

Health concerns raised over EU–US trade deal

Campaigners are concerned about the implications for health of a comprehensive free-trade agreement being negotiated between the European Union and the USA. Neil Bennet reports.

Billed as the world's largest ever free-trade agreement, the proposed Transatlantic Trade and Investment Partnership (TTIP) currently under negotiation between the European Union (EU) and the USA has become the focus of intense criticism from campaigners and public health experts. The stated aim of the deal is to remove barriers to trade in a wide range of economic sectors, but critics are concerned about possible negative implications for health. "There's the direct effect on health services and there's also the indirect effects on public health", explains John Hilary, executive director of the charity War on Want, London, UK.

"On the health services side, one of the central concerns is that TTIP will lead to greater liberalisation of health services as a market", he continues, noting that in places where there has already been some degree of privatisation of health services, as in England with the Health and Social Care Act, "TTIP will effectively make that privatisation irreversible". The agreement could lock in privatisation such that there can be no return to a wholly public service "without paying enormous sums in compensation to the private companies who would effectively have had markets closed to them", Hilary explains.

Free trade versus regulation

A major aim of the proposed agreement is to reduce regulatory barriers to trade between the USA and the EU, but campaigners are concerned about what this could mean for regulations such as those that govern food safety, environmental protection, and animal welfare, many of which are stronger in Europe than in the USA. The European Commission has said that regulations will not be watered

down to be made compatible with those in the USA.

However, critics argue that such claims are not credible, especially in view of the massive industry lobbying effort around the negotiations. "The whole process is one of undermining the precautionary principle, which industrial lobbies have been trying to do for years", says Martin Mckee, professor of European public health at the London School of Hygiene & Tropical Medicine, London, UK.

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If the lowering of standards were not on the table, argues Kenneth Haar from research and campaign group Corporate Europe Observatory, Brussels, Belgium, "the chemicals and the food industries would simply not see the TTIP as an opportunity". In some areas, he suggests, traditions and standards are so far apart that the claim that negotiators can find a way to increase market access for the other side substantially without affecting the level of protection is difficult to take seriously.

Some critics, including chef and television presenter Jamie Oliver, have voiced concerns about the removal of existing European food regulations, such as bans on the trade of meat from hormone-treated animals. Haar believes that this outcome is a real danger, but the process will most likely be gradual.

"Personally, I do not expect immediate and comprehensive lowering of standards, for example in chemicals and food." Instead, he believes that TTIP will rely more

on regulatory cooperation, which "is about ironing out regulatory divergence in the long term, through opaque dialogues and a host of mechanisms that will allow the two sides to work slowly towards more market access for industry from the other side". The result would be lower standards and a brake on new rules, Haar argues.

Health-service protection

Whether European health services will be included in TTIP has become a political issue in the UK, where the opposition Labour Party has threatened to withdraw its support for the agreement unless the National Health Service (NHS) is exempted.

In a poll by the trade union Unite, two-thirds of voters in marginal Conservative constituencies supported an exemption for the NHS, prompting the government to deny that the health service will be affected by the deal. EU Commission officials have also made public statements suggesting that the NHS won't be affected by TTIP. However, critics remain unconvinced.

"I can fully understand why people don't believe this government, when we know they're doing their best to privatise large parts of the



health service and, as far as we can tell, have done nothing to stand up for public services in this deal", says John Healey MP, who chairs the all-party parliamentary group on EU-US investment.

"We have absolutely no idea whether or not the NHS will be protected, and I don't think anybody is in a position to say that it definitely will or will not", says Martin Mckee. "I find it very surprising that Commission officials would feel confident to make such a prediction, given that there are so many uncertainties involved."

Kenneth Haar agrees, telling *The Lancet* that such assurances "are not worth much". He points out that the EU had "tabled quite substantial offers" in a document leaked in May, including on health services. Although the document contains "some traditional language that might seem to limit the impact on public services", he argues that because of the growing commercialisation of health services such words "have no value".

The case for explicitly exempting the NHS from TTIP has found support in the medical community. Mark Porter, chair of the British Medical Association (BMA) Council, told *The Lancet* that the BMA "remains concerned about the potential for TTIP to threaten the NHS's ability to provide high-quality health care for all by facilitating further commercialisation". He argues that the government needs to make clear that safeguards will be in place to protect the NHS from further commercialisation arising from the deal. The UK Faculty of Public Health has gone further by opposing TTIP outright, pointing to potential threats to health and social care, environmental protection, and health and safety legislation.

Investor-state disputes

The plan to include a so-called investor-state dispute settlement (ISDS) mechanism has proven especially controversial in the TTIP negotiations. ISDS is a common feature of

investment treaties between countries, allowing foreign companies to sue host governments for compensation when policy changes threaten their ability to generate earnings from investments.

ISDS has previously been used in response to public health and environmental legislation. For example, Philip Morris is using the mechanism, via a trade agreement with Hong Kong, to demand compensation from the Australian Government for the introduction of plain packaging for tobacco products. In Quebec, Canada, a mining company is seeking damages via the North American Free Trade Agreement in response to a ban on hydraulic fracturing in part of the province because of environmental concerns.

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Unlike regular lawsuits, ISDS claims are adjudicated in private tribunals rather than open courts. "A group of arbitrators is selected, who are basically negotiators—the decisions are not based on any body of law or precedents or anything like that", explains Mckee. "It is essentially a negotiation procedure, and whoever can marshal the greater resources is likely to win."

Mckee suggests that if ISDS is included in TTIP we can expect to see many more specious claims from companies "in opposition to potentially any policy that reduces the consumption of something hazardous to health". Others have suggested that the existence of ISDS mechanisms can lead to a so-called regulatory chill, with politicians unlikely to introduce new legislation that might lead to costly tribunal outcomes. "The whole process is one that leads towards the lowest common denominator in terms of the protection of public health", notes Mckee.

Strong public pressure led to the European Commission opening a public consultation on ISDS in TTIP

earlier this year, which received an unprecedented 150 000 responses. The official review of the consultation will not be completed until November this year, although the controversial mechanism has remained in a draft version of the EU-Canada trade agreement leaked in August.

Behind closed doors

Another concern raised by campaigners is the secretive nature of the negotiation process, which is taking place behind closed doors, with documentation kept confidential. In response to accusations of poor transparency, the EU Ombudsman, the Italian Government, and the EU Trade Commissioner have called for the EU's negotiating mandate to be made public, but this would require all member states to agree.

The influence of industry lobbies in the negotiations has also raised concerns. According to the Corporate Europe Observatory, 92% of the European Commission's lobby encounters in preparation for the negotiations were with business representatives. Earlier this year, a leaked document from European and US pharmaceutical industry associations included a wish list of potential outcomes from TTIP, causing concern among public health groups, who noted industry opposition to government price controls and plans for the disclosure of clinical trial data. "The pharmaceutical lobby has been extremely active in trying to ensure that the agreement meets all of its goals, and we really do need much more transparency in this process", notes Mckee.

Campaigners are planning a Europe-wide day of action in opposition to TTIP on Oct 11, soon after the seventh round of the negotiations, which takes place from Sept 29 to Oct 3 in Washington, DC, USA. Negotiations are expected to continue into next year.

Neil Bennet