The EU-US trade deal: How TTIP could cripple local government

June 2015

Behind closed doors, EU and US negotiators are busy hammering out a new trade and investment deal called TTIP (Transatlantic Trade and Investment Partnership) that could be disastrous for local and regional government. This deal could threaten public services, set up shady arbitration panels capable of overruling the UK court system and undermine regulations such as health and safety standards. All of this means that TTIP is a threat to local democracy, affecting the freedom local authorities have in decision making when these affect the interests of large US corporations.

TTIP: the basics

Many grand claims are made about TTIP. It is supposed to bring £10 billion of growth to the UK by 2027 and create millions of jobs. Unfortunately, analysis by a number of academics has shown that these claims are unlikely to be reflected in reality. Similar claims were made before the adoption of NAFTA between the US, Canada and Mexico. In the end around a million jobs were lost in the US alone. Any economic benefit of TTIP will be miniscule while the costs could be enormous.

But perhaps the most damaging myth about TTIP is that it’s an ordinary trade deal. It’s not. Trade deals are focussed on reducing tariffs and quotas for exported goods. TTIP will do little to reduce the already low tariff barriers between the US and the EU. Instead, it will focus on so-called ‘non-tariff barriers to trade’ like environmental, health and safety regulations. In reality, TTIP isn’t about free trade but about increasing corporate power and undermining the capacity of governments, both local and national, to regulate legitimate areas of public policy.

ISDS – suing policymakers for making policy

One of the most controversial aspects of TTIP is the possible inclusion of an Investor-State Dispute Settlement (ISDS) mechanism. This will mean that multinationals will be able to sue the UK for changing any policy or regulation that affects corporate profits at an unaccountable
These tribunals have the authority to override even decisions by the Supreme Court and are presided over by corporate lawyers (not judges) who are paid in a way that gives them a vested interest in encouraging corporations to bring more cases. These tribunals have been used under other similar agreements to sue Argentina for billions of pounds for freezing electricity tariffs and also to sue Egypt for introducing a minimum wage. These mechanisms can and have been used to challenge policies of local and regional government (see below).

Proponents of ISDS argue that the UK has won both cases it has so far been involved in. But even if a government successfully defends itself against one of these claims, they can end up costing a lot of money. It is estimated that successfully defending against a spurious corporate ISDS case costs an average of around $4 million and can be as high as $12 million which may be enough to encourage local decision-makers to construct policy in a corporate-friendly way to avoid being sued in the first place.

Regulatory cooperation

The harmonisation of regulation and standards is one of the main motivations for negotiating TTIP. Proponents of the deal say this is all about reducing unnecessary red tape but the reality is that TTIP could give multinationals the right to effectively ‘co-write’ future regulation on both sides of the Atlantic. Any future measures deemed necessary to protect the welfare of the population would be subject to a lengthy process in which US corporations interests will have to be taken into account. Many people across UK society fear that this could open the door to products currently banned in the EU like hormone treated meat.

How TTIP undermines local government

The current debate around further devolution in Scotland, Wales and regions of England means that it looks likely that local authorities will win further powers across the UK.

TTIP could hinder these plans. More and more of the NHS is being contracted out to the private sector. Under TTIP, any local authority that makes a decision to take services back under public control could cause the UK to be taken to international arbitration and be sued for billions of pounds. Also, there could be “ratchet clauses” that prevent governments from rolling back privatisation once it has taken place.

TTIP could also affect existing powers granted to local authorities such as planning. The decision of Lancashire County Council to deny planning permission for fracking in the local area is the sort of decision that would be harder to make under TTIP – first because such a decision could be challenged under ISDS, and second because of the pressure to ‘harmonise’ energy regulations.

The provision of local public services and procurement could also be affected. Current EU rules allow for environmental and social considerations in awarding contracts. For example, local governments can decide to buy only fairtrade or organic produce. Local authorities are also allowed to ensure that procurement benefits small and medium-sized businesses in the area – for instance a number of cites, including Manchester and Glasgow, have become Sustainable Food Cities, and are trying to use more locally sourced, sustainable food in the public sector. The Scottish parliament has also passed a new public procurement act that allows Scottish public bodies to promote the environmental and social wellbeing of the area when buying goods or services. It also allows them to facilitate the involvement of small businesses or charities. This sort of law might not be possible under TTIP because the European Commission, keen to access US local markets by getting rid of “Buy America” schemes across the Atlantic, has said it wants TTIP to open local procurement to greater competition. This
means that procurement could be constrained far more by price alone – giving US multinationals more access to markets at the expense of the local economy and the environment. Official EU estimates are that TTIP will induce a 25-50% liberalisation of government procurement. Even if certain local government services are supposedly excluded from the deal that is no guarantee that good law firms won’t find a way round. For example, a state government in Canada lost an ISDS case to oil firm Exxon Mobil despite the fact that a relevant exemption had been negotiated within NAFTA (see box for more information). In fact, sometimes even just the threat of legal action can be enough to cause some decision makers to back down.

### What can local authorities do?

The Local Government Association in England has already made severely critical noises about TTIP, saying that the deal is “currently unsatisfactory” and insisting on the removal of ISDS. The Convention of Scottish Local Authorities has also expressed its concerns about TTIP.

Individual local authorities can also make their voices heard by passing resolutions critical of TTIP. A number of councils, including Lancashire, Flintshire, Brighton, and Oxford have already done this. Councils can also write to the Department for Business, Innovation and Skills [and the devolved government of their country if applicable) outlining their concerns.

We have included a model motion at the back of this briefing that can be used for this purpose.

---

**Case study: Oil firms overrule Canadian provinces on oil & gas exploration**

Since Canada joined NAFTA, a free trade agreement with the US and Mexico, it has been subject to a barrage of tribunal cases, some of which targeted legitimate regulatory and planning decisions made by local government. For example, Quebec is currently being taken to arbitration for announcing a moratorium on fracking in the province. In another case, US oil giant Exxon Mobil won a case against Canada after the arbitration panel ruled that a regulation in the province of Newfoundland and Labrador forcing the company to spend money of research and development locally was in breach of NAFTA agreements. The fact that this occurred despite the presence of an exclusion negotiated by the Canadians in NAFTA deal shows that all the assurances coming from TTIP negotiators about excluding the NHS might come to nothing.

Activists gather before getting on the TTIP train to Brussels. Photo: Jess Hurd
Model TTIP Motion for Local Authorities

This council notes:
1. That the EU and USA launched negotiations in July 2013 on a Transatlantic Trade and Investment Partnership (TTIP).
2. That negotiations are underway to determine which goods and services TTIP will apply to and if new rules can be agreed to protect investors, harmonise standards, reduce tariffs and open new markets throughout the EU and USA.
3. That there has been no impact assessment about the potential impact on local authorities.
4. That there has been no scrutiny of the negotiating texts by local government and no consultation with local government representatives.
5. That MPs are also unable to scrutinise the negotiating documents.

This council believes that:
1. TTIP could have a detrimental impact on local services, employment, suppliers and decision-making.
2. A thorough impact assessment of TTIP on local authorities must be undertaken before the negotiations can be concluded.
3. The proposed Investor State Dispute Settlement (ISDS) mechanism has been used by corporations to overturn democratic decisions by all levels of governments at significant public cost. Local decision-making must be protected from ISDS.
4. The EU’s food, environmental and labour standards are better than those in the US and TTIP negotiations must raise and not lower these standards across the EU and USA.
5. Sourcing supplies and employment locally is important to strengthening local economies and meeting local needs. TTIP must not impact on local authorities’ ability to act in the best interests of its communities.

This council resolves:
6. To write to the secretary of state for communities and local government, local MPs/MSPs/AMs/MLAs, the Scottish/Welsh/Northern Ireland First Minister (as appropriate) and all (insert EU constituency) MEPs raising our serious concerns about the impact of TTIP on local authorities and the secrecy of the negotiating process.
7. To write to the (local government association/COSLA/NILGA) to raise our serious concerns about the impact of TTIP on local authorities and ask them to raise these with government on our behalf.
8. To call for an impact assessment on the impact of TTIP on local authorities.
9. To publicise the council’s concerns about TTIP; join with other local authorities which are opposed to TTIP across Europe and work with local campaigners to raise awareness about the problems of TTIP.
10. To contact the local authorities of municipalities twinned with (insert local authority name) asking them to consider passing a similar motion on TTIP.