

Summary of issues in relation to the Transatlantic Trade and Investment Partnership (TTIP)

Introduction

The Transatlantic Trade and Investment Partnership (TTIP) between the EU and USA has been in negotiation for over two years. While negotiators on both sides speak hopefully of concluding talks quickly, it looks likely that talks will continue into 2016 and beyond as the US election adds delays.

Much of the content of TTIP has yet to be discussed. TTIP will be affected by the final shape of the EU-Canada trade agreementⁱ ([CETA](#)), as this is being used as a template for negotiations, but the content of this agreement is also in flux. The text of CETA was finalised in 2014 but the agreement has yet to be ratified by the European or national parliaments. It may come before the European Parliament as early as the first half of 2016.

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 promoting TTIP as good for economies and living standards. This has been particularly evident in Ireland where it would appear that the Government's efforts have had some impact and 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' (TTIP was not named) while 15% are against and 14% 'don't know'. The corresponding EU member state average (unweighted) was 58, 25 and 17%. The percentage of 'against' exceeds 'for' in Austria, Germany and Luxembourg. In the case of Germany only 39% of citizens endorse an agreement. It is partly to counter this hard sell that Congress is setting out its position on TTIP and similar type trade agreements in this document.

Congress key concerns with TTIP

In July 2015, Congress BDC passed a [motion](#)ⁱⁱ which stated that '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' and thus adopted a position of 'outright opposition' to TTIP. Conference

went on to call on the trade union movement to make it clear that workers will never accept any trade agreement that doesn't promote decent jobs and growth and safeguard labour, consumer, environmental and health and safety standards. Conference called for the continuation of lobbying, campaigning and negotiating on these matters, in alliance with the ETUC and AFLCIO and other civil society organisations with similar views. Public mobilisation over trade reached an unprecedented and extraordinary level in October 2015 when 250,000 [people protested](#) in Berlin against the free trade agreements between the EU and the US (TTIP) and Canada (CETA).

1. Investor-State Dispute Settlement

Congress believes [Investor State Dispute Settlement \(ISDS\) is unacceptable in TTIPⁱⁱⁱ](#) (and should not be included in TTIP) as this process creates a right for companies to launch a suit for financial compensation if a government introduces a rule or regulation and that rule or regulation has a negative impact on the company's profit, or expected profit. Furthermore, the company will be enabled to bypass the domestic legal system of the country concerned and make their claim against the state in a private international arbitration court or tribunal. ISDS has been used on numerous occasions to overturn legitimate public policy 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 after Philip Morris sued Australia for similar legislation through the ISDS clause in the Hong Kong-Australia Bilateral Investment Treaty. Although in December 2015 the Singapore based "Permanent Court of Arbitration" declined on jurisdictional grounds to allow the case to proceed, the World Trade Organisation (WTO) is currently considering a separate challenge to Australia's legislation by four Member States, and a flurry of challenges by tobacco companies are ongoing as more countries (including Ireland) follow Australia's lead. French multinational Veolia brought a case against the government of Egypt for at least 82 million Euros, challenging the decision to raise the monthly minimum wage and make other labour reforms. Such decisions don't, by themselves, "overturn" the law, regulation or decision that was challenged. But if the country loses a case and wants to keep the decision that was challenged, it has to pay a fine and many countries will just change the rule instead of paying the fine.

In the face of 97% public and civil society opposition to the inclusion of ISDS in TTIP, the European Commission proposed in 2015 to repackage it as an ‘investor court system’. The provisions on Investor-State Dispute Settlement (ISDS) were discussed in the 11th [negotiating round](#)^{iv} in October 2015. This slightly reformed version of ISDS developed in the EU Trade Commissioner’s new [“Trade for All”](#) policy^v published in advance of the most recent round of negotiations, would replace ad hoc arbitrators with permanent ‘judges’ and an appeals tribunal, but retains the core element of investor-state dispute settlement: corporations can sue states outside national jurisdiction. Congress is opposed to this reformed version of ISDS as we are opposed to all forms of special courts for foreign investors in trade agreements as they provide a privileged route for investors to seek compensation from governments if they believe a policy would endanger their future profits.

Helpfully, the United Nations Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, in his [fourth report](#)^{vi} to the UN General Assembly also calls for the abolition of the ISDS mechanisms that form part of most of the new international trade and investment agreements.

“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,” the expert stated. In his report, Mr. de Zayas reviews 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 privatized 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 procedures,” he said.

The Independent Expert noted the European Commission’s recent proposal to create an Investment Court System for the Transatlantic Trade and Investment Partnership – TTIP. However, he 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.”

Widespread criticism of the ISDS provisions in CETA by the German, French and Greek governments as well as the Socialists and Democrats group in the European Parliament, among others, raises the possibility that the Investment chapter of CETA, and perhaps other parts of the deal, will be reopened for negotiation in the near future. CETA is due to be ratified by the European Commission in 2016, but a Europe-wide petition^{vii} calling on the Commission to scrap the [deal has reached almost 3.5 million signatures](#). While the Commission acknowledged that the original ISDS proposal in TTIP was politically unpalatable and proposed an alternative version, they have hypocritically retained an old-fashioned version of the corporate court in CETA. ISDS in its current form could also prove to be unconstitutional under Irish law.

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 taken in the deal. This approach means that all services are open to further privatisation unless they are explicitly exempted. In September 2014 the UK government confirmed that it has requested no explicit exemption for the NHS or public services in TTIP. This would mean that the privatisation in services such as health and education that have already been part-privatised would be locked in, preventing future governments from being able to bring these services back into public ownership. Furthermore ISDS would mean that foreign investors, such as US health companies, would have the power to sue any European government for renationalising parts of their public service, leading to a 'chilling effect' on public policy. [IFUT](#)^{viii} have also outlined the possible inclusion of education in the trade deal, the entrance of a large number of for-profit providers of so-called education 'services' and the impact this would have on education as a public good in the sovereign control of a democratic power. [IMPACT](#)^{ix} has also 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](#)^x have also expressed concerns about Trade deals "forcing the privatisation of Irish Water".

In addition to TTIP, unions have grave concerns about its 'sister' agreement, the Trade in Services Agreement (TiSA). TiSA involves 50 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/Jobs and Wages

Some of the tariff reductions proposed in TTIP could be good news for Irish exporters. But these represent only a minor part of the deal; instead of seeking an agreement with those limited but uncontentious objectives, politicians and business on both sides of the Atlantic have over-reached, seeking to sweep away 'non-tariff barriers' that provide a range of health and safety, environmental and consumer protections. Some of the corporate lobbyists pushing for TTIP have made it clear that it is 'regulatory cooperation' rather than ISDS that is the most important aspect of the deal to them, while some supporters of TTIP have even gone as far as to advocate sacrificing ISDS to [protect regulatory cooperation](#)^{xi} as it allows big business to effectively "co-write" regulation with policy makers.

Congress and others [remain unconvinced](#)^{xii} by studies produced by the Irish Government and EU Commission promising job gains and growth, particularly as other studies produced using different modelling suggest potential job losses and wage depreciation.

A study on the economic opportunities and impacts for Ireland of a potential TTIP Agreement, commissioned by the Department of Jobs & Enterprise, was published in March 2015. The key findings of the study are very positive for Ireland overall with a potential impact on the Irish economy of 1.1% increase in GDP. This is more than double the impact for the EU as a whole.

- The Irish Economy could grow by 2 billion euros or double the impact on the EU overall. This is the equivalent of a fiscal stimulus without extra demands on tax payers.
- Ireland's growing services sector should gain if the US opens its markets further.

- Smaller companies could benefit from common standards and less bureaucracy

It must be noted, however, that TTIP's assumed trickle-down commercial benefits have been heavily contested by independent [studies^{xiii}](#), which use more sensible assumptions on macroeconomic adjustment, and which project that TTIP will lead to a contraction of GDP, personal incomes and employment, as well as 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. We believe negotiators, governments and businesses need to engage with trade unions on the potential outcomes for different sectors. The European Commission must make clear how funds would be provided through the Globalisation Adjustment Fund to areas losing jobs or income due to TTIP.

Despite the claims of benefits from TTIP for small business, some high profile business people in the UK have launched the initiative, [Business Against TTIP^{xiv}](#). They outline the challenges in setting up and running a successful business and how to do so against a backdrop of the biggest companies in the world having an unfair advantage is a sure-fire way to threaten "our vibrant business sector". They go on to express fears about lower standards and the predicted loss of at least [680,000 jobs](#) across Europe. To date, Irish business does not seem to share any of these concerns.

It must also be noted that the Irish government has not commissioned or conducted any comparable impact assessments of TTIP's broader societal effects – on the environment, on human rights, or on labour standards.

4. Labour Standards

Congress is concerned that TTIP may lead to a lowering of labour standards as the US refuses to ratify core ILO conventions, including those on freedom of association and collective bargaining and operates anti-union "right to work" policies in half of its states. We are concerned that 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 and that workers would therefore not have a route through TTIP to enforce their rights.

5. Transparency and Openness

The European Commission claims to be [negotiating TTIP^{xv}](#) as **openly** as possible. Yet, much of the negotiation process remains highly secretive, and only two trade unionists (ETUC and IndustriALL representatives on the EU's Advisory group on TTIP) have access to the negotiating texts- and this is in a locked Reading Room where copies cannot be made. Congress gets regular trade updates from the ETUC and has a position on their Trade and Globalisation group, where TTIP is a standing agenda item.

We understand the need to keep certain aspects of negotiating strategies confidential but Congress believes a more open approach is needed overall, 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 allegedly represent; and
- the EU should operate on the assumption that documents should be public, unless there is a good reason to keep them secret – rather than the other way round.

6. European Parliament report on TTIP

On July 2 the European Parliament adopted a [resolution on TTIP^{xvi}](#) 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.

However, Congress did not support the report's conclusions on Investor-State Dispute Settlement 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.'

As stated above, although this criticism of the traditional version of ISDS may be useful for encouraging the Commission to reopen the investment chapter of CETA, Congress does not support the proposal that a modified version of ISDS would be preferable to the traditional ISDS found in CETA. We are 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 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. Decision Making on the TTIP Agreement

According to the Department of Jobs Enterprise and 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. This means that Ireland will be part of the final decision to ratify the agreement.

However, in our view, the process for the ratification of new trade and investment agreements like TTIP by the European Union 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, although it is possible that the European Commission may attempt to push CETA or TTIP through as exclusive competence agreements regardless of the position of the European Court of Justice or individual Member States.

Endnotes

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- ⁱ Consolidated CETA text - http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf
- ⁱⁱ 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)/)
- ⁱⁱⁱ Congress sub 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/>
- ^{iv} http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc_153935.pdf
- ^v Trade for All, EC - http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf
- ^{vi} http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/285
- ^{vii} Global Justice Now European initiative against CETA and TTIP - http://action.globaljustice.org.uk/ea-campaign/action.retrievestaticpage.do?ea_static_page_id=3521
- ^{viii} TTIP and Education, IFUT - <http://www.ifut.ie/content/ttip-and-education>
- ^{ix} TTIP would be a blow to democracy, IMPACT - <http://www.impact.ie/ttip-would-be-a-blow-to-democracy-impact-trade-union/>
- ^x TTIP will force privatisation of Irish Water, SIPTU - http://www.siptu.ie/media/pressreleases2015/othernews/fullstory_19484_en.html
- ^{xi} Regulatory Cooperation in the EU/US Economic Agreement, US Chamber and Business Europe - <http://corporateurope.org/sites/default/files/businesseurope-uschamber-paper.pdf>
- ^{xii} TTIP – the best thing since the invention of the sliced pan? Tom Healy, NERI - <http://www.neriinstitute.net/blog/2015/03/29/ttip-the-best-thing-since-the-invention-of-sliced/>
- ^{xiii} The Trans-Atlantic Trade and Investment Partnership: European Disintegration, Unemployment and Instability, Jeronim Capaldo *GDAE Working Paper 14-03*, October 2014 http://ase.tufts.edu/gdae/policy_research/ttip_simulations.html
- ^{xiv} <http://businessagainstttip.org/>
- ^{xv} EU Negotiating texts in TTIP, EC - <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>
- ^{xvi} European Parliament resolution of 8 July 2015 containing the European Parliament's recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP) (2014/2228(INI)) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0252+0+DOC+XML+V0//EN>