



EUROPEAN COMMISSION

Directorate-General for Trade

The Director General

Brussels, **11 DEC. 2014**
TRADE/JLD

Dear Dr Wollaston,

Thank you for the note of 3 December 2014 including a number of questions from members of the House of Commons Health Committee about the Transatlantic Trade & Investment Partnership (TTIP) negotiations.

I am pleased to enclose our responses to your questions below.

1. Is it the EU's negotiating position that publicly-funded health services should be excluded from TTIP?

This is the effect of the EU's approach to public services in all trade negotiations since the General Agreement on Trade in Services (GATS) in 1995. In the case of TTIP, it is clear in the negotiating directives given to the Commission by the Member States. This says that the EU must preserve the quality of its public utilities and that services supplied in the exercise of governmental authority should be excluded from the agreement. At the same time all bilateral agreements take GATS as a starting point. This means as follows:

- We explicitly exclude services supplied in the exercise of governmental authority: this exception is valid and is significant for a number of public services (e.g. justice, policing).
- Beyond this, in all its trade agreements the EU then takes a broad horizontal reservation which reserves the right to have monopolies and exclusive rights for public utilities in EU Member States at all levels of government.
- In addition, the EU retains very broad sectoral reservations in its trade agreements for public services (public education, public health and social services, and water). This means that public authorities at all levels do not have to treat foreign companies or individuals the same way as EU ones and do not have to provide access to their markets.

It is also worth explaining that even without the above reservations and exceptions, the EU trade agreements leave EU governments at all levels free to regulate all services sectors in a non-discriminatory manner. For example, they are free to deciding on (i) the licencing requirements necessary to be allowed to provide a particular service or (ii) the quality standards that suppliers have to meet.

Therefore, in effect all publicly funded public health services are protected in EU trade agreements, and this approach will not change for TTIP.

- 2. What would be the consequences for the provision of NHS services, including hospital, primary care and community services, if they were not specifically excluded from TTIP?**

As above, in effect all publicly funded public health services, including NHS services, will be protected in TTIP.

- 3. Does the definition of public-funded Health Services include private companies who run such services paid for from public funds? Does it include third sector organisations?**

Yes, as long as the services are publicly funded, it does not matter how they are delivered.

- 4. The Chief Executive of NHS England quoted Sr Garcia Bercero to the Health Committee on Tuesday 28 October 2014, saying “We can already state with confidence that any ISDS provisions in TTIP could have no impact on the UK’s sovereign right to make changes to the NHS. I hope that this information clearly demonstrates that there is no reason to fear either for the NHS as it stands today, or for changes to the NHS in future, as a result of TTIP.” Can you comment on this statement? Do you agree with this interpretation?**

Yes. This statement remains perfectly correct.

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- 5. In your letter of 8 July to John Healey, you say that the experience of negotiating the EU’s trade agreement with Canada provides an example of how the rights of Member States to change policy without detriment can be included in such agreements. Could you explain how that has been achieved in the Canadian example, and how this might be relevant to TTIP?**

See the response to question 6 below.

- 6. Can you explain what is meant by positive and negative listing, and which one is relevant for the TTIP negotiations?**

The choice of listing is a technical point, as the same outcomes can be achieved through either method.

Under the positive approach, the Parties first define sectors where they want to take commitments, i.e. to open markets or to bind the existing level of liberalisation. In the second step, the Parties can take reservations from the undertaken commitments.

Under the negative approach, there is no first stage, but only the second one. This means that all sectors are committed but the Parties can take reservations.

Furthermore, a negative list includes two Annexes with reservations. Annex 2 includes measures to which no ratchet mechanism applies. "Ratchet" is a mechanism which captures future autonomous liberalisation and does not allow backtracking from it. In simple words, this means that if a Party of an agreement liberalises a sector this becomes automatically binding in future, and the Party cannot revert to the previous level of openness.

The EU practice is for all reservations related to sensitive sectors such as public services to be included in Annex 2 so that the ratchet mechanism does not apply.

7. Is there any opportunity after the exclusion of any public services from TTIP for other countries to challenge that exclusion and, if so, what is the process?

No.

8. Is there any action that a Member State can take outside the negotiation process to ensure that health or any other public services are exempted from the provisions of TTIP or any other trade agreement?

As above, in the Commission's view there is no need to take any further action to ensure this result, as public services are always protected in EU trade agreements.

9. The National Institute for Health and Care Excellence (NICE) undertakes appraisals of new drugs and health technologies to assess whether they should be provided through the NHS using a custom designed cost-benefit analysis process. Is it possible that decisions not to authorise a drug or other treatment made through that process could be challenged under TTIP?

No, this is not part of the negotiations.

10. If a private, charitable or social enterprise provider is running a service, could that be taken back into public ownership at a future date and what would be the procedure for doing so in order to avoid penalties?

Yes. As long as contractual and property rights are respected (as they already must be under EU and national law), it is completely up to the public authorities whether to bring a service back into the public sector. TTIP would not have an impact on public

authorities' right to reverse decisions to contract provision of services to an external operator, whether that operator is private, charitable or a social enterprise.

I trust that this information will assist you and the Committee in your deliberations about TTIP. Should you require any further detail, please do not hesitate to be in touch.

Yours sincerely

A handwritten signature in black ink, consisting of a long horizontal stroke with a loop and a vertical stroke crossing it.

Jean-Luc DEMARTY