

Transatlantic Trade and Investment Partnership implications for Scotland

Friends of the Earth Scotland submission to the European and External Relations Committee



Friends of the Earth Scotland

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Introduction

Friends of the Earth Scotland is an independent Scottish charity with a network of thousands of supporters, and active local groups across Scotland. We are part of Friends of the Earth International, the largest grassroots environmental network in the world, uniting over 2 million supporters, 74 national member groups, and some 5,000 local activist groups. We campaign for environmental justice: no less than a decent environment for all; no more than a fair share of the Earth's resources.

The Transatlantic Trade and Investment Partnership is a major threat to a wide range of environmental gains made over decades, from European restrictions on toxic chemicals to Scotland's climate laws. Over 80% of the predicted gains from TTIP are claimed to come from the removal of regulatory barriers between the EU and USA. The USA and big industry have made it clear that they consider the EU's precautionary approach to regulating sectors such as food, chemicals and agriculture a significant barrier to trade. Any move to adopt the USA's preferred regulatory approach in these sectors would require a significant weakening of current EU standards.

As well as watering down regulations, the Investor-State Dispute Settlement (ISDS) process within TTIP would put huge power to direct what Scotland can and cannot do in the hands of a small group of unelected lawyers in a secretive tribunal. Even the Economist has called ISDS "a way to let multinational companies get rich at the expense of ordinary people."¹

FoE Scotland supports points made by others on threats to labour laws and the NHS, and endorses the submission by WDM Scotland on climate change and other issues.

There are numerous examples of the trouble that free trade agreements cause around the world. Here we focus on three examples: climate change, fracking and toxic chemicals.

Climate Change

TTIP is a problem for meeting our climate targets in two ways. 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 profits from, for instance, selling us nuclear reactors or Humvees.

¹ <http://www.economist.com/news/finance-and-economics/21623756-governments-are-souring-treaties-protect-foreign-investors-arbitration>

Secondly, at the heart of TTIP is a deal for the US to export more fossil fuels to Europe. This means more destructive tar sands and more fracking in the US, and locks us all into high-carbon infrastructure at a time when we are trying to make the vital transition to low-carbon economies.

More generally, a leaked EU negotiating document shows how states control over energy policy would weaken, local renewable energy schemes would be harder to create and Europe would burn more fossil fuels as a result of TTIP.²

Unconventional gas and fracking

Scotland has taken a much more cautious approach than the UK Government to the development of unconventional gas, including the use of fracking. Several EU countries have gone further and banned fracking or all unconventional gas extraction. TTIP would provide the mechanism for USA companies to weaken rules governing the industry and challenge bans and moratoria. This has already happened in Canada.

Under the ISDS provision in the North American Free Trade Agreement, USA mining company Lone Pine Resources is challenging the Canadian province of Quebec's 2011 precautionary moratorium on fracking, claiming for \$250m in lost profits from the Canadian Government.³

In Europe, the Swedish energy company Vattenfall launched an investor-state lawsuit against Germany in 2012 under the Energy Charter Treaty, seeking €4.7 billion in compensation for lost profits from two nuclear power plants after the German Government decided to phase out nuclear power after the Fukushima disaster. This case is still rumbling on and follows a previous Vattenfall case against Germany over a coal-fired power station which was settled out of court, including watering down of environmental standards.

Had a German energy company wanted to mount a similar challenge they would not have been able to because only foreign investors can make kind of challenge. Thus TTIP would create a tilted playing field by providing a mechanism for US companies to sue the UK over any policy or law they do not like, while UK firms would have no similar right within the UK.

The Lone Pine and Vattenfall examples show that big companies will not be shy in using an 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.

Antoine Simon, shale gas campaigner for Friends of the Earth Europe said:
"Energy companies must not be given the power to challenge democratically agreed laws that safeguard the environment and citizen health. Put simply, this puts profits before people, democracy and the planet."

² Sierra Club analysis of leaked EU papers,
http://action.sierraclub.org/site/DocServer/Analysis_of_EU_Energy_Proposal_for_TTIP-Final_-_Sierra_C.pdf?docID=15781

³ The right to say no: EU-Canada trade agreement threatens fracking bans,
<http://corporateeurope.org/sites/default/files/publications/ceta-fracking-briefing.pdf>

Standards for toxic chemicals

The EU system for regulating chemicals requires the supplier of chemicals to prove that the uses of its chemicals are safe, while the USA system does not require chemical suppliers to provide any data, and does not require any data for new substances and new uses. The EU applies the 'Precautionary Principle' – the idea that authorities should act to protect people and the environment even where evidence is uncertain. In the USA, where the precautionary principle is not applied, the burden of proof is reversed, and instead the regulator is required to prove a product is unsafe before regulatory restrictions can be imposed. The difference in approach has led, for example, to the EU banning around 1300 substances from use in cosmetics in contrast to the USA, which only bans 13.

In the mid-1990s FoE Scotland campaigned on 'gender-bending' or endocrine disrupting chemicals – those which the body mistakes for natural hormones, causing birth defects, brain and sexual developmental problems and various cancers.

A particular focus was Bisphenol-A in baby bottles, something which was finally banned in the EU in 2011. France, Belgium and Denmark have gone further, with the French banning Bisphenol-A from all food packaging and cooking utensils from 1st January 2015.

Again any USA company wanting to sell packaging or cooking products in France would be able to use the ISDS mechanism in TTIP to challenge their ban.

A recent meeting of scientific experts convened by the EU chief scientific advisor and former Scottish Government chief scientific advisor, Professor Anne Glover, noted that it is uncertain whether there are safe thresholds at all for endocrine disruptors. USA industry is putting the EU under pressure to ignore this discussion, both by trying to undermine the scientific consensus around endocrine disruption and by claiming catastrophic effects on trade. The EU abolished the post of chief scientific advisor at the end of last month.

Any attempt to 'harmonise' the very different EU and USA systems can only lead to a reduction in protection from toxic chemicals in Europe. Many groups are calling for regulation of chemicals to be completely excluded from TTIP.

Conclusion

TTIP is a race to the regulatory bottom which risks rolling back many of the gains we have made in the last 40 years on protecting people and the environment. There is a particular threat to areas where Scotland has made different choices from the rest of the UK, including making meeting our climate targets harder and overturning the Scottish Government's more cautious approach to unconventional gas and fracking.