

How the proposed Transatlantic Trade and Investment Partnership (TTIP) will reduce states' control over health care policy

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What is the TTIP?

- The EU's Lisbon Treaty (2007) requires “ *uniformity in measures of liberalisation*” among member states
- Uniformity is being achieved through new trade treaties
- The TTIP, a new regional trade treaty being negotiated with the USA under Lisbon Treaty powers, is by far the most significant of these
- Its stated aims are: to increase **liberalisation** and to introduce a new judicial system that will guarantee investors' property rights and encourage foreign investment
- It is the largest regional free trade agreement yet attempted (covering 47% of the world's GDP)
- It is one of a growing number of bilateral and regional agreements with similar provisions. It is expected to have global influence
- It resembles the OECD's failed attempt in 1998 to introduce a Multilateral Agreement on Investment (MAI)
- TTIP aims are equally controversial. Both will reduce states' policy autonomy

How liberalisation rules will reduce states' policy autonomy

TTIP leaked negotiating brief:

“The aim [...] will be to bind the existing autonomous level of liberalization of both Parties at the highest level of liberalization captured in existing [free trade agreements] covering substantially all sectors and all modes of supply, while achieving new market access by tackling remaining long-standing market access barriers [...]”.

“a high level of ambition, going beyond commitments negotiated at the WTO [...]”.

“The Agreement will aim at removing unnecessary obstacles to trade and investment including existing Non Tariff Barriers [...]”

WHAT THIS TEXT MEANS

- In order to achieve more services' liberalisation states must go “beyond” their commitments under the General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO)
- In particular, existing restrictions on foreign investment (known as ‘Non Tariff Barriers’) must be removed and current freedom to invest not limited in the future
- The targeted restrictions include domestic policies such as **health care planning**
- This requirement involves a new standard for determining what governments may and may not do

EXAMPLES OF NON TARIFF BARRIERS ALLOWED UNDER GATS THAT TTIP COULD FORCE MEMBER STATES TO REMOVE

Austria: Limitation of the number of beds and authorization required according to national health-service plan and need.

Belgium: The number of beds limited on the basis of a health plan. The needs test is in function of the degree of specialization, their capacity and equipment.

Spain: Prior authorization required based on an economic needs test taking into account population needs

France, Italy, Luxembourg: The number of beds authorized is limited by a health services plan established on the basis of needs.

The Netherlands: Economic needs test fixed by a health plan allowing for a maximum number of beds related to the population of each health region.

Latvia: The head, or his deputy, of the health facility should be qualified as a medical doctor. Private hospital services need authorization by local health authorities. Number of beds is based on the needs of population. Foreign private establishment and their consumers may not be entitled to receive financial support from public resources.

Estonia: Professionals trained outside Estonia are required to present a certificate of auxiliary training courses of Tartu University.

Poland: Foreign private establishment and their service consumers may not be entitled to receive financial support from public resources.

Slovenia: Foreign private establishment and their service consumers may not be entitled to receive financial support from public resources including usage of public medical insurance programmes.

The decision to include these policies in the TTIP suggests that the European Commission plans to take more control over member states' health policy AND to promote markets over public health planning

How new guarantees for investors will reduce states' policy autonomy

NEW GUARANTEES FOR FOREIGN INVESTORS

- An Investor State Dispute Mechanism (ISDS) is proposed
- It will guarantee foreign investors' property rights and allow corporations to sue states if their rights are not observed
- Some of these rights go beyond the guarantees that states have customarily given to foreign investors
- They therefore constitute new private property rights involving new restrictions on the policy autonomy of governments

CONTROVERSY SURROUNDING GUARANTEES

Investor protection disputes are settled on the basis of legal principles according to which a public policy that has an economic impact on investors can be declared wrongful and require compensation.

Two principles, "fair and equitable treatment" and "indirect expropriation", have been particularly controversial. "Fair and equitable treatment" refers to protection of the legitimate expectations of investors. "Indirect expropriation" refers to "policies that cause economic harm to investors" but fall short of physical seizure by the state of an investor's physical assets (which is known as "expropriation"). (UNCTAD)

Under these principles, corporations may sue states when profits now or in the future are threatened by policy changes.

But who will be the respondent?

8) before submitting a claim against the EU, or a Member State, the investor must request a determination as to whether the EU or the Member State will act as respondent in any particular case [...]

(Source: TRADE IN SERVICES, INVESTMENT AND E-COMMERCE, 02/07/2013)

TTIP also includes 'TRIPS plus' investor guarantees that will reduce policy autonomy

- More facility to patent old medicines
- Ability to patent medical methods
- Imposition of data exclusivity that extends monopoly beyond the patent period
- Patent term extension
- Prohibition of approval of generics until patents have expired

These provisions may (in conjunction with other parts of a treaty), extend the length and incidence of monopoly pricing, prevent pharmaceutical price controls and prevent the substitution of generic for patented products.

TRIPS plus provisions contravene WHA policy

World Health Assembly Resolution WHA56.27,
2003:

- “1(2)...adapt national legislation to enable the full use of TRIPS flexibilities [...]”

The negotiating brief includes provisions that expose public policies to the risk of new legal challenge but the scale of this risk is not known.

On current evidence, it is reasonable to conclude that the EU will take more control over health policy when it acts as respondent in trade disputes.

Conclusion

EU trade negotiators aim to extend member states' liberalization beyond that required under WTO or EU rules and to provide additional guarantees for foreign investors. The plans will promote marketization of health care further than current rules require or than domestic reform has achieved and they will undermine planned, solidaristic health systems. They represent a substantial reduction in member states' policy autonomy.

Investment chapters and obesity

The NHS says that the obesity epidemic can be attributed partly to easily accessed “cheap, high energy food that is often marketed aggressively.”

The government response is to promote healthier lifestyles and to [encourage businesses to sign up to a Public Health Responsibility Deal](#)

However, policies based on voluntary deals are dwarfed by international, non-voluntary rules drafted to promote and protect **the supply chain of high-energy-dense foods and sugary drinks.**

Meanwhile, trade agreements support industrial scale sugar production in a global supply chain

World Sugar Trade (2010/2011)

www.SAVEOURSUGAR.org



Support a Fair Deal for Cane Refiners



Sugar is produced on 31m hectares of land globally – an area the size of Italy – with at least 4m ha linked to 100 large-scale land deals since 2000 (OXFAM, 2013)

TRADE AGREEMENT-BACKED LAND DEALS:

TANZANIA

"a Swedish company is in the process of securing 400,000 hectare for sugarcane production in the Wami River basin in Bagamoyo District, Tanzania. [...]"

"1000 small-scale rice farmers will be displaced."
(Lorenzo Cotula et al., 2009).

Trade treaties known as agricultural investment agreements are used to obtain land leases.

Four African countries alone (Ethiopia, Ghana, Madagascar and Mali) approved land acquisitions from 2004 to early 2009 totalling 2 million hectare, including acquisitions by foreign investors for over 1.4 million hectare.

ETHIOPIA

In Ethiopia's Lower Omo Valley the Ethiopian government is transforming more than 375,000 hectares into industrial-scale plantations for sugar and other monocrops.

260,000 local people "will be evicted." (Oakland Institute, July 2013)

Exemption from export duties promised. DFID, USAID and EU found international food aid withheld until villagers participated in resettlement.



Investment treaties and sugar production

- Regional and bilateral trade treaties increasingly include an 'investment chapter' that requires governments not to discriminate against foreign investors in the making of an investment. In principle, this would require governments to not take land governance measures that discriminate against foreign investors, unless countries have negotiated exceptions. Under many treaties, foreign investors can challenge violations through international arbitration. Arbitrators tend to treat land as a commercial asset – (<http://www.bilaterals.org/spip.php?article24171#sthash.qTTCEsqU.dpuf>)