

"Brilliantly written and lucidly argued" **Jason Hickel**

■ **TRADE SECRETS**

The truth ■
■ **about the** ■
■ **US trade deal** ■
■ **and** ■
■ **how we** ■
■ **can stop it**

NICK DEARDEN ■



About the author

Nick Dearden is the director of Global Justice Now. He has been a campaigner against corporate globalisation and for global economic justice for over 20 years. He was a leading voice in the UK and European movement against the now-abandoned EU-US trade deal (TTIP) and a founder of the UK's Stop Trump coalition. He regularly contributes political analysis to publications including *The Guardian*, *Al Jazeera*, *Open Democracy*, *Red Pepper* and *Soundings* journal.

TRADE SECRETS

The truth about the US trade deal
and how we can stop it

NICK DEARDEN



Global Justice Now works as part of a global movement to challenge the powerful and create a more just and equal world. We mobilise people in the UK for change, and act in solidarity with those fighting injustice, particularly in the global south. Our local activist groups campaign around the country for a global economy where people come before profit.

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Global Justice Now, 66 Offley Road, London SW9 0LS
+44 (0)20 7820 4900 | offleyroad@globaljustice.org.uk | [@globaljusticeuk](https://twitter.com/globaljusticeuk)

Global Justice Now Scotland, Thorn House, 5 Rose Street, Edinburgh EH2 2PR
+44 (0)131 243 2730 | thornhouse@globaljustice.org.uk | [@globaljusticesc](https://twitter.com/globaljusticesc)

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Preface

When Labour leader Jeremy Corbyn held up pages and pages of blacked out trade documents on ITV's general election debate last November, it was the culmination of years of work.

My organisation Global Justice Now first submitted Freedom of Information requests for those documents, which contain crucial details of what the UK government was preparing to negotiate with the United States, in 2017. Despite numerous appeals and a legal challenge which still hadn't made it to court, this essential record of the likely consequences of a US trade deal had remained entirely hidden. Finally, they were centre stage.

When the uncensored documents were subsequently leaked in full, it was easy to see why the government wanted to keep them secret – they confirmed many of our fears about its willingness to capitulate to the US corporate lobby. While much mud has subsequently been slung about the identity and motivations behind the leak (though with little actual evidence given), the authenticity of the documents, and what they reveal, has never been disputed.

Ultimately, the electorate's desperate desire to stop discussing Brexit won out in December, and so Boris Johnson's vision of

future trade deals was never properly interrogated. But now that Brexit has formally happened, that interrogation is starting to begin, on both sides of the Brexit divide. Even media outlets like the *Daily Mail* are now reporting in detail on the threat to UK food standards from a US trade deal, as British farmers mobilise to protect their livelihoods. Parliament's latest failure to put protections for the NHS, as well as the democratic role of MPs themselves, into the Trade Bill has received far more attention than over recent years. Other issues like Big Tech, cosmetics and animal welfare are starting to get more traction too. It's not before time.

For many of us, it is a tragedy that this debate didn't happen as part of the Brexit decision, given everything we suspected (and now know) about the intentions of this government. But it is also time to move beyond those divisions. A clear-cut majority of the British public is opposed to most of Trump's top priorities for a trade deal, with much of this corporate-driven agenda also likely to continue under any Biden administration. If this central contradiction remains in the shadows, a catastrophic deal with the US could well be agreed. But if we can inform and mobilise a public that is already broadly onside, there is every chance it can be stopped.

London, August 2020.

**“When you’re dealing in
trade, everything is on
the table”**

Donald Trump, June 2019



1. Why the US trade deal matters

There is a part of Britain's establishment which has always looked to the United States for leadership. For these Atlanticists, Britain's 'special relationship' with the USA is about much more than a shared history or culture. It goes beyond even the bizarre nostalgia for the power of Empire, though that is part of it. Most importantly, this part of Britain's elite looks longingly at the US as a model economy in which the market rules, big business can behave as it sees fit, and rich individuals are free from irritating 'burdens' like public healthcare and redistributive taxes.

For such people, the referendum to leave the European Union presented an opportunity to unleash this long-cherished dream. And one important vehicle to achieve this would be a trade deal with the USA.

Trade deals today go well beyond traditional issues like tariff policy. For instance, they interfere with how we regulate food production, how we provide public services, how we're allowed to regulate big business and foreign investment, and how much we are charged for our medicines. Trade deals today deeply affect what sort of society we live in, promoting a model of free market economics, together with tools to discipline governments that step away from this model.

The US trade deal is not really about importing more American products. It's about importing the American economic and regulatory model. It is not about whether we trade with the US or not but whether we capitulate to a set of policies that enshrine the power of the market and big business. A US trade deal is at the heart of what sort of country we become after Brexit.

Informal talks started with the US administration about a year after the Brexit referendum, with formal talks commencing in Spring 2020. They are currently being held every 6 weeks.

The chapters that follow will spell out the consequences of this agenda, how a US trade deal would irrevocably change our economy and society, and what we can do to stop it. A US trade deal poses some very specific threats:

- It would not only undermine our food standards, but also many other regulations and protections we currently enjoy. It would give big business a greater role in influencing our laws in their own interests.
- It would undermine our public services, making it harder to bring services like the railways back into public ownership, and posing a particular threat to the NHS and the price it pays for life-saving medicines.
- It threatens to give US multinational corporations special legal powers to challenge the policies of the British and devolved governments, including their ability to introduce better environmental and public health policies.
- It would give Big Tech corporations like Amazon and Facebook more powers to use and abuse our data, and make it even harder to tax and regulate such corporations.
- It would threaten our ability to reduce carbon emissions and meet our climate change targets.
- In spite of the promises of 'jobs and growth' from this deal, it threatens to undermine workers' rights.
- The fact that the deal is being negotiated in secret, and that elected MPs have no meaningful way of scrutinising the talks or stopping an eventual deal, is an affront to our democratic rights.

It's important to say that in many ways there is nothing particularly special about these proposals for a US-UK trade deal. They are an embodiment of how expansive and enforceable global trade rules have become.

Trade rules have always been about power. Britain built its wealth trading people, forcing China to import opium, and imposing trade rules that devastated the economies of a large part of the world. The impact of this reverberates today.

In the last four decades, trade rules have come to embed a 'market knows best' logic, which has given vast new powers to big business but left governments less able to protect their citizens or the environment. Trade deals set the rules of the game, restricting governments from making certain democratic choices that are considered 'unacceptable' by those who want the market to make decisions about how society operates. And trade rules are enforceable, meaning they can be used to discipline governments that want to take a different route. Trade rules allow big business to say 'sorry, it's just not possible, it would be against trade rules'.

In this way, trade rules have cemented the power of big business and reduced democratic space. They have helped build a global economy characterised by enormous levels of inequality, both within and between countries, and, by demanding that profit comes first, have fuelled an environmental catastrophe. Britain has been a champion for such trade rules and after Brexit is preparing to develop more of these deals with countries around the world. So we must place our concerns about a US trade deal within a global context, and prepare to do battle not just with the US deal, but with the use of trade rules by our own government to plunder resources and exploit people around the world.

This book draws hope and inspiration from previous generations of trade activists. These campaigns stopped many awful trade deals, and today, as trade becomes deeply contentious around the world once again, we should pick up their torch and go beyond simply fighting individual deals to developing an ambitious agenda to transform the international economy so that it can work for people and the planet. In the final chapter I set out a description of what an alternative trade system might look like.

None of this is an argument against trade: trade in itself is simply a fact of life. The important question is how we trade. For

decades, ‘free trade’ has been presented as an unmitigated good, bringing jobs, growth and a wider selection of cheaper products. But this is a half-truth at best. Trade has always had losers as well as winners, but in recent years the ‘losers’ have been told ‘too bad, it must be your own fault if you’re unable to compete in the global economy’.

Of course there are many benefits to trade, but unless a society can control the market – can constrain the power of finance and multinational corporations, can tax them and build thriving public services – those benefits will flow upwards, while those below will experience job losses, impoverishment and despair. The political crisis we are now living through is an inevitable product of an unsustainable, anti-social economy – an economy that has handed the major decisions over our lives to a super-rich elite. Trade deals and trade rules have played no small part in the creation of this economy. People’s anger at this economy is driving the election of right-wing populists like Donald Trump. But despite sometimes targeting previous “bad deals” in his rhetoric, his view of trade is little different to his predecessors: it continues to embed privileges for the elites of the world, only with a more explicit acknowledgment that ‘might is right’ in today’s global economy, and that the US will not hesitate to uphold its own interests at the expense of its trading ‘partners’.

It is possible to build something better, and this book proposes how we might start on that journey. For us, in Britain, the defeat of a US trade deal is an essential first step, throwing a major obstacle in the path of our government’s Atlanticist vision, and opening up a debate on what sort of society we want, and the role we play in the global economy, that is long overdue. From here, we can join with campaigners across the world who are fighting against similar trade rules to the ones a US-UK deal would include, and begin to rebuild a movement capable of overcoming the ‘market knows best’ global economy which has wreaked such chaos on our world.

A note on the sources

Three sources are used extensively in this text to highlight what the British and US administrations want from a US trade deal. These sources are not individually footnoted but listed here:

- The US negotiating objectives¹
- The UK negotiating objectives, which include the British rationale for the talks, responses to public concerns, an impact assessment and the formal objectives for the talks²
- A set of leaked documents related to six rounds of preliminary negotiations held between the EU referendum in 2016 and the general election in 2019³

95%

of US baby foods contained
toxic metals in a recent test



2. Regulations, food, and letting big business write the rules

“This isn’t about importing more American products. It’s about importing the American economic model.”

Sharon Treat, Institute for Agriculture and Trade Policy⁴

“This administration is not going to compromise. We either have fair access for agriculture or we won’t have a deal.”

Robert Lighthizer, United States trade representative⁵

Trade deals today are less about reducing tariffs, already at historically low levels, and more about regulations and standards that supposedly ‘interfere’ with trade. The argument runs like this: I make lightbulbs and I want to export them into another country. The lightbulbs are safe, but they don’t meet the safety standards of the country I want to export to, so that country blocks imports of my lightbulbs. As an exporter this strikes me as unfair. It looks, from that perspective, like a trade barrier dressed up as a safety standard.

Modern trade deals spend a lot of effort trying to level (or ‘harmonise’) such standards. They do this by judging different regulations that achieve the same goal as ‘equivalent’. You can trade such goods because they’re essentially the same.

The problem with this approach is that goods are very often not ‘equivalent’ at all, and by treating them as such, we risk undermining what are often hard-fought-for environmental, animal welfare and consumer protections. Even lightbulbs are not

straightforward. In the UK, energy-inefficient incandescent bulbs were phased out years ago, but they are still on the market in the US, and moves to get rid of them are currently being watered down by the Trump administration.

The scope of the problem of ‘harmonising’ standards though is nowhere more evident than in the contentious issue of food.

US food standards: a tale of chlorine, pus and antibiotics

US food standards are radically different to Britain’s. US agriculture is dominated by massive corporations, farming on an industrial scale, with intensive use of antibiotics, hormones and steroids to promote rapid growth of animals and prevent illness in what are often extremely unpleasant and unhealthy conditions, along with an excess of chemicals, and allowances for stomach-churning things to end up in the food we eat.

Britain, up to now in the EU, embraces a farm-to-fork method of food production where sustainability and animal welfare are protected to some degree and the use of dangerous chemicals is reduced. It is by no means perfect, but it’s a radically different approach to that employed in the US. The final product might or might not taste similar, and might or might not be as safe (though US food poisoning rates are much higher than European rates), but the products are certainly not ‘equivalent’.

This situation has come about because of the tremendous power of big business within the American regulatory system. Small farmers have been decimated by this system in the US. Business has created a system in the US where the burden for regulation falls on the state, and business freedom is paramount. They call this a ‘science-based’ approach, and demand it aggressively in trade talks. ‘Science’ sounds good, but in trade deals it’s a shorthand for a system which allows business to develop and market products as it wants, and only when harm is proven can action be taken against that produce – an incredibly difficult task when big business is so well resourced, and those harmed often aren’t.

It contrasts sharply with our approach, the so-called ‘precautionary principle’, which takes a cautious approach to health risks, puts the burden on business to demonstrate a product is safe before it can be sold, and bans foods where there is a substantial and credible risk to health. Worryingly, both Boris Johnson and his lead trade negotiator to the EU have endorsed the ‘science-based’ approach, which means throwing caution to the wind when it comes to embracing technologies like genetic modification and intensive chemical use.

Five food standards under threat

The US is forceful in its demand that US food should be allowed onto British supermarket shelves under a US trade deal – in fact successive US representatives have insisted there’s no trade deal without it.⁶ As well as the general principles above, this includes some specific worries for British consumers:

It would certainly mean more **genetically modified foods**. GM ingredients are in the majority of US processed foods but virtually no European foods, owing to strong British and European disquiet about the technologies involved and the potential control it gives big business over the food system. Boris Johnson has clearly indicated he might be willing to agree to US demands on GM foods, saying British food will be “governed by science, not mumbo-jumbo”.⁷

Chlorine chicken, the now-famous symbol of a US trade deal, is poultry washed in pathogen reduction treatments such as chlorine dioxide. But the problem is less the chlorine than what the chlorine is hiding. The washes essentially remove bacteria which has accumulated over a tortured lifetime. Chickens can barely move, cluck or eat, never see sunlight, regularly suffer heart attacks because of their unnatural size, and are covered in sores.⁸ What’s more, the washes might actually disguise (rather than eliminate⁹) some pathogens. Food poisoning is a big problem in the US, with studies suggesting that the percentage of people who fall ill with food poisoning annually is up to ten times higher

in the US than the UK.¹⁰ Workers' rights in the US meat industry are often appalling, with the chemical washes playing a part in that. Testimony shows the washes are bad for workers – with cases reported of “rashes, burns, destruction of the eye tissue, difficulty breathing, and inflammation of the respiratory system”.¹¹ Leaked papers from US-UK trade talks reveal that the US has pressured the UK to accept chlorinated chicken, even offering to help with a PR exercise to sell chlorinated chicken to the UK public. In fact, the government has tied itself in knots trying to find ways of giving into US demands while also convincing the public they haven't – most recently planning to allow chlorine chicken into the British market but with higher tariffs. As campaigners have pointed out, this is no way to protect decent food standards, not least because tariffs can be simply lowered over time.¹²

Much other US meat is also produced on an industrial scale, with conditions as bad as those in the chicken sheds. In particular, **hormones, steroids and antibiotics** are regularly used to make animals grow bigger faster (regardless of the impact on the animal's ability to walk!) and to prevent them getting ill in the unnaturally close conditions in which they live. Some never see sunlight, or eat grass.¹³ The use of many of these chemicals is bad for humans too – antibiotic overuse is threatening to make these drugs useless as bacteria develop resistance to them, which would take away one of the most crucial tools of modern medicine. US pigs regularly contain **ractopamine**, which makes pigs collapse, tremble, suffer liver and kidney dysfunction, and even die, and might well also have serious effects on human health when consumed.¹⁴ It's not just Europe that's worried – over 160 countries, including Russia and China, have banned this dangerous chemical, as well as US pork which contains it.

A range of stomach-churning food standards, including allowing **higher levels of pesticides in vegetables** (the US allows 72 chemicals banned here in Britain, including some responsible for serious harm), higher levels of 'somatic cells' in milk (often meaning more pus, owing to infection in the cow), **traces of insects, arsenic**

and even excrement in various foods. A recent report shows that American apples are allowed to contain 400 times the amount of some insecticides linked to serious health conditions, and grapes 1,000 times the amount.¹⁵ Even baby food carries higher risks in the US. In the UK, baby food has special standards, including a complete ban on artificial colours and e-numbers and very low maximum levels of pesticides. The US has no specific regulations for baby food. A recent test of baby foods in the US found that 95% contained toxic minerals and 73% had arsenic.¹⁶

A move away from our current system of ‘geographical indicators’ by which certain products have their local identity and production methods protected – think Cornish pasties, Melton Mowbray pork pies, Stilton cheese and Arbroath smokies. The system also sets a quality standard for products sold under these iconic names. In trade talks to date, the US has “pressed the UK to move away from current EU approach on generic terms”. This would potentially **allow American companies to produce and sell ersatz ‘Cornish pasties’** themselves.

Proponents of allowing these types of food into our markets often argue that it’s consumer choice: “If you don’t like it, don’t buy it!” But the argument is disingenuous, not least because the same big business lobbies pushing to cut food standards are also arguing against our labelling standards. Nutritional labelling can literally be a life saver, for instance for people who need to reduce their sugar or salt levels for health reasons – especially things like ‘traffic light’ labelling, which make it easy to see at a glance if something is high risk. But in preliminary discussions (see ‘what the trade papers say’ below) the US has already challenged this type of labelling. Such systems are a problem for big business, whose processed foods tend to be higher in salt, sugar, fat and GMOs.

There’s a deeper problem too. We’ve already seen that trade deals don’t necessarily directly lower standards. But by forcing producers into competition with those practising lower standards, they do make higher standards unsustainable. Even with decent labelling, this competition would force farmers to pressure the

government to abandon standards here too. Before long, high food standards would be the preserve of the few who can afford to shop in niche markets. In this way, modern trade deals force a race to the bottom in standards and protections.

Overall, very few British people support such an agenda. In fact, the overwhelming majority, according to opinion polls, would rather have no trade deal with the US than one which deregulates the food industry. Asked whether Britain should lower food safety standards to secure a trade deal with the US or retain current standards, only 8% of the public think the UK should lower food safety standards, with 82% preferring to keep current standards.¹⁷

Cosmetics

Food is where the threat to our regulations and standards is most newsworthy, but the issue is much wider. One area where the US' 'market knows best' philosophy is most extreme is the cosmetics industry. As with food, some of the chemicals allowed in US cosmetics seem almost unbelievable, including formaldehyde and coal tar, with even asbestos being found in small amounts in makeup marketed to children.

A core problem is that the US law that regulates cosmetics hasn't been updated since 1938. This leaves the regulatory authority – the Food and Drug Administration (FDA) – with a very limited ability to intervene in the market to prevent harm, even serious harm. As the US government admits, "FDA's oversight of cosmetics is limited".¹⁸ In the US, businesses do not have to have their product's ingredients approved before it is placed on the market. Over 1,300 toxic ingredients have been banned from use in cosmetics here, with restrictions of another 500 ingredients. By comparison, only 11 are banned in the US.¹⁹ Animal testing of cosmetics is legal in the US, but banned in Britain.

As with food, in the US the burden broadly lies with the regulator to prove something is unsafe, rather than with business to show it's safe – and this can only happen after a product is already on the market. Corporations are not required to tell the

regulator about their product's safety, or to disclose manufacturing locations, or the quantity of ingredients in their product. What's more, even when a product is found to be in violation of the basic standards, the regulator does not have the power to recall those products.²⁰

All of this explains the terrible scare stories around cosmetics in the US. Among the most incredible are traces of the deadly toxic substance asbestos found in makeup marketed to children in major US high street stores. Asbestos ends up in makeup because it is often found near talc, a common ingredient in many makeups, and poor regulation means that asbestos isn't properly separated from the talc.²¹ In 2019, the FDA confirmed that asbestos had been found in several products at Claire's Accessories²², a store aimed at children. Although Claire's recalled the products out of an "abundance of caution", the regulator was only able to issue a 'safety alert'.²³ As one campaigner said: "When it comes to cosmetics regulation, it's the Wild West... consumers end up with unsafe cosmetics staying on store shelves even after harm has been proven".²⁴

There are a number of other chemical substances freely available in US products, but banned here in Britain, including:²⁵

- **Formaldehyde** used in hair straightening treatments, nail polish and eyelash glue. Formaldehyde is a known carcinogen.
- **Parabens** used in skin and hair products. These have a tendency to mimic oestrogen in the body, wreaking havoc on your hormonal system.
- **P-Phenylenediamine** derived from coal tar in hair dyes. This can lead to very severe allergic reactions, in severe cases causing blindness.
- **Triclosan** in soaps and toothpastes, which is believed to spread antibiotic resistance.
- **Phthalates** in perfumes or shampoo, which can result in lower testicular volume and semen production, and worse semen quality.

Things are getting worse. Donald Trump is on a quest to relax even these loose chemical laws, for instance further deregulating asbestos. Even though the historical use of asbestos still kills 40,000 Americans annually, Trump believes asbestos is “100 percent safe, once applied”, and has blamed the collapse of the World Trade Centre towers on the absence of asbestos.²⁶

Unfortunately, Trump might find a willing partner in the British government, which has itself tried to water down EU chemical laws. The EU is currently looking at prohibiting the use of titanium compounds in sunscreen, for instance, on the basis that tiny particles can penetrate the skin and cause cancer. But the EU plans were challenged by Britain even before it left the EU.²⁷ Boris Johnson’s desire for so-called ‘science-based’ rather than precautionary standards could well accord with US objectives in a trade deal.

Good regulatory practice and regulatory cooperation

‘Good practice’ and ‘cooperation’ sound like positive things. Indeed, there might be nothing wrong with different countries discussing their regulations to see whether it makes sense to learn lessons from regulatory practices elsewhere. But, in the context of trade policy, ‘regulatory cooperation’ has a specific meaning, which gives big business new and special powers over the regulatory process. In particular, the US uses ‘good regulatory practice’ as a shorthand for a deregulatory approach in the name of ‘cutting red tape’.

Trade deals can include what is known as a ‘necessity test’. This is a requirement that regulations and other measures taken by government should not be more burdensome than necessary on business. This is a subjective criteria which leaves governments at constant threat of being challenged by corporations. It means that trade rules create pressure on governments to opt for voluntary self-regulation by business – always less ‘burdensome’ than regulation.

Although regulatory cooperation can work in various ways, it increasingly means:

- Mandating regulators to take account of business interests from trading partner countries when creating regulations.
- Giving business lobbyists guaranteed access to decision-makers, and the ability to object to proposed regulations, often before elected representatives have even seen the proposals.
- Insisting on the ‘necessity test’ – that regulations are not more onerous on business than is strictly necessary.

In the US’s negotiating mandate, they call for “strong provisions on transparency and public consultation that require the UK to publish drafts of regulations, allow stakeholders in other countries to provide comments on those drafts, and require authorities to address significant issues raised by stakeholders and explain how the final measure achieves the stated objectives”. For ‘stakeholders’ here, read business lobbyists.

There is a regulatory cooperation chapter in the EU-Canada trade deal (CETA). Recent reports show how these formal working groups of regulators can demand changes to regulations. So officials, meeting in secret, and working closely with the very industries they are supposed to be regulating, effectively make regulations with little public or parliamentary scrutiny. According to reports from recent meetings, this can include publicly sensitive issues such as challenging prohibitions on chemicals such as the controversial herbicide Glyphosate.²⁸

What the trade papers say

All of these areas are on the agenda in US-UK trade talks. In fact, changing Britain’s regulatory framework is precisely why the US is so interested in this deal. The US hates the EU regulatory framework, and Trump in particular seems to think that Brexit is a great way to undermine it. The US negotiating objectives are clear that a key aim of the deal is to “Promote greater regulatory compatibility to reduce burdens associated with unnecessary differences in regulations and standards, including through regulatory cooperation where appropriate” and that this includes

establishing “a mechanism to remove expeditiously unwarranted barriers that block the export of US food and agricultural products”. That means a body or process that can challenge British standards that the US doesn’t like. In particular, the US wants to “strengthen implementation of the obligation to base SPS measures [‘sanitary and phytosanitary’ – health and safety measures related to food and agriculture] on science”. And as we’ve seen, ‘science’ here is their code for whatever the market wants.

The US negotiating mandate wants “to eliminate unjustified trade restrictions or unjustified commercial requirements (including unjustified labeling).” Meanwhile, the leaked papers of trade talks between the US and UK say: “The US views the introduction of warning labels as harmful rather than as a step to public health... they are concerned that labelling food with high sugar content (as has been done with tobacco) is not particularly useful in changing consumer behaviour.”

The leaked papers from the trade talks show the US regulatory agenda being pushed hard. For instance, in November 2017, “The US repeatedly emphasised their view that the UK should seek regulatory autonomy following EU Exit to allow us to evaluate methods/products independently.” Then in July 2018, the US lambasted Theresa May’s Chequers plan “and the UK’s decision to attempt to align with the EU on Agri-food and SPS” as “the ‘worst-case scenario’ for a UK-US FTA”. The US has also promoted its own voluntary standards, with industry giving direction to regulatory bodies and business given the freedom “to demonstrate their products are safe and effective” in whatever way they see fit.

When it comes to chemicals, the US administration loathes the EU chemical regulatory framework, known as REACH, and devotes several pages to the problems of this framework in its annual ‘Foreign Trade Barriers’ reports.²⁹ It takes particular aim at “unnecessary” chemical regulation which forces business to apply for authorisation to use certain chemicals, including troublesome “safety data information requirements”.

Medicines in the US are on average

4 times

more expensive than in the UK



3. The NHS, public services and procurement

“Look, I think everything with a trade deal is on the table. When you’re dealing in trade everything is on the table. So NHS or anything else, a lot more than that, but everything will be on the table, absolutely.”

Donald Trump, June 2019³⁰

‘Does Britain’s National Health Service face an existential threat from a US trade deal?’ That became a key question in the general election of December 2019. For Brits, the NHS is the epitome of civilisation, the proof of what a society can achieve when geared towards the needs of the many. In the ruins of a world war, a Labour government took healthcare out of the market and, in essence, brought the right to health a giant leap closer to reality for all citizens.

The US system, on the other hand, is the most inefficient health system in the developed world.³¹ Despite being the most expensive, it delivers the worst health outcomes of any industrialised country. It is preyed upon by gigantic corporations who charge whatever the market will tolerate. But these same corporations are international operators, desperate to push market mechanisms onto the British NHS. And unfortunately, the NHS has been gradually pushed in that direction over the years, lumbered with internal markets, public-private partnerships and the contracting out of services to big business. Even its CEO spent 10 years as a senior executive at the world’s largest healthcare corporation.³²

The NHS is most certainly ‘on the table’ in a US trade deal. That deal could accelerate and cement in place a direction already

well trodden by successive governments. But the way the NHS is threatened is not straightforward, and the government can hide behind this complexity. As then shadow secretary of state for trade Barry Gardiner MP pointed out during the 2019 election, “the NHS is not a building you can simply sell”. The way a US deal will threaten the NHS revolves around how trade deals discipline the regulation and provision of services, privilege pharmaceutical corporations and increasingly extend new powers to Big Tech.

Services

In trade rules, a ‘service’ is anything you can’t drop on your foot, from finance to telecommunications, from transportation to hairdressing. Trade in services accounts for \$5.8 trillion a year, or one quarter of all global trade.³³ It also covers many sectors that we would regard as *public* services. Rules around services are governed by the General Agreement on Trade in Services (GATS). After hard-fought campaigns, GATS does make exemptions for public services. The problem is that those exemptions are narrowly defined, being limited to “any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers” – a definition that is unlikely to apply to large parts of the NHS, never mind more fully privatised services such as railways and energy. What’s more, many trade deals today go well beyond the commitments governments made under GATS.

Services are included in trade deals in order to open them up as much as possible to the market – and lock that liberalisation into place. For public services that basically means privatisation; for others it is about deregulation. Trade deals require governments to commit to a high level of ‘openness’, or liberalisation. Modern trade deals often contain clauses which require that any policy change in relation to these services must not reverse the level of liberalisation (a ‘standstill’ clause) or must be in the direction of more liberalisation (a ‘ratchet’ clause).

In practice, this locks market mechanisms into the delivery of services in perpetuity, making it much harder for a government

to bring services back into public ownership or to better regulate those services. In addition, they insist that foreign businesses or investors need to be treated as favourably as domestic investors or businesses.

It is still possible to exempt services from trade deals, but it's getting harder. In older trade deals, governments could choose specifically which services to opt into these disciplines under a so-called 'positive list'. But today this is being replaced with 'negative lists' – unless you list something as excluded, it's automatically subject to liberalisation. This is a problem, because disentangling various services is complex. And of course, when a service doesn't yet exist – think how few households had internet connections a couple of decades ago – it's impossible to remove them for these trade rules.

In the campaign against TTIP, the now-defeated US-EU trade deal, Unite the Union commissioned legal advice by leading QC Michael Bowsher which concluded that the NHS would not have been adequately protected from liberalisation under TTIP.³⁴ The US wants to put the same provisions into its deal with the UK that were previously in TTIP.

All in all, protecting services that have already experienced some degree of privatisation, such as the NHS, wouldn't be at all easy. Where contracting-out and market mechanisms already exist, a trade deal would lock those mechanisms into place and make it very hard for a future government to reverse or remove them. For our health service, a US trade deal would make the Health and Social Care Act – which introduced so many pro-market changes – a permanent fixture, with any new law only able to move in the direction of further privatisation.

Intellectual property

A second major threat to the NHS is intellectual property rules. Intellectual property – copyright, trademarks, patents and so on – became a part of trade rules in 1995 with the passing at the World Trade Organisation of the Agreement on Trade-Related

Aspects of Intellectual Property Rights (TRIPS). This agreement attempted to extend western-style intellectual property standards right across the world. In effect, this gave big business massive new protections for what is increasingly seen as their key asset. As actual manufacturing or customer service work was increasingly outsourced, corporations held the ‘intellectual property’ that enabled them to keep hold of the profits.

To understand the nature of the problem, bear in mind that much of the positive impact that comes from trade in developing countries is exposure to new technologies from more advanced countries. By better understanding and copying these technologies, countries can avoid ‘reinventing the wheel’ and can leapfrog their economies to a more advanced state. It’s one of the key ways that China has been able to use trade to develop its economy – in some cases literally taking stuff apart, seeing how it’s put together, and copying or producing something better based on the same technology. India developed its generic medicine sector, producing affordable versions of life-saving drugs at scale, because medicines were not patentable there before TRIPS – leading to it becoming known as the ‘pharmacy of the developing world’.

TRIPS makes this much harder. It’s not about enforcing competition, but the opposite – protecting rights to a monopoly for an extended period of time, often 20 years. This is a particular problem for research and manufacture of medicines.

During the 1990s, at the height of the HIV epidemic, countries were prevented from rolling out HIV medication because it was covered by intellectual property rules, which kept prices of key medicines very high – far out of reach of most health systems. So even though medicines existed which could have massively extended the lives of millions of people, and mitigated their suffering, intellectual property prevented their treatment.

Fortunately, campaigners fought for and won some exemptions to TRIPS, which allowed countries to override intellectual property provisions in certain circumstances. For example, governments are allowed to issue so-called compulsory licenses, authorising

manufacturers to produce generic versions of patented drugs, for public use or in situations like a health emergency. What's more, compulsory licensing gives governments negotiating power with the pharmaceutical corporations, persuading them that it's better to lower the price of a drug rather than lose their patent in a certain country altogether. Even developed countries use this leverage to ensure patients can access new drugs without breaking their health system budgets. And this seems only fair, given that public money is often a vital part of research costs, especially in the earliest and most risky stages of research.

However, Big Pharma has fought back, persuading western governments, especially the US, to close these important exemptions in new trade deals. Their agenda, known as 'TRIPS-plus', tries to make compulsory licensing impossible. They also want to give Big Pharma more power to block transparency in their medicine testing, to make it harder for governments to negotiate better drug prices, and to make it easier for big business to gain new monopolies by making small changes to medicines that are reaching the end of their current patents.

Despite government claims that higher medicine prices won't be part of a US trade deal, we know that it is already being discussed. A particular bone of contention for the US is a UK public body known as the National Institute for Health and Care Excellence, or NICE. NICE sets guidelines for cost efficiency in the NHS, so in effect decides which new medicines can be provided by the NHS. These guidelines give real leverage to the NHS in negotiating with drug companies, because the threat that the NHS will not prescribe a certain medicine will often persuade a drug manufacturer to lower the price.

Big Pharma hates NICE. Donald Trump has called countries like Britain "freeloaders" and vowed to make pharmaceutical pricing a "top priority" in trade.³⁵ This agenda is a serious threat. The cost of drugs to the NHS is already growing much faster than inflation, and is driving deficits across the service.³⁶ US drug prices are eye-watering, averaging more than four times the price paid

in the UK.³⁷ For newer drugs like Humira, used in the treatment of Crohn's disease and rheumatoid arthritis, the NHS is already paying £1,400 per packet – and it costs seven times as much in the US.³⁸ Other 'biologic' drugs are also important in cancer treatment and are a particular focus for US negotiators. Such large increases in prices under a US trade deal would pose an existential threat to the NHS – driving costs for new drugs well beyond the health system's ability to afford them.

The US position is driven by the pharmaceutical industry, whose lobby groups continue to demand far-reaching intellectual property rules in any trade deal, including an all-out war on compulsory licensing and NICE's ability to negotiate lower prices. So seriously does Big Pharma take these concerns over pricing that they have demanded that the UK should be placed on a US trade 'Watch List',³⁹ opening the door to potential trade sanctions unless Britain falls into line.

Beyond the NHS

Much public concern has been focused on the NHS, but other public services – and services we might one day want to be returned to public ownership – are also threatened by a US trade deal. Polls suggest significant public support for restoring public ownership of services such as railways (60% yes to 25% no), energy companies (53% to 31%) and the post office (65% to 21%).⁴⁰ But through the provisions explored in this chapter, a US trade deal would make this significantly harder. Standstill and ratchet clauses, discussed above, would make any such move contrary to the terms of the trade deal. If combined with an ISDS corporate court system (see chapter 4), it could also mean a future government being sued for attempting such action. In fact, during the 2019 general election, it was reported that private energy providers were moving their headquarters overseas precisely in order to sue a prospective Labour government if it carried out its manifesto pledges to move parts of the energy sector into public hands (see pages 46–47).⁴¹

Meanwhile, industries still in the public sector, such as Scottish Water, would face the same kinds of pressures that would be placed on the NHS under a trade deal. This is particularly egregious given that the Scottish government, which makes decisions about the public nature of water provision, doesn't currently have any power over the content or approval of a US trade deal. As such, a deal could undermine the constitutional powers given through Scottish and Welsh devolution.

Also included in services liberalisation could be Royal Mail, telecoms and potentially rules that affect the BBC. Although the US objectives are relatively silent on offensive interests in these areas, the powerful US Chamber of Commerce and the US Coalition of Services Industries released their own priorities for the talks in November 2019.⁴² They are calling for a trade deal to “provide the broadest possible coverage of binding market access and national treatment for delivery and logistics services” and “ensure that some of the unique challenges associated with market dominant players in the sector (i.e. national postal operators) are addressed with appropriate safeguards against abuse of that position”. This could limit the ability of governments to step in to help the Post Office, while shifting the rules to favour Amazon and private courier firms. They also call for the government to prohibit the nationalisation of some pension funds, which could make it more difficult for governments to bail out people left short when firms go bust.

Finally, the lobby groups call for liberalisation of: “media and entertainment services, including all of its sub-sectors and related services (such as advertising) and across all means of distribution. The agreement should also eliminate quotas and other forms of discriminatory treatment of films and television in all means of distribution, including online. There should be no culture carve out and any agreement should ensure non-discrimination online.”

This goes much further than TTIP, where the French government insisted on a cultural carve out to protect its entertainment industry from a takeover by the US industry. It

would make it hard to protect the British film industry and harder to regulate the big streaming services including Amazon and Netflix. Neither would the BBC be exempt – a particularly chilling possibility given the current government’s known antipathy towards the state broadcaster.

All in all, modern trade deals help accelerate privatisation and make it nearly irreversible. A deal with a country as keen on corporate involvement in the provision of services as the US would represent a plan for privatisation on steroids.

What the trade papers say

The name ‘NHS’ doesn’t appear in the leaked papers from the preliminary US-UK talks – deliberately. The UK is recorded as saying it “wouldn’t want to discuss particular health care entities at this time”, because negotiators know it is so sensitive. But the issues that would affect the NHS are present.

The papers show that the US wants very sweeping liberalisation of services, including a ‘negative list’, going beyond what was proposed even in TTIP. In fact the US jokes about the EU’s reticence to apply this approach to TTIP and explains: “The US wanted total market access to be the baseline, and the EU simply didn’t understand that.”

The US negotiating mandate has a long section on intellectual property calling for “a standard of protection similar to that found in US law”, while the leaked papers from the talks with the US show that medicine pricing has been extensively discussed, to the point where “beyond specific policy details in niche areas, we are awaiting the clearance to negotiate and exchange text to really take significant further steps”.

On top of this, the leaked documents show that pharma lobby groups have already had privileged access to negotiators, and preliminary negotiations have been “followed by a series of positive bilateral stakeholder meetings [including] with... the Pharmaceutical Research and Manufacturers of America (PhRMA)”.

\$80bn

was claimed from Argentina
using corporate courts



4. Corporate courts

“If you wanted to convince the public that international trade agreements are a way to let multinational companies get rich at the expense of ordinary people, this is what you would do: give foreign firms a special right to apply to a secretive tribunal of highly paid corporate lawyers for compensation whenever a government passes a law to, say, discourage smoking, protect the environment or prevent a nuclear catastrophe.”

The Economist, October 2014⁴³

In the days leading up to Christmas 2001, Argentina was engulfed by one of the worst crises in its history. A decade of economic liberalisation had seen poverty soar in the country.⁴⁴ Large parts of Argentina’s public sector – water, energy, telecommunications – had been privatised on terms which were great for the international corporations that took over the utilities, but terrible for the people relying on the services.⁴⁵

As a debt crisis grew bigger, deep cuts to government spending were announced, businesses closed, banks capped what savers could withdraw, and protests toppled the government.⁴⁶ The president resigned and was airlifted out of his palace, which had been besieged by protestors. In less than two weeks Argentina went through five presidents, defaulted on its debt and then devalued its currency to help put the country on a long path to recovery.

Part of this recovery involved protecting Argentinians’ access to basic services. The government froze the price of water and energy. But big business howled in protest that this broke their privatisation contracts, which promised payments would be linked

to dollars – something that would have seen prices skyrocket because of the devaluation of Argentina's currency. So the corporations attacked. They claimed they'd been treated unfairly, and sued Argentina in secret arbitration panels made possible under the terms of investment treaties the country had signed. Over 50 cases were lodged altogether, claiming an astronomical \$80 billion from the government.⁴⁷

British company Anglian Water was a party to one of the claims. Having been part of a consortium that took over the Buenos Aires water system – and despite claims of atrocious service, lack of investment and a rise in waterborne diseases – Anglian and its partners claimed the price freeze breached their 'rights'. Argentina claimed that the human rights of its citizens should surely be the paramount concern, but the tribunal decided human rights should not override investor rights and found in favour of Anglian, which was awarded £13 million out of a total £251 million award.⁴⁸

Corporate courts

What does this have to do with a US trade deal? Well, the same mechanism that saw Argentina hauled over the coals by big business is likely to be included in the deal, leaving future British governments exposed to cases brought by US-based multinationals in secret courts, challenging their ability to take action in the public interest.

Investor-State Dispute Settlement (ISDS)⁴⁹ – or what we call the 'corporate courts' system – was invented back in the 1950s, when it started to be inserted in investment deals, particularly reflecting western countries' suspicion of how their corporations would be treated in newly independent countries in the global south. But it's really the last 20 years that they have become a major obstacle to the ability of countries to enact measures that protect citizens and the environment.

Britain already has many ISDS agreements with countries around the world, but while corporate courts have been a huge problem for those countries, for the most part Britain is the

more powerful partner in these agreements. These agreements should be rescinded as quickly as possible because of the damage they have done to others. But establishing an ISDS agreement with the US would put the boot on the other foot: it would suddenly open Britain up to challenge by tens of thousands of US-based multinational corporations, and we would be challenged very rapidly.

ISDS has recently often been included in the ‘investment chapter’ of modern trade deals. These chapters give foreign investors – which usually means big business or big financial firms – special privileges that protect them from government action. Investment chapters were invented to protect investors from having their assets seized by a foreign government, to ensure that contracts they signed with governments would be upheld, and to prevent discrimination in favour of domestic investors. In reality, there are many legitimate reasons why a government might want to give preference to domestic investors, not least it can help stimulate the local economy and make government debt easier to manage. But even leaving this aside, modern ‘investor protection’ goes well beyond preventing discrimination or enforcing the terms of contracts. It gives foreign investors more rights than domestic investors and many more rights than ordinary citizens, and hands them huge powers to bully elected governments.

Corporate courts allow foreign investors to sue governments in special tribunals when they believe their ‘rights’ have been infringed. The basis for such cases has been expanded to an almost ludicrous degree by big legal firms eager to make money from the system. A foreign investor today might claim pretty much any government action that damages their future profits is ‘unfair’ or ‘expropriation’, even though the rest of us might regard the measure as a reasonable response to the harm a corporation is causing. Putting cigarettes in plain packaging, forcing toxic mines to put better environmental standards in place, or the controlling of water prices might well damage a corporation’s profits, but the idea that they have infringed some fundamental

right directly threatens a government's ability to enact important regulation. Yet these are all real ISDS cases where corporations have used corporate courts to try to discipline governments. Although ISDS systems can be different, they usually contain the following elements:

- ISDS is **only ever open to foreign investors or corporations**. These 'courts' are not open to citizens or even domestic investors. Neither can governments challenge investors. It's a one-way system.
- In most cases, **an investor doesn't need to use the national court system** – something which they always have a right to do just like everyone else. ISDS gives them their own special legal system.
- ISDS cases are usually **only concerned with investment law** and arbitrators don't have to consider the balance between public and private interest, or take account of human rights or environmental law, let alone give precedence to them.
- There are no formal 'judges'. **Only a small number of corporate lawyers can hear these highly technical cases**, giving those involved an interest in perpetuating the system.
- Governments **lack the right of appeal** and sometimes can't even reclaim their legal costs. Thus it's difficult for a government to ever 'win' – they can lose, or lose worse.
- Investors can often bring cases even if they have **no real economic base in the country** whose investment chapter they are using. For example, a Canadian mining company registered in Jersey is using a British-Romanian treaty to sue Romania.⁵⁰
- They often contain **'sunset clauses' for as long as 20 years**, meaning governments struggle to get out of such treaties. Even if a government rescinds an agreement containing ISDS, as some have, it could still face cases for two decades afterwards.

In recent years there have been attempts to reform this system, though to date these efforts have made no difference to how the

system works. Reforms can't deal with the fundamental problem: these are one-sided systems for big business to bully governments.

ISDS cases are expensive to bring. It's no surprise then that the beneficiaries of this system are the super-rich. Research shows that giant corporations (over \$1 billion in annual revenue) and super-rich individuals (over \$100 million wealth) get 95% of all compensation awarded in corporate-court cases.⁵¹

Another big winner is the corporate legal industry, which has made well over \$1 billion from such cases – not surprising, given legal costs for such ISDS cases average over \$8 million, exceeding \$30 million in some cases.⁵² In a dangerous new development, hedge funds have started speculating on such cases – providing funds which can help cases last longer and make it more likely they will wear down governments facing challenge.⁵³

The coronavirus pandemic has opened up endless potential for corporations to use ISDS. As governments scramble to introduce emergency measures to save lives, corporate law firms claim these measures might fall foul of investment chapters. As one law firm put it: “Governments have responded to COVID-19 with a panoply of measures, including travel restrictions, limitations on business operations, and tax benefits... For companies with foreign investments, investment agreements could be a powerful tool to recover or prevent loss resulting from COVID-19 related government actions.”⁵⁴

Investor protection, public harm

ISDS is part of a much bigger problem with trade rules. Corporate courts seem just plain wrong to most people, but decision-makers justify the rules on the basis that they encourage investment. In free market theory, investment will flow to those parts of the world where returns can be generated, helping the poorest countries to develop. Unfortunately, in practice, these flows can do as much harm as they can good.

While investment can play a useful role in development, it is only likely to do so if governments have the rights to control,

What it could mean for Britain

Uniper v the Netherlands^{55,56}

The Dutch government has been threatened with an ISDS case by energy company Uniper, which runs coal-fired power plants in the country. Uniper is unhappy at the Netherlands climate policy to ban coal-based power generation by 2030, a policy which would force Uniper to switch energy sources or close its plants. What's interesting is that Uniper's plant is fairly new, so the company can hardly claim it wasn't aware of the growing movement to phase out coal power. In fact, Uniper's strategy appears to be to carry on as usual⁵⁷ and claim compensation from governments when the inevitable phase-outs happen. ISDS is becoming a business model in itself – removing pressure for corporations to take environmental measures, safe in the knowledge they will effectively be bailed out for bad decisions. The publicity with which Uniper has threatened the case is likely also to have a 'chilling' effect, intimidating other governments. Germany is planning to phase out coal power and is now offering billions in compensation to energy firms.

Construction companies v Britain?

As part of the response to the Covid-19 pandemic, the Scottish government and the Mayor of London both ordered construction sites to temporarily close. The Westminster government, however, did not. That difference could be construed as posing unnecessary or unfair impediments to business, even though many believe strong action was far more conducive to halting the spread of coronavirus. Lawyers have already been publicly discussing⁵⁸ the high likelihood of such a case being brought over the closing of Crossrail construction sites in London.

Energy companies v Britain?

In 2019, Britain approached a general election in which the Labour Party promised to take parts of the country's energy and water networks back into public ownership if it won. The policy enjoyed support from a majority of the population⁵⁹. Alarmed, two energy corporations that would have been affected, National Grid and SSE, created overseas holdings companies, hoping that they could sue the government if they didn't receive the price they demanded for their assets. If Labour had won the election and begun to carry out its manifesto, these energy corporations could have spent years making the policy unworkable. Such cases would proliferate under a US trade deal that included ISDS.

regulate and tax investors.⁶⁰ But investor protection chapters hinder the ability of governments to do this. So although investment might be more likely to flow into a country, it can just as easily flow out again when it has extracted the resources it came to exploit, leaving no benefit for the country concerned. This fuels speculation, unpayable levels of debt, and environmental and human rights abuses.

Globalisation has not only increased the flow of goods and services around the world but also, and in many ways more importantly, massively increased the flow of money. The creation of an integrated global financial system marks a sharp break with the post-war period, when there was a greater understanding that finance should not be an end in itself, and that its power, therefore, needed to be constrained by governments. From the 1970s onwards, finance was 'let off the lead': financial markets were deregulated, and capital started to flow across borders like never before.⁶¹ The impact on societies around the world has been profound. The financial logic of short-term profit maximisation has become dominant throughout the global economy, with costs thrown onto workers, the public sector, future generations and the environment. It has skewed the economy towards speculation and rent, and has fuelled massive inequality.⁶²

At first glance, trade rules might seem irrelevant to these era-defining developments. But as we've seen, trade rules today go well beyond what have previously been thought of as trade issues, and they have played an important role in fuelling this wave of 'financialisation'. UN agency UNCTAD described it like this:⁶³

"talk of free trade provided a useful cover for the unhindered movement of capital and an accompanying set of rules... that disciplined government spending and kept the costs of doing business in check... hyperglobalization has as much to do with profits and mobile capital as with prices and mobile phones, and is governed by large firms that have established increasingly dominant market positions and operate under 'free trade'

agreements that have been subject to intense corporate lobbying and all too frequently enacted with minimal public scrutiny.”

What the trade papers say

Both sides in the talks want investment to be included in the trade deal, with the US calling for “rules that reduce or eliminate barriers to US investment in all sectors in the UK”. There is no direct mention of ISDS in the US objectives, but Trump’s ‘America first’ view is reflected in its objective to “Secure for US investors in the UK important rights consistent with US legal principles and practice, while ensuring that UK investors in the United States are not accorded greater substantive rights than domestic investors.” This sounds like a one-sided ISDS system, which would normally be unthinkable, except the US has already achieved a partially one-sided ISDS with Mexico in its negotiation of NAFTA.

Britain’s objectives more clearly speak to their desire for ISDS, saying they want to ensure: “UK investors investing in the US the same types of rights and protections they receive in the UK, including non-discriminatory treatment and ensuring that their assets are not expropriated without due process and fair compensation.” British ministers have also made clear their support for ISDS in parliament.⁶⁴ Moreover, the leaked US-UK papers highlight the US’s opposition to the EU’s proposal for a reformed ISDS system, known as Multilateral Investment Court. In the words of British officials, the US negotiators were “particularly robust on the opposition to the EU’s proposed Multilateral Investment Court” and “were clear that the ‘traditional ad hoc tribunal’ approach is their favoured method”. The US “would be very concerned at any indication that the UK was in favour of a MIC”, so much so that “they were clear that this would undermine the ability of the US to work with the UK in other forums”. So only the fullest, most pro-big-business ISDS system would be acceptable – anything else seems a deal-breaker.

**“Amazon, Google
and Facebook
have demanded that
a digital tax be made
impossible under a
US trade deal”**



5. Freedom for Big Tech

“Every generation wants their own version of #freedom - freedom to shape their own lives... This generation are #Uber-riding #Airbnb-ing #Deliveroo-eating #freedomfighters”

Liz Truss (later secretary of state for international trade)
on Twitter, March 19, 2018

“Today’s tech billionaires have a lot in common with a previous generation of capitalist titans – perhaps too much for their own good.”

The Economist⁶⁵

Back in the late nineteenth century, a small group of businessmen captured the American economy, using new technologies like railways and new practices in banking to build monopolies which brought them unprecedented levels of wealth and power. They were labelled the ‘robber barons’ and became synonymous with obscene levels of inequality and the capture of politics by private interests. It took decades of protest and mobilisation to rein in these corporate titans, by taxing, regulating, breaking up and taking them into public ownership.

Today, a new group of corporations has risen, developing technologies which have become central to our economy and society, and using their control of these technologies to amass unimaginable fortunes. Their power has had an extraordinary impact on how our economy works, on how we communicate with each other, and even on the working of our democracy. Big Tech titans like Amazon, Google and Facebook have become more powerful and wealthy than most governments, and in the coming decades their power is only likely to grow, as more of our economy becomes ‘digital’.

In order to cement their power on the global stage, these corporations are now pushing for the development of new digital trade (sometimes known as e-commerce) rules in trade deals. The US and Britain are among the countries pushing these rules the hardest, meaning there is certain to be a far-reaching digital trade chapter in a US trade deal. And while it's true that countries need to find ways to regulate the power of Big Tech, these trade 'rules' are not intended to do that – in fact they achieve the very opposite. Like the investment chapters discussed above, they are essentially corporate charters, cementing the power of Big Tech by ruling that the digital sphere should be deregulated from the start.

Technologies that work for profit, not people

A digital trade chapter in a US trade deal could severely constrain the ability of future British governments to make these technologies work in the public interest. Of particular concern, a US trade deal could:

- **Prevent the effective taxation of Big Tech.** The British government has proposed a 'digital services tax' to help ensure effective taxation of these corporations. The US has made clear that such a tax would be incompatible with the sort of trade deal it wants to sign with Britain,⁶⁶ and Big Tech lobbying groups including Amazon, Google and Facebook have demanded that such a tax be made impossible under a US trade deal.⁶⁷
- **Lower existing standards.** Britain is currently signed up to the EU's General Data Protection Regulation (GDPR), which is regarded as a gold standard agreement for online privacy. The US dislikes these regulations, as it has made clear in public and in the leaked papers (see below).⁶⁸
- **Prevent the development and introduction of new standards.** The many issues posed by the rapid expansion of the online world and digital giants into every area of our lives are complex and few have simple answers. There is a need for public debate and exploration of ideas by policymakers. Trade rules must not

be used to simply shut that debate down. For instance, politicians are now looking at ways of holding corporations to account for failing to tackle fake news online. But Trump has been clear that he wants to make such action impossible under a US deal.

- **Make regulation of the gig economy more difficult.** Many of these proposals make regulation more difficult. This is particularly problematic given the scale of change being brought about by new technologies. In particular, a major issue is how to protect workers' rights in this new gig economy. Even without a digital services chapter, a recent case in which Uber sued Colombia in a corporate court, for trying to stop Uber competing unfairly with local taxi services, shows the additional powers trade deals could give Big Tech to challenge governments and prevent effective regulation.⁶⁹
- **Prevent governments promoting open source technologies.** A recent report suggests that government promotion of open source alternatives to Big Tech services could be impossible under new trade rules, limiting an important means for governments to challenge corporate control of technologies.⁷⁰

These rules would help embed a new global standard. Negotiations to create digital trade rules in the World Trade Organisation have stalled because of opposition from many developing countries,⁷¹ who rightly fear the power these rules would give big business in their own countries, hampering their ability to build their own high-tech sectors because they would be challenged by the already powerful Silicon Valley companies. The concern is that, if rich countries begin developing these rules in their own trade deals, they will become the de facto rules of the whole global economy. As Parminder Singh of IT for Change says: "We are not advocating digital de-globalisation. What is sought is simply a fair place for developing countries, and for public interest, in the emerging global digital order."

The technologies developed in recent decades have transformed the nature of our economy. Who controls these technologies going

What do digital trade rules normally contain?

Bans on data localisation

Our personal data is one of the most lucrative resources in the digital economy, and has been described as the ‘new oil’. It allows corporations to understand our behaviour, mindset, fears and prejudices, and to market and develop products based on this information. The collection of data through devices like smart watches can help corporations better control and exploit workforces, and automate jobs.⁷² Corporations want to use trade rules to cement their control over our data, in particular by prohibiting governments from limiting the export of our data overseas. Google is already moving British users’ data to the US, sparking concerns from privacy campaigners at the Open Rights Group that “Moving people’s personal information to the USA makes it easier for mass surveillance programmes to access it. There is nearly no privacy protection for non-US citizens.”⁷³

Source code secrecy

Source code determines how computer software works. Increasingly it’s vital for the functioning of our phones, cars and household appliances. There is a push in trade deals to allow corporations to keep source code and algorithms secret, even from regulators. Yet regulators need to understand the algorithms involved in high frequency financial trading, for example, to have a hope of preventing economic crises,⁷⁴ while health

and safety regulators need to understand how cars are programmed if they're to uphold safety, or prevent companies like Volkswagen bypassing emissions standards. We are also just beginning to recognise how algorithms can unintentionally incorporate society's prejudices. Especially when such algorithms are used in recruitment, or by the police, secrecy can be incredibly harmful.⁷⁵

No local presence

Another worrying rule is that corporations engaged in digital trade cannot be required to set up a local subsidiary within a country. For Big Tech, which governments already find difficult to tax and regulate, this deepens the problem. With no local presence, it is harder to enforce laws, rules and standards. As the International Trade Union Confederation says, “without a local presence of companies, there is no entity to sue and the ability of domestic courts to enforce labour standards, as well as other rights, is fundamentally challenged”.⁷⁶

‘No more than necessary’

As in other areas of trade policy, there are proposals to put ‘necessity tests’ on digital economy regulations. This means governments could be forced to justify that any regulatory changes they make are no greater than absolutely necessary. But when it comes to dealing with new technologies, regulation is bound to be experimental. Governments should be free to see ‘what works’.

forward will determine what sort of a world we will live in over the decades ahead. This technology presents the possibility of better healthcare, better education, more effective farming and much more. But if that technology is simply corporate property, we're in danger of seeing public goods turned into commodities, and the means to enjoy a good life will become increasingly inaccessible for the majority. We will certainly need rules through which society can harness these technologies for the common good. But at a time when many people across the world still have no access to these technologies, we cannot allow those who are profiting from them to dictate what those rules will look like.

What the trade papers say

Both Britain and the US have made clear digital trade will be a major component of the US trade deal. The US is demanding “state-of-the-art rules to ensure that the UK does not impose measures that restrict cross-border data flows and does not require the use or installation of local computing facilities” and which would “prevent governments from mandating the disclosure of computer source code or algorithms”. There would seem to be no room for opt-outs even for very sensitive sectors like healthcare data, potentially allowing big business to profit from the NHS database.

The US calls for rules that limit online platforms' liability for third-party content. This is extremely worrying as it's a very live debate even within the US, with Democrats demanding that Facebook should be forced to take action to prevent the spread of 'fake news' and hate speech. Although the US accepts some exceptions could be made for “legitimate public policy objectives”, it is deeply concerning that a US trade deal could prevent Britain tackling such issues in the most effective way.

While the UK's position is vaguer, paying lip service to the need to protect privacy and consumer rights, we know that the government is very keen on far-reaching digital standards. Both former trade secretary Liam Fox and current prime minister

Boris Johnson have been accused of misunderstanding the importance of our current online protections.⁷⁷ The leaked papers confirm US dislike of these online regulations too, citing “specific concerns with how GDPR [our current privacy regulation] is being implemented, while the UK declared itself a ‘strong supporter of free flows of data’”.

Meanwhile, both US business federations and trade experts have warned that Britain’s proposed digital services tax could derail the entire trade talks, suggesting such a tax is incompatible with the provisions of such a deal.⁷⁸ US business federations call for a trade deal to promote “open access to government-generated public data to enhance innovative use in commercial applications and services”, a possible attempt to get their hands on NHS data, which they can then use to create new products to sell back to the NHS.⁷⁹

\$300m

was awarded to mining firm
Bilcon when it used NAFTA
to challenge Canada's
environmental regulations



6. Climate change

“I think something’s happening. Something’s changing and it’ll change back again. I don’t think it’s a hoax, I think there’s probably a difference. But I don’t know that it’s manmade. I will say this. I don’t wanna give trillions and trillions of dollars. I don’t wanna lose millions and millions of jobs. I don’t wanna be put at a disadvantage.”

Donald Trump, October 2018

We are living through a climate emergency. If we don’t get a grip on this crisis, our future on this planet is in jeopardy. But this is not simply a question of individuals changing their lifestyle. Climate change is driven onwards by the rules of the global economy. Trade rules and trade deals have played a significant role in exacerbating this crisis.

At one level, the very nature of trade liberalisation is problematic. The production and transportation of goods is largely dependent on fossil fuels. Promoting the movement of more and more goods around the world means environmental destruction. It exacerbates the extraction and burning of fossil fuels on an unprecedented scale. Even the very free trade Economist Intelligence Unit admits:⁸⁰

“Universal tariff reduction has increased trade in carbon-intensive and environmentally destructive products, such as fossil fuels and timber, more than it has for environmental goods. In some cases FTAs [free trade agreements] can also shrink the ‘policy space’ available to countries to pursue environmental goals, for example if they prohibit, or are perceived to prohibit, a country’s ability to distinguish between products according to emissions released during their production.”

If we took a fundamentally different approach to trade deals, then trade could help disperse renewable technologies and more carbon-efficient production methods – but at present trade rules actually *ban* many measures to encourage the spread of green technologies.

We also need to keep in mind that renewable technologies in themselves can only do so much. A totally renewable economy based on never-ending growth would still quickly exhaust the world's metals and minerals, and exacerbate global inequalities. Replacing every petrol car on the planet with an electric car would not in itself create a sustainable or fair global economy. The only answer is to fundamentally rethink our economies, including trade liberalisation as embedded in deals like that proposed between Britain and the United States.

In reality, there is a high likelihood that any trade deal with the US would increase carbon emissions. Britain admits to this possibility in its scoping paper and names energy as one of the likely 'growth sectors' under a deal.⁸¹ When the EU was negotiating a trade deal with the US (the now-shelved TTIP), it predicted an additional 11 million metric tons per year of CO₂ as a consequence of that agreement.⁸² Damage to the environment is hard-wired into the current trade system. The idea that trade liberalisation is a solution to climate change is very wide of the mark.

A US deal would exacerbate the climate emergency

A trade deal with a climate-denying leader like Donald Trump clearly poses a very specific and urgent challenge for Britain's attempt to radically reduce carbon emissions. Labour's shadow foreign secretary Lisa Nandy MP has previously said that Britain should not sign a trade deal with any country that refuses to abide by climate change obligations agreed to under the UN Paris agreement.⁸³ The US is intending to leave the agreement this year.

This matters for the same reason that low food standards do: competing against goods made to lower standards, whether they are animal welfare or carbon reduction standards, would give an

advantage to those employing lower standards, enabling them to produce cheaper goods at the expense of the environment.

In addition to the routine problems with trade liberalisation deals, there are some specific elements of a US deal which would cause particular problems:

- **Actively encouraging trade in dirty fossil fuels.** This is notable in recent deals the US has done. The renegotiated NAFTA agreement between the US, Canada and Mexico (USMCA) makes it cheaper for oil corporations to export more Canadian tar sands oil. The US-China 'phase one' deal requires China to import fossil fuels. What's more, Canada used the negotiations for the EU-Canada trade deal CETA to insist that the EU should import more tar sands oil, overriding a regulation that would have prevented that.⁸⁴
- **Energy 'neutrality'.** Even when a trade deal does not specifically promote fossil fuel trade, so-called 'energy neutrality' clauses stop countries from treating fossil fuel energy differently to energy from renewable sources. That means, for example, it would not be possible to charge lower tariffs on renewable energy or punitive ones on fossil fuels. The leaked energy chapter of TTIP had this rule.
- **Promoting voluntary action over binding regulation.** To tackle the climate crisis, we need strong binding regulation that can shift us out of decades of inertia and business-as-usual. Yet trade rules are written to prioritise voluntary self-regulation by corporations – exactly the approach that has resulted in continued inaction. The US has emphasised that it wants an approach that always prefers self-regulation.
- **Regulatory harmonisation.** We've already seen how modern trade deals can exert downward pressure on regulations and standards when it comes to food. The way we produce our food also has a very big impact on climate change. The increasing trend towards industrial-style food production is a major driver of climate change, involving more animals, more chemicals, more

monocrop plantations. Given that emissions from agriculture are thought to account for between 19% and 29% of total emissions, this has a significant impact.⁸⁵ Changing the food we eat further in this direction will hamper our ability to halt climate change. We've already seen how Trump is taking an axe to chemical regulation, and some of this deregulation will certainly affect the climate.^{86,87}

- **A corporate court.** The ISDS system (see chapter 4) has been repeatedly used to challenge environmental standards and protections. Canada has been a particular target, for instance being challenged under NAFTA for trying to take dangerous chemicals out of petrol, and for placing a moratorium on fracking while assessing its safety. In 2008, a corporation called Bilcon brought a case against Canada after the government refused to grant an extension to a quarry project after an environmental review found that it would cause significant damage.⁸⁸ Bilcon claimed \$300million and went so far as arguing that Canada should never have carried out a review. Although Bilcon won, one arbitrator disagreed with the finding, stating: “a chill will be imposed on environmental review panels which will be concerned not to give too much weight to socio-economic considerations or other considerations of the human environment in case the result is a claim for damages under NAFTA.” The ruling was, he said, a “significant intrusion into domestic jurisdiction”. More recently, corporations have even started challenging governments for phasing out coal power in line with their international climate obligations.⁸⁹

What the trade papers say

The leaked papers from the US talks underline how seriously this deal threatens the fight to halt climate change. US negotiators told Britain that it's not even possible to mention climate change during the talks, and that it won't be mentioned in the final deal:

“US [negotiators] responded emphatically that climate change is the most political (sensitive) question for the US, stating it

is a 'lightning rod issue', mentioning that as of 2015, USTR [the trade representative's office] are bound by Congress not to include mention of greenhouse gas emission reductions in trade agreements. US stated this ban would not be lifted anytime soon."

While trade deals are normally negative for the environment, a trade deal in which climate change cannot even be acknowledged as an issue would exacerbate those already seriously climate destructive elements of trade policy. Unsurprisingly, the UK's own assessment hedges its bets on whether the deal will increase carbon emissions, essentially saying it's impossible to know, but certainly thinks there's a good chance that it "could favour UK sectors which are currently more emission intensive".

1.3 million

jobs were lost in Mexico after it
did a trade deal with the US



7. Growth, jobs and workers' rights

“Simply pledging to leave no one behind while appealing to the goodwill of corporations or the better angels of the super-rich are, at best, hopeful pleas for a more civic world and, at worst, wilful attempts to deflect from serious discussion of the real factors driving growing inequality, indebtedness and insecurity”

The United Nations Conference on Trade and Development, Trade and Development Report 2018⁹⁰

For a long time, the public have been told that trade deals bring jobs. Indeed, to listen to politicians over the last 40 years, you'd assume that trade deals only produce winners. Unfortunately, this isn't true. Trade deals produce winners, but they also produce losers. Even standard free trade theory accepts this reality. If shirts can be produced more cheaply in Dhaka than Manchester, and protections are stripped away, then all things being equal, jobs will be lost in Manchester and gained (on lower pay) in Dhaka.

As far as possible, trade deals should be reshaped to ensure they support as many as possible in society. However it will never be possible to ensure no one loses out, and it is vital to simply acknowledge that and do something about it.

A plan to benefit the person who has lost their job or the city that has lost an industry should be a standard and required component of doing a trade deal. As a minimum, this would involve government investment in stimulating new industries, training to equip workers with new skills, and a good social safety net to ensure those workers who lose those jobs aren't made destitute.

Strong mechanisms for redistribution, including taxation and regulation of multinational corporations, are required if the benefits of trade are really to be shared across society. But the failure of governments to take such measures in recent decades, under the rubric that ‘the market will provide’, has left those who lose out as a result of trade deals impoverished, marginalised and often deeply embittered with the global economy.

Without proper intervention, any savings trade and investment rules have brought have tended to go to those at the top. Those who have lost out have been told to ‘get on their bike’ and find another job. The vast rise in inequality in an era of unprecedented levels of free trade shows that, left to its own devices, the market will not improve the lives of the majority.

How much would Britain benefit from a US trade deal?

The government is selling a US trade deal on the basis that it will bring growth to the economy, promising that that growth will in turn lead to jobs. Growth, measured as gross domestic product (GDP), is a deeply problematic measure which in no way equates to human welfare. It says nothing about equity, and may translate into large gains for one bit of society, but a fall in living standards and loss of jobs for others. In other words, it disguises the problems with trade outlined above – that it can affect different parts of society in a radically different way, and that those who’ve gained the most from it have been those at the very top of society.

But even if we were to overlook these problems, the US trade deal seems barely worth the effort even in terms of growth. The British government projects two scenarios from a US trade deal. The more extreme deal – which by definition includes some of the most worrying aspects documented in these pages – is predicted to increase GDP by a mere 0.16% by the mid-2030s, while a more limited deal gives gains of only 0.07%, again over 15 years.⁹¹ It’s a tiny gain, and in fact the picture gets worse when you bear in mind that Britain is heading for a dramatic decline in GDP in coming years as it leaves the EU. In 2018, Theresa May’s

government estimated that loss to be 4.9% by 2035, and that's provided a trade deal is signed with the EU. Without a trade deal, an entirely possible scenario, the loss would be 7.7%.⁹²

Britain is negotiating with both the EU and US, but the difference in language between the two sets of talks is stark. Boris Johnson and his senior negotiators have gone out of their way to irritate and offend the EU, while talking up the possibility of an 'ambitious' deal with the US. This is in spite of the fact that a deal with the US would be worth so much less than a deal with the EU, something which the government's own figures clearly bear out – a 7.7% loss to the economy against a 0.16% gain.

More worrying still, Boris Johnson seems so determined to meet Donald Trump's demands that he's prepared to do a deal which is abysmally bad for Britain. It isn't possible for Britain to sign deep trade deals with both the EU and US, because the standards between the two blocs are so different. The US shows it is well aware of this in the leaked documents, and in fact one of the US's interests in doing a deal with the UK is to weaken the EU by peeling the UK away from the EU's regulatory sphere (see 'what the trade papers say', below).

Johnson seems willing, perhaps even eager, to jump to Trump's demands, even though they will leave Britain in a much worse position. Trump, meanwhile, clearly isn't thinking about Britain's welfare at all. His goal is twofold – to weaken the EU, which he sees as a major competitor, and to give himself a quick win which will help deliver "political advantages for the President going into the 2020 elections". While such behaviour is to be expected from this US president, the idea of a British prime minister acquiescing to this is nothing short of scandalous.

The British government predicts there will be no overall change in employment figures as a result of the deal, because jobs lost will be made up for by jobs gained. Again, this will come as cold comfort to those who lose their jobs. Particularly concerning is the prediction that the youngest in the job market – 16-24 year olds – are those likely to suffer most from job losses.

Workers' rights

The government suggests that there will be little threat of worse labour standards because the US “maintains high labour standards”. This is simply untrue. It is the case that the US has an extensive set of negotiating objectives around labour standards, but US labour standards are woeful compared to British ones. As the government acknowledges: “The UK also guarantees statutory leave, sick pay and paid parental leave. The US does not have any federal legal requirements for employers to provide paid leave.” The lack of protections afforded to US workers is notorious for making it extremely easy to sack staff without justification and without warning.⁹³ British people, who on average work fairly long hours by European standards, have nothing on American workers who work an additional 250 hours per year.⁹⁴

Although the US talks about the importance of International Labour Organisation conventions, it has an atrocious record of signing up to international labour standards, ratifying only two of the eight core Conventions.⁹⁵ The Trade Justice Movement quotes evidence of the US denying freedom of association to public sector workers⁹⁶ and denying the right to strike by allowing lawful strikers to be permanently replaced.⁹⁷

Workers' rights in Britain face real threats from a US trade deal. Apart from the pressure placed on workers' rights directly by increased competition from the US, the inclusion of a regulatory cooperation chapter will give big business a greater say over regulation, and it's also possible that ISDS could be used to challenge new workplace rights.

What the trade papers say

The leaked papers expose the likelihood of most people in Britain failing to see any benefit at all from the US deal, even in terms of ‘cheaper goods’ as negotiators admit “benefits tend to filter through to company profit margins rather than a full pass-through rate to consumers”. This is a pretty blunt acknowledgement of who will benefit from the deal the officials are working on –

Where are the jobs? The case of NAFTA

Like most free trade deals, NAFTA promised Mexicans a world of plenty – in particular new jobs, cheaper products and access to larger markets for Mexican goods. The results were somewhat different, and expose why we should be so wary of such promises. Mexico was overwhelmed by cheap, industrially produced, unhealthy American food.

It's estimated that 1.3 million agricultural jobs were lost in Mexico in the years following the implementation of NAFTA, with another million indirect jobs wiped out. Not all peasants lost their livelihood completely – some were reemployed on land now owned by big landowners or big business, but often in worse conditions. Others moved into the cities where they faced atrocious pay and conditions. Monthly income for self-employed farmers went into freefall – from 1,959 pesos a month in 1991 to 228 pesos in 2003. No wonder immigration into the US soared.⁹⁸

Even the promise of cheaper prices wasn't realised. Prices slightly increased in the US, and in Mexico they surged, including the price of the maize used to make Mexico's staple food, tortillas. One study found the price of tortillas increased by 279% in NAFTA's first decade.⁹⁹ Nearly 25 years later, millions more Mexicans were living in poverty, while the minimum wage had fallen nearly 17%.¹⁰⁰

corporations, not people. The preliminary economic modelling discussed in the papers showed that “UK welfare and GDP gains from elimination of UK and US tariffs and TRQs [tariff rate quotas] on goods would be smaller under the ‘hard Brexit’ scenario, whereas for the US, the reverse held”.

US officials make clear that Trump is pushing, if not bullying, Britain into the hardest Brexit position, which would mean Britain could do a deep trade deal with the US. The documents show the US telling British officials “there would be all to play for in a No Deal situation but UK commitment to the [EU] Customs Union and Single Market would make a UK-US FTA [free trade agreement] a non-starter”. In fact, US officials appear furious at the fact that previous prime minister Theresa May was willing to agree a ‘level playing field’ with the EU. A level playing field with the EU means Britain cannot sign up to US standards on food, cosmetics, or numerous other issues detailed here. This is the first aspect of the Withdrawal Agreement that Boris Johnson reneged on upon assuming office.

**“The deal will be
negotiated with virtually no
transparency to either the
public or parliament”**



8. Secrecy and democracy

“MPs who campaigned for Leave in order to ‘take back control’ should wake up: it’s not parliament which now has control, it’s the the prime minister.”

Caroline Lucas MP, former leader of the Green Party¹⁰¹

On 19 November 2019, Labour leader Jeremy Corbyn went head-to-head with Conservative leader Boris Johnson on national television. With under a month to go until the general election, it was a critical debate. And Corbyn had brought a prop with him – a pile of papers which had been almost entirely blacked out.

These were the redacted details of the trade talks the British government had been conducting with the US administration, as provided by the Department for International Trade. And the fact that virtually the only thing still visible on these papers were the page numbers made one thing very clear – as far as the British government was concerned trade negotiations should take place in secret, with no meaningful role for the public or our elected representatives.

The papers that Corbyn held up had been released to Global Justice Now some months earlier. We had asked the government to disclose basic information about the trade talks: where and when they’d taken place, the agenda, details of those present and notes of the meetings. Initially we’d received nothing back, on the grounds that all such information was too sensitive for the public to view. But on appeal, we’d received a substantial amount of papers. The only problem is that we couldn’t read any of them because they had been censored.

In the event, the full papers were leaked on website Reddit and came to our attention a few days later. The leaks proved extremely

helpful in writing this book and allowing us to see exactly what is ‘on the table’ in these talks. But the problem of our desperately archaic and opaque political system has not gone away. The fact remains that the deal described in these pages will be negotiated with virtually no transparency to either the public or parliament.

MPs cannot properly scrutinise the negotiations, they can’t approve or reject the government’s negotiating objectives and they can’t stop a trade deal passing into effect, however much they may dislike it. Trade deals are negotiated without the normal democratic checks and balances. And, given how these deals touch upon so many areas of our lives, this is an unacceptable democratic deficit.

Democratic deficit

Britain’s system for negotiating trade deals has changed little since the 1920s. International agreements were then seen as the business of the executive rather than parliament, and were negotiated under royal prerogative, largely bypassing parliament. As trade deals at that time were more limited affairs, concerned mostly with the mutual reduction of tariffs, perhaps there was some justification for this system. But as times – and trade deals – change, the British system stayed the same.

While Britain was a member of the European Union, trade matters were mostly dealt with in Brussels, with the elected MEPs gradually gaining significant powers over the negotiations. These powers were greatly enhanced during the TTIP negotiations, as the European Commission saw the damage that secrecy was having on public trust and began to fear that the whole deal could be derailed, as indeed it eventually was. Scrutiny powers were improved and today negotiating a trade deal in the EU entails a fairly extensive process including member state governments setting negotiating objectives, the Commission keeping parliament fully informed and taking its views into account, MEPs having the right to see all negotiating documents, an open and formal dialogue with civil society organisations, and, vitally important,

parliament getting a meaningful vote at the end. Indeed, for some trade agreements, all recognised parliaments in the EU, including some regional assemblies, must ratify the deal too. Many still think this is insufficient. In 2015, the EU Ombudsman Emily O'Reilly said: "Citizens are increasingly aware that TTIP will produce rules that impact on them in a manner analogous to how legislation impacts them... citizens expect and demand the right to know and to participate when it comes to TTIP... The impact [of transparency] is deemed to be overwhelmingly positive, ranging from enhanced legitimacy, heightened trust, an educated debate, and a better agreement in substance."

In the US, Congress is also guaranteed a meaningful vote on trade agreements and, unless it signs away its authority, it even has the right to amend trade deals. Public consultation is mandatory, with specific guidelines for how to carry it out including a very large citizen advisory panel with access to confidential information.

Sadly, the British government has failed to transfer the powers of democratic oversight developed within the EU to the British parliament. British MPs do not have a right to vote or debate the government's negotiating objectives, they don't have a right to see the negotiating papers or to effectively scrutinise the government, and they are not guaranteed a debate or a vote once the trade bill is complete. Even if they are lucky enough to be granted a vote, they cannot stop the trade deal for more than a month, and – in any case – by this time it would already have been implemented.

The fight for trade democracy

Some MPs have put up a heroic fight to secure greater powers over trade deals, but to date their work has been rejected by the government. Five parliamentary committees have criticised the trade process and called for change, with one calling current procedures "anachronistic and inadequate".¹⁰²

In the previous parliament, MPs from Labour, the Scottish National Party, Liberal Democrats, Plaid Cymru and the Green

Party all sought to use the Trade Bill going through parliament to introduce a modern democratic framework for doing trade deals. In the House of Commons, amendments to the Trade Bill tabled by MPs like Caroline Lucas were defeated by the government's majority. Then in the Lords, an amendment was successfully passed which would have given parliament proper power to scrutinise and, if necessary, stop trade deals – at which point the government shelved the whole bill to prevent the amendment becoming law. After the 2019 election the government brought in a new Trade Bill, without any of the new parliamentary powers.

A coalition of businesses, campaigners, trade unions and consumer groups have called for a model which would make trade negotiations transparent and democratic.¹⁰³ It includes:

- A debate and vote on the government's negotiating objectives at the start of the process.
- Transparency throughout the negotiations so MPs can hold the government to account.
- A final debate and a meaningful vote on the final deal.

It is also important, given that trade deals can interfere with the power of devolved administrations, to give those administrations a role in overseeing trade negotiations. Again, the government has promised these governments little more than a regular chat.

Without these changes, trade deals will remain secret from the public, and will allow the British government startling powers to erode our standards and protections, our public services and our ability to control big business, with virtually no checks or balances.

What the trade papers say

When it comes to democratic accountability, we know the government's position, because it has been set out formally. The more information that comes to light, the clearer it is that, in the words of a former trade official, Britain is “at the far end of the secrecy” spectrum.¹⁰⁴ We have also learned that the government

has gone beyond even its usual opaque standards by signing a letter with the US promising to keep negotiating papers secret for as long as five years after a deal has been signed.¹⁰⁵ And we have discovered that the government is having trade talks with other governments that are so secret, we're not even allowed to know who they are talking to.¹⁰⁶

Even the government's apparent attempts at accountability have been shambolic and inadequate. Its consultation on the US trade deal sounds like a positive step, and it attracted nearly 160,000 responses, proving public interest in trade deals.¹⁰⁷ But sadly it gave no indication of what the UK's objectives would be, or a meaningful assessment of the impact of a deal. It amounted to little more than asking people what they thought of the broad idea of trade with the US. Neither do ministers have to pay any attention to what the public thinks. Boris Johnson's manifesto pledge that a trade deal would not affect food standards already seem to have been shelved, leading to a further erosion of trust in the government's promises about this deal.¹⁰⁸

When it comes down to it, Britain will be conducting trade negotiations with countries that have far more transparent processes than we do. In the case of the US, congressional representatives will hold more power than our MPs over the terms of any deal. And if a trade deal with the EU takes place, it will surely be a supreme irony that our parliament, in a quest to 'take back control', will actually find it has less power over that deal than the European parliament we just left, and very likely less power than German MPs, Danish MPs, or even deputies in Belgium's regional assembly.

3 million

people signed the
petition to stop TTIP



9. How we can win

This lack of democratic accountability is frightening. If parliament is unable to stop trade deals, how can we defeat the proposed trade deal with the US? We can learn plenty from previous generations of trade campaigners. Just look back to the 1990s, a period of unprecedented trade liberalisation and expansion of trade rules when, nonetheless, campaigners achieved some remarkable successes and pushed back against some of the more extreme demands of big business. From the defeat of TTIP, and its forerunner the Multilateral Agreement on Investment, to the victory over the Free Trade Area of the Americas and removal of water sector liberalisation from WTO rules, there is much to be proud of and to draw lessons from. And these stories can give us confidence that it will, indeed, be possible for us to defeat the US trade deal.

The Peoples vs Free Trade

We can start on New Year's Eve 1994, when a people's revolt against free trade began. Across Mexico's poorest and most southern state, Chiapas, a rebel army declared war on the Mexican government.¹⁰⁹ As midnight struck, poorly armed peasants launched uprisings across Chiapas. Town halls were occupied and rebels barricaded themselves inside. Prisoners were freed, military barracks set alight and land seized. A declaration was issued: the impoverished peoples of Chiapas were at war not simply with the Mexican state which had repressed them for so long, but with a global economic system which was wiping out their way of life.¹¹⁰

The Zapatistas continued to occupy the towns for several days, before retreating to land they could more easily hold in the countryside. While desperate not to use their weapons for a minute longer than was necessary, the Zapatistas also refused

to surrender. To this day, they control multiple territories across Chiapas which are run as autonomous communities.

Why had the Zapatistas risen up on New Years Day? Their pipe-smoking, balaclava-wearing representative ‘Subcomandante Marcos’ explained: “Today the North American Free Trade Agreement begins, which is nothing more than a death sentence to the indigenous ethnicities of Mexico... the *compañeros* decided to rise up on that same day to respond to the decree of death that the Free Trade Agreement gives them.”

It was the trade deal between the US, Mexico and Canada, NAFTA, which sparked the rising. NAFTA threatened to fundamentally change farming in Mexico, turning land into a commodity which would need to be intensively farmed, and thereby make the lifestyle of small farmers history. The idea of cheaper, imported food didn’t appeal much to the Zapatistas given that the price of this food would in all likelihood be their expulsion from the land and exile to the sweatshops of the cities. They refused to accept this, and while they didn’t stop NAFTA – which as we’ve seen, proved as disastrous as they had expected – they did preserve an alternative form of society which has lasted until today.

The Zapatistas should give hope to trade campaigners today. With their focus on radical democracy, some of the most marginalised people in the world challenged the mantra of free trade and free markets at a time when these ideas were nearly beyond criticism in international circles.. And they inspired perhaps the most diverse and international movement we’ve ever seen, dubbed the anti-globalisation (sometimes alter-globalisation, or global justice) movement. It connected Mexican indigenous farmers with Bangladeshi sweatshop workers, environmentalists with trade unions, faith groups with anti-poverty campaigners. And it made the economics of free trade deals mainstream news worldwide.

If the Zapatistas lit the spark of the anti-globalisation movement, it was on the streets of Seattle where the movement

secured its first major victory. The setting was a summit of the World Trade Organisation (WTO), the international body set up to develop global trade rules. In fact it was here at the WTO that the real expansion of free trade into all manner of other parts of society – from public services to medicine prices – was taking place. So, in 1999, activists from around North America gathered in Seattle to take this global institution to task.

During a festival-style series of teach-ins, protests and non-violent direct actions, a broad coalition made its power felt. Most excitingly, it brought together environmentalists and animal rights campaigners with industrial workers. One worker – a steelworker from Michigan who'd just been made redundant – was quoted in the press as saying: "I never got on with environmentalists until I realised we were all fighting for the same thing."¹¹¹ On the streets of Seattle, and in combination with developing world delegates unhappy about the direction of the WTO, the summit was brought to a standstill. It wouldn't hold a successful summit again for over a decade.

In fact, over a few years, the institutions of globalisation – including the WTO, the World Bank, the International Monetary Fund (IMF) and the G8 – went from being the specialist interest of a few left-wing think tanks to the focus of ire for a mass movement. They couldn't meet anywhere without being besieged by protesters from around the world.

As well as bringing the WTO to a standstill, this movement fought against the new intellectual property rules (known as the Agreement on Trade-Related Aspects of Intellectual Property Rights, TRIPS) and won life-saving exemptions which still allow governments to override patents (see page 34),¹¹² and fought the pro-liberalisation General Agreement on Trade in Services (GATS), removing water resources from the deal.¹¹³ It also derailed the massive free trade deal known as the Free Trade Area of the Americas¹¹⁴ and played a role in bringing to power governments in Latin America which went onto challenge the free trade agenda like never before.

The Transatlantic Trade and Investment Partnership (TTIP)

The next big uprising against trade deals concerned four ‘new generation’ trade deals: TTIP between the EU and US, the EU-Canada deal known as CETA, the Trans-Pacific Partnership (TPP) and the Trade in Services Agreement (TISA). Taken together, these deals represented a massive expansion of trade rules into new areas of life for hundreds of millions of people,¹¹⁵ an attempt by big business interests to cement the rules that campaigners had held back for 20 years into a set of new deals.

Across the world, campaigners dusted down their placards and got active. As with the previous wave of trade campaigning, the benefit of these deals is that they brought together very large coalitions, including public sector workers concerned about privatisation-by-stealth, farmers, environmental and animal welfare activists worried about food standards being driven down, campaigners for privacy online, and anti-corporate and anti-poverty campaigners.

From humble beginnings where few politicians or journalists understood what TTIP was, campaigners fairly quickly started to ‘control the narrative’. Chlorine chicken became almost synonymous with TTIP, especially in Germany, where 250,000 activists took to the streets to protest the deal.¹¹⁶ An online petition across the EU generated over 3 million signatures in just 12 months.¹¹⁷ Campaign pressure on local councils saw a wave of resolutions declaring ‘TTIP-free zones’, including in Brussels – which meant, embarrassingly, negotiators were often meeting in a TTIP-free zone.¹¹⁸

In the end, the campaigning worked to expose and exacerbate tensions within the negotiations themselves. As European politicians became fearful that TTIP wouldn’t actually pass through the European parliament, talks were shelved. The TISA talks also collapsed. While the TPP and CETA deals went ahead, they have still not received full ratification. The US pulled out of TPP, while massive protests continue in Chile. CETA was nearly derailed by a regional assembly in Wallonia, and even today risks being halted in

the Netherlands. While not a total victory, these campaigns left the project for a brave new world of free trade deals in tatters.

The US trade deal

So what can we learn from these movements as we face a trade deal very similar to TTIP, this time between Britain and the US? Most important, there's every reason for hope.

A wide coalition has already been formed. Many TTIP activists are already at work, and have been joined by new allies, including farmers worried about their livelihoods. On the day he was made secretary of state for environment, food and rural affairs, George Eustice was booed by farmers when he mentioned the US trade deal.¹¹⁹ They join NHS campaigners, unions, anti-poverty and environmental campaigners.

Once again, we already control the narrative. As with TTIP, nothing says 'US trade deal' like chlorine chickens. It's almost impossible for the government to ignore this, and even pro-government newspapers like the *Mail on Sunday* are running regular columns on the problems of a US trade deal for our food and farming.

There is every chance that this can reach beyond the 'Brexit divide'. True, the politicians who led the Leave campaign want to use Brexit to deregulate and liberalise the British economy, but many of their voters want something entirely different. A recent survey shows high levels of support among young Leave voters in the north of England for environmental and animal welfare regulation.¹²⁰

The volatility in political life means that even the government's large majority cannot be taken for granted. There have already been early rebellions on the US trade deal as some Conservative MPs have joined the opposition to try to protect food standards.

As with TTIP, there will be tensions between the two negotiating teams. The US sees no reason to compromise with Britain, and has taken every opportunity to bully negotiators, threatening to pull the trade deal when Boris Johnson steps out of line on introducing

a digital sales tax, supporting the Iranian nuclear deal or offering 5G contracts to Chinese corporation Huawei.¹²¹

There is every reason to hope that the US deal can be defeated if we build a sufficiently large and diverse movement. By doing so, we will not only prevent the government signing a terrible deal, but will throw a spanner into the works of their attempts to push Britain down the path of further deregulation and liberalisation.

And the stakes are even higher. Because the defeat of the US trade deal would be another setback for a global trade regime which urgently needs to be transformed if we're to deal with the massive problems facing our world: inequality, climate change, and the erosion of democracy. It could be a real step towards a different form of global economy. What might that economy look like? That is the subject of the final chapter.

“It is now time to
think about how we
radically reform global
trade rules”



10. A new trade agenda

Britain trades over £200 billion worth of goods and services with the US every year.¹²² This trade won't stop, and at the very least it shows that there is no need to rush into a new trade deal. But this trade is done in a way which, broadly speaking, complies with British standards. In fact, before Donald Trump escalated a tariff war, most tariffs were fairly low between the two countries. So it's very clear that any 'major gains' from a trade deal would come through changes to regulations and standards, public services, intellectual property, government procurement – things we should be really concerned about.

Campaigners led by the Trade Justice Movement have put together a set of 'red lines', detailing as a minimum those elements of a US-UK trade deal which should be stopped.¹²³ They are:

- 1** Blocking positive action on the environment or undermining existing standards.
- 2** Undermining food standards.
- 3** Threatening public health or the NHS.
- 4** Threatening public services.
- 5** Undermining labour and social rights.
- 6** Being passed without democratic scrutiny and consent.
- 7** Limiting online regulation and undermining digital rights.
- 8** Undermining sustainable development and international commitments.
- 9** Including corporate courts.
- 10** Limiting public procurement strategy.

As discussed in the last chapter, these red lines could actually help us to beat the US trade deal altogether, by drawing together a powerful movement of different constituencies. But they also raise

an important question. The vast majority of campaigners do not oppose trade per se. Indeed it is true that trade can be beneficial for societies in various ways. Many global south countries have been able to learn from the technological know-how, the skills, and the investment that trade can bring. China is a prime recent example of a country that has used trade policy as a tool to massively reduce poverty, though it has also experienced growing inequality. However, the key point is that China has only been able to achieve that by flouting the western consensus on trade policy. In fact, historically almost every country that became rich through trade, from the UK followed by the US and Germany up to South Korea and Taiwan more recently, did so by doing exactly what modern trade rules prohibit countries from doing.

Trade rules do not have to be a problem. But in order for them to play a positive role, we need to fundamentally rethink what we want trade rules to achieve – and how to do so with a cooperative, constructive, internationalist approach. After the second world war, many countries came together to secure a more open trading regime, and while they did want to bring tariff levels down, their aim was to cement international cooperation and achieve full employment, workers' rights, and economic development. Trade rules were more flexible, leaving large areas free for countries to design the best policies for their own development, and there were enormous exceptions. These were codified in the Havana Charter in 1948, which was supposed to lead to an International Trade Organisation, but was scuppered by the US.¹²⁴

In 1964, a new UN-based trade body was created, UNCTAD (the United Nations Conference on Trade and Development). This became an important organisation advising and coordinating developing country trade and investment policy. UNCTAD believed in economic cooperation and openness, but also saw the need for developing countries to break away from colonial terms of trade which would never help them develop. It believed that trade and investment could be important, but only on the right terms. For developing countries to continue selling cheap fruit and metals

to rich countries, with those countries then selling them back expensive manufactured goods, was an economic black hole, and they encouraged countries to use the tools at their disposal to break with this model.

The high point of this thinking was the passing of the New International Economic Order¹²⁵ at the UN general assembly in 1974. This document was a call for a radical transformation of the global economy to change unfair terms of trade, and to control multinational corporations and big finance. Sadly, it was effectively marginalised by the richest countries in the years that followed, as a manufactured debt crisis devastated the power of developing countries and the era of free market economics was ushered in.

There was never anything anti-trade or anti-investment about this post-war form of economics. Rather, the goal was to develop trade and investment rules which created new terms of trade, in order to achieve a more equal world. From the late 1970s, this was turned on its head, helped by the creation of the World Trade Organisation. Trade rules and trade deals started to embed and accelerate trade liberalisation, and the goal became to strip away the ability of governments to control the power of capital.

It is now time to think about how we radically reform global trade rules. Not everything UNCTAD said in the 1960s is appropriate today. In particular, the idea of never-ending growth wasn't consistently critiqued, in a way it now must be. But the idea that trade rules can set better terms of trade, rather than cementing liberalisation, is one to which we must return. It provides a stark alternative not only to neoliberal trade, but also to the 'beggar-thy-neighbour' nationalistic bullying of Donald Trump.

When neoliberalism was later seriously challenged by the rise of the 'pink tide' governments in Latin America from the late 1990s, the reform of trade rules was one of the goals those governments set themselves. Governments in the region formed something called the ALBA (the Spanish abbreviation for the Bolivarian Alliance for the Peoples of Our America).¹²⁶ ALBA was an alternative trade pact, aiming at breaking the power of the US

and rich countries to dictate trade terms to Latin America. The deal did not close markets, but rather prioritised regional trade, promoted redistribution of wealth and attempted to level up labour standards. Though never developed sufficiently to replace the dominant trade system in the region, the concept behind ALBA can help point us towards what an alternative trade system might look like.

Building a different trade system

This final section lays down some fundamental principles that should be at the heart of a radically different international economy. This is just a starting point for issues that need to be urgently taken up by progressive movements and politicians.

We need to start from the fact that tariffs are at very low levels, and further reductions are mostly likely to create little gain for society in general.¹²⁷ What's more, the removal of 'non-tariff barriers' (regulations) can seriously damage the ability of governments to improve society for the majority, or to fight climate change. While reductions of tariffs and harmonising regulations could still be pursued when genuinely mutually beneficial for societies and the environment, it doesn't make sense to have this as a primary goal of trade policy. Instead, the goal must be regulating trade and investment flows to ensure a fairer and more sustainable international economy that works for people and planet, and all trade rules and trade deals should be geared towards this end. This will require more than trade rules, and must include, for instance, coordination on taxation and controlling speculative financial flows. But as a minimum, trade rules must not scupper these efforts.

Trade and investment can improve productivity and technological know-how. But these benefits will not be shared equally unless governments can control, tax and direct the resulting business activity. Without this, it will simply accrue further wealth at the very top of society. That's what trade rules have too often done, as government action has been prohibited.

New trade rules should encourage governments to regulate and tax in a non-discriminatory way, and create rules and norms that take power from big business and hand it back to ordinary people.

Current trade rules encourage the free movement of capital and big business, allowing them to play off governments against one another, and forcing down pay and standards. Current mechanisms for standardising regulations risk making things even worse. We need to reverse this process, and encourage a 'race to the top' in standards and protections.

This means finding ways to prevent the undercutting of government regulation between countries (the race to the bottom). This might include for example, setting minimum wages and conditions that companies need to meet in order to take advantage of trade preferences. It might also mean greater regional integration behind a common set of standards, as has been achieved on certain standards (water quality, air quality and many farming standards) in the EU for example.

Trade deals must not protect corporate monopolies, be they in medicines, energy or the high-tech economy. The transfer of technology is key to countries being able to develop. There must be significant encouragement for countries to learn from technology and produce generic versions of that technology, especially when it comes to dealing with the climate crisis and giving access to medicines. Strong exemptions to intellectual property laws could provide a first step in this direction, and ultimately intellectual property could be taken back out of trade rules.

There will always be sectors of an economy that lose out from trade deals. This might not even mean an overall trade deal is not beneficial – but it does mean that those sectors need investment and retraining. In the era of globalisation, the 'losers' have been ignored and made to feel the loss is somehow their fault. Trade deals should not be entered into without proper assessment and consultation on losses, as well as serious investment, employment and proper safety nets for those affected.

The world urgently needs to take action on climate change. We need to respect human rights, give people economic security, and create a more equal world. Whether trade is good or bad depends on how it contributes to those broader goals. At a minimum, trade must never get in the way of securing these goals. Clauses should be included in trade deals to make them subservient to other, much more important, international laws, ensuring trade deals can't block a government's ability to create and support public services, take climate action or improve standards and protections within a society.

Trade deals currently give special privileges to the already powerful: multinational corporations and gigantic investors. This is obscene and must cease, with the abolition of corporate courts. But we should aim higher. If trade and investment really is supposed to improve people's lives, we should give communities and individuals the right to a hearing if they believe *their* rights have been violated by the behaviour of international corporations or investors. Moreover, if a trade deal is not working to improve lives, there must also be a complaint process and a review mechanism. As trade deals affect so much of our lives, and these rules touch upon vital areas of public policy, there must also be much greater public involvement in trade deals, including public consultations, publicly available impact assessments, a presumption of transparency in talks, and parliamentary vetoes over trade deals.

International rules also need to help poorer countries in the global south to diversify their economies. This includes an even greater allowance for technology transfer, a preference for regional over global trading, and agreements which improve commodity pricing.

This is all a very long way from where we currently are. But with right-wing leaders such as Donald Trump threatening the international system as a whole, and with climate change posing a threat to our entire political and economic system, radical reform is the only way forward. Liberalising deals like the US-UK one must

be rejected out of hand. Progressive leaders and movements must begin to create the foundations of a very different economy if we are to avoid a retreat into xenophobia, the politics of bullying, and a collapse of any sort of international coordination. A return to 1990s-style globalisation is not an option. Only radical proposals have a hope of turning things around.

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