- UST0020 – Dr Julian South, **Maltsters Association of Great Britain**
- UST0021 – **Dr Ludivine Petetin**, Cardiff School of Law and Politics
- UST0022 – Sam Lamont, **Law Society of England and Wales**
- UST0023 – Reema Selhi, **Design and Artists Copyright Society**
- UST0024 – Mark Dayan, **Nuffield Trust**
- UST0025 – Joasia Cohen, **Pesticide Action Network UK**
- UST0026 – Peter Dawson, **Dairy UK**
- UST0027 – Sophie Jones, **British Phonographic Industry**
- UST0028 – **Professor Susan Aaronson**, Digital Trade and Data Governance Hub, George Washington University
- UST0029 – Leah Miller, **British Medical Association**
- UST0030 – Bruce Hunt, **City of London Corporation**
- UST0031 – Izzy Gill, **Agricultural Biotechnology Council**
- UST0032 – David Walsh, **WWF UK**
- UST0033 – Jean Blaylock, **Global Justice Now**
- UST0034 – Daniel Guthrie, **Alliance for Intellectual Property**
- UST0035 – Robert Russell-Pavier, **British Generic Manufacturers Association**
- UST0036 – Lise Johnson, **Columbia Centre on Sustainable Investment**
- UST0037 – **Linda Kaucher**
- UST0038 – Richard Collin, **British Standards Institute**
- UST0039 – Nicholas Crook, **UNISON**
- UST0040 – Julian Jessop, **Institute of Economic Affairs**
- UST0041 – John Bleed, **Confederation of British Industry**
- UST0042 – Arnold Pindar, **National Consumer Federation**

UST0043 – Susie Heron Halliday, **Producers Alliance for Cinema and Television**
UST0044 – Caroline D’Silva, **Motion Picture Association**
UST0045 – **Digital Policy Alliance**
UST0046 – Tori Morgan, **National Farmers’ Union**
UST0047 – Mike Corkerry, **AT&T**
UST0048 – Dr Emma Dawnay, **Green House**
UST0049 – Will O’Brien, **Association of the British Pharmaceutical Industry**
UST0050 – Tori Morgan, **National Farmers’**
UST0051 – Maxwell Green, **Cornwall Council**
UST0052 – Lisa Vainio, **TheCityUK**

Annex C: UK-US inquiry: Supplementary Call for Evidence

The House of Lords EU International Agreements Sub-Committee (IAC), chaired by Lord Goldsmith QC, is currently undertaking an inquiry into the UK-US trade negotiations towards a new full free trade agreement. For more background on the inquiry, see our inquiry page.

This is a public call for written evidence to be submitted to the Committee. The Committee's scrutiny of these negotiations will consider a wide range of issues, and we expect to continue to seek evidence throughout the course of the negotiations.

Our previous call for evidence included detailed issues relating to agri-food, healthcare and drug pricing, and digital trade, as well as the potential impacts of a trade deal on regions in the UK and how different areas, regions and nations across the country might either benefit from the deal or miss out. That call for evidence is available [here – a link to a PDF will be provided], and we continue to welcome submissions covering one, some or all of those questions.

Our first letter to the Secretary of State for Trade covering these issues was published on 31 July [link], and her response will be published in due course. The written and oral evidence on which that letter was based is available [here], and submissions are welcome to cross-refer to existing evidence.

The questions below cover additional topics, including:

- Climate change and environmental commitments and regulation;
- Intellectual property provisions;
- Mutual recognition of regulations and standards setting across sectors; and
- The import of agri-food products.

We would be grateful for submissions on one, some or all of the questions set out below by Friday 25 September, in the first instance.

Concise submissions are preferred, and responses must not be any longer than six sides of A4. Bullet points are acceptable. Paragraphs should be numbered. Submissions should be made through the written submission form below and will be acknowledged automatically by email.

Submissions do not need to address every question below. Equally, if there are any crucial issues not captured by the questions we pose, please highlight what they are and explain their salience.

Further revised calls for written evidence may be issued in due course, as negotiations progress, and all those who have previously made written submissions will be notified of this and invited to make an additional submission, if they wish.

The process for making submissions is set below, but if you have any questions or require any adjustments to enable you to respond, please contact the staff of the Committee at HLIntlAgreements@parliament.uk.

Areas of interest

General and cross-cutting issues

We welcome broad responses to these general questions, as well as specific responses to them regarding one or more of the themes set out below.

1. How effectively does the Department for International Trade (DIT)'s strategic approach, published on 2 March 2020, represent the interests of different groups and regions across the country, including the devolved nations, businesses, civil society, and individuals?
2. How reliable do you find the DIT's assessment of the potential impacts of the proposed agreement with the US, either as set out in the strategic approach or elsewhere? How do you evaluate the economic analysis behind the DIT's the impact assessment? The impact assessment suggests that the trade deal could increase GVA in Scotland, Wales, the North East, and the Midlands in particular. How do you evaluate this assertion?
3. How can the Government ensure that any outcome has a net positive result for the country, especially in the light of the impacts of COVID-19 locally, regionally, nationally and globally? What are the costs and benefits of a UK-US trade deal to the various regions of the UK? We would be especially interested in detailed economic analyses on this point.
4. To what extent do the ongoing negotiations with the EU on a future relationship conflict with negotiations with the US on a trade deal? What are the major trade-offs involved? And what effect could a UK-US trade deal have on the UK's future ability to negotiate deals with other countries, including China?
5. The United States Congress will scrutinise the US Government's negotiations with the UK and any final deal. What do you think will be the key issues for Congress and legislators in the US? How will the influence of US legislators be felt in the course of these negotiations?

Climate change and environmental commitments and regulation

The Committee has already received evidence from several witnesses on these areas and would welcome additional views. The questions that follow are not intended to be prescriptive, and submissions relating to other relevant points are welcome.

6. What implications might an FTA with the US have for the UK's international commitments on environmental protection and climate change? How might the deal

affect the UK's national objectives in these areas, such as the Government's commitment to reaching net-zero by 2050?

7. The UK objectives for negotiations with Japan include “ensur[ing] both parties meet their commitments on climate change”, but this sort of objective is missing from the Department for International Trade's published documents about talks with the US. How should the UK Government prioritise climate change and environmental issues in talks with the US? What should be the key objectives?
8. The UK will host the UN climate conference, COP26, in 2021, having been delayed from November 2020. How should the UK's trade policy align with the UK's leadership on climate and environment in other fora, such as COP? In your view, is there already sufficient alignment between the Government's trade policy and its other goals, such as on achieving net-zero, or are changes needed? Or should the two spheres operate entirely separately?
9. What is your assessment of how the Government is getting the message across to negotiating partners that it takes its multilateral and domestic commitments in this area seriously?
10. What steps could the UK take to help ensure that the UK-US deal, taken as a whole, secures positive environmental impacts? How should this best be assessed?
11. We have heard from some witnesses concerns about how investor protections, in particular investor-state dispute settlement mechanisms, could affect domestic environmental regulation. What assessment do you make of this particular risk? Are there any studies or especially salient examples that you would give?

Digital trade and intellectual property provisions

The Committee has already received evidence from several witnesses on these areas and would welcome additional views. The questions that follow are not intended to be prescriptive, and submissions relating to other relevant points are welcome.

We have heard concerns from witnesses about the risk that the UK's copyright and intellectual property rules might be changed in the light of any deal with the US.

12. How do the two countries' copyright and IP rules compare? What provisions on copyright and IP should the UK seek to agree with the US to support the UK's creative industries in particular? How high a priority should other areas be, such as securing an Artist's Resale Right provision?
13. Witnesses have also raised concerns about the US' “safe harbour” rules that protect platforms like Google and Facebook from liability for content posted by others. What is your view of those protections and their consequences for copyright rights holders? What provisions should the Government be seeking to support copyright holders

enforcing their rights?

14. The Court of Justice of the European Union has recently issued its judgment in the Schrems II case, invalidating the EU's adequacy decision for the US' Privacy Shield, which had facilitated transatlantic data transfers. How might that judgment affect the possible provisions that the UK and US can agree? How might it affect the UK's parallel discussions with the EU?
15. Would you support establishing a UK-US intellectual property working group? Who should be represented on that group, and what should its key focuses be?

We have also received submissions about how intellectual property and exclusivity rights are applied to drug patents and 'biologic' medicines, such as some innovative cancer treatments. The US is seeking to secure extensions to the periods that protect such drugs and medicines.

16. What is your view of the effects of those longer periods, both in the US, where they currently apply, and for the UK if they were to be introduced following a trade deal?
17. Are there any studies or salient examples of how these patent/exclusivity periods support or undermine innovative research and the ultimate health outcomes for patients?

Regulation and standards setting

The Committee has already received evidence from several witnesses on these areas and would welcome additional views. The questions that follow are not intended to be prescriptive, and submissions relating to other relevant points are welcome.

18. Would the UK aligning more closely with the US' regulatory approach benefit either UK or the US business? How do you assess the respective benefits for US businesses of the UK's alignment either with an EU or a US approach to regulation? How might the UK use a UK-US deal to advocate for the adoption of international standards?
19. We have heard from witnesses that the UK should not agree to mutual recognition of standards, for example because US standards are less consensus-based than those that apply in the UK. What is your view of how the US, at all levels, sets standards for, and regulates the safety of, products?
20. Any agreement will bind the federal government in the US, but UK businesses may face a range of barriers at state-level, including variations in product standards. What steps could be taken in an FTA to help ease these barriers? What should the UK Government be pushing for in this area?

Import of food and agricultural products

21. What opportunities do you see for UK businesses that import, or rely on the import of, food or agriculture products across sectors? How do you assess the Government's evaluation of any opportunities, in their published strategic approach or elsewhere?
22. Trade deals are not solely about economic benefits. How might a trade deal on agri-food affect the UK in other ways? For example, could a deal that increased the number of agri-food imports from the US help in tackling food poverty, or increase efficiency or the adoption of innovations by producers based in the UK? What are the broader risks and opportunities in this area?

Other areas of negotiation: trade remedies, government procurement, SMEs and services

23. The UK has developed a new trade remedies framework based on the “key principles” of “transparency, efficiency, impartiality and proportionality”. What impact might these negotiations and any deal with the US have on the UK's establishment of its own trade remedies regime? What are the possible risks or opportunities for the UK in negotiations with the US on these issues?
24. Both countries' stated objectives include provisions relating to government procurement and areas that they intend to exclude from negotiations, including sub-federal programs and defence programs (US objectives), and key public services, such as the NHS (UK objectives). What are likely to be the key points of both agreement and contention in negotiations about government procurement? What are the possible risks or opportunities for the UK?
25. Small and medium-sized enterprises could particularly benefit from opening US public procurement to UK business, but it is not clear that an SME chapter in a UK-US deal can secure those opportunities. What practical assistance should a deal give to UK SMEs? Are there any other steps that could be taken in a UK-US deal to help ensure that UK SMEs are treated in a non-discriminatory fashion?
26. The UK is seeking “ambitious commitments” from the US regarding trade in services. What general or sector-specific rules, including on financial and aviation services, should the UK be seeking to support the UK's services exporters?
27. The US has recently walked away from one strand of OECD-led talks about taxing digital services. What do you think the UK's approach should be to its recently introduced Digital Services Tax? How useful or necessary is such a tax for the UK?

Guidance for submissions

Concise submissions are preferred, and responses must not be any longer than six sides of A4. Bullet points are acceptable. Paragraphs should be numbered. Submissions should be made through the written submission form below and will be acknowledged automatically by email.

Evidence that is accepted by the Committee may be published online at any stage; when it is so published it becomes subject to parliamentary copyright and is protected by parliamentary privilege. Submissions that have been previously published elsewhere will not be accepted as evidence.

Once you the evidence has been accepted and published, you will receive a further email, and at this point you may publicise or publish your evidence yourself. In doing so you must indicate that it was prepared for the Committee, and you should be aware that your publication or re-publication of your evidence may not be protected by parliamentary privilege.

Personal contact details will be removed from evidence before publication but will be retained by the Committee Office and used for specific purposes relating to the Committee's work, for instance to seek additional information.

Substantive communications to the Committee about the inquiry should be addressed through the clerk of the Committee, whether or not they are intended to constitute formal evidence to the Committee.