



Government Response to the House of Commons
Environmental Audit Committee's
Ninth Report of Session 2014-15:

Environmental risks of the Transatlantic Trade and Investment Partnership

Presented to Parliament
by the Secretary of State for Business, Innovation and Skills
by Command of Her Majesty

July 2015



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Contents

INTRODUCTION.....	2
PART 1 – THE CASE FOR A TRADE DEAL WITH THE US	3
Why TTIP is important to the UK	3
Addressing concerns about TTIP	3
Sustainable development.....	4
The negotiations	5
PART 2 – GOVERNMENT RESPONSE TO THE REPORT’S RECOMMENDATIONS AND CONCLUSIONS.....	6

INTRODUCTION

1. The Government would like to thank Joan Walley MP, former Chair of the Environmental Audit Committee, and all the Committee's members, for their assessment of the EU-US Free Trade Agreement negotiations, also known as the 'Transatlantic Trade and Investment Partnership' (TTIP)¹.
2. The Government will continue to reach out to citizens and civil society to explain the gains of an agreement while also addressing concerns and debating openly the impact such a deal will have, including any potential impact on environmental regulations. The Committee's report is a helpful contribution to the public debate.
3. In this response to the Committee's Report the Government will:
 - set out the case for the agreement and its importance to the UK; and,
 - respond to the 6 specific recommendations and conclusions made in the Report.
4. The Government is also responding in parallel to a report of the House of Commons Business, Innovation and Skills Committee, which also conducted an inquiry into TTIP and which made some recommendations similar to those of the Environmental Audit Committee.

¹ The Committee's Report on TTIP is published on Parliament's website at:
<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmenvaud/857/857.pdf>

PART 1 – THE CASE FOR A TRADE AND INVESTMENT DEAL WITH THE US

Why EU-US FTA is important to the UK

5. The 'Transatlantic Trade and Investment Partnership' is a significant economic and geo-political opportunity for the UK and EU. The agreement could add **up to £10 billion** annually to the UK economy² and demonstrate continued EU and US commitment to trade liberalisation based on fair rules and regulations.

6. As much as £1.6 billion of goods and services are traded between the US and Europe every day, to which **13 million jobs** are linked. The agreement could also benefit the EU economy by **up to £100 billion**³.

7. The agreement will reduce remaining tariffs on nearly all trade. It will also improve access to US public procurement markets and improve customs clearance procedures for exporters. The greatest economic gains will come from reducing the cost of different regulations and standards by promoting greater compatibility – while maintaining our high levels of health, safety and environmental protection.

8. An EU-US FTA will make it easier for business in the EU to access a market of more than 300 million American consumers. It will benefit small businesses in particular who will find it easier to export because of reduced regulatory burdens and tariffs, smoother customs processes and access to US public procurement markets.

9. The agreement will directly benefit the consumer by widening the range of products available. It will also reduce trade costs, leading to cheaper goods, and increase job opportunities and wages. The **average UK household will benefit by as much as £400 a year**.

Addressing concerns about TTIP

10. The Government recognises that while an EU-US FTA can potentially bring huge benefits, some have expressed concerns about its impact on regulatory standards, public services, and the UK's right to regulate. These concerns need to be addressed.

11. The Department for Business, Innovation and Skills (BIS) is making the case for the agreement. BIS holds regular meetings with stakeholders representing a number

² UK commissioned study by the Centre for Economic Policy Research (CEPR)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198115/bis-13-869-economic-impact-on-uk-of-transatlantic-trade-and-investment-partnership-between-eu-and-us.pdf

³ Study for the European Commission by the CEPR published at
http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf

of business associations, the TUC, consumers, and other Non-Governmental Organisations.

12. The Government has been absolutely clear that TTIP -

- **Will not erode regulatory standards.** Both the EU and US are publicly committed to maintaining high standards. It provides a good opportunity to take stock of existing rules on both sides of the Atlantic and remove any unnecessary bureaucracy and regulatory duplication.
- **Will not decrease environmental standards** and targets which we have in place or hold back action on climate change. TTIP will not prevent either side from introducing new **environmental** and low carbon legislation.
- **Will not harm the NHS.** TTIP will not affect the way the NHS takes decisions about who best should provide NHS services, and any suggestion that TTIP could change this is completely untrue. This has been confirmed by the EU and US negotiators.
- **Will not threaten UK sovereignty.** The EU has made it clear that the freedom of governments to regulate in the public interest will be explicitly protected. The Investor-State Dispute Settlement clauses being discussed will not prevent countries taking regulatory action to protect the public or the environment, nor will they overturn or force changes to law.

Sustainable development

13. The UK and EU want to see ambitious provisions in TTIP that ensure economic growth, development and environmental protection go hand in hand. More trade doesn't have to come at the expense of workers or the environment. The European Commission has published four papers on sustainable development which are available on its website at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>

14. The Commission also routinely carries out Sustainability Impact Assessments (SIA) to assess the social, environmental and economic impact of a trade agreement. They are carried out during the underlying negotiation, and help to integrate sustainability into trade policy by:

- informing negotiators of the possible environmental, social, and economic consequences of a trade agreement; and,
- providing guidelines for the design of possible complementary measures, the scope of which can extend beyond trade policy (for example, capacity building, international regulation), and which are intended to maximise the positive impacts and reduce any negative impacts of the trade negotiations in question.

15. The SIA for TTIP is being undertaken by Ecorys (a research consultancy company) on behalf of the Commission. Details of the approach Ecorys is taking to deliver its assessment is given in the Final Inception Report – a terms of reference

document – which is available on the Commission’s website at: http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152512.pdf

16. Work on the TTIP SIA is now intensifying with a view to publishing the interim report online in October 2015. During this process the consultant will continue to welcome contributions from all interested stakeholders. For further detail, please see the consultant's website: <http://www.trade-sia.com/ttip/>

The negotiations

17. There have now been ten rounds of TTIP negotiations. The Government considers that negotiations have progressed well, particularly at a technical level. This technical work – understanding each other’s offers and considering areas where existing trade barriers can be removed – is crucial and prepares the ground for an ambitious and comprehensive agreement. We now want to accelerate work on all issues, with a goal of finalising understandings on the outline of an agreement as soon as possible, preferably by the end of this year.

PART 2 – GOVERNMENT RESPONSE TO THE REPORT’S RECOMMENDATIONS AND CONCLUSIONS

The Committee made 6 specific recommendations and conclusions in its Report. The Government’s response to each of these points is set out below.

Recommendation 1

The EU and US have some environmental standards which deliver similar safeguards, but there are others which differ—a result in part of different approaches to standard-setting. The EU’s stronger focus on applying the precautionary principle in setting regulations should not be weakened as a result of efforts under TTIP to align regulatory standards. (Paragraph 16)

Government Response

18. We agree with the Committee’s recommendation. The precautionary principle, which allows the EU to apply a precautionary approach as part of a risk-based assessment where the scientific evidence is uncertain, is incorporated into the fundamental legal framework of the EU through the Lisbon Treaty and TTIP will not change that.

19. We also agree with the Committee’s view that there are some environmental standards on both sides which deliver similar safeguards. The results of a major academic study on this issue⁴ indicated that “Although the US does not formally endorse the precautionary principle, it has fully adopted precautionary approaches since the inception of the concept. Conversely, the EU does not always adopt a precautionary approach although it has adopted the principle in its treaty.”

20. While over half of the projected benefits of the agreement will come from more closely aligning the regulations of the EU and US, this does not mean lower standards. Both sides in the negotiation have committed to maintaining levels of protection that they already have. The aim is to reduce the levels of duplication that businesses have to go through in meeting regulations, inspections or testing procedures.

21. The UK Government, President Obama, and President of the Commission Juncker have all been clear that there will be no reduction in regulatory standards as a result of the EU-US FTA. We will not trade off lower levels of protection for economic gains. Converged standards across the EU did not reduce standards – quite the opposite.

⁴ Fabry and Garbasso, Notre Europe, reviewing Wiener, Rogers et al, “The reality of precaution - comparing risk regulation in the US and Europe”

22. Both the US and the EU are highly regulated economies, and in many areas regulations have similar aims but different methods, for example in ensuring car safety. There are also duplicate inspections, for example, where pharmaceutical factories must meet international good practices but are subject to separate EU and US inspections.

23. There are many opportunities to reduce duplication without reducing the overall levels of protection. This could be through methods such as mutual recognition of regulations, mutual recognition of conformity assessments (i.e. tests of whether products meet particular regulations or standards), development or use of common international standards, and alignment of future regulations.

24. The vast majority of businesses do not want lower standards. They want there to be one set of high standards that can potentially become the de facto production standard, thereby raising overall global standards and productivity. They also want greater clarity on what standards are applicable across the US and EU and for these standards to be applied consistently.

Recommendation 2

Where 'mutual recognition' of environmental standards is used to smooth trade between the EU and US, it will be important that this is applied only in cases where the 'safety equivalence' test is genuinely satisfied. Where it is not, such as for chemicals, existing regulation should be maintained. Failing to keep to such a course risks an unacceptable 'race to the bottom'. (Paragraph 17)

Government Response

25. We agree with this recommendation. As stated above we are clear that there will be no reduction in regulatory standards, in environmental standards or any other sector, as a result of the agreement. In terms of chemicals, the Commission's public position paper dated 14 May 2014⁵ 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."

26. 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.

27. The four areas of greater cooperation are:

- prioritising chemicals for assessment and how best to test them;

⁵ http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152468.pdf

- classifying and labelling chemicals;
- identifying and addressing new or emerging issues; and
- sharing data and protecting confidential business information more effectively.

Greater cooperation in these four areas could make our systems more efficient and thereby cut firms' costs.

28. We note that EU and US negotiators have repeatedly committed to the maintenance of regulatory standards, and the avoidance of a race to the bottom. No evidence has been presented to the UK Government of previous agreements, such as the creation of the Single Market, leading to a race to the bottom.

Recommendation 3

There is a range of views about whether the proposed EU/US Regulatory Co-operation Council will help or hinder environmental protections in future; a result of a lack of detailed information and transparency on the proposals. The Government should work with other EU states to push for environmental groups and agencies to be represented on the Council, to bolster its ability to fully weigh environmental issues alongside the economic and trade considerations that might otherwise take precedence. (Paragraph 20)

Government Response

29. The UK Government partly agrees with this recommendation. We note that a significant amount of material has now been made available on the website of the European Commission relating to regulatory cooperation and the body that will oversee this (called the Regulatory Cooperation Body in the draft text proposed and published by the EU)⁶.

30. In terms of stakeholder representation on the regulatory cooperation body, the draft text is clear that there should be stakeholder consultation from a range of interested groups. At this stage of the negotiations the UK Government will not push for specific interests or stakeholders to be represented, but rather believes it is more important to establish the broad principles of stakeholder engagement, including the involvement of a wide range of stakeholder groups representing various interests. Clearly there will be a large number of organisations with an interest in the work of the Regulatory Cooperation Body, and therefore work will need to be undertaken to ensure these organisations have a reasonable chance to participate without unduly delaying the process.

31. We will continue to work with the Commission, the US, and stakeholders in support of a Regulatory Cooperation Body that is able to pursue meaningful regulatory cooperation while upholding regulatory standards. We would note that this body will not lead to regulations being changed outside of the usual democratic rule-

⁶ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>

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.

Recommendation 4

EU states must retain their 'right to regulate', but a TTIP treaty text that enshrines such a safeguard will be meaningless if the prospect of ISDS litigation produces a chilling effect on future regulation-setting. A compelling case for the inclusion of an ISDS in TTIP has not yet been made, and there are unresolved doubts about how well international arbitration courts would operate. If there is to be an ISDS, the parties will need to agree a robustly framed one which prevents unwarranted litigation, adopting the lessons from the recently negotiated ISDS provisions in the EU/Canada trade treaty, to circumscribe the terms on which litigation could be initiated against policies to improve environmental or health protections. (Paragraph 29)

Government Response

32. 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.

33. 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, however, under the UK's existing investment treaties (and we already have over 90 bilateral investment treaties with other countries).

34. 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 investment provisions included in CETA are published on the European Commission's website at:

http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151918.pdf

35. 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. The Commission has published a report on the consultation responses which is available on its website at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1234>

36. 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. 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. 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.

Recommendation 5

The potential impact of TTIP on developing countries needs to be addressed as a central consideration of the TTIP negotiations. Developing countries should be invited to take part in the negotiations now, to allow their concerns to be fully addressed. The impact of TTIP should be assessed for each country affected. But financial compensation to those countries is not the solution: instead, UK and EU Aid should be targeted to help them to be able to continue to compete for their existing export markets. (Paragraph 34)

Government Response

37. 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.

38. Further, independent research jointly commissioned by BIS and the Department for International Development (DFID) examined the possible effects on low income countries of trade liberalisation between the EU and US as the result of the EU-US FTA. The study indicated that the potential for negative effects on low income countries is limited because the exports from these countries to the EU and US are very different from the trade that the EU and US have with each other.

39. Greater free trade between the EU and US is more likely to expand trade in the products that those economies already trade with each other in significant quantities than divert trade from other countries. It also noted potential for gains for developing

countries if the agreement results in greater regulatory coherence between the EU and US. For example, mutual recognition of standards could greatly benefit developing country exporters, who have limited capacity to meet different standards.

40. The UK provides over £1 billion a year in 'Aid for Trade' – assistance which improves developing countries' capacity to trade. The Government is also working to ensure new EU Economic Partnership Agreements with African, Caribbean and Pacific countries deliver a genuine partnership which supports their needs. We want to help create the right conditions for trade and investment, sustainable growth and poverty reduction. These agreements place our trade relationship on a more equitable footing and will reduce EU import tariffs to zero once in force.

41. 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.

Recommendation 6

TTIP potentially presents risks for environmental safeguards, as we have described in this report, but there is also scope for these to be satisfactorily addressed. That depends on the detail of the deal that is struck. At the current stage in the negotiations there is not the transparency needed to be able to reach a view on whether such risks will be dealt with. EU member states, including the UK, will need to be more closely involved in the negotiations from now on, and engage in turn with environmental groups and agencies, to ensure that environmental issues are adequately considered. The next Government should ensure that the public and the House are given a full and timely opportunity to scrutinise the draft terms of any TTIP settlement before it is a done deal. (Paragraph 38)

Government Response

Transparency

42. The UK is working closely with other EU member states and the European Commission on the negotiations. The Government supports greater transparency in the negotiations and we are pleased therefore that the European Commission is adopting a more open approach. The Commission has published nine EU textual proposals for legal text in the agreement this year. It has also published fifteen position papers giving detailed information about what is being negotiated, and a series of factsheets setting out the EU's aims for this FTA. At the end of each negotiating round the European Commission's and the US's lead negotiators hold a public press conference outlining progress to date. Details of the Commission's transparency initiative are available at:

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>

Consultation

43. There has been, and continues to be, extensive consultation on the agreement. The European Commission has run four online public consultations to get stakeholder views on various elements of the deal. The Commission is holding regular meetings with an advisory group, as well as civil society groups throughout the negotiations. BIS also holds regular meetings with organisations representing those with a particular interest in the EU-US FTA, including a number of campaign groups. These meetings help to inform the Government's approach to the negotiations.

Parliamentary Approval

44. The agreement is expected to be a mixed agreement to which the UK will be individually a party. In that case, it will be subject to agreement by each Member State (including the UK), the EU Council (representing governments of the EU countries) and the European Parliament. As part of this process, the UK Parliament will receive the complete draft text of the agreement in order to scrutinise it through debates in both Houses. The draft text will also be published online at the same time.

45. The following stage, for a mixed agreement, would involve individual ratification by the UK and all other Member States. Only once all Member States have ratified the agreement and the European Parliament has consented, will the Council then decide to conclude it. The approval procedure is set out in the **Annex**.

Annex: EU-US FTA - Parliamentary Approval Procedure

- Once political agreement is reached on a text, the next stage is ‘signature’. This is subject to a decision of the EU Council. The UK and the European Commission assume that the agreement will also cover some areas which are a Member State competence and is therefore a “mixed” agreement – it is therefore also subject to signature by all Member States.
- The UK would not agree the proposed EU Council Decision to sign the agreement until it was scrutinised by the Lords and Commons EU Scrutiny Committees. The Government may also have to decide whether a JHA opt-in is appropriate.
- The next stage is ratification or ‘conclusion’ in EU terminology.
- The Commission presents a draft Council Decision authorising conclusion on behalf of the EU. This draft Decision to conclude will also be presented to the EU Scrutiny Committees for their consideration. The European Parliament must also approve the Decision. The Government would also decide whether to exercise the JHA opt-in (if applicable) and inform the Commission.
- In parallel with this, if the agreement is a mixed agreement it would be subject to ratification by the UK and all other Member States individually. In the UK there are two aspects to this process that would need to be completed before ratification:
 - (a) the agreement must be published and laid before Parliament for scrutiny for 21 sitting days; and
 - (b) any necessary implementing legislation must also be in place, including any necessary amendments to UK legislation. At a minimum, this usually requires a Specification Order to be passed by affirmative resolution in both Houses. It is likely that amendments to legislation would be required, made for example under the European Communities Act.
- Only once all Member States have ratified the agreement and the European Parliament has consented, will the Council then decide to conclude the agreement.

The timeline

- Most of the agreement, including trade provisions such as reduced duties on imports and exports, could probably be applied provisionally within 18 months of political agreement, following legal scrubbing, signature and EU parliamentary approval. However this would represent an ambitious timeframe and every Free Trade Agreement is different. There are some specific timeframes – for example if there is a JHA opt-in, the European Union must allow eight weeks for scrutiny of the agreement.
- Full ratification could then take from one to several years further as it would be subject to ratification by all European Union Member States and the Council would then have to decide to conclude it.
- Tariff liberalisation could be phased in slowly for some goods. Some of the elements of regulatory coherence may also require further work before they can be agreed and implemented.

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