University and College Union

The Transatlantic Trade and Investment Partnership

What it is and why we should be worried

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- **The Transatlantic Trade and Investment Partnership (TTIP) is a proposed trade deal between the EU and the US, supposedly being pursued in the interests of free trade.**
- **UCU believes that it poses a profound threat to public services in general, including education, leaving them wide open not only to greater privatisation but making it harder for any future government to regulate foreign private sector companies operating in our public services.**
- **The TTIP is also an affront to democracy. The talks are being pursued without any transparency or democratic oversight by the EU and the US. If they succeed, they will take disputes between companies and governments away from independent courts and make them the preserve of unaccountable tribunals dominated by corporate lawyers.**
- **This briefing explains why UCU is calling for all public services to be protected within any trade treaty and indicates how members can support the growing campaign against the TTIP.**

WHAT IS THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP?

The Transatlantic Trade and Investment Partnership (TTIP) is a bi-lateral free trade agreement which is being negotiated by the US and the European Union. There are a range of instruments available to states that want to negotiate free trade agreements, including, the World Trade Organisation (WTO)[1] and the attempts to negotiate a new Trade in International Services Agreement (TISA)[2]. Increasingly important are bilateral agreements like the trade agreement between the US and Canada or the proposed EU-US trade treaty.

The talks aim to eliminate barriers to trade in goods and services, to guarantee investor rights and to promote regulatory cooperation. These agreements are fundamentally about creating a positive, secure investment environment for big transnational businesses. The US is particularly keen on these agreements as a way of promoting the transnational interests of big US companies.

[1] For a summary of the recent WTO talks in Bali, see http://www.ei-ie.org/en/news/news_details/2798

[2] For a useful briefing on the TISA negotiations, see http://www.ei-ie.org/en/news/news_details/2659

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The US has bilateral agreements with individual states across the globe, including Canada, Korea, Oman, Mexico and Australia. Now it wants an agreement with the entire EU.

Typically, bilateral free trade agreements tend to follow a standard template, developed by the US on the basis of the perceived success of the North American Free Trade Agreement (NAFTA), in which signatories agree to remove remaining barriers to trade and investment. The EU-US treaty is looking to:

- remove the last remaining tariffs on goods traded between the EU and US – these are already very low, averaging 5.2% for the EU and 3.5% for the US
- harmonise rules on trade, business and environmental standards
- open markets in the service sector to delivery from outside
- open up access to government procurement markets and eliminate preferential treatment to local suppliers, and
- introduce investment protection provisions that include investor-state dispute settlement (ISDS) mechanisms which allow investors to challenge state actions which they perceive as threatening to their investment.

WHO'S DRIVING THIS AGENDA?

Big businesses in the US and EU. The deal's promoters, including the UK government claim that everyone will benefit as they claim this deal will create new jobs. Some big businesses certainly think they will benefit. The CBI is very keen on a deal since they believe that some transatlantic British businesses would be able to win new markets in the US and predictably the Coalition government is trailing in their wake. And then of course, there are the US investors looking for new markets in the UK and Europe.

But there probably won't much benefit for anyone else. When the NAFTA agreement was signed it was claimed that it would create 200,000 jobs in the US. In fact, it has been claimed that it cost 680,000 US jobs.[3]

A recent LSE report commissioned by the Department of Business Innovation and Skills, concluded that looking at existing patterns of US-UK trade, there was 'little reason to think that an EU-US investment chapter will provide the UK with significant economic benefits'. Not only that, the report argued that there could be 'meaningful economic costs on the UK'.[4]

WHY THE TRADE DEAL IS SUCH A BIG PROBLEM

Behind the rhetoric about free trade, the real prize with a TTIP is to remove regulatory 'barriers' to foreign investors in breaking into public service markets. There are many problems with the proposed trade treaty but the biggest is the proposal to include an ISDS mechanism. ISDS mechanisms are promoted as a way of 'depoliticising' disputes between foreign investors and private companies. Disputes are heard by

[3] Robert E Scott, 'Heading South: US-Mexico trade and job displacement after NAFTA', EPI briefing paper, May 3 2011

[4] Lauge N Skovsgaard Poulsen, Jonathan Bonnitcha, Jason Webb Yackee, ' Costs and Benefits of an EU-US investment protection treaty': a report for BIS on behalf of LSE Enterprise (April 2013) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260380/bis-13-1284-costs-and-benefits-of-an-eu-usa-investment-protection-treaty.pdf, p. 44-46

In Britain, most attention so far has been focused on the threat to the NHS. However, the education sector is also directly threatened by this treaty; for-profit education companies have become bigger and more powerful lobbyists in national and transnational political spheres.

tribunals of 'experts, rather than resolved in a host state's courts. But a recent report by UNCTAD explained how they have worked in practice:

'foreign investors have used ISDS claims to challenge measures adopted by States in the public interest (for example, policies to promote social equity, foster environmental protection or protect public health).'

UNCTAD also pointed out that:

'Questions have been raised whether three individuals, appointed on an ad hoc basis, can be seen by the public at large as having sufficient legitimacy to assess the validity of States' acts, particularly if the dispute involves sensitive public policy issues.'[5]

ISDS mechanisms are widely used but most actively and aggressively promoted by the US government on behalf of US companies. US companies have used previous bilateral agreements with this mechanism to mount legal challenges to governments who attempt to regulate public service markets on the grounds that these represent a threat to profits.

For example, US companies have litigated against the Canadian government under the terms of the North American Free Trade Agreement for imposing performance requirements on contractors, for denying them access to public subsidies and for imposing environmental duties on companies.[6]

Large US companies are well-known for using aggressive litigation as part of their business plan and the danger is that the threat of law suits and the risks of losing them would have a 'chilling effect' on governments trying to defend quality in public services. Evidence from Canada supports this fear.[7]

THE DIRECT THREAT TO EDUCATION

In Britain, most attention so far has been focused on the threat to the NHS. As the TUC has warned, governments looking to bring the NHS back into public ownership or even regulate more effectively would lay themselves open to charges of 'expropriation' under the ISDS mechanism.

However, the education sector is also directly threatened by this treaty. In the past, most notably in GATS negotiations, education was left out of free trade deals because of fears that quality would be damaged. Yet in the years since then, for-profit education companies have become bigger and more powerful lobbyists in national and transnational political spheres. The UK government has also stated that the removal of 'barriers' in higher education should be a priority for EU trade negotiators.[8]

Some 'government services' may be exempt from the treaty, but it is very likely that the education sector, already comprising 'mixed' provision across the EU, the UK and the US, will fall under the treaty's terms.

[5] http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d4_en.pdf

[6] Poulsen, Bonnitcha, Yackee, ' Costs and Benefits of an EU-US investment protection treaty', p. 23.

[7] Ibid, p. 40.

[8] International Education: Global Growth and Prosperity. London, UK: Department for Business, Innovation and Skills, July 2013; p. 46. Available on-line at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227033/BIS-13-1081-International_Education-_Global_Growth_and_Prosperity-_Accessible__2_.pdf

UCU believes there is a major risk that litigious US companies could exploit an EU-US Trade Treaty to deter any government from imposing proper regulation on private providers.

TTIP: A BLANK CHEQUE TO US FOR-PROFIT COMPANIES

The UK further and higher education sectors are already under attack from a government that wants to see more for-profit providers. As UCU research has shown, the UK's higher education market is seen as a strategic priority for US education companies and recent years have seen a series of strategic acquisitions by US companies.

UCU believes there is a major risk that litigious US companies could exploit an EU-US Trade Treaty to deter any government from imposing proper regulation on private providers.

The recent revelation that BIS has lost control of student recruitment among private providers of HE has brought into sharp focus the currently unregulated environment in which for-profit companies are able to operate and the growing role of US investors in UK higher education.[9]

BIS is struggling to regain control of the de-regulated system it has created in which private providers can recruit students without regulation or a proper independent quality assurance regime. A proper regulatory regime would have to include imposing new levels of oversight, scrutiny and control over private providers, including new performance criteria and sanctions for underperformance. It is widely acknowledged that the government must legislate at some point.

The risk is that both the exercise of current regulatory 'sanctions' on private providers and any attempt to work up more robust regulations, now or in the future, would face legal challenges from US for-profit companies under ISDS mechanisms for threatening or affecting profits. Even the threat of such litigation might encourage a government to set legislation on regulation at an extremely low level.

Think it couldn't happen? In the US, the liberalisation and privatisation of higher education has caused a policy disaster, issuing in a Senatorial investigation and attempts by the US government to legislate to re-regulate for-profit companies. Their attempts to do so have been hampered by wealthy and highly litigious US companies.

In 2011 and 2012, US for-profit colleges sued the US government over the publication of a report that was highly critical of for-profit companies. Then the following year, they sued the government again over its attempt to introduce new regulations and protections for students. In July 2012, they won a case to strike out the regulation that would have damaged their profits most.

UCU has consistently warned that the UK government's attempt to de-regulate the higher education sector in favour of for-profit providers risks creating in Britain the same conditions that have led to a policy disaster and public scandal in the US higher education sector.

An EU-US treaty that encompassed an ISDS mechanism could play a key role in setting us on the path to a US-style policy disaster.

A THREAT TO THE WHOLE EDUCATION SECTOR

It isn't just higher education that is in danger from the TTIP. Vocational education is already delivered by some very big private training companies with many of the same kind of problems that have been seen in the higher education sector.

[9] http://www.theguardian.com/education/2013/nov/18/college-course-chaos-budget-shortfall; http://www.theguardian.com/education/2013/nov/22/poorest-students-face-350m-cuts

UCU does not believe that the EU-US trade agreement will deliver the positive results its promoters claim, but more especially, we want a clear statement that all services that are in the public good, explicitly including all forms of education, are excluded from the treaty.

In addition, we are only a hair's breadth away from a situation where schools can be run for profit.

IES Breckland is already being run for profit in Suffolk. One of the biggest academy chains in England, AET is outsourcing its support services to another private company. The Conservative-led government is reportedly being lobbied by growing academy chains and chains running independent schools to be allowed to run state schools for profit and raise private equity. US companies with a record of running charter schools in the US would be interested in expanding into Britain. US private equity funds are already buying British private companies with a view to profiting from schools reform. For example, Cognita Schools, the for-profit company operating schools in the UK and worldwide, was bought in 2013 by the US private equity giant KKR.

If education is included within the TTIP, the pressure from US-owned companies to lower barriers to market entry would grow stronger. It would be harder to regulate or to bring back in house outsourced education support services. If a future government also moved to relax the rules governing academies and Free Schools' financial operations, US-backed companies would move quickly into the sector and it would be almost impossible to regain democratic control of the schools' sector without risking the threat of litigation.

AN AFFRONT TO DEMOCRACY

We also think that the TTIP should be a matter of concern for anyone interested in democracy and accountability. The democratic deficits in the process and content of the TTIP are immense.

- Firstly, the talks are being held in secret by representatives of the EU and the US. Governments are effectively negotiating to hand over their right to regulate in the public interest without any transparency or accountability to their electorates. In the case of the EU, there is even less accountability since the negotiations are being pursued by an unelected commission.
- Secondly, an ISDS takes disputes between companies and governments out of transparent and independent courts and places them in the hands of cobbled-together tribunals of corporate law experts.
- Finally, an ISDS would make it hard for any government with a mandate to reverse liberalisation and privatisation to do so without being sued by foreign investors under the terms of the Treaty. So whatever voters actually wanted, the trade treaty would place major barriers in the way of any government giving expression to their democratic will.

WHAT DOES UCU WANT?

UCU does not believe that the EU-US trade agreement will deliver the positive results its promoters claim, but more especially, we want a clear statement that all services that are in the public good, explicitly including all forms of education, are excluded from the treaty.

This definition of public services is important because negotiators may seek to disarm opposition by exempting a narrowly defined public sector, such as the UK government uses for accounting purposes. This would leave education and many other services unprotected.

HOW DO WE INFLUENCE THIS PROCESS?

It's very difficult. Because this is a treaty being negotiated by the US with a supranational state body (the EU) that has very few democratic levers, it's difficult for unions, or indeed any citizens or civil society organizations to have influence.[10] The fact that the Coalition government is in favour of the deal and of de-regulation in higher education does not help.

Nonetheless, UCU is doing whatever it can to campaign on behalf of our members' interests. We are lobbying in Education International (the international trade union body for education unions) in the European TUC and in the British TUC to ensure that when these organisations lobby on the trade deal they seek protection for education.

We are also lobbying politicians directly, raising our concerns about this little-understood deal. But we need pressure from members too. The formal negotiations are at an early phase but time is of the essence.

HOW CAN WE GET INVOLVED?

The first priority is to raise awareness of the treaty negotiations among members so that we know that when we're talking to our allies and lobbying, we know we have the active support of our members.

To find out more about this issue and how you can get involved in UCU's campaigning, contact **rcopeland@ucu.org.uk** or **jwhite@ucu.org.uk**

[10] See http://corporateeurope.org/trade

APPENDIX

US HIGHER EDUCATION INVESTMENTS IN THE UK

Private higher education provider operating in UK	Main business	US Parent company/owner	Acquisition
Holborn College	Career college/ Domestic students	Kaplan Inc (Washington Post Co)	2005
Kaplan Law School	Career college/ Domestic students	Kaplan Inc (Washington Post Co)	2007
Kaplan International Colleges	Pathway provider/ international students	Kaplan Inc (Washington Post Co)	2007
BPP University College	Career college/ Domestic students	Apollo Global (Apollo Inc/ Carlyle Group)	2010
Resource Development International	Career college/ Domestic students	Capella Education Company	2011
Study Group International	Pathway provider/ international students	Providence Equity	2010
INTO University Partnerships	Pathway provider/ international students	Leeds Capital Partners (20% stake)	2013
HE Online Ltd	N/A	University Ventures	2011

FURTHER READING

George Monbiot, 'This transatlantic trade deal is a full-frontal assault on democracy', The Guardian, Monday 4 November 2013; http://www.theguardian.com/commentisfree/2013/nov/04/us-trade-deal-full-frontal-assault-on-democracy

Lori M. Wallach, 'The corporation invasion', Le Monde Diplomatique, English Edition, December 2013

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