

# SIPTU statement on the proposed EU-US 'Transatlantic Trade and Investment Partnership' (TTIP)

October 2015



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SOCIETY**

## 1. Introduction

SIPTU is not convinced by the arguments being made that the proposed 'Transatlantic Trade and Investment Partnership' (TTIP), currently being negotiated by the EU and the US, would be in the best interests of the people of Ireland.

We do not oppose in principle the EU reaching trade agreements with third countries but we are concerned about the current direction of these particular negotiations. We have set out our concerns in a detailed statement on TTIP adopted by SIPTU's National Executive Council in June 2015.\* This document summarises that statement.

We believe the negotiations should be suspended so as to allow a full review of the concerns we and other trade unions and civil society organisations have identified. If these concerns are not adequately addressed, we would have no hesitation in actively opposing any proposed final agreement.

This document is set out as follows. Section 2 outlines TTIP's basic features. Section 3 examines the claimed economic benefits. Section 4 highlights the potential negative employment effects. Section 5 examines whether current instruments would be able to support workers who would lose out. Section 6 examines the controversial investor-state dispute settlement (ISDS) mechanism. Section 7 examines whether TTIP can promote labour rights. Section 8 examines whether the proposed protections for public services are sufficient under such a broad agreement. Section 9 outlines the proposals to align EU and US regulations. Section 10 sets out our conclusions.

*\*To view full statement go to: [www.siptu.ie](http://www.siptu.ie)*

## 2. TTIP – Main Features

TTIP is a proposal to bring the EU and US economies closer together. It is much broader than a traditional international trade agreement. The intention is to reach agreement in three main areas:

- i) 'Market access' – granting EU and US firms greater access to each other's economies such as by reducing tariffs (which are generally quite low for most products but higher for some) and restrictions that limit access to certain sectors (e.g. to public procurement);



- ii) 'Regulatory coherence' - reducing so-called 'non-tariff barriers' such as differences in technical regulations (e.g. on product size, design, labelling, marketing etc.) and bringing existing and future EU state and US regulations closer together.
- iii) 'Global rules' - on trade issues such as on intellectual property, investment, labour standards etc.

The European Commission is negotiating on behalf of EU member states. About 24 working groups made up of Commission and US officials meet about every two months in Brussels or Washington to negotiate particular topics. Nothing will be agreed until everything is signed off.

The Commission is negotiating under a mandate unanimously agreed by EU trade ministers, including Minister for Jobs, Enterprise and Innovation, Richard Bruton, in June 2013. It works closely with national civil servants, including from the department and regularly briefs ministers and Members of the European Parliament (MEPs) on the talks.

Any proposed agreement concluded by Commission and US negotiators would be submitted (without further amendment) for approval to MEPs. MEPs would have to adopt the agreement by an absolute majority (i.e. at least 377 of its 751 members). If that hurdle is passed, the agreement would (more than likely) have to be unanimously adopted by all 28 EU governments and by the national parliaments of all 28 member states. There is a possibility that the agreement could be adopted by a qualified majority of governments but this issue will not be resolved for certain until the text is finalised: the content determines the voting procedure.

The negotiations are likely to continue until the end of 2016, at least. Voting in the European Parliament, in the Council of Ministers and in national parliaments could take a further two years. If adopted, full implementation could then take up 10 years.

### **3. Claimed economic benefits are based on unrealistic political assumptions**

It is claimed that TTIP could lead to an annual 0.5% (i.e. €119 billion) rise in EU GDP and a 0.5% rise in real wages across Europe, after 10 years' implementation. These estimates are based on a 2013 Europe-wide study carried out by the UK Centre for Economic Policy Research (CEPR) for the European Commission.

It is important to realise that this study assumes that an 'ambitious and comprehensive agreement' will be reached. This is defined as entailing the abolition of all remaining tariffs, a 25% reduction in non-tariff barriers and a 50% reduction in public procurement barriers.

What is less often highlighted is that this study also estimates that a 'less ambitious' agreement, i.e. entailing a 98% reduction in tariffs, a 10% reduction in non-tariff barriers, and a 25% reduction in procurement tariffs, could lead to a 0.25% rise in EU GDP, after 10 years. Therefore, the claimed benefits depend on the assumptions of what might be agreed.

However, many commentators do not believe an 'ambitious and comprehensive' agreement is realistic politically. A 2014 survey by the US think-tank The Atlantic Council and the German think-tank The Bertelsmann Foundation of over 300 trade specialists (e.g. national parliamentarians on national trade policy committees, trade lawyers, business, academia and the media) found that only 29% (down 8% since 2013) felt a broad agreement would be reached. A total of 57% (up 2%) said a moderate agreement would be the outcome and 14% (up 6%) said no agreement would be the outcome. While a moderate agreement under this survey is not the same as a 'less ambitious' agreement under the Europe-wide study, it is also worth noting that an April 2015 European Parliament study places much more emphasis on the prospect of a 'less ambitious' agreement than on an 'ambitious and comprehensive one'.

On the same basis, the claimed benefits for Ireland, of a 1.1 % rise in GDP, a 1.5% rise in real wages, and up to 10,000 'additional export-related jobs', according to a March 2015 study by research consultancy, Copenhagen Economics, for the Department of Jobs, Enterprise and Innovation (called the Irish study below), should also be treated with caution.

It should also be pointed out that a number of other studies using different economic models and based on different assumptions forecast negative effects in terms of economic growth, employment, wages etc.

#### 4. Insufficient consideration of negative employment effects

The 2013 Europe-wide study concludes that an 'ambitious and comprehensive' agreement could result in between 0.2% and 0.5% of the EU labour force (i.e. between 500,000 and 1.1 million workers) having to change jobs and move from one sector to another over the ten year implementation period.

This estimate was not broken down by member state but an (admittedly crude) extrapolation based on the size of the labour force in each member state would suggest that between 4,000 and 10,000 workers in Ireland could be adversely affected (under the assumption of an 'ambitious and comprehensive agreement').

The negative employment effects are not fully considered in the 2015 Irish study. This study simply states that there could be up to 10,000 'additional export-related jobs' in Ireland (under the assumption of an ambitious and comprehensive agreement). While it does state that certain sectors in Ireland could lose out (e.g. business services, primary production particularly beef



production etc.), there was no attempt to quantify how many jobs losses there might be in these (and other) sectors, nor the regional impact of job losses.

**Recommendation: an independent and comprehensive assessment of the potential negative employment effects, sectoral and regional, must be carried out for Ireland.**

## 5. Supporting workers

In its acknowledgement that 'there will be sectors shedding workers and the re-employment of these workers in the expanding sectors is not automatic' the European Commission states that EU instruments such as the European Social Fund (ESF) and the European Globalisation Adjustment Fund (EGAF) as well as 'numerous Member States mitigating measures' could be used to ensure a 'balanced regional and social outcome' arising from job losses in certain sectors.

While the Commission does not identify what national 'mitigating measures' it has in mind, it should be realised that these EU instruments are, as currently funded, unlikely to be able to support between 500,000 and 1.1 million workers. Only 126,000 workers were supported by the EGAF between 2007 and 2014, according to a recent European Parliament report. Almost all of the ESF's 2014-20 budget is already committed while the upper limit of the EGAF's annual budget was cut from a maximum of €500m per annum between 2006-13 to €150m per annum for the 2014-20 period. And there is no apparent intention to increase allocations to the ESF and the EGAF during the 2016 planned mid-term review of the 2014-20 EU budgetary framework.

**Recommendation: Support for workers who would be adversely affected by TTIP must be strengthened, including by expanding instruments such as the European Social Fund and the European Globalisation Adjustment Fund, as well as national measures.**

## 6. Investor State Dispute Settlement (ISDS) will lead to 'regulatory chill' effect

It is the proposals to include a controversial 'Investor State Dispute Settlement' mechanism that is giving rise to most concern about TTIP among trade unions and civil society so far.

These provisions, which are a feature of international trade agreements already in place, enable a foreign investor (and a foreign investor only) to seek damages from a signatory state to an agreement containing ISDS provisions over an alleged breach of its 'rights' under that agreement. Implementation of these provisions is highly controversial, with cases heard before a private international tribunal, mostly behind closed doors. Average damages are reported to be approximately \$16.6 million, according to the UN, though there have been

awards amounting to hundreds of millions and, indeed, billions of dollars.

While Ireland has ratified (in 1999) the European Energy Charter which includes ISDS provisions, introducing ISDS through a much broader agreement such as TTIP would further entrench the rights of foreign investors vis-à-vis public authorities. It would inevitably lead to a 'regulatory chill' effect whereby legislators would be unwilling to regulate for fear of being sued. In blunt terms, the potential threat of an ISDS claim will always remain if TTIP includes ISDS. SIPTU will therefore oppose any proposed agreement that contains ISDS.

The recent Australian-US Free Trade Agreement shows that international agreements that do not contain ISDS provisions can be agreed. There is no valid reason why the EU and the US should not do the same.

**Recommendation: Drop ISDS from TTIP**

## 7. Adopting, maintaining and enforcing core International Labour Organisation (ILO) Conventions

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In July 2014, the European Trade Union Confederation (ETUC) and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) jointly called on the EU and the US to commit through TTIP to 'adopt, maintain and enforce' the eight core ILO conventions (i.e. on collective bargaining, forced labour, child labour, and the elimination of discrimination in the workplace) as well as the ILO's Decent Work agenda (i.e. promoting employment, social protection, social dialogue, and fundamental principles and rights at work).

All EU member states have ratified the core ILO conventions whereas the US has ratified just two - on forced labour and child labour. Canada, with which the European Commission has recently concluded trade negotiations, has ratified six of the core ILO conventions - all but two on collective bargaining and child labour. It would appear, therefore, that Canada and the EU are closer in approach to the ILO conventions than the EU and the US are.

However, the draft EU-Canada agreement, which has yet to be put to a vote, merely commits both sides to making 'continued and sustained efforts towards ratifying the fundamental ILO Conventions to the extent that they have not done so'. This seems to be no more than a commitment to making 'continued and sustained efforts' (towards ratification), not to actual ratification.

The European Parliament's resolution of 8th July 2015 on TTIP now calls for a binding and enforceable sustainable development chapter that aims at the 'full and effective ratification, implementation and enforcement' of the eight core ILO Conventions, the ILO's Decent Work Agenda and the core international environmental agreements. These provisions should be included in TTIP.

**Recommendation: TTIP should commit both parties to adopting, maintaining and enforcing the core ILO Conventions and the Decent Work Agenda and core international environmental agreements.**

## **8. Protecting public services**

The only public services that would be entirely exempt from TTIP would be 'governmental authority' services, such as public administration, the police, the judicial system and social security. The European Commission argues that existing measures aimed at protecting public services contained in existing international trade agreements signed by the EU will be sufficient under TTIP. These include exemptions from (liberalisation) commitments, limits on commitments and justifications for specific (public service) measures.

The question remains however whether these measures, agreed either at EU level or at national level, will be robust enough and flexible enough to protect public services under such a broad agreement as TTIP, particularly with its proposed ISDS provisions.

In addition, whereas previous EU-negotiated agreements applied only to expressly-listed sectors (a so-called 'positive list' approach), the proposed EU-Canada agreement would apply to all sectors except those expressly listed (a 'negative-list' approach). This places considerable responsibility on national authorities to state each and every area where the agreement would not apply ('list it or lose it').

Finally, the draft EU-Canada agreement proposes to include a so-called 'ratchet clause'. This provides that if certain measures that are currently exempted from a commitment under the agreement, at a future point are deliberately liberalised, the exemption can never be re-introduced. For example, the proposed EU-Canada agreement would maintain an 'economic needs test for intercity bussing services' in Ireland so as to limit access by Canadian transport companies to Ireland's public transport sector. If a future Government however was to abolish this measure, any subsequent attempts to re-introduce the measure could be deemed a breach of the agreement.

**Recommendation: Public services should be entirely excluded from the scope of application of TTIP. This should include but not be limited to health, social services, education and water. Member states must retain the right to introduce, adopt, maintain, or repeal any measure with regard to the commissioning, organising, funding and provision of public services, irrespective of how they are provided or funded.**

**The proposed 'negative' list approach and 'ratchet' clause should be dropped.**



## 9. Regulatory co-operation

The European Commission says that up to 80% of any gains under TTIP would come from closer 'regulatory coherence' between the EU and the US, i.e. cutting so-called 'red tape'.

This is to be attempted through a new, permanent 'Regulatory Co-operation Body' (RCB) that would examine all current and planned EU and national measures that 'have a significant impact on trade and investment', and make recommendations.

The RCB would be composed of EU and US regulators (e.g. European Commission officials) but, crucially, there would also be a direct input by stakeholders who would be able to bring forward their own recommendations (which could be accepted as RCB recommendations).

While trade unions and other civil society organisations would therefore have a role, it is likely that only industry bodies would have the real capacity to fully engage with this new process, and then only with a de-regulation agenda. If a multinational like Volkswagen admits to deliberately cheating on existing rules aimed at cutting dangerous emissions, can we be sure that the RCB would not be used to 'tear down from within' existing or planned measures aimed at protecting human health, upholding labour standards, safeguarding consumers etc.?

Furthermore, many commentators approach this issue with the view that regulation is a barrier in itself. For example, the 2015 Irish study states. 'Tariffs and regulatory differences give rise to unnecessary burdens on exporters, which causes distortions in the exchange of goods and

services. Reducing these barriers will provide consumer gains and enhance trade and growth'.

This completely ignores the fact, as the ETUC General-Secretary has said, that 'what is one person's red tape is often another's red line'. As a 2009 'pre-TTIP' study for the European Commission concluded: 'aligning non-tariff measures needs to be chosen with care - so as not to lower standards, and to avoid treating differences in regulatory systems as simple trade barriers. This matters particularly with regard to consumer interests on product safety, and social and environmental standards...'



**Recommendation: Regulatory co-operation, based on the balanced involvement of stakeholders, must not undermine the right to regulate in the public interest, including to uphold labour and social standards, and must aim at the levelling upwards not downwards of EU and US regulations.**

## 10. Conclusion

SIPTU is not opposed in principle to the EU concluding an agreement with the US. We support the July 2014 statement from the ETUC and the AFL-CIO setting out the demand for a transatlantic agreement that 'promotes workers' rights, generates quality jobs [and] upholds public services and procurement, democratic decision-making and international conventions'.

We are concerned that this is not where the TTIP talks are heading. We may be told that our fears are unfounded but it is well to set these out now rather than wait until the end when no doubt we would then be told it is 'too late'.

We do not want to be presented with a *fait accompli* in the form of an inadequate and unacceptable agreement that would become a (low) benchmark for future EU agreements with third countries. Accordingly, we believe the talks should be suspended now pending a full review of the concerns summarised in this document and set out in full in our National Executive Statement of June 2015.

By highlighting these concerns, we are telling all those involved that if certain highly problematic provisions are included and certain necessary safeguards excluded, we would have no hesitation in actively campaigning against any proposed agreement.



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