



Dear Martin Romer  
ETUCE-CSEE  
European Director,

Porto, 7 July 2014  
N/REF. 118/FNE/2014

Concerning the *Transatlantic Trade and Investment Partnership (TTIP)*, and in the terms that were proposed, FNE intervened with the Portuguese Ministry for Education and Science on this issue, being the response of the Portuguese government the one that follows below (translation: FNE):

## **“Transatlantic Trade and Investment Partnership (TTIP)”**

Dear João Dias da Silva

Secretary General of FNE,


Nuno Crato, the Portuguese Minister for Education and Culture, instructs me to thank you for your letter of April 8<sup>th</sup> and to inform the *Transatlantic Trade and Investment Partnership (TTIP)* between the EU and the USA (TTIP) is accompanied by the Ministry for Foreign Affairs with the contribution of this Ministry for preparing the national position within the TTIP, as well as for all other negotiations with trade involving these matters.

The same agreement will include specific liberalization commitments in the services, like all negotiations of Free Trade Agreements (FTA) that the EU has concluded with third countries since the establishment of the World Trade Organization (WTO), in 1995.

Indeed, the WTO - successor to the General Agreement on Tariffs and Trade (GATT) – being the first to include services in the multilateral system of international trade, enabled the integration of this field, both in the process of accession of Members to the Organization and in the traditional FTAs, reserved until that time to goods.

In the WTO, the multilateral framework of principles and rules for trade in services is governed by the General Agreement on Trade in Services (GATS). This agreement applies to almost all services, except services supplied in the exercise of governmental authority, ie, that are not provided neither on a commercial basis, nor in competition with one or more service providers (art. 13). Related activities, for example, with social security and other public services (such as health or education) not supplied on a commercial basis, are excluded from the Agreement.

The GATS provides for two types of bonds: the **general character**, which apply to all members regardless of liberalization commitments that may or may not have consolidated (the Most Favoured Nation clause - art II- and the principle of transparency - Article III; and the **specific character**, that relate to the sectors and activities for which a Member has decided to assume obligations of Market Access (MA - art XVI.) and National Treatment (NT - Article XVII.).



In this sense, the GATS leaves it to Member States (MS) the possibility to define the level of liberalization for each sector, determining its scope in conformity with their national interest. Liberalization commitments regarding the MA and NT are negotiated based on 4 modes of supplying services: Mode 1 (cross-border supply), Mode 2 (consumption abroad) Mode 3 (commercial presence) and mode 4 (movement of natural persons).

When the WTO was created were included, in the list of services appointments for the European Union and MS, liberalization commitments in the area of Private Education Services.

These commitments relate primarily to 5 sectors: i) primary education, II) secondary education, III) higher education, IV) education services for adults and V) other education services.


For the first 4 sectors of Private Education Services, almost all of MS (including Portugal, of course as agreed with the Ministry of Education and Science) offered commitments without limitations for modes 1, 2 and 3. Instead, liberalization in mode 4 - by more restrictive nature of the implications with sectoral policies on immigration - is in a state of a more incipient liberalization, except in regard to appointments and horizontal limitations of the USA and MS. The sector V) - "other education services" - is almost closed, mainly because at the date of signing of the Marrakesh Agreement, no one knew the scope of services included in it.

In the subsequent negotiation of Free Trade Agreements in the EU with third countries the procedure was similar, consolidating liberalization commitments in the sectors noted above.

In this regard, it is noted that one of the most positive elements of the rules and disciplines of the WTO is the predictability of the consolidated liberalization, both in terms of goods, or in the case of services. This means that the reduction of such liberalization can not be taken by individual States, but it had to be negotiated with all parties potentially affected.

For this reason, unlike the existing *carve-out* for audiovisual services (already expressly rejected in 1994 and in subsequent FTAs with third countries), hardly the sector of private education services could be excluded from TTIP. To come out, a distant position would require a lengthy negotiation in the WTO, which would certainly take a few years, with unpredictable consequences for the EU, arising from claims for compensation that might be required by the affected members.

For these reasons, although the contours of supply of services from the EU to the USA are not yet known, liberalization commitments will certainly be included in the private education services sector.



The GATS also recognizes explicitly the right of Members to regulate the provision of services according to their own goals. The Agreement provides only one set of rules and disciplines to ensure that these regulations do not constitute an unnecessary barrier to trade in services. Guaranteed assumptions of fairness enshrined in the Agreement (Art. 4 and 5), Members are free to adopt the requirements of their choice in qualifications, licenses or technical standards for, for example, to maintain quality of the service.

Twenty years after the creation of the WTO, there are no known disputes that have involved requirements established by MS in relation to Education Services.

This scheme provided for by the WTO services should guide negotiations between the EU and the USA in this area.

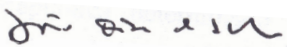
Concerning the *ratchet* clause, it is unknown at the outset if the TTIP will include this instrument. However, if this is the case, easily stays the concern raised by FNE., since the Private Education Services can be accommodated in the list of appointments for services reserved for the *policy space* of MS and, as such, not subject to this clause.

With best regards,

The Chief of Staff of the Ministry for Education and Culture

Vasco Lynce de Faria”

Best regards,



João Dias da Silva  
Secretary General of FNE