# TTIP update: social services reservation, regulations and investment protection, growth, jobs and wages.

Cecilia Malmström, EU trade commissioner:

'I *hear claims that the Commission is negotiating lower safety standards for food, restricting Europe's ability to regulate on health and the environment, and that we are doing this through secret backroom negotiations. I know that this is not the case*.' Cecilia Malmström (http://blogs.ec.europa.eu/malmstrom/hearings-in-the-parliament/)

As we already know, one of the main aims of TTIP is to push forward with the privatisation of public services (official term 'liberalise'). That much is clear from the EU mandate to its negotiators:

'*The aim of negotiations on trade in services will be to bind the existing autonomous level of liberalisation of both Parties at the highest level of liberalisation captured in existing FTAs, in line with Article V of GATS, covering substantially all sectors and all modes of supply, while achieving new market access by tackling remaining long-standing market access barriers*'. (The link to the text of the mandate can be found here: http://ec.europa.eu/trade/policy/in-focus/ttip/)

The phrase ' highest level of liberalisation captured in existing FTAs' means that the levels of privatisation achieved in existing free trade agreements, for instance, in the recent agreement with Canada, are the baseline for its negotiations on TTIP. The aim then is to exceed this, to achieve 'new market access'. This is the kind of ratchet effect stipulated in the General Agreement on Trade and Services (GATS) in 1995. The privatisation road is one way only.

Is health included in the negotiations? Yes health services are included. This is clear from the European Commission announcement on 23 October concerning progress in negotiation:

*'The sectors covered included in particular environment, distribution, postal services, business services, health, education, energy, and transport.' (*Report on the Seventh Round of Negotiations, p.2: http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152859.pdf*)*

Some people had believed earlier that health was safe because the treaty excludes '*services carried out in the exercise of governmental authority'* (the phrase used in GATS). But this doesn't cover health, as the Commission itself pointed out in a document on 26 October 2011:

*'A wide variety of so-called public services, including certain activities relating to education, healthcare, ... have certain commercial aspects and may be provided to some extent by private operators on a competitive basis. Where this is the case, they would normally fall within the scope of the GATS as representing potentially "tradable" services.'*
*(*Commission Proposal for the Modernisation of the Treatment of Public Services in EU Trade Agrements, October 2011: http://www.epsu.org/IMG/pdf/154b-11_EC_paper_on_public_services_.pdf)

**The EU reservation in TTIP.**
Although health services are not excluded from the treaty, the EU and its member states can insert reservations for health services in an annex to the treaty. The EU has made such a reservation:

*The EU reserves the right to adopt or maintain any measure with regard to the provision of all health services which receive public funding or State support in any form, and are therefore not considered to be privately funded.*(http://www.bilaterals.org/?eu-us-fta-ttip-draft-services)
This reservation certainly appears to cover the problem that arises when services have a commercial element or are in competition with other private providers. This is the sense also of the German reservation:

*Health and Social Services: Germany reserves the right to adopt or maintain any measure .... where services may be provided by different companies or entities involving competitive elements (which are thus not "Services carried out exclusively in the exercise of governmental authority)".*

Germany, in fact, goes much further with respect to hospital services, using the dreaded word 'nationalise':

*Hospital services: ... Germany reserves the right to nationalise [other] key privately funded hospitals.*

Is this general reservation for all health services that receive public funding adequate? It is certainly stronger than the old GATS exemption. But it will require further analysis to determine how strong this reservation is. For instance, would it allow governments to renationalise services that have been contracted to the private sector? And if a government did this, would it face legal claims from investors?

In any case, it is clear that the least we need to do now is to insist that any future Labour government inserts a reservation in the treaty giving it the right to regulate the entire health and social services sector, public and private, including re-nationalisation.

**Regulations**

The second area of concern for campaigners is the threat to regulations posed by TTIP. This concerns such things as environmental regulations, food labelling, chemicals in food, the use of pesticides, and so on. The declared aim of the treaty is to move towards a situation where regulations are the same on both sides of the Atlantic. This is known as harmonisation and is described by the EU as 'regulatory cooperation'. Part of the goal here is to reduce regulations in the EU.

The negotiators themselves will not discuss individual regulations but will establish a transatlantic body which will be responsible for carrying out a programme of regulatory reduction. TTIP will establish a

*"Regulatory Cooperation Council manned by senior level representatives from regulators and trade representatives from the EU Commission's Secretariat General (SG) and the US Office for Information and Regulatory Affairs (OIRA). The RCC shall meet twice a year, organize the work and prepare a yearly regulatory programme."*

Hidden away from public scrutiny, the exact powers of this RCC are unknown but, according to the EU document, it will have a very powerful remit:

*'Where relevant, the Parties will take the necessary steps to ensure their regulators/competent authorities can engage in such cooperation without unnecessary restrictions, including any institutional, statutory or other barriers/ inflexibilities.'* ('TTIP: Cross-cutting disciplines and Institutional provisions': http://corporateeurope.org/sites/default/files/ttip-regulatory-coherence-2-12-2013.pdf)

If experience is anything to go by, the European Commission will not be a strong defender of better regulation. Let's take the example of food regulations. The European Crop Protection Association (ECPA) is the main lobby in the EU opposing tighter regulations on pesticide levels in food. Its US

equivalent is CropLife America. In 2012, when TTIP was under discussion, the European Commission's Trade Directorate sent an invitation to ECPA encouraging ECPA to participate in a consultation on TTIP:

"*A substantial contribution from your side, ideally sponsored by your US partner, would be vital to start identifying opportunities of closer cooperation and increased compatibility*."
(http://corporateeurope.org/international-trade/2014/07/ttip-lose-lose-deal-food-and-farming

ECPA and Croplife America replied within weeks. What they demanded, among other things, was
- standards should be based on 'sound science' i.e. opposition to EU's 'precautionary principle'
- mutual recognition as a first step towards harmonisation.

Mutual recognition would mean that both the EU and the US would recognise each others regulations as legitimate and therefore they would not a barrier to trade. So US corporations and US agribusiness could sell products in the EU even if they didn't comply with EU regulations and vice versa.

The European Trade Commissioner at the time, Karel de De Gucht, supported mutual recognition. According to de Gucht, 'we should ultimately strive for the mutual recognition of our regulations across a broad range of sectors. In my mind, this is the most efficient way to connect our two systems to allow our businesses to operate more effectively across the Atlantic.' (http://europa.eu/rapid/press-release_MEMO-13-835_en.htm)

Mutual recognition would lead quickly to harmonisation (levelling down) because it would have effects on competition between EU and US producers. Farmers in the EU would have to implement increasingly expensive and higher production standards making their products more expensive and therefore not competitive. There would be a powerful demand from them for a harmonisation of standards.

The  Regulatory Council will be a new transatlantic institution with huge powers, hidden from public eye, open to business lobbying. With the European Commission pushing this agenda, could we rely on the European Parliament to fight the battle to defend high standards? The signs aren't good. The use of lactic acid as a beef decontaminant was banned in the EU. The US Department of Agriculture asked the European Commission to overturn the ban to which US beef exporters objected. The European Consumers Association opposed the use of lactic acid in slaughterhouses because it could be used to mask poor hygiene and, in any case, consumers were opposed to such use of chemicals in food. In 2012 the European Commission agreed to support the US proposal but it needed parliamentary approval. On 28 November 2012, the Parliament's Committee on the Environment

approved the deal. According to GlobalMeat the measure was welcomed by US exporters because it will allow more US beef treated with lactic acid into the EU market.
(http://www.globalmeatnews.com/Industry-Markets/EU-decision-on-lactic-acid-use-welcomed)

**Investment protection.**
The basic idea behind investment protection is a simple one. When a corporation makes an investment in a foreign country, it needs reassurance that its investment will be protected from arbitrary acts of government. In the past, any dispute between a corporation and a foreign government was dealt with by the existing legal system and cases were decided by national courts or by recognised international courts.

But TTIP would change this in a fundamental way. Like other free trade agreements in recent years, TTIP will include a mechanism known as Investor State Dispute Settlement (ISDS). Under ISDS these disputes between corporations and foreign governments would be removed from the courts and existing legal system and handed to a tribunal of three corporate lawyers whose deliberations would be secret, its decision final and not subject to appeal. It could also impose massive fines on governments but not on corporations.

The dispute between Ecuador and the oil company Occidental is one of many in recent years. Ecuador is not a rich country. 35% of its population are below the poverty line. Occidental had been given oil drilling rights in the Amazon. But when its actions broke Ecuadorian law, the government withdrew its concession. According to the Ecuadorian attorney general, Occidental demanded damages of nearly $3.4 billion. In 2012 the arbitration panel ordered Ecuador to pay $1.77 billion to Occidental. (http://www.reuters.com/article/2012/10/06/us-ecuador-occidental-ruling-idUSBRE89500O20121006)

In the words of Juan Fernández-Armesto, arbitrator from Spain:
“When I wake up at night and think about arbitration, it never ceases to amaze me that sovereign states have agreed to investment arbitration at all … Three private individuals are entrusted with the power to review, without any restriction or appeal procedure, all actions of the government, all decisions of the courts, and all laws and regulations emanating from parliament.”
(http://corporateeurope.org/trade/2012/11/chapter-4-who-guards-guardians-conflicting-interests-investment-arbitrators)

Of course this ISDS mechanism is a way of handing power to corporations. That's the whole point of

the game. A group of researcher at York University in Canada made a study of 140 tribunal cases up to 2010. In their conclusions, they reported that 'arbitrators tended to favour claimants [corporations] in general and claimants from major Western capital-exporting states in particular.' (http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1036&context=ohlj)

In addition to this blatant grab for power by corporations and the fines imposed on governments, there's the issue of its effect on future regulation. Governments will not risk regulations that could bring massive fines. The North American Free Trade Agreement (NAFTA) was signed in 1994. In the twenty years since then, Canada has become the most sued country in the world. As a result, the Canadian government has been reluctant to attempt new regulations that could be challenged by US corporations. According to one Canadian government official:

“I've seen the letters from the New York and DC law firms coming up to the Canadian government on virtually every new environmental regulation and proposition in the last five years. They involved dry-cleaning chemicals, pharmaceuticals, pesticides, patent law. Virtually all of the new initiatives were targeted and most of them never saw the light of day”. (http://corporateeurope.org/trade/2012/11/chapter-3-legal-vultures-law-firms-driving-demand-investment-arbitration)

During the past year, there has been a growing movement of opinion in Europe against ISDS. In response to this, the new trade commissioner, Cecilia Malmström, supports ISDS but has said that she 'wished for it to be included in a more open and transparent format than it has been in any of Europe's previously negotiated agreements'. (http://www.ibtimes.co.uk/eu-trade-commissioner-elect-malmstrm-clarifies-public-services-exemption-trade-negotiations-1467749) But that's not what people want. Fearful that this growing opposition might influence the Commission, in October 2014, fourteen EU governments wrote to the Commission demanding that ISDS be retained in the treaty:

'The Council mandate is clear on its inclusion of investor protection mechanisms in the TTIP negotiations; we need to work together on how best to do so.' 'http://blogs.ft.com/brusselsblog/files/2014/10/ISDSLetter.pdf

Corporations and the US and European political elite want ISDS. The only thing that could stop it is big public opposition.

**Economic growth and jobs**

John Healey, Labour MP and head of the All Party Group dealing with TTIP, has claimed that 'The most reliable estimates suggest a much-needed boost to UK GDP of £4-10bn a year, thousands of new jobs and wage gains for workers'. (http://www.huffingtonpost.co.uk/john-healey/eu-us-

trade_b_4865271.html)

John Healey is guilty of either a misunderstanding or a sleight of hand here. These figures of £4-10bn are based on a report commissioned by the European Commission and carried out by the Council for Economic Policy Research (CEPR) in 2013. What the CEPR did was create a model of what the economy would look like in 2027 if TTIP were successful (and no more recessions or financial crises in the meantime). It looked at various scenarios from modest to most ambitious. In its most ambitious scenario UK GDP would be £10bn higher in 2027 because of TTIP.

But this is a cumulative figure, after 10 years of TTIP. This may seem like a big increase but actually it's only a 0.35% increase in GDP. So John Healey's claim of £4-10 billion a year is very misleading. He forgets to mention that this is an economic prediction for 13 years from now. (The tables with the predictions for 2027 are in the CEPR Report on page 37 and can be read here: (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198115/bis-13-869-economic-impact-on-uk-of-tranatlantic-trade-and-investment-partnership-between-eu-and-us.pdf)

CEPR did a similar report for the EU as a whole and made predictions for 2027. Like John Healey, EU promoters of TTIP have quoted the projected 2027 increase in GDP as a 'yearly increase'.

The claim about jobs and wage gains is even more misleading. According to the CEPR Report that everyone relies on, wages in the UK, after 10 years of a successful TTIP, will have increased in 2027 by the following amounts:

skilled: between 0.21% and 0.5%
unskilled: between 0.21% and 0.53%

As for jobs, the report actually predicts a loss of jobs resulting from TTIP. The term used is 'displacement' because it is assumed that workers unemployed in one sector will move to another:

'... up to one per cent of the UK labour force is shown to move between sectors as a result of increased trade with the US.' (CEPR Report, p. 44)

The number of people in work in the UK in 2014 is 32.7 million. CEPR predictions would therefore indicate that 327,000 workers would have lost their jobs by 2027 as a result of TTIP. So, even if the CEPR figures are reliable, which many economists doubt, the predicted economic gains are very modest indeed and John Healey's claim about growth in GDP, jobs and wages is very doubtful indeed.

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