

Discussion points by Tom Jenkins, Chief adviser at the European Trade Union Confederation (ETUC)

EMPL/ INTA Hearing on Employment and Social Aspects of TTIP

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The ETUC has three sine qua non conditions on TTIP: No ISDS; a guaranteed protection of public services; and an enforceable labour chapter. Today's meeting is dealing with that issue.

Growth and Employment

Before dealing with the rules governing labour issues in TTIP, first a remark about the proposed agreement's growth and employment potential: there is deep uncertainty about decent work creation.

- The Initial CEPR study¹ based on the Computable General equilibrium model (used by the World Bank) (small growth, no jobs data) is contradicted, for example, by ETUI paper² and by recent Jeronim Capaldo (ILO and Tufts University) study³ based on UN Global Policy Model.
- Ecorys consultants Trade Sustainability Impact Assessment interim report was delayed last July and no news since. There are meant to be synergies between the SIA work and the negotiations. Where are they?
- We need to know which industries would be affected, and where geographically.
- Even if there are winners, there will also be losers. Globalisation Adjustment Fund not fit for this purpose. We need proper adjustment measures.

TTIP not a traditional FTA

The core of TTIP is regulatory convergence. We are not against eliminating genuine duplication and mutual information exchange that does not affect our competitive advantage, but still have questions as to whether this is not a deregulatory enterprise despite official statements to the contrary. US statements praising the EU's REFIT programme feed our concerns.

- TTIP not just about market access, though there are some sensitive products where tariff reductions would have a significant effect; and, in such a big market, even a small fall has big results.
- The question arises as to whether regulatory coherence issues should be part of a trade negotiation. What will be the trade-offs between this and other parts of the agreement?
- Recall that the Transatlantic Economic Council (TEC) spent years discussing regulatory issues without significant results. DG ENTER (Verheugen) who led this, were replaced by DG Trade to deal with the issues under the new Barosso Commission

¹ http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf

² <http://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/The-Transatlantic-Trade-and-Investment-Partnership-exaggerated-hopes-from-the-liberalising-agenda>

³ http://ase.tufts.edu/gdae/policy_research/TTIP_simulations.html?utm_source=GDAE+Subscribers&utm_campaign=c22b7276a1-RP_Newsletter_11_19_2014&utm_medium=email&utm_term=0_72d4918ff9-c22b7276a1-49725881

- Labour was excluded from the TEC, while business (and consumers) could advise.
- Whatever happens under TTIP we insist that, unlike the TEC, trade unions be extended the same status as employers to advise regulatory mechanisms.
- This exists now in EU with CEN, CENELEC, ECHA etc.
- Democracy issues arise: we insist on EP oversight plus the social partner involvement (also at sectoral level as appropriate).
- US “transparency” for companies (notice and comment) in fact gives industry lobbies undue influence and vast possibilities to delay regulation⁴, compared to EU system of parliamentary scrutiny (though we have problems with secondary legislation comitology in EU that need to be addressed within our domestic context).
- Aim for highest level protections, not lowest common denominator, particularly so far as H&S is concerned (REACH; nanos etc). The US’s reluctance to adopt international standards is an issue. But setting high transatlantic standards would pull standards worldwide upwards if producers want access to the transatlantic market.

Labour issues in TTIP: no ghetto; a deep agreement

Turning to the labour rules issues, we insist that they be deep, wide and enforceable.

On the first point, labour protections should be mainstreamed throughout the agreement, applying at sub-federal level where appropriate, and not be circumscribed within the Sustainable Development Chapter, though we also support the inclusion of such a chapter covering labour and environment.

Areas to be mainstreamed include:

- Investment: need to include the responsibilities of investors in the investment chapter: OECD guidelines for Multinational Enterprises; ILO tripartite declaration of the principles concerning multinational enterprises and social policy; UN guiding principles on business and human rights; UN Global Compact. EU worker representation, information, consultation etc measures (eg works councils) should be included under this heading and elsewhere.
- Services: best safeguarded through a positive list of commitments especially public services; on Mode 4: the usual EU practice of inserting a footnote covering respect for law and collective agreements; no strikebreaking clause, should be included in the text.
- Public procurement: observance of ILO Convention 94 and Recommendation 84 (respect of collective bargaining) as well as (at least) EU instruments covering social and environmental protections should be included
- Regulatory coherence: aim upwards for example H&S re REACH. A general no regression clause should be included.
- Any regulatory mechanism must involve social partners including at sectoral level.
- Dispute settlement provisions should apply also to labour chapter (see below)).

Sustainable Development Chapters

We also support the inclusion of a Sustainable Development Chapter building on current EU practice.

- Since Global Europe these appear in various forms in all trade and investment agreements (CARIFORUM, Korea, CETA, Central America, Colombia / Peru, Georgia, Ukraine, Singapore...). We’re told will be in China investment agreement. The EU-Korea FTA is the current benchmark. CETA need studying closely (separate discussion)

⁴ See for example <http://www.sensiblesafeguards.org/assets/documents/down-the-regulatory-rabbit-hole.pdf>

- 2 pillar labour/environment structure. We reserve position on the architecture, given the reluctance of US to engage in environmental issues. No trade offs.
- For the labour pillar, a key EU objective has been to promote the ratification and implementation of core ILO Conventions.
- A key objective should be to devise a system for continuous improvement of standards, with a monitoring mechanism including representative and independent social partners.
- So far as the monitoring mechanism is concerned, we believe that the Domestic Advisory Groups and Civil Society Forum set up under EU-Korea provides the foundation on which to build, though specific issues have arisen such as the representativeness of members.
- Consideration should be given to better linking the US contact point (in the Department of Labour) with the EU Sustainable Development Unit in DG Trade, and social partners and Civil Society Organisations to maintain relations, given that there is no US equivalent institution to the European Economic and Social Committee which provides the EU DAG secretariat under current agreements, and should continue to do so.
- New budget provisions will be necessary for resources to enable the mechanism to function adequately.

ILO Conventions; a wide agreement

The ETUC/AFL-CIO statement of joint principles⁵ says:

“The parties should commit to the ratification and the full and effective implementation of the eight core conventions of the ILO and of core international environmental agreements. The provisions should envision labour and environmental standards that continue to rise, aiming in particular toward the implementation by all parties of all up-to-date ILO Conventions. Moreover, the dispute settlement mechanism must not undermine, weaken or create conflict with existing interpretations of ILO Conventions and Recommendations”.

- We support COM in its inclusion of the “ILO decent work agenda” in labour chapters, including its 4 pillars: 1) promoting employment, 2) social protection, 3) promoting social dialogue, 4) fundamental principles and rights at work - as the overall objective and framework. This approach, however, is promotional though it has been included as an inspiration for some EU policies which might be “exported” to the US. This deserves consideration. However, that should not deflect from the key issues around the ratification and implementation of ILO Conventions.
- A central problem for TTIP is the non-ratification of key ILO conventions by the US (only ratified are conventions on the worse forms of child labour and the abolition of forced labour)
- But implementation is the key. The US has duties under the 1998 Declaration of Fundamental principles and rights at work (though it apparently refuses to accept the follow-up provisions) and of 2008 on social justice and fair globalisation.
- There also exists ILO supervisory machinery for unratified Conventions which might be examined in this context.
- Consideration should be given to including the operative parts of the conventions in the body of the agreement.
- The coverage of ILO conventions should be extended, so as not to refer only to the 8 core conventions. The TTIP labour chapter should in particular also cover C81 on Labour Inspection; C122 on Employment Policy; C129 on Labour Inspection in Agriculture; C144 on tri-partite consultation. Also C94 on public procurement and recommendation no. 84; C155 on Occupational Health and Safety; C135 on Workers representation; C102 on Social Security.

⁵ http://www.etuc.org/sites/www.etuc.org/files/document/files/afl-cio_ttip_report_uk_1.pdf

- We sent a full list to the Commission in 2006, and repeated this since [see Annex].
- It is important that monitoring mechanisms in TTIP should not “double-guess” the ILO’s supervision mechanisms.
- A clarification is required about Commission policy on the pronouncements of which ILO instances it bases its appreciation of whether breaches have occurred.
- It should also be mentioned that trade unions are extremely concerned at the concerted attack by employers’ organisations against ILO structures, notably the Committee of Experts. This could eventually undermine the whole EU system for supervision of labour standards in its trade and investment agreements.
- In addition to ILO and international conventions such as those on investment (see above) we want to advance in particular in applying the highest levels of workplace democracy. Extend the scope of application of social legislation and enforcement mechanisms embodied in European Directives on European Works Councils (2009/38/EC), or Information and Consultation (2002/14/EC). These regulations already cover both European and US-based companies operating in Europe, and are specifically directed at multinational investment and production regimes.
- Must apply at all levels of government (sub-federal level)

Labour rights: an enforceable agreement

The ETUC/AFL-CIO Statement says:

“Ensure sustainable development by requiring parties to protect fundamental labour rights and the environment and by including recourse to dispute settlement and trade sanctions if necessary. Labour rights must be enshrined in the body of the agreement, be applicable to all levels of government, and be subject to dispute settlement and trade sanctions equivalent to other issues covered by the agreement”.

- US and Canada FTAs have one advantage over EU’s: tangible economic consequences if a party defaults on engagements.
- For the US, the matter is covered by the “10 May Bipartisan Trade Deal”⁶. It is of high importance to the US to maintain this position, and we encourage USTR to do so.
- The EU refuses to include such enforcement. The good monitoring system that exists eg in EU-Korea including the social partners should be reinforced by a binding clause linking to dispute settlement provisions elsewhere in the agreement.
- COM points out that under the US system, sanctions only apply to “trade-related” issues and we agree with COM that all breaches (including public sector etc) should be covered. We do not believe that this is an “either-or” situation and insist that the US and EU approaches can be merged. We are ready to discuss further in detail. Depressed public sector wages drag down salaries throughout the whole economy including the export sector.
- COM also says that the US has only once –recently over Guatemala- invoked its sanctions mechanism, after 6 years of discussion. We would point out that this reinforces our position that this step should not be taken lightly and should be at the end of a consultation process, including a panel of experts, after all other steps have failed. The possibility of tangible economic consequences would nevertheless be an incentive for the parties to find solutions. The ILO also points out that conditionality is a useful bargaining tool during the FTA negotiation.
- There are differing views as to whether the ILO should be directly involved in the panel of experts. One suggestion has been that the chair of the panel

⁶ http://www.ustr.gov/sites/default/files/uploads/factsheets/2007/asset_upload_file127_11319.pdf

should be drawn from the ILO Experts. In any event, close work with the ILO is essential.

- COM points to CETA as a possible way forward⁷. We understand that provisions of Art 11 open the possibility of reviewing the dispute settlement provisions to include enforcement of labour rights, should TTIP includes them.
- The same Article states that “It is understood that the obligations included under this chapter are binding...” but further explains that enforcement does not include any link to any form of sanctions. This apparent contradiction requires further explanation.

We and AFL-CIO are looking for Gold Standard for labour conditions. If achieved, this could provide a benchmark at international level.

⁷ CETA labour chapter; See p 376 et seq http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf

ETUC/ ITUC STATEMENT OF TRADE UNION DEMANDS RELATING TO KEY SOCIAL ELEMENTS OF “SUSTAINABLE DEVELOPMENT” CHAPTERS IN EUROPEAN UNION NEGOTIATIONS ON FREE TRADE AGREEMENTS (FTAs)

1. There must be strong and unambiguous references to the requirement that both parties commit themselves to the effective implementation of core labour standards and other basic decent work components.
2. There is need for a clear statement that parties to the agreement will ratify the ILO standards concerned.
3. It should be clarified that the Sustainable Development chapter falls under the same standard provisions as everything else in the FTA, hence making its stipulations subject to the same dispute settlement treatment as all other components in the body of the agreement.
4. Both parties should submit regular reports on general progress to implement all the commitments made under this agreement, including the Conventions protected by the ILO Declaration on Fundamental Principles and Rights at Work and any other instruments that may be mentioned.
5. Both parties must make an engagement to respect the OECD Guidelines on Multinational Enterprises and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy, and not to lower labour standards in order to attract foreign investment. Such an engagement must specify that it extends to all parts of their territories, so as to prevent the agreement resulting in an expansion of production in export processing zones (EPZs).
6. Provision should be included for ongoing sustainability impact assessments (SIAs) and for action to be taken on the basis of their findings. The SIAs should consider all relevant aspects of the social and economic impact of the agreements, including access to quality public services and the use of different policies, including trade related policies, to achieve industrial development.
7. It is essential that governments be required to act on the basis of social partners' formal submissions of communications. This should be a binding mechanism whereby recognised workers' and employers' organisations on both sides of any FTA should be able to submit such requests for action. Such complaints should be treated within a specified time period and form part of an ongoing follow-up and review process to ensure that governments address such complaints effectively.
8. Complaints about social problems should be subject to consideration by genuinely independent and well-qualified experts. Their recommendations must be part of a defined process for adequately rapid treatment of the issues raised, such that their deliberations are not limited to the issue of reports and recommendations but result in ongoing follow-up and review provisions, particularly in order to maintain pressure on any governments that allow violations of workers' rights on their territories.
9. A Trade and Sustainable Development Forum providing for consultation with workers' organisations, employers' organisations and NGOs should be established, with a clearly defined, appropriate balance between those three groups of members. This should meet at least twice a year, and should enable Forum members to raise social issues and problems for public discussion.
10. In addition to linkage to the general dispute settlement provisions of the agreement as mentioned above, the agreement should provide for fines. These must be high enough to be of a sufficiently disincentive nature. The proceeds from such fines should be directed towards improving social standards and working conditions in the sectors and areas giving rise to the problems concerned.

11. Technical and development assistance should be provided in the FTA, linked where relevant to cooperation with multilateral agencies and especially the ILO. Additional forms of incentives, including trade incentives should also be included.
12. In addition to co-operation regarding the core labour standards, there are other important ILO conventions relevant to decent work that should be encompassed in the agreement. These include those identified as "priority conventions" by the ILO Governing Body in its 1993 decision (Convention 122 on Employment Policy, Conventions 81 and 129 on Labour Inspection and Convention 144 on Tripartite Consultation), other Conventions enjoying widespread support at the ILO (including Convention 155 on Occupational Safety and Health, Convention 102 on Social Security, Convention 103 on Maternity Protection, and Convention 135 on Workers' Representatives), and certain other essential ILO instruments (namely the Promotion of Cooperatives Recommendation, 2002 (No. 193), the Human Resources Development Recommendation, 2004 (No. 195) and the Employment Relationship Recommendation, 2006 (No. 198)).
13. Finally, given the overall context of this chapter on "sustainable development", we would stress that strong clauses concerning respect for multilateral environmental agreements, including the Kyoto Protocol, are required.
14. Respect for human rights conventions in general, including those on civil and political rights, is highly relevant to the social dimension of sustainable development and should equally be stipulated in the chapter.

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