



All-Party Parliamentary Group on EU-US Trade & Investment

Note on meeting on TTIP and the NHS and public services – November 2014

The All-Party Parliamentary Group on EU-US Trade & Investment organized a discussion on NHS and public services in the context of the Transatlantic Trade and Investment Partnership negotiations on November 24th in Westminster Palace with the following panelists:

Dave Prentis, General Secretary of Unison

Peter Morrison, Senior Legal Counselor in the Trade in Services Division, WTO

Ignacio Garcia Bercero, EU Chief Negotiator, European Commission

The meeting was attended by Parliamentarians from opposition and government Parties, plus representatives from business, trade unions and campaign organizations and interested individuals. Below is a short summary of the remarks and discussion.

Peter Morrison provided a picture of the multilateral commitments on trade in services. He termed the (GATS) within the WTO as the grand-daddy of all international agreements on trade in services. He underlined that GATS is an extremely flexible framework with a few very basic rules. Obligations or commitments entered into were tailored to the specific needs of the member countries making them. Public services and the health services are generally excluded from the GATS provided the services are not supplied on a commercial basis and are not provided in competition with private providers. The flexibility of the GATS allowed countries through their scheduled commitments to excluded sectors or parts of sectors. WTO does not affect governments' ability to adopt and decide regulations. Finally Peter Morrison underlined that there had be no disputes on public services within the WTO, and the services commitment had not prevented any government in making decisions on how to organize their public services.

Dave Prentis addressed three main concerns Unison, its members and others have about the Transatlantic trade and investment negotiations, while underlining that concerns were not limited to these three. First, he pointed to the perceived secrecy surrounding the talks and the lack of public access to documents during the negotiations. He also raised questions about democratic accountability, and questioned whether individual EU member state parliaments would have an opportunity to scrutinize an agreement. Dave Prentis referred to the CETA agreement as an indication of what approach might be taken in the TTIP and questioned the use of a "negative list" approach in the services area as opposed to a "positive list". In the former you list what is not covered, while in the latter you list what is

covered. He also feared that TTIP would lead to a “creeping liberalization” if a so-called ratchet clause was included.

Finally Dave Prentis highlighted concerns over the inclusion of an investor-state-dispute-settlement mechanism (ISDS) in a Transatlantic trade and investment deal. He underlined that concerns were not limited to the NHS but also to other public services where private providers are participating. Dave Prentis listed a number of examples of abuse of ISDS globally that had given rise to concerns. He feared the inclusion of an ISDS mechanism would prevent a future elected government re-nationalising British Rail or abolishing the Health and Social Care Act. He underlined that ISDS provisions lack democratic accountability and provide multinational corporations with a right to compensation through fines if governments decide to alter policy. (For a further discussion of ISDS see the report from the November 4th APPG meeting: <http://tradeinvest.babinc.org/wp-content/uploads/2014/11/Note-on-ISDS-and-TTIP.pdf>)

Ignacio Garcia Bercero responded to the concerns raised. On secrecy and democratic accountability he underlined that all positions that the European Commission discussed with the US in the context of the negotiations have been discussed beforehand with EU member states and the European Parliament’s INTA (trade) Committee. The member states and the INTA Committee had access to all EU proposals. He referred to Commissioner Malmström’s announcement that she would be making a number of EU proposals in the negotiations public as well as providing for broader access in the European Parliament.¹ The Commission could not, however, make US positions public. There is currently no TTIP-text to disseminate. A final agreement will require unanimous approval by all 28 member states and will likely be subject to ratification in individual member states as well since it is expected to be a “mixed agreement”. Garcia Bercero also referred to the numerous position papers that had been made public on the EU website since the start of the negotiations.

Garcia Bercero said categorically that nothing in the negotiations/in an agreement would limit member states’ ability to decide on how to organize and/or manage public services. Governments would be free to bring privatized services back into the public domain. Public services are protected at three levels: generally by allowing for public services/ public utilities to be provided by public monopolies or exclusive rights granted to private operators; secondly through the freedom to regulate; and third by the freedom to decide who can operate or invest and under what conditions; including allowing for repeals of decisions to open up services to private participation. Garcia Bercero also pointed to the US negotiator’s assurances that the US was not seeking to open up public services for US private participation. (Garcia Bercero’s letter to John Healey MP with assurances on the NHS is here: http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152665.pdf and the note on public services and trade is here <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1115>)

¹ The details of the Commissioner’s transparency initiative is here: http://ec.europa.eu/news/2014/docs/c_2014_9052_en.pdf

On ISDS Garcia Bercero referred to the public consultation currently being assessed by the Commission, where a decision on policy going forward is expected by the end of the year. He underlined that the goal in the negotiations had been to define and protect governments' right to regulate or their policy space more clearly than in the more than 1,000 bilateral investment treaties that EU Member States currently have in place. He reminded the audience that ISDS was not an European Commission invention and that some of the ISDS cases cited by Dave Prentis would NOT be possible to raise within the framework established for example in the CETA negotiations with Canada.

Discussion. In the discussion there were calls to make information to the broader public more readily available. Some Parliamentarians found Garcia Bercero's remarks very reassuring while others questioned why there is a need for a trade agreement or ISDS in an agreement between the EU and the US. Dave Prentis in response to an MP question assured that he was not against trade, but argued that the investment part of the treaty was what raised concerns within unions. The broad public mistrust in trade negotiators dated back to the WTO meeting in Seattle in 1999.

In response to a question on whether tariffs weren't already low in Transatlantic trade, Garcia Bercero pointed to the significant remaining tariff barriers for some sectors and the barriers caused by duplicative testing or certification processes in transatlantic trade. The goal was to remove or minimize these barriers without lowering standards in any way. Peter Morrison pointed to the positive contributions trade provides not only to business, but also to consumers and underlined that developing countries remained strong supporters of the benefits of trade.

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If you wish to join the APPG and receive the regular bulletins, please contact Siwan Puw in Guto Bebb's office.