

Unfree Trade Agreements: The Abdication of Democracy

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Dogmas, by their nature, are impervious to the fresh air of questioning revision. The dogma of free trade, much to the misfortune of non-corporate beings, is all too representative of this. As Richard Denniss points out, "Like buying a house, it's easy to get a free trade agreement if you don't care what you get or how much you pay." [1] The principle of swapping a technology or a product one has with another country that does not have it, is a dandy thing, provided it takes place in the theorised control room of an economist's vacuous world. The legal and politics side of things tends to be left dangling, if, indeed, it is considered at all.

The cult of free trade was given voice in the UK Prime Minister's recent address to the Australian parliament. While David Cameron was also talking about subtracting freedoms from various UK citizens returning back from Syria and Iraq, he was also having a good go at sentiments of "protectionism". "One of the greatest threats to our values and to our success is the spectre of protectionism." [2] We should resist it in "the modern integrated global economy".

To that end, Cameron and other EU leaders are mulling over plans for a Transatlantic Trade and Investment Partnership (TTIP), which, he has decided, "is a deal we want". [3] The EU member states engaged the European Commission to start negotiating a free trade agreement with the United States in June 2013.

To that end, Cameron is dismissive about domestic erosions and challenges provided by such arrangements. "Some people argue in some ways that this could damage the NHS. I think that is nonsense. It's our National Health Service. It's in the public sector, it will stay in the public sector." How could those flat-earth theorists assume that Britain's NHS could be weakened by such a deal? Len McCluskey of the Unite union certainly thinks so, suggesting that the NHS is "being taken over by Wall Street". [4]

He has a point. The *Health and Social Care Act 2012* increased the number of private providers in the NHS system. Since coming into force, the act has seen 70 percent of health services put out to private tender. Suggesting that the NHS is an untouchable creature in a world of back door and overt privatisation is itself the nonsense behind the supposedly beneficial effects of a free trade arrangement. Medical policy invariably spills over into corporate conduct, or corporate recalcitrance, if the market line refuses to play with the political one. McCluskey's point is simple: exempt it, or there will be union inspired blood.

Nor is McCluskey alone. The EU itself is examining responses to a consultation on problems with the TTIP, garnering 149,399 online contributions, with 38.4 percent coming from the UK alone. [5] In the words of the Consultation, completed on July 13 this year, "The key issue on

which we are consulting is whether the EU's proposed approach for TTIP achieves the right balance between protecting investors and safeguarding the EU's right and ability to regulate in the public interest." [6]

It is questionable whether the balance struck can ever be appropriate in such cases. For one, it vests a barnstorming power in the hands of foreign investors if they feel the government in question has broken rules contrary to company interests. This process is given a legal veneer of an international tribunal, which sounds much like validating an act of international pilfering. The language in the agreement is never framed so bluntly – diplomats have termed this “investment protection” and “Investor-to-state dispute settlement” or ISDS.

George Monbiot suggests that this is a crumpling blow to the credentials of democracy, which goes to show that free trade deals of monumental proportions tend to undermine the role of parliament and the voices of the voting public. They also suggest the abdication of public duty, where parliamentarians become empty projections and silent underminers of the public interest. “Remember the referendum about whether we should create a single market with the United States? You know, the one that asked whether corporations should have the power to strike down our laws? No, I don't either.” [7]

Such arrangements are becoming habitual, forming the euphemistic argot of political discourse. Australia's Abbott government is rushing pen to paper regarding a host of free trade agreements that will have similar effects. Such pacts are being pursued with only the slightest murmur of protest, largely because the policy toffs are convinced that free trade is actually free of cost. One such example is the impending FTA with Beijing, lauded on the just concluded visit to Australia by President Xi Jinping.

Only the Greens have ventured to remind legislators that Chinese private and state-owned enterprises (SOEs) stand to profit in legal actions against the Australian government over ISDS provisions. According to Senator Peter Whish-Wilson, Greens spokesman for Trade, “This is a new era in Australian governance.” The ISDS provisions “opened a Pandora's Box that will leave a lasting legacy of doubt over the Australian Parliament's ability to make laws in the national interest without fear of litigation from a Chinese investor.” [8]

Canberra's enthusiasm in this regard is misplaced, given the consequences of allowing the corporate beast into Parliament's sacred domain. Tobacco giants Philip Morris used the trade agreement between Hong Kong and Australia in 2011 to target Canberra's decision that cigarettes be sold in plain packets marked by morbidly graphic health warnings. Their argument was that the tobacco maestros be awarded money for diminishing the value of their trademarks. [9] Philip Morris spokeswoman, Anne Edwards, anticipated “that the compensation would amount to billions.”

Cameron is simply dismissive of such cases, choosing to consider trade deals as minor adjustments with major benefits. “We've signed trade deal after trade deal and it's never been a problem in the past.” Trade deals are one thing, but the free trade deal is a legal creature that seeks to transform domestic markets with a heavy corporate code fanged by legal sanctions. It removes citizens from the process, and privileges companies as private persons who can raid public purses when their products fall foul of domestic legislation. Like similar agreements on the tables, such as the Trans-Pacific Partnership deal, it takes place in hermetic conditions. There is minimal scrutiny.

The final unifying feature of such pacts is that they tend to be so loaded with such heavy exemptions and dispensations, they sink. Running into hundreds of pages, they are fodder for specialists in international trade litigation, putting pay to Cameron's fantasy that trade "enables the specialisation that can enrich us all." Lawyers and companies muse even as domestic political systems vanish. Be wary, then, of the hefty costs of any free trade agreement.

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Notes:

[1]

<http://www.smh.com.au/comment/nothing-free-about-tony-abbotts-free-trade-agreements-20140411-zqt3m.html>

[2] <https://www.gov.uk/government/speeches/australian-parliament-david-camerons-speech>

[3] <http://www.bbc.com/news/uk-30073357>

[4]

<http://www.theguardian.com/commentisfree/2014/jul/17/nhs-taken-over-wall-street-cameron-health-service-privatisation>

[5] http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152693.pdf

[6] http://trade.ec.europa.eu/consultations/index.cfm?consul_id=179

[7]

<http://www.theguardian.com/commentisfree/2013/nov/04/us-trade-deal-full-frontal-assault-on-democracy>

[8]

<http://peter-whish-wilson.greensmps.org.au/content/media-releases/trojan-horse-isds-provisions-china-deal-haunt-australian-parliament-decades>

[9] <http://www.theguardian.com/world/2011/jun/27/philip-morris-australia-cigarette-packets>

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