



Transatlantic Trade and Investment Partnership (TTIP) – Implications for Scotland.

Response to the call for evidence from the European and External Relations Committee.

The UNISON Scotland Submission to the Scottish Parliament's European and External Relations Committee

November 2014

Introduction

UNISON is Scotland's largest trade union representing members working in the public sector. UNISON Scotland represents, amongst others, workers employed in the NHS, Social Care, Education, Community & Voluntary Sector and Police and Fire Staffs.

UNISON Scotland welcomes the opportunity to respond to the Call for Evidence on the Transatlantic Trade and Investment Partnership (TTIP) and its implications for Scotland.

General Comments

As a public sector trade union, UNISON is opposed to the Transatlantic Trade and Investment Partnership as we believe it is a profound threat to public services, especially through the Investor-State Dispute Settlement (ISDS) provisions which could limit the ability of the Scottish Government to regulate in the public interest and could also lead to the liberalisation of public services. We are also opposed to its threats to regulatory standards which will affect our members by restricting employment and trade union rights and threaten health and safety legislation. Lastly we are worried about its potential effect on climate change and the environment.

Public Services

The Investor-State Dispute Settlement (ISDS) provisions proposed in the TTIP could limit the ability of government to regulate in the public interest. ISDS allows investors to challenge government actions that they perceive as 'expropriation', i.e. threats to their investment. However, what is understood as 'expropriation' by investors can be the legitimate exercise of government regulation for the public good. For example, Veolia is currently using ISDS mechanisms to sue the Egyptian government for increasing the minimum wage. ISDS was also used against Slovakia when it sought to bring health insurance back into the public sector. Where they have been established, ISDS processes are often conducted in secret, are not based on existing case law and have no right of appeal, thus undermining governments' ability to defend their actions. Even when the state is not under threat of legal action from investors, ISDS creates a 'regulatory chill' that stays the hand of governments to regulate in the public interest for fear of litigation.

TTIP also aims to further liberalise the trade in services, including public services. The UK government and European Commission refuse to say which services are being discussed or to rule out specific exemptions for services such as health, social services or further and higher education. The large-scale privatisation of the NHS in England, ushered in by the Health and Social Care Act is encouraging large US health companies to maximise their opportunities for profit. Despite not having large scale privatisation of the health service in Scotland, the danger is that if the Scottish Government sought to bring those limited elements of the health service and other areas, such as care services that are privatised back into public control they could lay themselves open to expropriation litigation under the Investor-State Dispute Settlement (ISDS) mechanisms that TTIP will set up. Given the size of American health companies and their frequent use of litigation, these investors are likely to wield considerable power and lobby for the continued privatisation of the health service.

The UK Government could easily obtain the exclusion of the NHS in particular from any future deal, as the French have done, but is not attempting to do so. The Scottish Government must press David Cameron to seek such an exemption to ensure the NHS and other public services in Scotland are not subjected to the ISDS mechanisms.

UNISON has taken our concerns over ISDS threats on our public services to the STUC and the TUC and Dave Prentis, our General Secretary has taken the issue to the US Congress, working alongside the President of the teamsters' union of America.

Regulatory Standards

One of the strands of TTIP will lead to the 'mutual recognition' of regulatory standards between the EU and US. This could include regulations with regard to chemicals, pharmaceuticals, food, environmental protection and public health. There is a concern that the higher regulatory standards found in the EU will be undermined by mutual recognition of the lower US regulations. For example, the EU uses the precautionary principle that requires proof that any new product causes no harm before it can be marketed. There are no such safeguards in the USA. Similarly there is no different regulation for the safety standards of genetically modified (GM) crops compared to non-GM crops in the USA. Furthermore, as mentioned above, the ability of the state to introduce additional regulation to protect environmental and health standards is threatened by the ISDS provision in the agreement.

Public procurement in Scotland could also be threatened as TTIP could restrict the ability of local authorities and other public bodies to source and employ locally. This undermines their ability to use public money to achieve social and environmental outcomes through their supply chain and employment practices. UNISON Scotland has frequently pressed the Scottish Government to include better employment practices, such as the living wage, in its contracts with providers and any such conditions could also be challenged by ISDS.

The EU has historically included employment and trade union rights in trade agreements. However, the USA has not ratified a number of the most important International Labour Organization Conventions, including the rights to freedom of association and collective bargaining. The US has also passed 'Right to Work' legislation in 24 states, most recently in the traditional union stronghold of Michigan, which clamp down on unions' capacity to bargain and organise. There is a concern that European companies may take advantage of the ease of market access created by TTIP to relocate to the USA, and take advantage of the weak labour regulations described above. Similarly, there is also a danger that American companies may be encouraged by the TTIP to relocate to EU states such as Bulgaria, Romania and Slovakia where incomes are low and trade unions are weaker than in other parts of the EU.

Health & Safety legislation, which now mainly stems from EU Directives, could also be under threat as it could be shown to decrease profits of US companies operating in the UK if they had to adhere to the higher standards.

Scotland was the first part of the UK to introduce smoking legislation and has recently added to the initial smoking ban indoors, by introducing standardised packaging and closed cabinets for their storage. In Australia, Philip Morris International, a global tobacco company, is challenging their tobacco plain packaging legislation under the 1993 Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments (Hong Kong Agreement). This is the first investor-state dispute that has been brought against Australia and serves as a warning of potential challenges against our own anti-smoking legislation under TTIP. A similar challenge has been ongoing against Uruguay since 2010.

Climate Change and the Environment

We agree with Friends of the Early Scotland that TTIP is a problem for meeting our climate targets. Firstly, because Scotland has more ambitious targets on climate change than the UK as a whole, it would be easy for a US firm to claim that this was a challenge to their potential. Secondly, the US wishes to export more fossil fuels to Europe, as seen in the deal recently announced by Ineos. This means more destructive tar sands and more fracking in the US, to enable them to meet our requirements.

The Ineos announcement also indicated their wish to undertake fracking exploration in the Central Belt of Scotland. Up to now, Scotland has taken a much more cautious approach than the UK Government to the development of unconventional gas, including the use of fracking, despite several EU countries having banned fracking and all unconventional gas extraction. TTIP would provide the mechanism for American companies to weaken rules governing the industry and challenge bans and moratoria, although only foreign companies can challenge such decisions, not an indigenous company, again creating an unfair playing field.

Like Friends of the Earth, we believe that big companies will not be shy in using the proposed ISDS mechanism in TTIP to challenge policy decisions and regulations they do not like, with the threat of multi-billion pound compensation claims to be weighed against protecting the environment and public health.

Conclusion

UNISON Scotland believes that the threats outlined above are the reasons that we should oppose TTIP. We are working with a coalition of other organisations both in the UK and in the EU who share our view.

In particular we would wish, the European Parliament and national governments, including the Scottish Government, to reject the deal if it includes:

- The liberalisation of public services. We want all public services explicitly excluded from the scope of TTIP. In particular we want to ensure the 'positive list' approach towards liberalisation commitments is taken, so that only services specified in the agreement can be liberalised, rather than the 'negative list' approach, which means that only services that have been specifically excluded are safe.
- The removal of the Investor State Dispute Settlement (ISDS) mechanism. ISDS has no place in a trade deal between two trading blocs with well-established legal systems and effective existing protections for investors.
- The mutual recognition of regulatory standards that will inevitably lead to a lowering of established European regulations and which exist to protect workers, consumers and the environment.
- Furthermore, the European Parliament and UK governments should not ratify any agreement unless it includes a commitment by the US to respect and implement the ILO core conventions.

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