
A BRIEFING FOR TRADES UNION COUNCILS

TRANSATLANTIC TRADING INVESTMENT PARTNERSHIP (TTIP)

THIS DOCUMENT GIVES A DESCRIPTION OF WHAT TTIP (AND CETA - Comprehensive Economic and Trade Agreement) IS AND WHAT ACTIVITIES THE TUC AND UNIONS HAVE BEEN ENGAGED IN DEALING WITH THE ISSUE TO DATE.

ALSO APPENDED IS THE RESOLUTION ON TTIP PASSED AT THE 2014 CONGRESS.

APRIL 2015

Briefing on CETA and TTIP

The **Comprehensive Economic and Trade Agreement (CETA)** is an agreement between Canada and the European Union.

The Canada and the EU 'finalised' the text on the EU-Canada free trade agreement known as CETA in 2014.¹ It is due to be ratified later this year.

In September 2014 the TUC's General Council adopted a position of outright opposition to CETA and to lobby MEPs to oppose the deal.

Key concerns, amongst others, are the threat to public services posed by CETA which include:

- the 'negative list' approach CETA takes to listing of services in the Investment chapter means that only specific listed services will be safeguarded from further liberalisation. There is a very narrow range of services listed which would not cover much of our part-privatised services such as health, education, transport etc. This opens the door for Canadian investors to make inroads into European public services.
- CETA will include a 'ratchet clause' which prevents certain liberalisation commitments made in the deal from being reversed.
- CETA gives investors wide-ranging powers to challenge government actions due to broad ranging definitions of what counts as a breach of 'fair and equitable treatment' and 'indirect expropriation'. Corporate lawyers hired by companies will be able to use such wording as grounds for cases against the government for any policies that threaten company's future profits – allowing them to challenge decisions to bring public services back in-house.
- Canadian investors will be able to challenge public policy through an unaccountable closed court system that Investor State Dispute

[HTTP://EU-SECRETDEALS.INFO/CETA/](http://EU-SECRETDEALS.INFO/CETA/)

Settlement (ISDS) provisions in the deal will establish. ISDS has been used numerous times by investors to challenge public policy decisions like this.² Slovakia, for example, has been sued through ISDS under its bilateral trade deal with the Netherlands when it renationalised its health service. It had to pay \$22 billion dollars in compensation to the Dutch insurance company Achmea. The TUC outlined in detail its opposition to the inclusion of ISDS in trade deals in its submission to the European Commission's consultation on the Investment chapter of TTIP.³

The TUC has raised our opposition to CETA with Business Secretary Vince Cable, to MEPs and to the European Commission via the ETUC, as well as through ongoing campaigning.

TTIP

The Transatlantic Trade and Investment Partnership (TTIP) is a series of trade negotiations being carried out between the EU and US. As a bilateral trade agreement, TTIP is about reducing the regulatory barriers to trade for big business, things like food safety law, environmental legislation, banking regulations and the sovereign powers of individual nations.

TTIP seeks to remove customs duties and other barriers to trade, stimulate the economy and create jobs, help EU companies grow and compete worldwide.

Through TTIP, the European Commission is seeking to make sure that EU services companies can compete in the US on the same terms as US firms and yet safeguard EU governments' right to run public services just as they wish.

² [HTTP://CORPORATEEUROPE.ORG/TRADE/2013/06/TRANSATLANTIC-CORPORATE-BILL-RIGHTS](http://corporateeurope.org/trade/2013/06/transatlantic-corporate-bill-rights)

³ SEE SUBMISSION: [HTTP://WWW.TUC.ORG.UK/INTERNATIONAL-ISSUES/TUC-SUBMISSION-EUROPEAN-COMMISSIONS-CONSULTATION-ISDS](http://www.tuc.org.uk/international-issues/tuc-submission-european-commissions-consultation-isds)

EU firms face hurdles when they try to sell their services on the US market. TTIP would put in place rules that:

- scrap certain limits in place at the moment, like a ceiling on the number of EU suppliers that can operate in the US
- treat EU and US suppliers in exactly the same way
- protect sectors which are sensitive for the EU or US, like public services
- uphold governments' right to set quality or safety standards regulate services in other ways.

The eighth round of TTIP negotiations were held in Brussels from 2-6 February. At Congress in September, the TUC adopted a resolution opposing TTIP (see below) for a number of reasons, including the threat to public services and regulation, the provision of special rights for foreign investors, the failure to guarantee better workers' rights, and uncertainty over jobs and wages.

Impact on public services

TTIP takes a 'negative listing' approach to public service commitments which means that all public services must be opened up to competition except those specified in the agreement. While there is an exemption for 'services of general interest', this only covers government-funded services, so part-privatised public services in education and health might not be covered. We would prefer a 'positive list' in TTIP which would only open specified services to competition, or at the very least, a broad-based exemption for all public services rather than the narrowly-focused exemptions for certain services that appear in some leaked documents and in CETA the new EU-Canada treaty which is being presented as a model for TTIP.

TTIP may also limit the scope for future governments to renationalise privatised services - such as Labour's plans to overturn the Health and Social Care Act (2012) - or introduce tighter regulation to areas such as the growing for-profit education sector. This is due, firstly, to the 'ratchet clause' in the services offer of TTIP which would lock in liberalisation commitments made in the deal, preventing their reversal. And secondly, ISDS mechanisms (*Investor-State Dispute Settlement*), set out in the negotiating mandate European Governments gave the European Commission, would set up an international court system which corporations could use to sue governments for policies or actions that threaten their future profits, often defined as 'indirect expropriation'. Poland and Slovakia have both been sued by investors for bringing parts of their health services back into public control.

In September, TUC Congress adopted a position of opposition to TTIP in part due to concerns over the threat it posed to public services and would extend corporate investors' rights.⁴

Specific threats to public services in TTIP include:

- the 'negative list' approaches to service commitments taken in the deal which look set to be similar to those in CETA (see above). This approach means that all services are open to further privatisation unless explicitly exempted. The UK government has confirmed that it has requested no explicit exemption for the NHS or public services in TTIP. There were also no assurances provided in the letter European

Trade Commissioner Malmstrom sent to Lord Livingston on this matter.⁵

⁴ [HTTP://WWW.TUC.ORG.UK/INTERNATIONAL-ISSUES/TRADE/CONGRESS-2014-COMPOSITE-RESOLUTION-TRANSATLANTIC-TRADE-AND-INVESTMENT](http://www.tuc.org.uk/international-issues/trade/congress-2014-composite-resolution-transatlantic-trade-and-investment)

⁵ [WWW.TRADE.EC.EUROPA.EU/DOCLIB/DOCS/2014/JULY/TRADOC_152665.PDF](http://www.trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152665.pdf)

- The Investment chapter currently contain broad ranging definitions of what counts as a breach of 'fair and equitable treatment' and 'indirect expropriation' allowing companies to sue governments for any policy which threatens their investments, such as renationalising parts of the NHS.
- ISDS provisions proposed which would create an unaccountable closed court system for companies to use to challenge governments for introducing public policies.

The TUC has raised concerns with Vince Cable on the exemption TTIP provided for public services. He has said there should be increased transparency in TTIP to demonstrate public services would be safe in a statement on February 16:

“We must also clearly demonstrate that the NHS and our public services are protected as a priority. The EU has recently given us very strong assurances that TTIP would not in any way endanger them. I want to see that reflected in the treaty drafting.”

The new European Trade Commissioner has also made a commitment to transparency and ongoing consultation with stakeholders, including unions, on the ISDS and investment provisions in TTIP.⁶ The TUC is raising concerns over public services, amongst other issues with the European Commission directly and through the TUC through the ETUC which is able to speak to negotiators after each TTIP round through its position on the Commission's Expert Advisory group on TTIP. IndustriALL also has a seat on this group with employers and consumers' groups.

In May, the European Parliament will debate a resolution on TTIP. The working document for the resolution was drafted by the International

⁶ [HTTP://TRADE.EC.EUROPA.EU/DOCLIB/PRESS/INDEX.CFM?ID=1231](http://trade.ec.europa.eu/doclib/press/index.cfm?id=1231)

Trade (INTA) committee.⁷ It calls for a positive list and a complete carve out for public services, which the TUC supported. However references to respect of core labour standards should be strengthened in the draft resolution and the TUC has submitted amendments to that effect. The TUC also submitted amendments to the other committees' opinions to the draft resolution, namely the AFET, IMCO and ITRE committee focusing on the effects of the agreement on developing countries, regulatory cooperation and standards and effects on jobs. The plenary vote on the resolution will be on 18-21 May.

In February, the TUC held a meeting with European and health officers on public services and TTIP and CETA. At this meeting Unison presented a legal opinion on CETA's service commitments and shared the legal opinion commissioned by Unite. The meeting agreed amongst other things to consider participation in the European day of action by the No to TTIP coalition on April 18.

Next steps

There will be a resolution in the European Parliament on TTIP which will be discussed at the Plenary session in March, which will be an opportunity for MEPs to highlight opposition to ISDS, as well as calling for exemptions for public services in TTIP. The Socialists and Democrats in the European Parliament have recently reiterated their opposition to ISDS (a position shared with the Green and Left groups) and the group is likely to propose a resolution for the European Parliament on ISDS, in the context of TTIP, CETA, and the EU- Singapore Free Trade Agreement.

Conclusion

The trade agreement between EU and Canada finalised in 2013 was negotiated totally behind closed doors. Once the details leaked unions

⁷ [HTTP://WWW.EUROPARL.EUROPA.EU/SIDES/GETDOC.DO?PUBREF=-%2F%2FEP%2F%2FNONSGML%2BCOMPARL%2BPE-546.593%2B01%2BDOC%2BPDF%2BVO%2F%2FEN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%2BCOMPARL%2BPE-546.593%2B01%2BDOC%2BPDF%2BVO%2F%2FEN)

found it posed all the threats TTIP poses to public services as well as containing ISDS and the ratchet clause. It also contained no enforceable labour standards, like other EU trade agreements with Korea and Colombia. This has meant that in Korea more workers have been imprisoned since the trade agreement took place. In Colombia more workers have been gunned down with impunity.

Trade unions do not believe the EU naturally has workers interest at heart, that TTIP naturally create jobs, growth or protect our social standards and public services. Trade deals can only be negotiated in the public interest when they have the full involvement of civil society. This is why the [‘fresh start’](#) Malmstrom promised when she became Trade Commissioner in December must involve genuine engagement with union concerns and action to protect public services, democracy and rights in trade deals. These are not commodities, they are core values, and they cannot be traded away.

Glossary of abbreviations

CETA - *Comprehensive Economic and Trade Agreement*

ISDS - *Investor State Dispute Settlement*

TTIP - *The Transatlantic Trade and Investment Partnership*

INTA - *Committee on International Trade*

IndustriALL - *IndustriALL Global Union represents 50 million workers in 140*

countries in the mining, energy and manufacturing sectors and is a force in global solidarity taking up the fight for better working conditions and trade union rights around the world.

AFET-*The Committee on Foreign Affairs is responsible for the Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP).*

IMCO - *Internal Market and Consumer Protection*

ITRE - *The Committee on Industry, Research and Energy is responsible for the Union's industrial policy and the application of new technologies, including measures relating to Small and Medium Enterprises*

Appendix

Composite 3 passed at 2014 Congress Transatlantic Trade and Investment Partnership (TTIP)

Congress is extremely concerned about the proposed Transatlantic Trade and Investment Partnership (TTIP) free trade treaty, a wide ranging trade deal giving unprecedented power and influence to transnational corporations that would become the benchmark for all future trade agreements, currently being negotiated between the EU and

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

A key element of the TTIP is the introduction of the Investor-State Dispute Settlement (ISDS) clause, which would act as a tribunal/arbitration. The ISDS could see millions of pounds paid out to those big private sector corporations should NHS services be brought back into the public sector in the future. As with all trade agreements, TTIP is being negotiated mainly in secret. The current negotiations lack transparency and proper democratic oversight. TTIP would:

- (i) Allow corporations to sue sovereign states, elected governments and other authorities legislating in the public interest where this curtails their ability to maximise their profits, by recourse to an Investor- State Dispute Settlement mechanism
- (ii) Threaten the future of our NHS and other key public services
- (iii) Risk job losses, despite unsubstantiated claims to the contrary
- (iv) Potentially undermine labour standards, pay, conditions and trade union rights as the US refuses to ratify core ILO conventions and operates anti-union “right to work” policies in half of its states
- (v) Reverse years of European progress on environmental standards, food safety and control of dangerous chemicals, given US refusal to accept stricter EU regulation of substances long banned in the EU
- (vi) Reprieve EU member states of billions of pounds in lost tariff revenue.

Key concerns are:

- (a) The threat to our National Health Service and sections of the public sector that may be opened up to the private sector leaving a future Labour government with no legal right to take back into public ownership (including previously publicly owned transport and utilities) and that could lead to a far more widespread fragmentation of NHS services, putting them into the hands of big private sector corporations
- (b) The quasi-judicial process on the Investor- State Dispute Settlement under which multinational corporations may sue, in secret courts, nation states whose laws or actions are deemed incompatible with free trade

(c) Opening up European markets to US Frankenstein foods – hormone enriched beef, chlorinated poultry and genetically modified cereals and salmon

(d) The mutual recognition of regulatory standards which will lead to a race to the bottom and the creation of a Transatlantic Regulatory Council which will give privileged access to multinational corporations

(e) The impact on creators' intellectual property rights.

Congress notes that free trade agreements rarely, if ever, benefit working people and are pushed by corporations who use them as a means to maximise profits and further their own interests.

The idea of transatlantic trade may well be supported by those that would profit from it, but for our health services based on values, principles and sustainability it could be a financial disaster, adding another nail in the NHS coffin.

The TUC and a number of other organisations have been campaigning to exempt the NHS from the negotiations and Congress now calls on the General Council to keep the pressure on and raise the profile of the calamitous affects the TTIP could have on the NHS.

Congress remains unconvinced by official claims of job creation arising out of TTIP, and considers that the dangers to public services, workers' rights and environmental standards outweigh any potential benefits.

Congress remains unconvinced about the likelihood of a binding labour rights chapter based on ILO Core Conventions. Congress has similar concerns over current negotiations for the proposed Trade in Services Agreement (TISA) and the Comprehensive Economic Trade Agreement (CETA).

Congress believes that on the current path we will be presented with a *fait accompli* in the form of an inadequate, unacceptable agreement that we have had no chance of influencing or amending and where time will make it difficult to mobilise opposition.

Congress resolves that the TUC should:

1. Oppose Investor-State Dispute Settlement (ISDS) mechanisms and a ratchet clause
2. Call for the exclusion of all public services, including education and health, public procurement, public utilities and public transport (whether in public or private ownership) from the negotiations

3. Demand no levelling down in relation to consumer, worker or environmental protection
4. Insist on genuine consultation with civil society organisations, including trade unions
5. Work with like-minded organisations, including the ETUC, in opposing all detrimental aspects of TTIP and in campaigning for alternative EU trade and investment policies
6. Welcome the decision of the EU Foreign Affairs Council on Trade to exclude the audio-visual sector from the initial TTIP agenda, and lobby the UK government to oppose its future inclusion, in order to preserve the European Cultural Exception and the unique national nature of arts and entertainment activity within Europe.

Congress therefore resolves that the trade union movement should now call for the TTIP negotiations to be halted and adopt a clear position of outright opposition to TTIP, and the other trade agreements currently being negotiated, whilst continuing to monitor progress and press for improvements to promote decent jobs and growth and safeguard labour, consumer, environmental and health and safety standards through lobbying, campaigning and negotiating, in alliance with the ETUC and AFLCIO.

Congress agrees that all pending and future trade agreements entered into by the EU should be subject to a vigorous and transparent regime of scrutiny and consultation, ensuring that they are of benefit and acceptable to the millions of people affected by their content, in all countries covered by the agreement.