

**Statement on TTIP to the
Joint Committee on European Affairs**

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by

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Congress is very concerned about the introduction of rights for companies to launch a suit for financial compensation if a government introduces rules that could have an impact on the company profits.

We are strongly opposed to the inclusion in TTIP – or indeed any trade agreement - of the Investor State Dispute Settlement (ISDS) and we would want to see the parliament send a clear and unequivocal message that it should be removed. This proposal is an affront to democracy insofar as it allows investors to sue governments in secret courts composed of corporate lawyers, at which other people have not representation, for compensation over national laws or rules that affect their activities.

This quasi-legal process is not subject to judicial review. An increasing number of cases of this type are already in train and TTIP will give investors a clear and certain privilege over citizens. We believe that it is unacceptable in principle for foreign investors to have privileged access to a separate dispute resolution system and we believe that existing court systems in Europe and the USA are perfectly adequate.

A careful consideration of the evidence and the issues at stake is of vital importance. The Investor State Dispute Settlement (ISDS) has been the subject of much controversy in the last year not least in those member states that have unpleasant experiences of the workings of ISDS.

I am not in a position to advise on whether ISDS or a similar type agreement would not be open to constitutional challenge in Ireland and Germany, to mention just two members. In the Irish case, we have no experience of ISDS arrangements (partly because Ireland is seen as a golden pupil when it comes to investor friendly conditions and tax treatment and because Irish courts have not been noted for their hostility to restrictive interpretations of the right to private property and business interests more generally).

The 'I' in ISDS seems to give the story away: ISDS is a mechanism crafted to protect investor interests above all. While the 'S' could reflect citizen and worker interests it is far from clear that the actual practice and implementation of ISDS type cases operates in that way.

Moreover, it may be asked what is wrong with the operation of existing courts at the national or supranational level? If new systems of adjudication and arbitration are required at international level due to limitations in the remit of national courts why should these be under the umbrella of private tribunals? Recent court rulings in national jurisdictions including Ireland in areas of labour law have not been sympathetic to worker interests. Why is it proposed to enlarge uncertainty and exposure to negative rulings through a system of global arbitration?

Some have argued that education and health services are exempt from TTIP. Defining public services as an 'exercise of governmental authority' exempt from competition rules does not seem to apply here. The fact is that health and education services are already spread between public and private providers – often on a competitive basis. The risk is that TTIP could lock in existing arrangements and leave states and public service providers open to legal challenge via private tribunals.

A 'positive list' in regards to public services approach would be far superior to a 'negative list' one.

Finally, we believe that adherence to the fundamental human rights set out by the UN's tripartite body for work issues - the eight core conventions of the International Labour Organisation (ILO) - should not only be a key part of the Sustainable Development chapter of TTIP, but should apply to all elements of the agreement and that adherence to the Sustainable Development chapter should be binding and enforceable.

Our fear is that multinational companies may be able to challenge collective agreements as 'barriers' to trade and investment thereby accelerating a race to the bottom in employment standards. The public procurement chapter in the agreement must protect and promote the provisions of the new European Union procurement directives including specific reference to the social employment and environmental protection provisions and the right of public authorities to decide how they deliver works and services including the legitimate right to provide them through in-house provision or public-cooperation.

IRISH CONGRESS OF TRADE UNIONS,

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