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# OBSERVATIONS



## TRADE AGREEMENTS

# Brexit: the NHS is far safer inside the European Union

Concerns about the EU's international trade agreements are being addressed

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Is the survival of the NHS threatened by continued British membership of the European Union? You might easily believe this if you listen to those arguing for “Brexit.” Their arguments focus, firstly, on the money that they say is denied to the NHS because of payments to the EU—a claim demolished by the Institute for Fiscal Studies,<sup>1</sup> the Treasury,<sup>2</sup> and many others—and, secondly, on what was, until recently, a rather obscure international trade agreement, the Transatlantic Trade and Investment Partnership (TTIP), which if agreed would ease trade between the EU and the United States.

Many of us have been seriously concerned about TTIP. Public services, such as health, social care, and education, long considered matters of national responsibility, could be opened up to international trade. Existing public providers simply would not be able to compete with the might of global corporations.

TTIP would also disempower national governments, with their decisions open to challenge in the now notorious “investor state dispute settlement” process, where decisions are made in secret by arbitrators chosen by the parties involved. The concerns were real, and I've been among those calling attention to them.<sup>3</sup> But do they justify the United Kingdom withdrawing from the EU? Absolutely not. Leaving the EU would expose the NHS to much greater risk.

### Public services need to be protected

When negotiations on TTIP began, they were led by people who understood international trade but not public services. To be blunt, they simply didn't get the difference. This has now changed completely. The health community, along with others, has made a powerful case for why public services need to be protected. And those negotiating on behalf of the EU have had to listen. Effective advocacy within countries has ensured that national governments have woken up to the risks and, through the Council of Ministers, have given clear directives to the European Commission officials involved.<sup>4</sup>

So what has changed? We know much more about the process. Initially, as with all international trade agreements, the negotiating positions were secret. But given the importance of TTIP, this was simply unacceptable. The European

Commission's position is now set out publicly.<sup>5</sup> And now that we can see the European position, it is clear that many of our concerns have been taken on board. There are protections for public services—specifically health services, but also education, social services, and police services.<sup>6</sup> Recent leaks have confirmed that the US is pushing its own interests strongly, but both the European Commission and the president of the European Parliament have made it absolutely clear that unless the Americans accept European protections for health services and public health there will be no agreement.<sup>7</sup>

The EU government is determined that governments cannot be forced to give up monopolies on the provision of the services. Moreover, even if one government decides to do so, that decision can be reversed by a subsequent government. European governments can provide subsidies to those providing such services if they wish to. Of course, some governments, such as that in England, have opened up healthcare to competition; in this case they do make services subject to European competition law (although with many protections), something I and others warned about previously.<sup>8</sup> But this is a matter for the governments concerned, and TTIP still protects them from competition from providers outside the EU.

### Decisions by judges

Perhaps the most important change is to the mechanism for settling investor disputes. The EU is demanding a completely new model in which the decisions would be made by judges, meeting in public, and with all documentation available on the internet. The grounds for legal challenges would be strictly demarcated to avoid some of the ludicrous examples elsewhere, such as the Ukrainian challenge to plain packaging for cigarettes in Australia.<sup>9</sup>

No one who lived through the passing of the 2012 Health and Social Care Act should be naive about the threat to the NHS.<sup>10</sup> However, that threat comes from some of our own politicians and not from the EU.

Outside the EU, a much weakened UK would have to negotiate a separate deal with the US. The question for anyone concerned

about the NHS must be who is more likely to protect it? Those currently campaigning for Brexit include Daniel Hannan MEP, who once described the NHS as a 60 year “mistake”<sup>11</sup> and the UK Independence Party MEP the Earl of Dartmouth, who called for health to be included in TTIP.<sup>12</sup> Or would you rather a European parliament that has made clear its commitment to protect public services?

Competing interests: I have read and understood BMJ policy on declaration of interests and declare I lead Healthier in the EU, a grassroots organisation making the health arguments for remaining in the EU, for which I receive no payments or expenses. LSHTM also receives grants for my EU funded research.

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