

TTIP at the end of 2015

TTIP negotiations continue but public protest in 2015 has made a difference across Europe, especially in Germany. The number of people who publicly protested against TTIP in Germany in 2015 was greater than the number that had protested against the Iraq war in 2003. Over 300 cities and towns in Germany have declared themselves TTIP-free zones.

The strongest opposition across Europe was to ISDS – that private groups of corporate lawyers could interfere in the democratic process and fine governments. In the end, the trade commissioner, Cecelia Malmström, made a concession: ISDS would stay but the secret private tribunals would become public investment courts with publicly appointed judges and hearings open to the public. The EU Parliament frequently claims this as their victory but it was the Commission which moved first and the parliament went along with the Commission rather than reject the ISDS idea outright. As a result of protests in Britain, Labour MEPs voted against the EU Parliament's proposals on TTIP because it hadn't gone far enough in rejecting ISDS. It's still corporations suing governments in special courts, ISDS renamed, but it was a recognition that there was something inherently undemocratic in the existing ISDS process. It remains to be seen how the US reacts to this.

Leaks have been a major annoyance for the Commission. What we know about TTIP has come mainly from leaks. In the latter part of 2015 a German website, [Correctiv](#), published minutes of a number of Commission meetings which reported on negotiations with the US. The Commission then clamped down on negotiating texts reaching the public and made it extremely difficult even for politicians to see the texts. Recall that at one point towards the end of 2015 only a limited number of government representatives could view TTIP texts under guard in US embassies. But German politicians from left and right protested loudly against this and the [Commission gave way](#). MPs will from this month (January 2016) have access to the texts (still in closed rooms under guard!) and the Commission has promised to make more of them public.

What's the state of the negotiations? They are proceeding very slowly and there are a lot of disagreements. The leaked minutes of Commission meetings make it clear there are more differences between both sides than had originally been anticipated. For instance, over car safety standards, cosmetics, hormones in beef, banking regulations, public subsidy for culture and the arts, etc.

There is no indication yet of any movement in the area of public services. The

Commission claims that health and education are protected and many politicians in Europe go along with that. Campaigns in support of public health services in Britain point out that only a complete exclusion of NHS from the treaty would protect health services here. Firstly, even if 'public services' were genuinely excluded, the legal definition of a 'public service' under the GATS treaty of 1995 excludes any service in which there is a commercial element or which is in competition with commercial providers. The NHS, like so many other health services in Europe, is such a mixture of state-owned and commercial interests that any protection would be very weak. The World Health Organisation has warned that a service is not public just because the government provides it.

Secondly, any protection would apply only to existing services. Any new services or any new configuration of services would automatically fall under the terms of the treaty and would have to be 'liberalised' (opened to the market). This ratcheting mechanism in the treaty would also mean that any service already open to the market could not be taken back into the public sector. There is only one direction of travel.

Thirdly, there are the possible effects of what is known as 'most favoured nation' treatment. This means that no corporation, let's say from the US, can be treated under TTIP in a less advantageous way than a corporation from Canada would be treated under the terms of the EU's treaty with Canada. So if the treaty with Canada allows Canadian corporations to sue the EU in private tribunals (as it currently does) then US corporations cannot be required to use the public investment courts which the Commission proposes for TTIP. Because this would give an advantage to Canadian corporations. The EU currently has something like 30 free-trade deals either completed or being negotiated with other countries. Corporate lawyers can trawl among all these treaties to find the best deals for their clients. This means that any safeguards written into the TTIP treaty would have little meaning if the same safeguards weren't written into all the other EU free-trade treaties.

Many of these issues where there have been big differences have been put off until the final round. The Commission hopes that the negotiations will finish this year while Obama is still in office. There will be a lot of leaks this year and lots of protests. Lotta continua.