20 July 2015

Thank you for your letter of 11 June to Sajid Javid about the EU-US Free Trade Agreement (FTA), also known as the Transatlantic Trade and Investment Partnership (TTIP). I am replying as this matter falls within my portfolio.

There is rightly a great deal of public interest in the implications of this agreement, and I welcome this further opportunity to inform stakeholders of the Government’s objectives in the negotiations and expected outcomes. Please find attached a detailed response to the points which you raise.

I am aware that these issues have also been raised during regular meetings that Friends of the Earth, and other campaigning organisations, have had with officials of the Department for Business, Innovation & Skills (BIS). My officials will continue to engage with stakeholders on a regular basis and will be in touch shortly to follow up.

Thank you, again, for passing on these concerns.

FRANCIS MAUDE
Detailed Response to Concerns raised by NGOs

Transparency

I am glad you agree that these are the EU’s most transparent bilateral trade negotiations ever. The Government supports greater transparency in the negotiations and we are pleased therefore that the European Commission is adopting a more open approach. The US Government takes its own decisions on which documents it chooses to make publically available. However, as also recognised by the EU Ombudsperson, “the Commission at times needs to talk to the US confidentially to be able to negotiate effectively.”

Investor State Dispute Settlement (ISDS)

Given the scale of investment between the EU and US and our ambition to promote further investment, it is appropriate to consider whether investment protections should be included in the agreement. The inclusion of investor-state dispute settlement (ISDS) provisions in the agreement will not prevent the Government from taking regulatory action to protect the public or the environment, nor will they force the Government to change laws, open markets or privatise public services.

It has been suggested that the inclusion of ISDS provisions in the EU-US FTA could prevent the Government from regulating in the public interest for fear of being sued (“regulatory chill”). This has not been the case in the UK, however, under the UK’s existing investment treaties (and we already have over 90 bilateral investment treaties with other countries).

The EU-Canada Comprehensive Economic and Trade Agreement (CETA) published last year exemplifies developments in investment protection and ISDS provisions for modern trade and investment agreements. We expect CETA to provide the foundation for further reforms in the EU-US FTA. These developments include:

- making the unsuccessful party liable for the costs of the claim (the 'loser pays' principle);
- clarifying and explicitly stating the right of governments to regulate in the public interest;
- prohibiting claims from being pursued simultaneously under ISDS provisions and in domestic courts; and
- improving transparency in the overall process

The BIS commissioned research from LSE Enterprise to which you refer, produced an analytical framework for assessing certain costs and benefits of investment protection treaties. Whilst useful in informing policy decisions, there are several limits to drawing direct conclusions from the research itself. The report itself acknowledges that there are certain factors, both economic and political, it cannot accurately address without detailed knowledge of the government decision-making process (to which it did not have access) and the findings were intended as a broad guide.
Secondly, at the time of the research, the provisions in CETA were yet to be fully developed. The research was based on an assumption that an EU-US investment treaty would follow the 2012 US model Bilateral Investment Treaty (BIT) approach. While this has many similarities to CETA, the latter has developed since that report was written, including to deliberately mitigate against risks identified in the report. For example, the report concludes that it did not expect the UK to lose many ISDS cases to investors, but the cost of defending unsuccessful claims is cited as prohibitive. Under many existing treaties this would be the case but, by introducing the ‘loser-pays’ principle, CETA removes these costs, as the unsuccessful claimant will compensate the government for their legal and arbitration fees.

The question of investment protection and ISDS provisions in the EU-US agreement is still under consideration. The public consultation on these provisions carried out by the European Commission last year sought stakeholder views on what modern investment provisions should look like, drawing on the developments included in the CETA text and outlined above. If included in the EU-US agreement, investment protection and ISDS provisions should protect the right of governments to regulate in the public interest and help deter investors from making unnecessary and speculative claims.


A recent European Commission concept paper lays out the roadmap for reform at: [http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153408.PDF](http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153408.PDF) The UK, with other EU Member States, is considering the Commission’s recent paper, and what further changes might be needed to the provisions for the EU-US FTA.

Public Services

To be clear, the NHS is under no threat whatsoever from the agreement with the US or any other trade and investment agreement. Over the last 20 years the UK and EU have signed numerous trade agreements including the WTO treaties. These have helped both UK and EU businesses grow and create high quality jobs. They have also ensured that it remains for the UK to decide how our public services are run. The agreement with the US will be no different. Decisions on how to deliver public services for the best outcomes for UK citizens are and will be made by UK governments, not our trade partners. The Prime Minister, the European Commission and the US government have all confirmed this.


The Commission and US Trade Representative, Ambassador Froman, also recently agreed a joint statement which set out that:

"US and EU trade agreements do not prevent governments, at any level, from providing or supporting services in areas such as water, education, health and social services. Furthermore, no EU or US trade agreement requires governments to privatise any service, or prevents governments from expanding the range of services they supply to the public. Moreover, these agreements do not prevent
governments from providing public services previously supplied by private service suppliers; contracting a public service to private providers does not mean that it becomes irreversibly part of the commercial sector.”


Food Safety, Health and Environmental Standards

The EU and United States have been clear that the negotiations are not about lowering regulatory standards. EU negotiators have specified that the agreement will not affect the way the EU legislates on food safety. Any food entering the EU must meet EU food safety standards. The EU-US FTA will not change that.

In terms of chemicals, the Commission’s public position paper dated 14 May 2014⁴ sets out very clearly that “Industry associations, civil society and governments are aware that neither full harmonisation nor mutual recognition seems feasible on the basis of the existing framework legislations in the US and EU: REACH (Regulation (EC) 1907/2006) and TSCA (Toxic Substances Control Act) are too different with regard to some fundamental principles.”

The paper goes on to set out four main areas in which a higher degree of convergence may be sought to increase efficiency and reduce costs for businesses. These would not require or imply any change in the regulatory systems of each side, as they relate to cooperation between the relevant chemicals regulators and better coordination.

The four areas of greater cooperation are:

- prioritising chemicals for assessment and how best to test them;
- classifying and labelling chemicals;
- identifying and addressing new or emerging issues; and
- sharing data and protecting confidential business information more effectively.

Doing so could make our systems more efficient and thereby cut firms’ costs.

Non-Tariff Barriers (NTBs)

Non-Tariff Barriers are multi-dimensional (regulations, certification, conformity assessments) and hence much more difficult to analyse than tariff barriers. However, the economic benefits of removing them have been holistically assessed by ECORYs, an independent organisation (http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152512.pdf). The assessment was thorough, and drew on multiple sources including surveys and economic analysis. As such we believe the estimates to be robust.

Regulatory Co-operation

The UK Government strongly supports a Regulatory Cooperation Body that is able to pursue meaningful regulatory cooperation while upholding regulatory standards. I would point out that this body will not lead to regulations being changed outside of the usual democratic rule-making frameworks in the EU and US. Rather EU and US regulators would be encouraged to cooperate at an early stage when preparing new regulations, setting up regular dialogues to identify unnecessary divergent approaches when regulatory aims are the same.

We expect that the body will take account of the views of all groups of stakeholders, and indeed that much of its work will be driven by suggestions for regulatory cooperation by stakeholders such as businesses, NGOs, or trade unions. Negotiations continue in this area, and the UK government will continue to work with the Commission to support an effective solution.

Climate

The UK supports the European Commission’s push for inclusion of an energy chapter in the EU-US FTA. A separate chapter with strong open market provisions across the range of energy activities could set a helpful precedent for future trade agreements. The open market energy provisions which the EU envisages for inclusion in the agreement would of course apply to all activities in this sector, low carbon energy as well hydrocarbons.

An energy chapter will not undermine the EU’s or UK’s climate objectives. The UK is committed to implementing the EU’s 2030 climate and energy framework, in line with the October 2014 European Council agreement, and in pushing for an ambitious global climate agreement in Paris later in the year.

EU access to US exports of liquefied natural gas (LNG) and of crude oil are key EU priorities in these negotiations. The UK and other EU Member States will need significant oil and gas supplies over the next few decades, which makes it important to have as diversified sources of supply as possible. Authorisation for the EU to import US gas would help to make the global gas market more liquid and bring some downward pressure on global gas prices.

The US ban on exports of crude oil does not fit comfortably with our broad approach to liberalising trade and adversely affects European refining industries. On the potential for the EU-US FTA to lead to imports of tar sand oil, the European Commission revised its original proposal in the Fuel Quality Directive (FQD) in order to ensure that the assessment of the Greenhouse Gas intensity of fuels was based on objective, level-playing field criteria. This is because robust information on all oil sources does not currently exist. The negotiations on the FQD proposal followed a separate process from the EU-US FTA negotiations and CETA.

The small projected rise in CO2 emissions expected to result from this agreement, to which you refer, seems as much attributable to the effects of increased trade across the board as to any anticipated exports of US oil and gas to the EU. Environmental impacts of trade liberalisation are complex but evidence points to environmental benefits as well as increases in than CO2 emissions – for example reductions in sulphur dioxide
emissions and, as a result of increased prosperity, increased affordability of low carbon goods and services.

Any increases in CO2 emissions as a result of this agreement – from whatever cause would have to come within the envelope of both the EU’s and US’s existing low carbon and emission reduction commitments. As you may be aware, the Commission continues to carry out work to assess the environmental and social impact of this agreement.

In addition to an energy chapter, the Commission is keen to make Sustainable Development an important part of this agreement including, to the extent appropriate in a trade agreement, in relation to climate change commitments and low carbon policies. The UK very much hopes that removal of remaining tariff and non-tariff barriers to trade in environmental goods and services will form a key part of the EU-US FTA, building on, and perhaps paving the way for further ambition in, the plurilateral WTO negotiations on Environmental Goods Agreement, to which both the EU and US are parties.

**Labour Rights**

We are committed to high labour standards and the EU-US FTA will not limit each party’s right to define and regulate labour protections at the level it deems appropriate, consistent with internationally agreed standards and agreements.

The EU’s proposed Trade and Sustainable Development Chapter in the EU-US FTA covers a wide range of labour-related issues. The chapter primarily sets out commitments to the ILO’s core labour standards, outlines future cooperation between the EU and US in these areas and acknowledges that international labour standards should not be lowered in order to encourage trade or investment.

**Digital Rights**

Our objectives for the negotiations on e-commerce are to unleash the potential of the digital world to make life easier for consumers whilst also building trust in the digital market, and to create a level playing field for business, encouraging fair competition and allowing the best new ideas to flourish.

We agree that trade agreements are not the appropriate forum for negotiations concerning the privacy of citizens. The EU has also been clear that data protection negotiations should be conducted separately from trade negotiations.

**Impact on Third Countries**

Independent research for the European Commission estimates that the agreement could be worth up to £85 billion annually to the wider world economy outside of the EU and US. Although developing countries are not parties to the agreement, they are expected to benefit from the agreement because, for example, growth in the EU and US economies will help developing country exporters.

The research commissioned by Department for International Development (DFID), to which you refer, estimated that the potential for negative effects on low income countries
will be small. Whilst it is true that countries such as Pakistan and Bangladesh were highlighted as having the largest potential impacts due to their garments and textiles sectors, the authors note that, as these countries are so much more competitive than the EU or US, and as they are likely to trade in different types of products within these sectors, the effect may be an overestimate. It should also be noted, that in many of the studies carried out on the deal, the estimated aggregate benefits to third parties through increased demand from the EU and US outweigh the costs in trade diversion.

The Government also works to influence the World Trade Organisation (WTO) negotiations to ensure that trade rules are developed for the benefit of developing countries. We are helping developing countries implement reforms relevant to the implementation of the WTO Trade Facilitation Agreement. This could eventually be worth up to £100 billion to global GDP, including £10 billion to Sub-Saharan African countries. Currently around £165 million worth of DFID projects are working to support trade facilitation in developing countries.

Drug pricing and access to Medicines

We want developing countries to aspire to the levels of intellectual property (IP) protection the EU and US provide. This does not mean we expect developing countries to do this straight away. The UK approach to IP has a direct line of sight to trade policy in that it is a balanced, case-by-case approach. We understand it is far more productive for developing countries to develop their IP systems than to spend time attempting to enforce IP rights with limited resources. That said, it is equally important to recognise that IP protection is an essential part of the drug development cycle, allowing the pharmaceutical industry sufficient incentives to make the necessary investment in the process of developing new medicines.

Some pharmaceutical industry stakeholders have raised price and reimbursement of medicines as a possible area for inclusion within the agreement, but there is already an EU Directive which addresses these matters. The Government’s priority is to improve outcomes for patients by improving access to effective medicines at prices that reflect their value. The UK would need to consider any proposals in these areas very carefully, especially due to the significant differences between how health care systems are organised in the US and in the EU.

Economic Claims

The UK has been clear in its message about the positive overall economic and political impact of the EU-US FTA and will continue to make this case.

We recognise there are limitations to all studies that attempt to estimate the benefits of FTAs, but the CEPR’s provide the most reliable and useful guide to the potential benefits of an EU-US FTA. Their general equilibrium based approach means they can capture indirect as well as direct effects of the FTA. They have used a state-of-the art model and drawn upon high quality data, for example for the estimates of non-tariff measures (NTMs). They also offer a range of scenarios to provide a guide to the impact of a deal reflecting varying levels of ambition. And whilst the figures we use are based on their ambitious scenarios, these are still plausible – for example even the ambitious scenario
assumes that the costs of most non-tariff measures (NTMs) will remain with only around a quarter of NTMs being reduced as a result of the FTA.

Furthermore, gains could be higher than these models suggest, as they capture the so-called “static gains” from trade coming from improved resource allocation, greater specialisation, economies of scale, greater accumulation of factors of production (notably capital, but also skilled labour), and access to cheaper inputs. But they do not account for the potential “dynamic gains” from greater openness, the potential that the rate of productivity growth could be increased for example as a result of increased competition pressure that forces firms to engage in more innovation.

Although the Capaldo-TUFTS study has garnered considerable attention, we and others such as the Commission, EU research groups such as ECIPE and various independent commentators consider that this study has significant limitations. It is based on a model that was not built to assess trade policy and so does not directly model trade flows or the gains from trade. It also relies on some strong assumptions, such as continued austerity across Europe. Neither its assumptions nor its results tally with the EU’s experience of other FTAs, including EU-Korea and the insights from the broader economic literature on trade.

We recognise that the figures we use apply to the long run, once we have adjusted to the changes that the FTA will bring. This adjustment will not necessarily be seamless. But in the long run, it is a reasonable assumption that economies should adjust as evidence suggests has tended to occur with previous FTAs. Furthermore the likely changes as a result of the EU-US FTA are relatively modest. Even in the ambitious scenario only around 0.7% of jobs are estimated to shift between sectors in the long run, which compares with the average annual turnover in jobs in EU manufacturing of around 3.7%.