

The Rt Hon Sajid Javid MP
Department for Business, Innovation and Skills
1 Victoria Street
London
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11 June 2015

Dear Secretary of State,

Re: The Transatlantic Trade and Investment Partnership (TTIP)

We, the undersigned, are writing to welcome you into your new position as Secretary of State for Business, Innovation and Skills and to bring to your attention our wide ranging concerns regarding the ongoing TTIP negotiations between the European Union and United States. Many of these issues have been raised previously with your department, the former Trade Minister, and your predecessor, but to date have not been adequately addressed.

We ask that you take our concerns on board, and re-evaluate the UK's decision to support and promote TTIP. We are all available to meet and discuss the specific issues raised in more detail.

Our concerns include, but are not limited to:

Transparency

Successful campaigning by civil society groups from across Europe has resulted in the European Commission (EC) publishing proposed EU TTIP negotiation texts, positions and the mandate. This has led Trade Commissioner Cecilia Malmström to label the TTIP negotiations "*the most transparent bilateral trade negotiations ever.*"¹ While this may be the case, and the noted improvement in transparency is to be commended, transparency in the TTIP negotiations still leaves much to be desired.

In refusing to openly publish US proposals and consolidated texts when available - as is done in equivalent international negotiating fora, such as the WTO and the UNFCCC - the EC is making it impossible for the public to engage in a robust discussion of the deal and its potential impact on the people of the EU and UK.

To this regard Emily O'Reilly, the European Ombudsman, has said that:

*"US resistance to publishing certain TTIP documents is not in itself sufficient to keep them from the European public. The Commission has to ensure at all times that exceptions to the EU citizens' fundamental right to get access to documents are well-founded and fully justified."*²

Investor State Dispute Settlement (ISDS)

Perhaps the most controversial aspect of TTIP is the ISDS mechanism. The concerns are well known: as well as being profoundly undemocratic and costly - averaging around \$8million per case with awards rising as high as \$50bn - ISDS legal cases can, and indeed have, deterred governments from passing social and environmental

¹ http://ec.europa.eu/commission/2014-2019/malmstrom/blog/debating-ttip-today-and-tomorrow_en

² <http://www.ombudsman.europa.eu/en/press/release.faces/en/58669/html.bookmark>

legislation.³ An LSE Enterprise report, commissioned by BIS in April 2013, found that there is some reason to believe that the inclusion of such a mechanism in TTIP would impose meaningful economic and political costs on the UK.⁴ Indeed, there is to date no conclusive evidence that the inclusion of an ISDS clause in a Bilateral Investment Treaty results in higher Foreign Direct Investment inflows.⁵

The BIS Select Committee's investigation into TTIP concluded, "... that the case has not yet been made for ISDS clauses in TTIP."⁶ This sentiment has been echoed by the British people, with close to 50,000 responding to an EC consultation on ISDS to demand its exclusion from the deal.⁷

Despite there being no evidence that ISDS will benefit the UK, and plenty of evidence suggesting it will be harmful, the previous government ignored the significant concerns of citizens and continued to lobby for its inclusion in the final deal.⁸

Public Services/NHS

The impact of TTIP on the public provision of services remains a serious concern, in particular that TTIP will lock in the current liberalisation of public services; lead to greater liberalisation of public services as negotiations continue over time; and inhibit the abilities of public administrations to expand public services in the future.

First, it should be acknowledged that there is a need for greater clarification as to the definition of public services in TTIP.

Second, although we have received various assurances that TTIP will not inhibit the manner in which public services are delivered little has been presented to assuage our fears surrounding public services and ISDS. Without sight of a draft consolidated text, the impact of ISDS on public services remains ambiguous. There is a clear need for public services at local, regional and national level to also be protected against any ISDS claims. This is an important point for thousands of people in the UK, who are particularly concerned about US firms potentially using ISDS to sue the UK if parts of the NHS are brought back into public hands. As long as this remains a possibility, we will continue to remain concerned about the subsequent "chilling effect" on the delivery and management of public services.

Finally, we note and echo the following position of the BIS select committee in its recent inquiry on TTIP:

"We recommend that the Government, in its response to the Commission's consultation, ensures that an unequivocal statement protecting public services at present—and the right to expand them in the future—is set out in any ISDS provisions. We further recommend that those draft provisions are made public, in advance of final decision, so that they can be subject to public scrutiny."⁹

Food safety, health and environmental standards

We are concerned that the EC will 'trade off' generally higher European food safety, health and environmental protections in exchange for concessions from the US. Recently leaked notes - taken by a German official - add further weight to our concerns, stating:

"The European Commission has made it very clear to the USA that a high US ambition level in the agricultural sector would require high ambition from the US on public procurement."¹⁰

³ <https://www.foeeurope.org/isds>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260380/bis-13-1284-costs-and-benefits-of-an-eu-usa-investment-protection-treaty.pdf

⁵ https://www.wto.org/ENGLISH/res_e/reser_e/ersd201010_e.pdf

⁶ <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmbis/804/80403.htm>

⁷ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153044.pdf

⁸ <http://www.ft.com/cms/s/0/e1dac340-59e1-11e4-9787-00144feab7de.html#axzz3YtDCSB5D>

⁹ <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmbis/804/80403.htm>

¹⁰ https://docs.google.com/file/d/0B-G_Tra1FckTcHNCQVp5LW5KT3c/edit?pli=1

Indeed, compromise is to be expected in any serious negotiation between equal parties, and it is impossible for stakeholders to take at more than face value any protestations from either bloc about areas and sectors that will or will not be included in the final deal.

Additionally, the EC has, throughout and in the lead up to the negotiations, proved itself more than willing to compromise on European protections in order to facilitate trade. Examples of this include the approval of lactic acid as a wash in beef slaughter – widely considered to be a good-faith measure at the start of the TTIP discussions;¹¹ the weakening of the EU Fuel Quality Directive, under pressure from Canada and the US, so as to not discriminate against imported fuel containing tar sand oil;¹² and the scrapping of planned legislation designed to regulate Endocrine Disrupting Chemicals.¹³ Actions speak louder than words, and thus far the EC has failed to live up to its conciliatory rhetoric.

Removal of non-tariff barriers (NTBs)

Eighty per cent of the predicted economic gains of TTIP are forecast to come not from the removal of tariffs, which are on aggregate already very low, but instead from the removal of Non-Tariff Barriers to trade (NTBs) – effectively, regulatory differences between the EU and US.¹⁴

The EC's preferred method - as made explicit in its proposed SPS draft texts¹⁵ - for removing these barriers is via the gradual implementation of mutual recognition. This approach would eventually result in the EU treating the US regulatory regime as equivalent with its own. In practice, unless and until regulatory regimes are completely harmonised, the principle of mutual recognition is likely to exert ongoing downward pressure on whichever bloc has the highest (and most costly) regulatory standards, with companies in that bloc being at a significant competitive disadvantage.¹⁶ We are concerned that this will increase pressure on the more stringent regulator to reduce levels of protection accordingly.

We are also concerned that, despite becoming the focus of the TTIP negotiations, little effort has been made to holistically assess the true economic benefit produced by the removal of NTBs. Cost to business has been consistently treated as synonymous with cost to the economy or society, despite this often not being the case.

On-going Regulatory cooperation

TTIP is envisioned as being a living agreement, with ongoing regulatory cooperation between the two negotiating partners. The 4 May 2015 textual proposal on Regulatory Cooperation in TTIP reveals that the EC is proposing the creation of a 'Regulatory Cooperation Body' which would ensure on-going cooperation and demand early access to comment and input on regulatory decisions made by either party at a *central* and *non-central* level if deemed to have a potential impact on trade.¹⁷ Furthermore, the proposed text on SPS proposes a joint management committee specifically to look at SPS matters.¹⁸ The establishment of such committees and bodies risks amplifying the ability of vested interests to unduly influence, shape and delay future regulation and negatively impact on the ability of governments to legislate in the interest of their people.

The EC's's REFIT and 'Better Regulation' agenda has already shown itself to be sceptical about regulating on social and environmental issues, with previously planned clean air and circular economy packages coming under considerable pressure.¹⁹ The last thing that citizens need is yet more pressure on the concept and practice of social and environmental regulation.

¹¹ http://www.ceps.eu/system/files/SP%20No_99%20TTIP%20and%20Agriculture%20%281%29.pdf

¹² <http://www.ft.com/cms/s/0/9f459ad4-ec5-11e3-a57e-00144feabdc0.html#axzz3Ooba3U4Q>

¹³ <http://www.independent.co.uk/news/world/europe/ttip-controversy-eu-drops-pesticide-laws-because-us-says-it-should-10270199.html>

¹⁴ http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf

¹⁵ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153026.pdf

¹⁶ <http://www.tandfonline.com/doi/pdf/10.1080/13563467.2014.983059>

¹⁷ http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc_153403.pdf

¹⁸ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153026.pdf

¹⁹ <http://www.euractiv.com/sections/sustainable-dev/commission-plans-ditch-circular-economy-and-air-pollution-rules-310754>

Climate

A clear priority for the EC is the inclusion of an energy chapter in the final TTIP, and the removal of US restrictions on the export of crude oil and LNG (predominantly shale gas).²⁰ Former Trade Commissioner, Karel De Gucht, has stated, "I cannot imagine that there will ever be a TTIP without such (energy) provisions."²¹

Renewable energy is, of course, not traded between the EU and US. So, any increased trade in energy between the blocs that results from TTIP will by definition be in fossil fuels. Indeed, the EC commissioned CEPR report into the economic benefits of TTIP predicts a rise in CO2 emissions in the EU and US as a result of TTIP.²² The rise is small, and the report is limited, but the direction of travel speaks volumes.

Fluctuation in the oil price notwithstanding, it seems likely that increased demand from the EU would further the expansion of fracking in the US and facilitate the export of tar sand oil, mined in Canada and refined/transported via the US, to the EU. A study commissioned by the EU has found the average life-cycle greenhouse emissions from tar sand production to be 23 percent higher than the average fuels used in the EU.²³

The necessary infrastructure investment required to facilitate the transport of liquefied gas across the Atlantic is considerable and decidedly long-term. The world has only a handful of years to peak and start to rapidly decline greenhouse gas emissions. Two thirds of global reserves of fossil fuels are effectively 'un-burnable' if we are to have a good chance of avoiding dangerous climate change. Any mechanism that is being designed specifically to increase the trade and therefore usage and extraction of fossil fuels is a big step in the wrong direction at a critical moment for global climate and energy policy.²⁴

Labour Rights

We have specific concerns regarding the lack of ratification of the ILO conventions and the violations of fundamental labour rights in the US,²⁵ notably on the right to organise and negotiate collectively, and particularly but not exclusively in Right to Work States. Without upward harmonisation of labour standards, we are concerned that companies will gravitate to cheaper, non-unionised US labour, thus increasing downwards pressure on workers' terms and conditions of employment in the EU.

Digital Rights

While we appreciate that negotiations on the chapters on data flows are still ongoing, there are serious concerns that TTIP could lead to an erosion of citizens' digital rights in this area. Rights to privacy and data protection have significant economic and societal benefits. It is important that they are not negatively impacted by trade agreements including TTIP.

The EC says that privacy is not in its negotiating mandate. However, the US has tabled a proposal for the E-Commerce Chapter saying that parties should refrain from stopping cross-border data flows and that parties should be prohibited from requiring local data storage.²⁶ Despite the EC's statements, this raises the issue of privacy and personal data in the TTIP negotiations. Citizens should have control of how their data is used. Unlike the EU, the US lacks a comprehensive framework of how personal data should be treated and citizens' right to data protection be protected. Trade agreements are not the appropriate forum for negotiations concerning the privacy of citizens.

²⁰ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153015.2%20Energy%20and%20raw%20materials.pdf

²¹ <http://www.reuters.com/article/2014/09/09/us-usa-eu-trade-idUSKBN0H428Y20140909>

²² http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf

²³ https://circabc.europa.eu/d/d/workspace/SpacesStore/06a92b8d-08ca-43a6-bd22-9fb61317826f/Brandt_Oil_Sands_Post_Peer_Review_Final.pdf

²⁴ http://static.newclimateeconomy.report/wp-content/uploads/2014/08/NCE-Global-Report_web.pdf

²⁵ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312232:NO

²⁶ <https://blog.ffii.org/us-wants-to-outlaw-eu-cloud-in-ttip-negotiations/>

Impact on Third Countries

The magnitude and likely depth of TTIP mean that it will have significant implications for countries not engaged in the negotiations and in particular for developing countries. The EU and US are important markets for developing countries and there is already evidence to suggest that they will experience negative impacts. This is due to trade diversion and the erosion of preferences such as those granted under the EU's Everything But Arms and Generalised System of Preferences schemes. A report commissioned by DFID suggests that all of the forty-three Low Income Countries it studied will experience reductions in their exports to the EU and US. Whilst the overall losses appear small, some countries see reductions of up to 12% and certain sectors also face significant losses, for example the report predicts a loss to Bangladesh and Pakistan's garments sectors of \$42.6 million.²⁷

TTIP also threatens to undermine UK and EU commitments to a fair multilateral trading system. The EU and US have both stated that they wish to 'multilateralise' the deal but third countries have not been involved in the negotiations, meaning they will have no say in the shape of the deal. Given the differing visions of international trade - illustrated by negotiations at the WTO - it is implausible that a deal agreed between the EU and US alone could be in line with developing countries' aspirations for the global trading system. Furthermore, TTIP could erode the gains that have been made by developing countries at the WTO. For example the recently-agreed services chapter, which aims to support domestic services industries, could be undermined by a services chapter in TTIP because it would make it more difficult for developing countries to compete in EU and US markets.

Finally, TTIP negotiations are undermining the EU's commitment to Policy Coherence for Development. This recognises that certain policies have a significant impact outside of the EU and can contribute to or undermine development cooperation; trade is a prime example of such a policy area. In light of this, it is of concern that there has been very little discussion of the likely impacts of the deal on third countries, and that the publication of the Sustainability Impact Assessment has been delayed by a year until the end of 2015.

Drug pricing and access to medicines

The UK has long stated its firm support for developing countries' right to utilise critical flexibilities within the WTO's TRIPS agreement as a means of ensuring essential access to affordable medicines. The use of these flexibilities has enabled the world to effectively respond to the AIDS pandemic and avert millions of deaths. But trade agreements have consistently closed the space available to countries to use these legal flexibilities and TTIP looks set to squeeze that space further, undermining health outcomes in Europe and across the developing world.

The pharmaceutical industry invests heavily to influence trade negotiations.²⁸ Analysis of a leaked pharmaceutical wish list²⁹ for TTIP shows that, if included in the agreement, these provisions would prolong monopoly periods for medicines and undermine national government initiatives designed to organise and contain the cost of medicines, delaying the availability of price-reducing generic drugs to Europe and pushing up costs for the NHS.³⁰ They are also seeking to reverse efforts to increase clinical trial transparency making it more difficult to make informed decisions about the true effectiveness of medicines and vaccines. Furthermore it will entrench an approach to medical R&D which persistently fails to deliver the medicines the world needs³¹ at a time when the UK is spearheading alternative approaches to pharmaceutical innovation tackle looming crises including on antimicrobial resistance.

Negotiations are at a much more advanced stage on the TPP agreement, which BIS staff have informed us is likely to inform the basis of IP, investment and enforcement provisions within TTIP. Analysis of the impact of the

²⁷<http://tradesift.com/Reports/Potential%20Effects%20of%20the%20Proposed%20Transatlantic%20Trade%20and%20Investment%20Partnership%20on%20Selected%20Developing%20Countries> DFID Final%20Report July2013.pdf

²⁸ <http://sunlightfoundation.com/blog/2014/03/13/tpp-lobby/>

²⁹ <http://tacd-ip.org/archives/1138>

³⁰ <http://haieurope.org/wp-content/uploads/2015/03/Civil-Society-Response-to-Big-Pharma-Wish-List.pdf>

³¹ <http://haieurope.org/wp-content/uploads/2014/09/Trading-Away-Access-to-Medicines-Revisited.pdf>

TPP on health shows it could halve the number of people Vietnam is able to reach with lifesaving HIV treatment.³² TTIP could have a significant and irreversible impact on the NHS and dramatically shift the balance of power to pharmaceutical companies. Furthermore if, as is the stated intent, TTIP sets a new global standard leading to coordinated trade policy objectives in negotiations with third-party countries the vital, internationally agreed safeguards putting the right to health ahead of patent rights will come under huge renewed and sustained pressure.

Exaggerated Economic Claims

The economic rationale for pursuing TTIP is that it will result in increased jobs, growth and prosperity. The UK government has relied heavily on two studies, produced by CEPR, which conclude that an ambitious TTIP would result in an extra £10bn per annum for the UK economy and £100bn per annum to the EU as a whole, by 2027. This claim has been regularly repeated and disseminated to the public, despite serious questions as to its credibility.³³

We would note that the studies rely on overly ambitious forecasts as to what TTIP can realistically achieve. These tend to be based on the (false) assumption that both economies are in a steady state of full employment; fail to account for costs, such as out of work payments to those workers displaced by TTIP (around one million people, as per the CEPR study)³⁴; and fail to account for the quantifiable social and environmental benefits associated with many so called NTBs.³⁵ Additionally the studies make no attempt to estimate distributional impact. Indeed, a much cited independent study, by Tufts University, predicts that TTIP will result in a net loss of jobs and GDP in the UK and EU as well as leading to an increase in inequality.³⁶

The BIS Select Committee report on TTIP states:

“Whilst TTIP has the potential to deliver economic benefits to the United Kingdom, it is impossible at this stage to quantify those benefits in any meaningful way. Rather than continue to use the £100 billion figure, the Government must come up with a comprehensive assessment which includes the estimated economic yield of a variety of levels of agreement.”³⁷

Additionally, a report by the House of Lords EU Committee recommends that:

“... in making the case for TTIP, the UK Government and the European Commission should deploy the headline figures from economic studies commissioned prior to the start of negotiations with extreme caution, lest they dent the credibility of an initiative that has merit in its own right.”³⁸

The continued use of said figures and estimates by the UK in its promotion of TTIP would be of grave concern so far as they serve to obfuscate the much warranted economic debate.

³² http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2536254

³³ <http://www.theguardian.com/business/2014/sep/01/eu-us-trade-deal-uk-economy-ttip-negotiations>

³⁴ <http://www.waronwant.org/attachments/TTIP%20mythbuster,%20Sept%202014.pdf>

³⁵ <http://web.isanet.org/Web/Conferences/Toronto%202014/Archive/ebb12214-50a7-4f8a-80eb-d25ce06fbed3.pdf>

³⁶ <http://ase.tufts.edu/gdae/Pubs/wp/14-03CapaldoTTIP.pdf>

³⁷ <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmbis/804/804.pdf>

³⁸ <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldcom/179/179.pdf>

Yours Sincerely

*Andrew Taylor, Climate Change Campaigns and Communications Manager, **People & Planet***

*Andy Atkins, Executive Director, **Friends of the Earth***

*Anne Peacey, Chair, **National Justice & Peace Network***

*Anne Scott, Secretary, **Women's International League for Peace and Freedom (UK Section)***

*Anton Ofield-Kerr, Head of Policy, **International HIV/AIDS Alliance***

*Bert Schouwenburg, International Officer, **GMB***

*Chris Baugh, Assistant General Secretary, **PCS***

*Christine Blower, General Secretary, **National Union of Teachers***

*Dave Prentis, General Secretary, **UNISON***

*David Babbs, Executive Director, **38 Degrees***

*Diarmaid McDonald, Acting Director, **STOPAIDS***

*Ed Paton-Williams, Campaigner, **Open Rights Group***

*Helen Drewery, General Secretary, **Quaker Peace & Social Witness***

*Joanna Pollard, Chair of the Board, **British Association for Fair Trade Shops and Suppliers***

*John Hilary, Executive Director, **War on Want***

*Jon Miller, National Coordinator, **Universities Allied for Essential Medicines UK***

*Linda Mead, Programme Co-ordinator, **Commitment for Life***

*Liz May, Head of Policy and Advocacy, **Traidcraft Exchange***

*Michael Warhurst, Executive Director, **CHEM Trust***

*Nick Dearden, Director, **Global Justice Now***

*Sally Hunt, General Secretary, **University and College Union***

*Saoirse Fitzpatrick, Coordinator, **Student Stop AIDS Campaign***

*Taren Stinebrickner-Kaufmann, Executive Director, **SumOfUs***

*Tony Dykes, Director, **Action for Southern Africa***

*Trevor Manfield, Head of Policy (Farming and Land-use), **The Soil Association***

*Ruth Bergan, Coordinator, **Trade Justice Movement***