



Quaker
Council for
European
Affairs



The Transatlantic Trade and Investment Partnership

A briefing for Friends

Summary

The Transatlantic Trade and Investment Partnership (TTIP) aims to boost trade and investment between the European Union (EU) and the United States of America (US).

The Quaker Council for European Affairs and Quaker Peace & Social Witness are asking the governments of the EU to say no to TTIP.

Properly regulated trade can bring many benefits. However we are concerned that in negotiating TTIP and similar agreements, the EU and US are prioritising short-term economic gains over fundamental long term issues such as the need to protect the Earth, promote equality, and safeguard democracy. Other concerns about the deal include a lack of transparency and an emphasis on protecting private investments at the expense of the public interest.

This briefing highlights our shared concerns about TTIP. It outlines what we know about the negotiation process, why TTIP is a manifestation of deeper problems with the global trading system, and why we reject TTIP as a basis for future trade rules. Together with our accompanying action guide it suggests how Quakers and others can campaign for a more just and sustainable international trading system.

What is TTIP?

TTIP is a trade agreement under negotiation between the EU and the US. Negotiations started in July 2013 with initial expectations that they would be completed by the end of 2014. Partly due to civil society concerns, talks have been taking longer than expected, but both parties are now aiming to complete them by the end of 2016.

The European Commission predicts that once fully implemented, TTIP could boost the US and EU economies by €95 billion and €119 billion per year respectively, with additional benefits of up to €100 billion for the global economy.¹ However, such benefits and their equitable distribution are by no means guaranteed.

Produced in May 2016 by the Quaker Council for European Affairs and Quaker Peace & Social Witness. For more information or additional copies, contact suzannei@quaker.org.uk or call +44 (0) 20 7663 1055

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Opposition to TTIP is building across Europe

Photo: mehr demokratie

Regulatory harmonisation

One of the main ways TTIP is expected to increase trade is through a process called regulatory harmonisation.ⁱⁱ This means removing or reducing differences between EU and US rules and standards including those designed to protect consumers, ensure product safety, public health or protect the environment. TTIP negotiators have been discussing a number of ways to do this, including adopting the same standards, increasing consultation between European and US regulators or recognising each other's standards as equivalent to their own.

The European Commission says that regulatory harmonisation will result in more effective environmental, health, safety and other standards across the two trading blocs – and potentially globally. However, many fear that rather than mutually strengthening standards, the process could actually weaken them. A key question is how the very different approaches used by European and US regulators will be reconciled. In Europe, regulation tends to be based on the “precautionary principle” where products have to be proved safe before being allowed to be sold. The US however, often bases policy on cost-

benefit analysis.ⁱⁱⁱ Cosmetics is a clear example where these two approaches have led to very different outcomes. The EU has banned over 1,300 substances from being used in cosmetic products. The US has only 11 on its banned substances list.^{iv}

Most environmental, health, safety and other standards exist for very good reasons and have been developed as a result of rigorous democratic processes. Yet critics fear that regulatory harmonisation will put pressure on governments to weaken these, reducing long term protections in the interest of short term trade gains. In some cases this is already happening. For example, there is already pressure to weaken EU policy on Genetically Modified Organisms (GMOs)^v. There are also claims that the fossil fuel industry successfully used the TTIP negotiation process to lobby the EU to drop proposed regulations which would have prevented highly polluting tar sands oil from being imported into Europe from North America.^{vi}

TTIP and climate change

The 2016 Paris climate agreement committed the EU and the US to keep global temperature increase well below 2 degrees Celsius. However, research suggests that TTIP threatens to undermine this commitment.^{vii}

The European Commission, claims that TTIP will have a “negligible effect” on global greenhouse gas emissions, increasing these by at most 0.07% a year. However this represents an increase of 11 million metric tons of CO2 emissions per year globally.^{viii}

If we are to keep global temperature increases below two degrees Celsius, there is an urgent need to decarbonise our energy system and significantly reduce our dependence on fossil fuels. However, the EU is aiming to use TTIP to import more carbon-based fuels from the US. If the US agrees, it would almost certainly encourage further investment in fossil fuel infrastructure.^{ix} It would also make it easier to import highly carbon intensive fracked gas and tar sands oil into the EU. These fuels use highly polluting and controversial extraction methods that have met with robust criticism from civil society across Europe and the US.

Even if the EU’s energy proposals are rejected there remains a real risk that other elements of TTIP such as regulatory harmonisation and Investor State Dispute Settlement or Investment Court System (discussed below) could hamper the adoption of effective policies to phase out fossil fuels or support renewable energy.^x

TTIP and inequality

Recent years have seen increasing evidence that high levels of economic inequality are harmful for individuals, communities and the economy. The US and some EU members such as the UK are already highly unequal, prompting fears that TTIP could accelerate this trend.^{xi xii} Unfortunately, very little analysis has been done on this issue.

The European Commission claims that the average European family could be better off by up to €545 (£400) a year as a result of TTIP, but says nothing about how those gains, even if realised, would be distributed in reality.^{xiii} What we do know is that in the short term at least, there

will be winners and losers as a result of TTIP. It seems likely that in some parts of Europe, farming – particularly small farmers^{xiv} - and the metals industry are likely to lose out, whilst the automotive and finance industries would expand.^{xv}

The type of jobs that are gained and lost as a result of TTIP and the extent to which workers who lose their jobs are able to earn a comparable living elsewhere, could have a significant impact on inequality in the EU and US. Unfortunately, the EU’s main study on TTIP has very little to say on this, suggesting that workers will naturally move from shrinking sectors to growing ones.^{xvi} The reality is that such a transition will take time, and many workers are likely to need retraining and support over an extended period. This will have unpredictable implications for national employment, training and social security policies, and therefore affect wider economic equality.

In the longer term, inequality trends will also be shaped by the regulations affecting worker protection, tax, health and environmental policies and - ultimately - who holds power within the global economy. As other sections of briefing show, there are legitimate fears that TTIP could weaken social regulations as well as tip the balance of power away from governments and further towards corporations and other private economic interests. If those fears are realised, the chances are that TTIP will increase rather than decrease inequality over the long term.

TTIP and local democracy

A growing network of local authorities are worried that TTIP could have a detrimental impact on their ability to act in the best interests of their communities by hampering their ability to do things like safeguard the environment, encourage local businesses or insist on ethical employment standards. Tom Leimdorfer of North Somerset Area Meeting in Britain is one Friend who has been working to raise awareness of this problem and succeeded in encouraging North Somerset Council to adopt a motion of concern about TTIP.

Read Tom’s story at <http://www.quaker.org.uk/our-work/our-stories/raising-concerns-around-ttip>

Investor State Dispute Settlement

One of the most controversial aspects of TTIP is the proposed Investor State Dispute Settlement (ISDS) mechanism which both the EU and US originally wanted to include in the deal.

Proponents of ISDS say it is necessary to protect investors from unfair treatment in foreign countries. It does this by giving a company the right to sue the government if that company believes the government's actions will damage the company's ability to make a profit. ISDS mechanisms already exist in a number of smaller trade treaties where they have been used to challenge a wide range of social and environmental protections. For example, in 2011 the German government weakened environmental protection conditions imposed on a highly polluting coal fired power plant, after the plant's owners challenged those conditions under an ISDS.^{xvii} Ecuador was recently forced to pay petroleum company Occidental around \$1 billion after an ISDS ruling.^{xviii} ISDS tribunals and the evidence associated with them are often heard in private without any meaningful public scrutiny. In some cases even the existence of an ISDS tribunal is secret.

Following heavy criticism from European citizens, governments and the European Parliament, the European Commission has proposed replacing ISDS in TTIP with an 'Investment Court System' (ICS). With cases being heard in public and an appeals system, ICS would be more transparent

than ISDS. Nevertheless, in many other ways the ICS proposal remains similar to ISDS and other major concerns apply to both systems.^{xix}

Whilst neither ISDS nor ICS can legally prevent a government from introducing legislation, in practical terms, both systems fundamentally threaten the ability of governments to protect the environment, public health, consumer safety and more. The cost of defending an ISDS claim can run to tens of millions of Euros^{xx} and simply the knowledge that a government *could* be subject to this may make it wary of introducing new regulations. In bypassing national courts and giving investors access to legal processes that are unavailable to most citizens or domestic companies, both systems violate the principle of "equality before the law" and therefore present a major challenge to democracy and public accountability

Since both the EU and US already have highly developed legal systems, there is little compelling evidence to suggest that the rights of foreign investors in either the EU or US are not already sufficiently protected, and why therefore ISDS or ICS is necessary to boost investment.^{xxi} Furthermore, some lawyers are casting doubt about the legality of establishing a new court system entirely separate from the existing legal structure. The German Magistrates Association for example has argued that there is "neither legal basis nor an actual need for" ICS.^{xxii}

7 reasons to scrap the Investment Court System

1:

ICS would **empower corporations to sue governments** over measures to protect the environment, health & workers

3:

ICS is a sure-fire way to bully decision-makers, potentially **curtailing desirable policymaking**

5:

Since only investors can sue, there is an incentive for **ICS arbitrators to side with them** to bring more lawsuits & fees

2:

The ICS means **billions in taxpayer money** could be paid to compensate corporations, including for missed future profits

4:

The ICS would give powerful **rights and privileges** to foreign investors, **without any obligations**

6:

ICS is likely to be **incompatible with EU law**, as it sidelines European courts and is fundamentally discriminatory

7:

ICS risks locking us into a **legal straightjacket**, as it will be practically impossible to remove investor privileges from larger trade deals

TTIP: cementing EU and US power?

Trade between the EU and US already accounts for approximately half of global trade, so TTIP will have a huge impact on the global trade system.^{xxiii}

One fear is that TTIP could hurt developing countries, many of which are already at a disadvantage under current trade rules. According to a study commissioned by the UK government, since TTIP would mean the EU and the US buying more from each other, some developing countries are likely to experience export losses.^{xxiv} TTIP could therefore concentrate wealth in the already well-off global north, further compounding global inequalities.

Another fear is that TTIP, particularly when combined with other similar EU and US 'mega trade deals' (See box) is intended to put pressure on other countries to run their economies in a way that is most beneficial to the EU and US, rather than in their own interests. The UK government has openly stated that TTIP is "an opportunity for the EU and the USA to set global standards for the future of trade".^{xxv} Many developing countries have successfully resisted the inclusion of mechanisms such as ISDS in other trade agreements. However, if mechanisms like ISDS are agreed in TTIP it will make it much harder for developing countries to resist them in future.

Transparency and accountability

Another major criticism of TTIP is that the negotiations are secret with very limited opportunities for public scrutiny. The European Commission argues that this is necessary to protect their negotiating position and to preserve good relations with the US.

Pressure from the European Parliament, Ombudsman and public has seen the European Commission make some information publicly available, including the EU negotiating mandate and its proposals for specific parts of the deal.^{xxvi} However, there is still no public access to key documents necessary to properly understand the status of negotiations or the US position. In May 2015 leaked negotiation documents were posted on-line by the environmental organisation Greenpeace. This was the first time the US position has been seen publicly.^{xxvii}

Members of the European Parliament have recently been given access to confidential negotiation documents, but only in a secure reading room where they are limited to making handwritten notes.^{xxviii} ^{xxix} A similar reading room has opened in Berlin; one has been promised in London but has yet to open.^{xxx} It is unclear whether reading rooms will open in other national capitals. The fact that elected representatives have so little access to the details of such a major trade deal is deeply worrying.

A web of 'mega trade deals'

Whilst TTIP has captured the media spotlight in much of Europe, it is just one part of a web of major trade deals being pursued by the EU and US. In 2014 the EU concluded negotiations on the Comprehensive Free Trade Agreement (CETA) with Canada and the US has recently agreed the text of the Transpacific Partnership (TPP) – a free trade deal between it and eleven other Pacific rim countries.

CETA and TPP are, in many ways, similar to TTIP with both deals for example containing ICS or ISDS. It is anticipated that if implemented TTIP, CETA and TPP will become blueprints for the global trading system, having an impact far beyond their signatory countries.

Although negotiations on CETA and TPP have ended, both deals are awaiting ratification. At the time of writing the European Parliament and Council have yet to ratify CETA, this is likely to happen in Autumn 2016. Although it is usual practice for both bodies to agree to a trade deal before it can be implemented, the text of CETA does allow for 'provisional' implementation before European Parliament approval. As with TTIP, it is currently unclear whether the EU will classify CETA as a so-called 'mixed deal' and therefore whether it will also have to be approved by each of the EU members' national parliaments.

TPP will need to be ratified by at least six of the 12 signatory countries before it can come into force.

TTIP: what next?

The EU and US intend to complete TTIP negotiations by the end of 2016. As and when this happens the text of the agreement will be made public. From the EU side the deal would have to be approved by the 28 member states at the European Council and the European Parliament. The latter can accept or reject the deal in its entirety, but cannot propose amendments.

It is currently unclear whether TTIP will be classified by the EU as a so-called 'mixed deal' which would mean that it would also have to be approved by each of the EU members' national parliaments. This question, with regard to the EU-Singapore trade deal, has been referred to the European Court of Justice (ECJ). A decision is expected by the end of 2016 and will likely set a precedent for other EU trade deals, including TTIP.^{xxxix} ^{xxxix}

If TTIP is classified as a mixed deal, the procedure by which national parliaments would approve it would be determined according to their individual constitutional arrangements.^{xxxix} This would complicate the ratification process, but would make it more democratic, and may open up additional campaigning opportunities for those concerned about TTIP.

Conclusion

International trade can bring huge benefits. However, the success of any trade agreement can not only be measured in economic terms; a truly successful trade deal will benefit the whole of society and the environment.

Quaker Peace & Social Witness and the Quaker Council for European Affairs fear that in the desire to promote short term economic gain through TTIP, the EU and the US risk trading away many of the things that are necessary for the longer term wellbeing of the Earth and our common good.

The many problems we have identified with TTIP are, in fact, a manifestation of deeper issues within the global trade regime. We believe this is the wrong basis for future global trading relationships and believe that there is an urgent need for a fundamental rethink of global trade rules. As such we reject TTIP as a basis for future trade rules.

What can I do?

An action guide to accompany this briefing is available at www.quaker.org.uk/trade and www.qcea.org/trade

Find out more

This briefing was written to accompany *Trade for well-being, not just for profit: a shared Quaker statement on TTIP and free trade agreements*, produced by American Friends Service Committee, Friends Committee on National Legislation, the Quaker Council for European Affairs, Quaker Peace & Social Witness and the Quaker United Nations Office in May 2016.

More information about Quaker Peace & Social Witness and Quaker Council for European Affairs work on TTIP, including the above statement can be found at www.quaker.org.uk/trade and www.qcea.org/trade

References

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- ⁱⁱ *Transatlantic Trade and Investment Partnership: the regulatory part* - European Commission, September 2013 http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151605.pdf
- ⁱⁱⁱ *Europe's regulations at risk: the environmental costs of the TTIP* – Frank Ackerman, Boston University Global Economic Governance Institute, April 2016 http://www.bu.edu/pardeeschool/files/2016/04/ACKERMAN.final_.pdf p4
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- ^v See for example, research by Friends of the Earth Europe, https://www.foeeurope.org/dirty_deals_170714
- ^{vi} It is suggested that changes were made to the Fuel Quality Directive (FQD) using the pressure of TTIP negotiations. See, for example *TTIP vs climate policy: What is the risk?* Frank Ackerman – Global Development and Environment Institute, Tufts University p 3 <http://ase.tufts.edu/gdae/Pubs/rp/GC91Dec15Ackerman.pdf>
- ^{vii} *TTIPing Away the Ladder: How the EU-US trade deal could undermine the Sustainable Development Goals* – Trade Justice Movement, September 2015 http://www.tjm.org.uk/documents/TTIPing_Away_the_Ladder.pdf
- ^{viii} *Impact Assessment on the future of EU-US trade relations* - European Commission working document, March 2013 http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150759.pdf
- ^{ix} *Take back the power – Why the energy transition demands fundamental reform of the global trade regime* – Trade Justice Movement, forthcoming - June 2016.
- ^x For example, under the North American Free Trade Agreement (NAFTA) - Lone Pine Resources is seeking damages of US\$118.9 million against Canada because, in line with the recommendations of environmental studies, the Quebec government introduced a moratorium on fracking under the St Lawrence River, revoking permits previously awarded to a third company working with Lone Pine. See Government of Canada Foreign Affairs web portal: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/lone.aspx?lang=eng>
- ^{xi} A study by Tufts University suggests that 600,000 jobs would be lost across the EU, leading to substantial reductions in the 'labour share' of GDP and consequent increases in economic inequality. See: *TTIP: European disintegration, unemployment and instability*- Jeronim Capaldo, Tufts University October 2014. http://ase.tufts.edu/gdae/policy_research/TTIP_simulations.html
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- ^{xvii} *Take back the power – Why the energy transition demands fundamental reform of the global trade regime* – Trade Justice Movement, forthcoming - June 2016. See also *How EU nations are being sued for billions by foreign companies in secret tribunals* –Glyn Moody, December 1 2015 <http://arstechnica.co.uk/tech-policy/2015/12/how-eu-nations-are-being-sued-for-billions-by-foreign-companies-in-secret-tribunals/2/>

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- ^{xviii} *Ecuador – Occidental arbitration award reduced to \$1 billion* – Reuters November 2 2015 <http://www.reuters.com/article/us-ecuador-occidental-idUSKCN0SR24V20151102> See also *Take back the power – Why the energy transition demands fundamental reform of the global trade regime* – Trade Justice Movement, forthcoming - June 2016.
- ^{xix} *The Zombie ISDS, rebranded as ICS, rights for corporations to sue states refuse to die* – Corporate Europe Observatory blog, February 2016 <http://corporateeurope.org/international-trade/2016/02/zombie-isds>
- ^{xx} It has for example been suggested that the Australian government spent between 30 and 50 million AUD defending a recent (unsuccessful) ISDS case challenging the introduction of plain packaging for cigarettes. See for example *ISDS arbitration upholds Australia's plain packaging laws*, Kavaljit Singh, January 2016 <http://www.eastasiaforum.org/2016/01/15/isds-arbitration-upholds-australias-plain-packaging-laws/>
- ^{xxi} *Transatlantic Investment Treaty Protection* – Lauge Poulsen, Jonathan Bonnitcha and Jason Yackee – Centre for European Policy Studies/ John Hopkins University/Centre for Transatlantic Relations, March 2015 <https://www.ceps.eu/publications/transatlantic-investment-treaty-protection>
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- ^{xxv} *TTIP – the mandate explained* – UK department for Business Innovation and Skills website <https://www.gov.uk/government/publications/ttip-the-mandate-explained/ttip-the-mandate-explained>
- ^{xxvi} European Commission website <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>
- ^{xxvii} Greenpeace press release, 1 May 2016 <http://www.greenpeace.org/eu-unit/en/News/2016/TTIPleaks-confidential-TTIP-papers-unveil-US-position/>
- ^{xxviii} It took eleven months of negotiations between the European Parliament and the Commission for this to happen. Previously only around 30 MEPs had been able to access the restricted texts
- ^{xxix} See for example MEP Molly Scott Cato and German MP Katja Kipping's account of using TTIP reading rooms at <http://www.theguardian.com/commentisfree/2015/feb/04/secrets-ttip-corporations-not-citizens-transatlantic-trade-deal>, <http://www.waronwant.org/media/what-i-didn't-read-ttip-reading-room> (English) and <http://www.linksfraktion.de/im-wortlaut/gegenteil-transparenz/> (Deutsch)
- ^{xxx} *TTIP Reading Room: A small step towards transparency* - Matthias von Hein, January 2016 <http://www.dw.com/en/ttip-reading-room-a-small-step-toward-transparency/a-19012651>
- ^{xxxi} The European Commission views TTIP and similar deals as its exclusive responsibility, meaning that national parliaments would not have to agree the deal. However, many EU governments view the deal as a so-called 'mixed agreement' because it would affect their domestic policy-making and could insist that TTIP be agreed by all 28 national parliaments as well as the European Council and Parliament.
- ^{xxxii} Case A-2/15, The EU- Singapore Free Trade Agreement – a mixed agreement? – EU Law Radar, October 2014 <http://eulawradar.com/case-a-215-the-eu-singapore-free-trade-agreement-a-mixed-agreement/>
- ^{xxxiii} In the UK for example, TTIP would be "laid before" both houses of parliament for 21 days. There is no legal requirement for either the House of Commons or House of Lords to debate or vote on trade treaties, however either houses can pass a resolution that the treaty should not be ratified. The process for triggering such a vote is not however specified. See *The Transatlantic Trade and Investment Partnership* - House of Commons Library Briefing Paper, 4 December 2015 <http://researchbriefings.files.parliament.uk/documents/SN06688/SN06688.pdf>