

NO DEAL: Why Unions Oppose TTIP & CETA

Briefing on the Transatlantic Trade & Investment Partnership (TTIP) & Canada Europe Trade Agreement (CETA)



CONGRESS
BRIEFING

One disappointing feature of the recent election campaign was the absence of any debate around the key European and global issues that confront us. There was nothing on Brexit and a similar silence around the proposed TTIP deal. Even more remarkable is the fact that the new Programme for Government contains not a single reference to TTIP. Does that mean that the new government has no official attitude to one of the single biggest trade deals in modern history, let alone on the enormous consequences of that proposed deal for working people on this island, across the European Union and in the United States?

The trade union movement here, in Europe and in the US has taken a stand on TTIP and we are firm in our opposition. It represents no less than an affront to democracy to bestow special legal rights on corporations and to award them legal privilege over citizens. Hopefully the publication of this Congress briefing on TTIP might help start the debate in earnest.



A handwritten signature in white ink, appearing to read 'Patricia King', written over a dark blue background.

Patricia King,
General Secretary

Introduction

The Transatlantic Trade & Investment Partnership (TTIP) between the European Union (EU) and the United States (US) has been in negotiation for over two years.

While negotiators on both sides speak hopefully of concluding talks quickly, it is unlikely negotiations will be completed before US elections in November 2016.

Much of the content of TTIP has yet to be agreed. The proposed deal will also be affected by the final shape of the EU-Canada trade agreement (CETA), as this is being used as a template for negotiations.¹

The text of CETA was finalised in 2014 but the agreement has yet to be ratified by the European or national parliaments. The latest reports indicate that it may be signed at the EU-Canada Summit in October 2016 and that the earliest vote in the European Parliament will be early 2017.

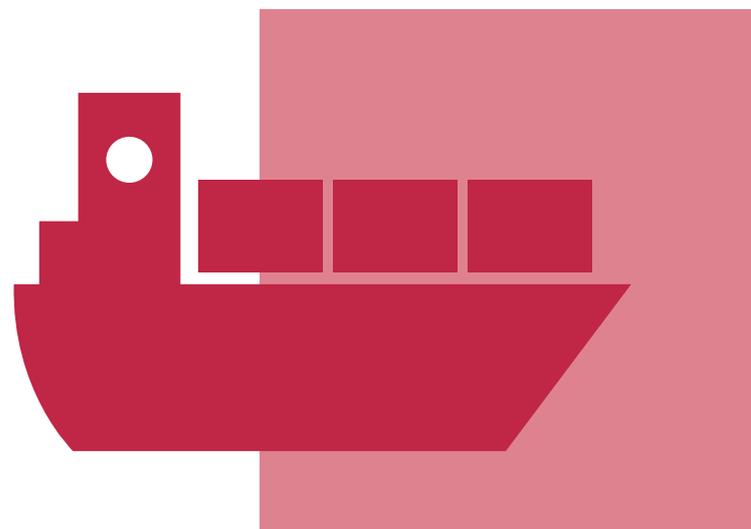
Efforts to promote and sell TTIP to the wider public have intensified over recent months with the European Commission, member state governments and other agencies energetically extolling the potential benefits of the proposed deal for economies and living standards.

This has been particularly evident in Ireland where it would appear the government's efforts have met with some success. According to a recent Eurobarometer poll 71% of citizens in the Republic of Ireland are for 'a free trade and investment agreement between the EU and the USA' while 15% are against and 14% 'don't know'. The corresponding EU member state average (unweighted) was 58, 25 and 17%.

Interestingly, the poll showed a majority were opposed in Austria, Germany and Luxembourg. In the case of Germany only 39% of citizens endorse an agreement.

However, it should be noted the survey simply asked respondents if they were for or against a 'free trade agreement' between the EU and US, neither specifying TTIP nor mentioning its many shortcomings and controversial features.²

It is entirely consistent to favour a free trade agreement, whilst opposing TTIP.



1 Consolidated CETA text: http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf

2 <http://bit.ly/TTIPSurvey>

Opposition to TTIP

In July 2015, the Congress Biennial Delegate Conference passed a motion on TTIP which stated:

“While there may be economic benefits in reducing trade tariffs and reviewing regulation for certain industrial sectors, Conference believes that the primary purpose of TTIP is to extend corporate investor rights...”

The Congress motion expressed “outright opposition” to TTIP and to any trade agreement that did not promote decent jobs and safeguard labour, consumer, environmental and health and safety standards.

It called for the continuation of lobbying and campaigning in opposition to TTIP, in alliance with the European Trade Union Confederation (ETUC), the US labour federation - the AFLCIO - and other civil society organisations that also disagree with the proposed trade deal.³

That there is strong public opposition to such deals should not be in doubt. Witness the mass mobilisation in October 2015 when 250,000 people protested in Berlin against both TTIP and CETA.⁴



³ Text of Congress motion - [http://www.ictu.ie/bdc15/motions/subject/transatlantic+trade+and+investment+partnership+\(ttip](http://www.ictu.ie/bdc15/motions/subject/transatlantic+trade+and+investment+partnership+(ttip)

⁴ <https://www.youtube.com/watch?v=MJVtzVwuEEA&feature=youtu.be>

The Problem(s) with TTIP

1. Investor-State Dispute Settlement

A core problem with the proposed deal is the Investor State Dispute Settlement (ISDS) which gives private corporations the right to sue governments for financial compensation if they believe their rights have been violated, a right to be invoked when government actions or policy 'interfere' with their ability to make a profit.⁵

Critically, the company will be enabled to bypass the domestic legal system of the country concerned and take their claim to a private tribunal, effectively a secret court.

This is a clear affront to democratic norms and elevates corporations above citizens, in terms of legal rights and access to the judicial system.

The AFL-CIO's Celeste Drake, an expert on TTIP, points out that ISDS allows:

"Foreign investors in the U.S. (and U.S. investors operating in foreign countries) the opportunity to skip traditional methods of complaining about laws and regulations they don't like and sue nations directly in private arbitration tribunals made up of for-profit arbitrators rather than full-time judges."⁶

The ISDS provision has previously been used (as part of other trade agreements) to overturn legitimate public policy initiatives and has had a 'chilling effect' on the introduction of new policies.

This was the case in New Zealand where the government dropped plans to introduce plain packaging for cigarettes due to fears of litigation. Their decision was taken after the Philip Morris Company sued Australia in relation to similar legislation relating to cigarette packaging, using an ISDS clause in the Hong Kong-Australia Bilateral Investment Treaty.

In December 2015 the Singapore based Permanent Court of Arbitration declined to

allow the case to proceed, on jurisdictional grounds.

However the World Trade Organisation (WTO) is currently considering a separate challenge to Australia's legislation by four member states, and a number of challenges by tobacco companies are ongoing as more countries (including Ireland) follow Australia's lead.

The French multinational Veolia also utilised ISDS procedures to bring a case against Egypt, seeking some €82 million compensation, following the government's decision to raise the monthly minimum wage and introduce other labour reforms. The case is still pending.⁷

Such decisions don't, of themselves, overturn the law or regulation that was challenged.

But if a government loses a case and decides to maintain the law it introduced, then it must pay a fine (compensation). Many countries - particularly those with fewer resources - may simply opt to change the law to avoid paying the fine.

This is understandable given the staggering scale of some of the awards that have been ordered recently by ISDS tribunals.

In 2013 Occidental Petroleum brought the government of Ecuador before a tribunal in Washington over Ecuador's termination of an oil concession contract, which appeared to have been done lawfully.

However the tribunal ordered Ecuador to pay \$2.3 billion in damages to the oil company.

⁵ Congress submission to public consultation on modalities for investment protection and ISDS in TTIP - <http://www.ictu.ie/publications/fulllist/congress-sub-to-public-consultation-on-modalities-for-investment-protection-and-isds-in-ttip/>

⁶ <http://touchstoneblog.org.uk/2013/11/special-courts-for-foreign-investors-have-no-place-in-trade-deals/>

⁷ <https://icsid.worldbank.org/apps/icsidweb/cases/Pages/casedetail.aspx?CaseNo=ARB/12/15>

Special Courts

Facing huge public opposition the European Commission proposed in November 2015 to repackage ISDS as an ‘investment court system (ICS)’.⁸

This slightly reformed version of ISDS developed in the EU Trade Commissioner’s new ‘Trade for All’ policy would replace ad hoc arbitrators with permanent ‘judges’ and an appeals tribunal, but crucially it retains the core element of investor-state dispute settlement: corporations can sue states outside national jurisdiction.⁹

The EU and Canada have since agreed this new form of investment ‘protection’ for CETA.

It contains the threat that if investors based in the US also have bases in Canada (or establish them there), they will be able to use CETA to take EU governments to the ICS before TTIP is even agreed.

The Commission has no guarantee of getting these proposals agreed as the US Chamber of Commerce has condemned ICS as ‘deeply flawed’, suggesting that the ‘model Bilateral Investment Treaty’ developed by the US government is better.

This model is no better for workers or society though, as it still gives foreign investors special courts to sue for their rights, and has been sharply criticised by trade unions in the US.

The ETUC at its March 2016 Executive Council meeting reaffirmed its opposition to the introduction of mechanisms that extend to foreign investors access to arbitration that is not available to domestic investors and other stakeholders. The ETUC remains opposed to the inclusion of ISDS or ICS mechanisms in TTIP and CETA.

Congress strongly believes that the ICS proposals – for a ‘reformed’ court system – do not address the fundamental point, which is that special courts for foreign investors are unnecessary and undemocratic, given

the already strong protections provided for investors in both the EU and US.

This is a view shared by the European Association of Judges which has expressed “serious reservations” regarding the ICS proposal and “is in doubt that such a competence [...] exists” for the EU to “introduce a new court into its well-established judicial system.”

In addition, the EAJ “does not see the necessity for such a court system” and points out that the “provisions for the election, time of office and remuneration for the ICS judges do not meet the minimum standards for judicial office as laid down in the European Magna Carta of Judges or other relevant international texts on the independence of judges.”¹⁰

A study by Client Earth has cast further doubt on the legality of ISDS under EU law, and has called for a request to be submitted to the European Court of Justice for an Opinion on its compatibility with the EU Treaties.¹¹

Equally, the United Nations Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, in his fourth report to the UN General Assembly, also called for the abolition of the ISDS mechanisms that form part of most of the new international trade and investment agreements.¹²

The report noted that: *“Far from contributing to human rights and development, ISDS has compromised the state’s regulatory functions and resulted in growing inequality among states and within them.”*

8 http://europa.eu/rapid/press-release_IP-15-6059_en.htm

9 http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

10 <http://www.iaj-uim.org/iuw/wp-content/uploads/2015/11/EAJ-report-TIPP-Court-october.pdf>

11 <http://documents.clientearth.org/wp-content/uploads/library/2015-10-15-legality-of-isds-under-eu-law-ce-en.pdf>

12 http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/285

It went on to review a number of ISDS cases with adverse impacts on human rights, in particular when specific social policies have led to lawsuits by investors for alleged breach of trade agreements, and concludes that there is no justification to establish this privatised system of dispute settlement.

“Investors can always bring claims before national jurisdictions with many appeal instances or rely on diplomatic protection and inter-State dispute settlement procedure.”

The UN’s Independent Expert noted the EU Commission’s proposal to create an ‘investor court system’ (ICS) specifically for TTIP.

His report warned that: “It suffers from fundamental flaws and can only be adopted if the primacy of human rights is guaranteed, and those essential areas of State regulation including tobacco control, labour standards and environmental protection are carved out, i.e. excluded from the Court’s jurisdiction.”

CETA – which includes the ICS mechanism – is due to be ratified by the European Commission in 2016, but a Europe-wide petition calling on the Commission to scrap the deal has already gathered some 3.5 million signatures.¹³

Rather than a cynical rebranding exercise the Commission must heed the overwhelming opposition to corporate courts and scrap ISDS in all its forms from TTIP, CETA and all trade agreements.¹⁴

Finally, the ICS mechanism could prove to be unconstitutional under Irish law.

Sinn Féin MEP, Matt Carthy, says that a legal opinion he obtained has clearly established that a referendum will be required in Ireland if the European Commission proceed with proposals to constitute an Investment Court as part of an agreement (as it would involve a transfer of jurisdiction from the Irish courts to an international court).¹⁵

There would also be obvious knock-on implications for the CETA trade agreement with Canada.

Brian Hayes MEP says that preliminary legal advice to the Irish government from the Attorney General says that the proposed system of arbitration would not have any constitutional implications, although he acknowledges that a referendum cannot be ruled out depending on the final text.¹⁶

It is worth recalling here that the 23rd Amendment to the Constitution was necessary in 2001 for Ireland to join the International Criminal Court. The Department of Foreign Affairs made it clear at the time that joining the International Criminal Court would entail the partial transfer to that Court of the sovereign power of the state to administer justice, and so required a constitutional amendment.

The ICS proposed by the European Commission could also entail a similar partial transfer of jurisdiction from the Irish courts and may require a similar amendment to the Constitution.

2. Public Services

TTIP poses a threat to public services that may be opened up to privatisation through the ‘negative list’ approaches to service commitments utilised in the deal.

CETA uses a ‘negative list’ for determining market access and national treatment rules – meaning governments can only fully protect from privatisation the public services that they explicitly list in the annexes to the deal.

This approach means that all services are open to further privatisation unless explicitly exempted.

¹³ http://action.globaljustice.org.uk/ea-campaign/action.retrievestaticpage.do?ea_static_page_id=3521

¹⁴ <http://touchstoneblog.org.uk/2015/07/isds-we-wont-be-fooled-by-a-rebranding/>

¹⁵ <http://www.sinnfein.ie/contents/38951>

¹⁶ <https://brianhayesdublin.wordpress.com/2016/03/10/sinn-fein-gets-its-facts-wrong-on-ttip-once-again-hayes/>

In September 2014 the UK government confirmed that it has requested no explicit exemption for the NHS or public services in TTIP.

Thus the partial privatisation in services such as health and education would be locked in, preventing future governments from being able to bring these services back into public ownership.

Furthermore ISDS would mean foreign investors - such as US private health companies - would have the power to sue any European government for re-nationalising parts of their public service, leading to a 'chilling effect' on public policy.

The Irish Federation of University Teachers (IFUT) has highlighted the possible inclusion of education in the trade deal, the entrance of a large number of for-profit providers of 'education services' and the impact this would have on education as a public good in the sovereign control of a democratic power.

The IMPACT union has stated that TTIP aims to further liberalise the trade in services, including public services. "The world is becoming a more insecure place by the day and this agreement would solidify that reality for our children".

SIPTU and the TEEU have also expressed concerns about trade deals "forcing the privatisation of Irish Water."¹⁷

Unions also have grave concerns about the TTIP 'sister' agreement, which is the Trade in Services Agreement (TiSA).

TiSA involves 50 OECD countries, including Ireland, and covers almost 70% of the world's trade in services. Our concern is that TiSA would promote privatisation of public services like health, water and transport, and make it legally and practically difficult for governments to take services back into public control if private operators failed.

3. 'Regulatory Cooperation' Puts Pressure on Wages

In an addendum to the motion passed at the Congress BDC in July 2015, the conference went on to "recognise the equally serious threat posed by 'regulatory cooperation', through which any future or existing socially desirable legislative measure or collective agreement could be deemed a 'barrier to trade' by a secretly established, unelected and recently revealed Regulatory Cooperation Board."

Regulatory cooperation is at the very core of TTIP. By aligning regulations and standards, or merely exchanging data, the EU and US are hoping to slash costs for businesses on either side of the Atlantic.

The Commission recently published an updated proposal on regulatory cooperation, which states that such cooperation should be voluntary and that the right to regulate has been strengthened.¹⁸

However, the chapter on 'good regulatory practices' mirrors the Commissions' own 'Better Regulation' agenda. Better known as REFIT, this has been criticised for creating new barriers to proper legislative procedures instead of focusing on making EU legislation more effective.

Critically if codified into a trade deal there is a serious risk that the desire to cut costs will become the global norm.

That would effectively subordinate future EU legislation to the principles of TTIP.

Furthermore, the UNI Europa union has obtained advice which says that some collective agreements could be subject to action by investors in the 'special courts' of either of either ISDS or ICS.

17 http://www.siptu.ie/media/pressreleases2015/othernews/fullstory_19484_en.html

18 http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc_154381.pdf

Although there is no precedent for this and hence we cannot say whether an investor would subject a tripartite or generalised agreement to the courts, we must be aware of the 'regulatory chill' effect this could have on these agreements.

Governments in fear of a multi-million euro fine might simply stop engaging in tripartite negotiations, or in applying collective agreements to the whole labour market – a common practice in many of European countries.

UNI Europa has characterised this as real threat to the European Social Model.

Commissioner Malmström – the EU Commissioner for Trade – has rejected this, saying that: "EU agreements and investment dispute resolution mechanisms in particular cannot threaten the European Social Model."

However, as UNI Europa has pointed out "the right to regulate by no means excludes investors' right to sue that regulation."

At best this is inconclusive; at worst it could pose a major threat to the normal processes of social dialogue, collective bargaining and the European Social Model.

Some of the tariff reductions proposed in TTIP could be good news for Irish exporters.

But these represent only a tiny part of the deal and should not be oversold. And in sweeping away 'non-tariff barriers' we may also lose a wide range of health and safety, environmental and consumer protections.

Some of the corporate lobbyists pushing for TTIP have made it clear that the most important aspect of the deal is 'regulatory cooperation' rather than ISDS.

Indeed some have gone so far as to advocate sacrificing ISDS to protect regulatory cooperation as it allows business to effectively 'co-write' regulation with policy makers.¹⁹

We remain entirely unconvinced of repeated promises of job gains and growth, particularly as the evidence is at best sparse, or often points in the opposite direction.²⁰

In fact TTIP's claimed benefits have been heavily contested by independent studies – including a key study by the ILO's Econometrics and Data Specialist, Jeronim Capaldo – which project that TTIP will lead to a contraction of GDP, personal incomes and employment, an increase in financial instability, a continuing downward trend in the labour share of GDP, and the dislocation of jobs in many sectors of the economy.²¹

Indeed some high profile business people in the UK have launched Business Against TTIP, expressing fears of the impact of lower standards and the possible loss of 680,000 jobs across Europe.²²

To date, Irish business does not appear to share these concerns.

It must be noted that the Irish government has not commissioned or conducted an independent sustainability impact assessment (SIA) of TTIP for Ireland, similar to the Europe wide SIA of TTIP's broader societal effects on the environment, human rights, or on labour standards, that was commissioned in 2014 by the European Commission.²³

19 <http://corporateeurope.org/sites/default/files/businesseurope-uschamber-paper.pdf>

20 <http://www.nerinstitute.net/blog/2015/03/29/ttip-the-best-thing-since-the-invention-of-sliced/>

21 http://ase.tufts.edu/gdae/policy_research/ttip_simulations.html

22 <http://businessagainstttip.org/>

23 http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152512.pdf

4. Labour Standards

Congress believes TTIP will lead to a lowering of labour standards in the EU as the US continues to refuse to ratify core ILO conventions, including those on freedom of association and collective bargaining.

Furthermore, at least half of its states now operate anti-union 'right to work' policies.

Labour chapters in EU trade agreements to date (such as in the EU-Korea FTA and CETA) have not contained enforceable language, such as sanctions for violations of labour standards.

It is clear that workers would therefore not have a route through TTIP to enforce their rights.

The provisions of CETA don't adequately protect workplace rights.²⁴

Unlike the billion dollar settlements foreign investors can obtain through ICS, trade unions can only seek a letter of criticism from a group of eminent experts under the sustainable development chapter.

This is wholly inadequate and totally out of balance with the protections offered to foreign investors.

EU-negotiated trade agreements should ensure all parties adopt, maintain and enforce the core ILO conventions and the ILO's Decent Work agenda and provide for sanctions for all breaches of core ILO conventions.

The deals should promote continuous improvement in labour standards beyond core ILO conventions and the Decent Work Agenda.

In short a key aim of such deals should be the creation of high quality jobs and the upholding of good labour standards.

5. Transparency & Openness

The European Commission claims to be negotiating TTIP in an open, transparent manner.²⁵

Yet, much of the negotiation process remains highly secretive, and only two trade unionists (the ETUC and IndustriALL representatives on the EU's Advisory group on TTIP) have access to the negotiating texts- inside a locked reading room where copies cannot be made.

Papers and texts being available online does help experts better understand what the EU is trying to achieve in the negotiations. However, it is an incomplete and inadequate picture as the consolidated text will not be made public. (Consolidated text is an EU term meaning the integration in a legal act of its successive amendments and corrections)

This is critically important because what is on the table now will substantially change as the negotiations progress.

The importance of being able to access the consolidated text has been acknowledged by the EU's Ombudsman Emily O'Reilly, who states that "the right of EU citizens to have public access to documents held by EU institutions is a fundamental right aimed at ensuring that they can participate in EU decision-making and hold the EU and its institutions to account..... (for this reason it should) inform the US of the need to justify any request not to disclose..."²⁶

24 <http://touchstoneblog.org.uk/2016/03/eu-trade-deal-with-canada-amended-not-good-enough/>

25 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>

26 <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/58668/html.bookmark>

Clearly a more open approach is needed, based on the following key principles:

- *whatever the negotiators show to employers, they should show to trade unionists;*
- *whatever the EU negotiators have given to the US negotiators, they should share with the people they represent; and*
- *the EU should operate on the assumption that documents should be public, unless there is a good reason to keep them secret – not vice versa.*

6. European Parliament Report on TTIP

On July 2 2015, the European Parliament adopted a resolution on TTIP which contained some positive proposals, calling on the Commission to:

- *ensure that there is ratification, implementation and enforcement of the eight fundamental International Labour Organisation (ILO) conventions and the ILO's Decent Work Agenda – and that labour and environmental standards are included in other areas of the agreement such as investment, trade in services, regulatory cooperation and public procurement;*
- *include rules on corporate social responsibility based on OECD Guidelines for Multinational Enterprises and clearly structured dialogue with civil society;*
- *ensure that national and local authorities retain the full right to introduce, adopt, maintain or repeal any measures with regards to the commissioning, organisation, funding and provision of public services irrespective of how the services are provided and funded;*
- *a 'positive list' for market access whereby services that are to be opened up to foreign companies are explicitly mentioned and new services are excluded – this would allow governments to retain policy space for services not explicitly included in negotiations.²⁷*

However, Congress believes the report does not go far enough in its criticisms of TTIP and largely ignores public concern about special legal treatment for foreign investors.

27 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0252+0+DOC+XML+V0//EN>

Nor can we support the report's conclusions which stated the Commission should:

"...replace the ISDS-system with a new system for resolving disputes between investors and states which is subject to democratic principles and scrutiny where potential cases are treated in a transparent manner by publicly appointed, independent professional judges in public hearings and which includes an appellate mechanism, where consistency of judicial decisions is ensured, the jurisdiction of courts of the EU and of the Member States is respected and where private interests cannot undermine public policy objectives."

Congress does not support the view that a modified version of ISDS is preferable to the traditional ISDS system. We remain opposed in principle to foreign investors having a special court system to sue for compensation if they claim their rights have been violated – no equivalent right exists for consumers, workers or domestic investors.

We believe there should be no ISDS or any variation of ISDS in CETA, TTIP or any trade agreement.

7. Ratification Problems

According to the Department of Jobs, Enterprise & Innovation, it will be a matter for the EU Council to decide on the signature of any TTIP agreement.

After signature, the European Parliament has to give its consent and following this, each member state will be asked to ratify the Agreement. If this is the case Ireland will be part of the final decision to ratify the agreement.

However, the ratification process remains unclear. Whether the agreement needs to be ratified only by the European Council and European Parliament—or whether each member state will also need to ratify the agreement under its own domestic parliamentary processes—will depend on whether an agreement is classified as the 'exclusive competence' of the EU institutions or a 'mixed agreement' to which member states must give their consent.

The European Commission has requested a legal opinion from the European Court of Justice on whether the recently concluded EU-Singapore Free Trade Agreement is a mixed agreement or exclusive competence agreement. This may have a bearing on how CETA and TTIP are characterised, but the Commission has already indicated that TTIP is likely to be a mixed agreement.

If this is the case, any proposed agreement must therefore be put before the European Parliament, the Council and member states for approval. There are concerns however that the Commission will attempt to put CETA through a Council vote this summer (2016) to give it provisional application in advance of an autumn signing summit and possibly then to enact it as exclusive competence before the ECJ opinion on the Singapore agreement is published.

Conclusion

TTIP and CETA are not essentially trade agreements. We would have few problems with either if they were.

Trade unions support trade that is fair, creates decent jobs, and is integrated into active labour market policies that help create better jobs. Unfortunately, on this score, TTIP and CETA come up short.

Our main problem relates to the reduction in the space for public policy, and additional constraints for governments striving to provide services or regulate in the public interest. This paper has outlined:

- *how the creation of an investment court will not remedy the principal defect of investment arbitration, which is not about process but about substance. Why do we need an ICS or ISDS between countries with fully developed and effective court systems? An investor-state arbitration system that is not subsidiary to national judicial systems provides VIP access for investors.*
- *the use of a “negative list” has the potential to commit future governments to privatisation/ liberalisation even in areas that do not yet exist. This means liberalisation by default for all new service areas. No sensible government can reasonably make such a commitment.*
- *how regulatory cooperation may threaten any future or existing socially desirable legislative measure or collective agreement and could be deemed a ‘barrier to trade’ by a secretly established, unelected Regulatory Cooperation Board.*
- *how the privileged status for investors stands in sharp contrast with very mild labour standard provisions with*

no enforcement mechanisms. If these agreements truly aim at becoming the gold standard for trade agreements, violations of their labour provisions should be subject to a dispute settlement process and punishable with sanctions.

- *the lack of transparency in the negotiation process;*
- *and, the uncertainty about how the agreements will be subject to democratic endorsement both in the European Parliament and in national parliaments.*

We would only support a trade deal that:

1. Has strong and enforceable labour standards including but not limited to the fundamental ILO conventions. Health and safety should also be included. The text should also make clear that the US should ratify the many ILO conventions it has not – but that in any event they should all be fully implemented for everyone in the United States. Trade unions need to have a key role in respect of enforcement and monitoring;
2. Guarantees exclusion of our public services from market opening. That should be ensured through a positive list that leaves no ambiguity as to what is on the table; and
3. Has no Investor-State Dispute Settlement mechanism. The beleaguered ISDS and its proposed successor, the ICS are an affront to democracy that privileges foreign investors over citizens. Investors also have responsibilities to their workers, consumers and the environment and these should be made clear in TTIP.

The views expressed in this paper are widely held among trade unions in Europe²⁸ and the United States²⁹ and Canada³⁰. Congress and European trade unions are working closely with our sisters and brothers in the AFL-CIO and CLC to ensure that such trade agreements will not be agreed and will be calling on all of our elected politicians to reject them in their current form.



28 <https://www.etuc.org/issue/trade-and-globalisation>

29 <http://www.aflcio.org/Issues/Trade>

30 <http://canadianlabour.ca/issues-research/search/issue/around-the-world-31/issue/trade-investment-and-security-37>

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