

## The European Parliament's Trade Committee Debates TTIP

Negotiations for the Transatlantic Trade and Investment Partnership (TTIP) were begun in June 2013 and have continued since then in secret. During that time there has been a lot of public debate and opposition to aspects of the treaty that have been leaked to the public. On 28 May, the International Trade Committee (INTA) of the European Parliament debated and agreed a document which would constitute the Parliament's recommendation to the European Commission on TTIP negotiations. The final vote on this document by the whole Parliament will take place on 10 June.

This Trade Committee of 41 members represents in its composition the strength of the various parties and factions in the parliament. The initial draft of the Report, written by Bernd Lange, the German MEP from the Socialists and Democrats Group who chairs the Trade Committee, was strongly supportive of TTIP. There were a large number of amendments and compromise amendments that were voted on at the meeting on 28 May.

### Public services

For those campaigning to protect the NHS from the threats of the international market, the most interesting part of the debate was about whether public services such as health would be adequately protected under TTIP. On the exclusion of health services from TTIP, the [initial draft](#) of the Trade Committee's Report recommended:

'(1.b.vi) to ensure an adequate carve-out of sensitive services such as public services and public utilities (including water, health, social security systems and education) allowing national and local authorities enough room for manoeuvre to legislate in the public interest; a joint declaration reflecting negotiators' clear commitment to exclude these sectors from the negotiations would be very helpful in this regard;'

Critics of the treaty thought this didn't go far enough. One of the most detailed [recommendations](#) came from the Parliament's Committee on Employment and Social Affairs:

'(1. xiii) to ensure an explicit exclusion of public services, as referred to in Article 14 TFEU, from the scope of application of TTIP, in order to ensure that national and local authorities have the freedom to introduce, adopt, maintain or repeal any measure with regard to the commissioning, organisation, funding and provision of public services, as provided for in Article 168 TFEU (public health) and Protocol 26 (Service of General Interest) thereto; this exclusion should apply whether the services in question are organised as a monopoly, operating under exclusive rights or otherwise, and whether publicly or privately funded and/or provided; such services include health and social care services, social security systems, publicly

funded education, railway and public transport, and water, gas and electricity services.

(xiv) to ensure that ratchet and standstill clauses do not apply to any public and social services; the full scope for the re-nationalisation and re-municipalisation of services must be safeguarded; (page 36).

The relevant paragraph in [the amended Report](#) did not contain the explicit guarantees recommended by Employment and Social Affairs but the original was very much strengthened:

'(1.b.7) to build on the joint statement reflecting the negotiators' clear commitment to exclude current and future Services of General Interest as well as Services of General Economic Interest from the scope of application of TTIP, (including but not limited to water, health, social services, social security systems and education), to ensure that national and if applicable 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 as provided in the Treaties as well as in the EU's negotiating mandate; this exclusion should apply irrespective of how the services are provided and funded;' (page 10)

## **ISDS**

A number of other parliamentary committees had produced amendments rejecting ISDS in the treaty. The strongest of these came once again from the Committee on Employment and Social Affairs:

'(1. xviii) - to ensure that agreement on any dispute settlement mechanism regarding investment protection must take into account the results of the public consultation on investor-state dispute settlement (ISDS), be fully transparent and democratically accountable, explicitly state the Member States' right to regulate and under no circumstances restrict or hinder legislators from passing and enforcing laws both in the area of employment and in the area of social policy for their countries; a state-to-state dispute settlement system between the EU and the US – both of which have fully functional legal systems and a sufficient level of investment protection to guarantee legal security – is another appropriate tool for addressing investment disputes; the inclusion of any form of private arbitration courts in TTIP must be ruled out;' (page 36)

These were also not accepted by the Trade Committee. The amended Report accepted ISDS based on the proposal of the Trade Commissioner Cecilia Malmström :

'(1.d.xv) - to build on the concept paper recently presented by Commissioner Malmström to INTA Committee on May 7 and the ongoing discussions in the Trade

Ministers' Council and to use them as a basis for negotiations on a new and effective system of investment protection, ... ' (page 18)

[Malmström's paper](#) had proposed that the arbitration proposals should be transparent, that the concept of 'fair and equitable treatment' should be more clearly defined, and that there should be a 'code of conduct' for arbitrators. She also proposed working with the US to agree an appeals procedure and suggested that 'investors cannot seek remedies in domestic courts and through ISDS at the same time'.

The amended Report calls for 'trust' in the EU court system and then proposes:

'(1.d.xv) ... a permanent solution 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 and the jurisdiction of courts of the EU and of the Member States is respected,

- in the medium term, a public International Investment Court could be the most appropriate means to address investment disputes;' (page 18)

This Malmström proposal has already been [severely criticised](#) by the campaign group Seattle to Brussels (S2B) because it ignored the results of the Commission's public consultation on ISDS and because, whatever the text may say about the need to 'trust' established courts, it gives international investors rights which no one else has to sue governments in special courts. Any 'International Investment Court' would be an arbitration tribunal by another name.

According to Malmström, the free-trade agreement already signed with Canada gave governments the right 'to adopt binding interpretations in order to control the interpretation of the agreement, and correct possible errors by the tribunals'. According to S2B, however, 'the NAFTA experience (where this feature was already included decades ago) shows that it does not make much of a difference. In the history of NAFTA, binding interpretations have only been used twice and not very successfully. ... What is more, the NAFTA experience shows that arbitrators are willing to ignore what the treaties' party intended by their interpretations – it is quite naïve to believe that they will treat the EU any better.'

Helmut Scholz, shadow rapporteur for European United Left/Nordic Green Left (GUE/NGL) parliamentary group, [criticised this outcome](#).

"The vast majority of people outside this Committee room reject investor-state-dispute-settlement (ISDS), but those MEPs in favour think they know better. In my opinion, it is arrogant that the amendments from the opinions of five other committees, including the legal affairs committee and the constitutional affairs committee, who asked to oppose ISDS, have been completely ignored, just like the 1.9 million EU citizens who already

signed a petition against ISDS.

The voting result was spun differently by the different groups. The Left in the GUE/NGL clearly saw it, in spite of the language, as retaining ISDS, as did the right wing group, Conservatives and Reformists, which the Tories are part of. The Social Democrats, however, interpreted it as a defeat for ISDS: 'This resolution is the beginning of the end for ISDS, a development which is long overdue', [said](#) Bernd Lange.

### **Regulations and standards**

In the area of regulations and standards, where there have been worries about the watering down of EU regulations in areas such as pesticide use, food safety and the environment, the INTA proposals include the controversial 'mutual recognition' of standards as well as acceptance of the proposed Regulatory Cooperation body which would have the power to examine existing regulations from the viewpoint of their effect on free trade and to put forward new regulations. However, with regard to the power of this Regulatory Cooperation Council, the final INTA Report proposed to the Commission that it should take into consideration:

'(1.c.viii) ... that any direct and compulsory application of its recommendations would imply a breach of the law-making procedures laid down in the Treaties; to also monitor that it fully preserves the capacity of national, regional and local authorities to legislate their own policies, in particular social and environmental policies;' (page 15)

This Regulatory Council is supposed to assess existing and proposed regulations with a view to its impact on free trade. The text makes it clear that this is its priority - consumers and the environment come second: '(1.c.iv) ... to ensure that the prior impact assessment for each regulatory act should measure its impact on consumers and the environment next to its impact on trade and investment.' (page 14)

On labour and environment standards, the Report proposes

'(1.d.iv) ...to ensure that labour and environmental standards are made enforceable, by building on the good experience of existing FTAs by the EU and US and national legislation;' (page 15)

There are significant differences in labour standards in the EU and the US in many areas, for instance, paid annual leave, unjust termination, worker representation, workplace safety and maximum working hours. Any harmonisation of labour standards would very likely have a negative effect on working conditions in the EU. But labour rights in the EU have been under attack now for many years and presented as 'labour market reform'. These are the same rights and standards that the EU leadership and its institutions are attacking in Greece.

The 'good experience of existing FTAs by the EU and the US' doesn't stand up to scrutiny. Such agreements which the US and the EU have signed with countries of the

south usually contain clauses about labour standards but there are no effective mechanisms of enforcement and where they are laid down in the treaty they are always ignored in practice. For instance, in spite of such guarantees in the US's free-trade agreement with Columbia, the assassination of labour organizers continues, threats against labour organizers has increased, labour participation in unions in Colombia remains at a dismal low 4 percent and the formation of illegal unions, called collective pacts, has continued unabated. And all of this in spite of the labour standards contained in the agreement with the US. The Trade Committee is ignoring what really happens in a world where labour standards are one of the principal targets of the neoliberal elite.

This document, the European Parliament's Recommendations to the European Commission on TTIP, will be voted on by the whole parliament on 10 June.

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