

Department for International Trade Open Consultation Response

The COVID-19 pandemic and international trade

Trade Justice Movement - April 2020

About the Trade Justice Movement

The Trade Justice Movement is a UK-wide network of nearly sixty civil society organisations, with millions of individual members, calling for trade rules that work for people and the planet. Our members include trade unions, environmental campaigns, NGOs and faith organisations. Together we are calling for trade justice, where the global system of trade ensures sustainable outcomes for ordinary people and the environment. Our network includes organisations with a range of expertise on trade and we welcome this opportunity to contribute to the development of UK trade policy.

The COVID-19 pandemic and international trade policy

The COVID-19 pandemic has generated unprecedented economic and social challenges for the UK and the world. Trade effects are already being felt, and the steep decline in world economic activity is having major impacts on the flow of goods and services. This economic and social crisis will present deep challenges for the Government, which are likely to absorb significant governmental capacity including that of the Department for International Trade (DIT). Therefore as part of the immediate response to the COVID-19 pandemic, the Government should:

- 1. Pause trade negotiations, and extend the Brexit implementation period.** This is vital to ensure that our future trade arrangements can be high quality, well-scrutinised, and suited to the post-coronavirus world. It will not be possible to achieve this when Parliament cannot easily sit and public attention is elsewhere. Government energy and attention should be focused on addressing the health and economic crisis created by COVID-19, while further economic disruption from a hard or no-deal Brexit should be avoided at least until the country has recovered.
- 2. Resist calls to relax regulatory standards,¹ and ensure imported goods remain safe and high quality.** Relaxing UK standards under the guise of keeping goods flowing, or introducing new trade agreements that impact on regulation, for example by including regulatory cooperation chapters or investor-to-state dispute settlement, could lead to the import of goods produced to inadequate standards or put downward pressure on UK standards. Now more than ever, it is vital to ensure that medicines, equipment, chemicals, food, digital products or other items that are safe and effective. Public health and environmental protection depends on the maintenance of high standards. This pandemic has shown that even major risks are hard to predict or prove in advance: therefore the precautionary principle should remain our guiding basis for all regulation.
- 3. Suspend the application of intellectual property provisions to COVID-19-related goods and services in existing trade deals including TRIPS,** where necessary to ensure that low-cost vaccines, treatments, testing equipment and other essential items can be distributed worldwide. Mandatory data-sharing rules may need to be applied to private companies, to ensure the greatest

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¹ World Trade Organization (March 2020) 'Agency chiefs issue joint call to keep food trade flowing in response to COVID-19'. Available at https://www.wto.org/english/news_e/news20_e/igo_26mar20_e.htm accessed on 20/04/2020

possible data pool is available for the development of these goods.²

4. **Agree a worldwide moratorium against the use of Investor-State Dispute Settlement (ISDS) claims relating to coronavirus measures.** In responding quickly to this emergency, it is likely that many governments will inadvertently breach rules found in investment agreements and chapters, including 'fair and equitable treatment', 'full protection and security' and 'direct and indirect expropriation' provisions. Where investment provisions are part of trade deals they are often subject to exceptions for public health emergencies, but this is not the case for standalone bilateral investment agreements (of which the UK has 94 in force).³ There needs to be clarity for governments that all measures taken in response to this pandemic will be protected from ISDS claims.
5. **Cooperate internationally to ensure countries can access the goods and services needed to respond to COVID-19.** Countries have already introduced export bans on essential goods such as personal protective equipment (PPE)⁴ and some foodstuffs.⁵ This is understandable but could cause hardship in countries that lack the ability to produce their own substitutes. As well as the long-term resilience measures described below, an emergency solidarity response is required with proactive initiatives urgently put in place to boost the flow of goods and services to countries that need them.
6. **Introduce trade and international development measures to support workers and producers in developing countries.** Reduced economic demand is having huge impacts on producers in developing countries that supply UK markets.⁶ It is likely that there will be significant unemployment in manufacturing industries and many agricultural businesses will struggle to survive, particularly where carefully-constructed supply chains have ceased to function or key events such as sowing or harvesting have been interrupted due to lockdowns. The UK should look at the trade arrangements it has with these countries and seek to offer maximum flexibility, for example in areas such as Rules of Origin. It should also consider extending the Everything But Arms scheme to countries that have recently graduated from 'Least Developed' (LDC) to 'Lower Middle Income' (LMIC) status, or who have low GDPs compared to other countries in the LMIC grouping.

In the medium term, a broader reconsideration of UK and global trade policy will be needed to ensure that it is appropriate for a post-coronavirus world. Public opinion in the UK and elsewhere may shift, with potentially stronger support for publicly-run public health and other services, increased localisation of production and the ability of governments to regulate and intervene in the economy. The response to the crisis will therefore require reconsideration of existing UK trade policy and our future direction of travel.

The UK Government should:

7. **Work with WTO members and trade partners to ensure countries can build domestic**

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² The Guardian (April 2020) 'The race to find a coronavirus treatment has one major obstacle: big pharma'
<https://www.theguardian.com/commentisfree/2020/apr/02/coronavirus-vaccine-big-pharma-data>

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³ UNCTAD (undated) *International Investment Agreements Navigator*. Available at
<https://investmentpolicy.unctad.org/international-investment-agreements/countries/221/united-kingdom> accessed on 20/04/2020

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⁴ Politico (March 2020) 'EU moves to limit exports of medical equipment outside the bloc'. Available at
<https://www.politico.eu/article/coronavirus-eu-limit-exports-medical-equipment/> accessed 20/04/2020

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⁵ Reuters (April 2020) 'Trade restrictions on food exports due to the coronavirus pandemic'. Available at
<https://www.reuters.com/article/us-health-coronavirus-trade-food-factbox/trade-restrictions-on-food-exports-due-to-the-coronavirus-pandemic-idUSKBN21L332> accessed 20/04/2020

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⁶ Overseas Development Institute (March 2020) 'Trade and the coronavirus: Africa's commodity exports expected to fall dramatically'. Available at
<https://set.odi.org/wp-content/uploads/2020/03/Trade-and-the-coronavirus-Africa%E2%80%99s-commodity-exports-expected-to-fall-dramatically-Final.pdf> accessed on 20/04/2020.

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resilience to trade disruption. Countries are under significant domestic pressure to prevent the export of certain goods including PPE⁷ and essential foods,⁸ and such derogation from trade rules is rightly permitted ‘to protect human life or health’.⁹ Disruptions in trade flows and shortages of important goods are likely to continue for some time, and we may expect a repeat of this in any future crises. Countries must therefore be free to act in advance of emergencies to build domestic resilience to trade disruptions, including by supporting local production where appropriate. To support local industries, countries may need to alter or introduce subsidies, apply performance requirements or local content rules to investors, or use tariff policy to enable local producers to compete, yet these actions are limited or prohibited under existing trade rules. Trade regimes that stand in the way of such support may need to be suspended.

- 8. Work with WTO members and trade partners to consider how trade agreements could better support public health and public services.** Various measures in trade deals such as Investor-State Dispute Settlement, ‘necessity tests’ and regulatory co-operation can have a chilling effect on public health, safety and other regulations, which can leave countries ill-prepared to face pandemics.¹⁰ For example, Philip Morris’ ISDS cases against the governments of Australia and Uruguay for measures to reduce smoking have been linked to delays in equivalent public health legislation in other countries¹¹ - this would make those populations more vulnerable to serious illness from COVID-19.¹² Public services, which have been so vital in responding to the pandemic, are at risk from trade deals, as prior privatisation can be locked in via mechanisms such as market access commitments, negative listing and standstill and ratchet clauses. This can impact on the availability, affordability and quality of provision, for example the outsourcing of hospital cleaning in England increased MRSA cross-infection rates by 50%.¹³ Trade in services policy and the treatment of regulation and standards in trade deals should be reassessed, to ensure that our public services and public health systems are best placed to prevent and respond to any future crises.
- 9. Seek mutual termination of ISDS clauses and agreements.** ISDS has been shown to obstruct important regulation including in public health¹⁴ and affordable medicines, for instance Columbia’s move to improve public access to a life-saving cancer medication was met by a major ISDS lawsuit

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⁷ Politico (March 2020) ‘EU moves to limit exports of medical equipment outside the bloc’. Available at <https://www.politico.eu/article/coronavirus-eu-limit-exports-medical-equipment/> accessed 20/04/2020

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⁸ Reuters (April 2020) ‘Trade restrictions on food exports due to the coronavirus pandemic’. Available at <https://www.reuters.com/article/us-health-coronavirus-trade-food-factbox/trade-restrictions-on-food-exports-due-to-the-coronavirus-pandemic-idUSKBN21L332> accessed 20/04/2020

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⁹ GATT (1986) *The General Agreement on Tariffs and Trade*. Available at https://www.wto.org/english/docs_e/legal_e/gatt47.pdf accessed 20/04/2020

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¹⁰ European Public Health Alliance (September 2018) ‘Trade, Investment and Public Health: Protecting public health in EU and post-Brexit trade agreements’. Available at <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=19253> accessed on 20/04/2020

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¹¹ War On Want (undated) ISS Files: Philip Morris v Australia. Available at <https://waronwant.org/sites/default/files/ISDS-files-Philip-Morris.pdf> accessed on 20/04/2020

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¹² World Health Organization (March 2020) Q&A on smoking and COVID-19. Available at <https://www.who.int/news-room/q-a-detail/q-a-on-smoking-and-covid-19> accessed on 20/04/2020

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¹³ Left Foot Forward (March 2020) ‘Caroline Lucas: Coronavirus – and why we should all be worried about the US trade deal’. Available at <https://leftfootforward.org/2020/03/caroline-lucas-coronavirus-and-why-we-should-all-be-worried-about-the-us-trade-deal/> accessed on 20/04/2020

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¹⁴ World Health Organization (2015) ‘Investor State Dispute Settlement and Noncommunicable Disease: Contemporary Disputes, Debates and Options for Reform’. Available at <https://www.who.int/global-coordination-mechanism/news/GCM-webinar-investment.pdf> accessed on 20/04/2020.

by pharmaceutical company Novartis.¹⁵ The threat of ISDS lawsuits must be removed to ensure that governments are fully free to regulate, in order to prevent, minimise and address future crises. ISDS should not be included in any new trade agreements and the UK's existing ISDS agreements, including our 94 bilateral investment treaties, must be terminated.

10. Work with WTO members and trade partners to re-examine Intellectual Property and Digital provisions in trade agreements. These provisions must be altered to ensure that they do not hinder the development, dissemination or affordability of medicines, vaccines and other essential items, for instance by securing stronger patent monopolies that restrict supply and increase prices. They also must not lock in a privatised model of data ownership or digital intellectual property protection, which could prevent the pooling of data and digital resources during a crisis,¹⁶ and thereby hinder the development of medicines and other vital products.

11. Improve scrutiny of trade deals, to ensure trade policy is transparent and has democratic support. Parliamentarians, devolved administrations and the public must have a formal and meaningful role in trade policy scrutiny. This must include full transparency during negotiations and guaranteed debates and votes in Parliament on trade objectives and final texts of deals. This will provide a vital safeguard to ensure that public priorities such as healthcare and disease prevention are adequately reflected in UK trade policy.

The measures described here would help to address the COVID-19 pandemic in the short-term, and enable the UK and other countries to better prepare for crises in the longer-term. We would like to thank the International Trade Committee for this opportunity to provide input, and we look forward to further discussions on the topics raised.

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¹⁵ Baker, B.K. and Geddes, K. (2017) 'The Incredible Shrinking Victory: Eli Lilly v. Canada, Success, Judicial Reversal, and Continuing Threats from Pharmaceutical ISDS', Loyola University Chicago Law Journal, Vol 49. Available at https://www.luc.edu/media/lucedu/law/students/publications/lj/pdfs/vol-49/issue-2/13_Baker.pdf accessed on 20/04/2020

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¹⁶ The Guardian (April 2020) 'The race to find a coronavirus treatment has one major obstacle: big pharma' <https://www.theguardian.com/commentisfree/2020/apr/02/coronavirus-vaccine-big-pharma-data>