



## **Update on the Comprehensive Economic and Trade Agreement (CETA), the Transatlantic Trade and Investment Partnership (TTIP), and the Trade in Services Agreement (TiSA)**

### **Background paper (December 2014)<sup>1</sup>**

This note reports on recent discussions on trade issues that have taken place with the European Commission (EC) and European Parliament (EP), and where EPSU / ETUCE have participated. The aim is to highlight the contentious issues around the CETA, TTIP and TiSA, especially concerning public services (see under point 5), in preparation of the EPSU/ETUCE seminar in Vienna on 15-16 January.

Annex I gives some first information from members on CETA – please find out what you can about the impact of CETA in your country.

Annex II asks some questions about who national positions on trade and different actors – please try and complete.

#### **1) European Parliament (EP)**

There have been many recent events on trade in the EP. EPSU and ETUCE took part in events organised by the S&D, Greens and GUE. We also took the opportunity to have on 10 December discussions with Canadian colleagues over in Europe to raise concerns in the EP about CETA, Scott Harris from the Council of Canadians and Priscilla Bittar from the Confédération des syndicats nationaux (CSN).

On 2 December the European Parliament had a hearing on the Employment and Social aspects of the Transatlantic Trade and Investment Partnership (TTIP), organised by the Committee on Employment and Social Affairs & Committee on International Trade. This provided a good overview of the different issues that are being debated, not just in relation to TTIP but also CETA and TiSA. The meeting was chaired by Marita Ulvskog, 1st Vice-Chair, acting EMPL Chair. Bernd Lange, INTA Chair opened by saying that TTIP should have the goal of setting standards for FTAs with particular focus on improvement of workers' rights and sustainable development.

Ignacio Garcia Bercero, EU Chief Negotiator noted that the TTIP negotiations should be considered from a broader perspective. CETA gives indication of the level of ambition. Although negative listing of market commitments, public services are fully protected. There are no commitments in public services and Member States can decide if some services should be provided by public sector. Reservations in Annex II allow for reversibility of

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<sup>1</sup> Some basic references:

- ETUC and ITUC positions on trade and investment <http://www.epsu.org/a/9736>)
- ETUC-CLC joint statement on CETA <http://www.etuc.org/a/10753>
- EPSU Congress resolution on trade <http://www.epsu.org/r/630>
- PSI Trade Website <http://www.world-psi.org/en/issue/Trade>
- ETUCE position paper on education and TTIP: [http://etuce.homestead.com/Statements/2014/Statement\\_on\\_the\\_Transatlantic\\_Trade\\_and\\_Investment\\_Partnership-EN.pdf](http://etuce.homestead.com/Statements/2014/Statement_on_the_Transatlantic_Trade_and_Investment_Partnership-EN.pdf)
- EESC opinion on TTIP [http://europa.eu/rapid/press-release\\_CES-14-42\\_en.htm](http://europa.eu/rapid/press-release_CES-14-42_en.htm)
- Leaked TTIP and TiSA documents <http://eu-secretdeals.info>

liberalisation policies. He affirmed that in TTIP the EU is aiming at regulatory compatibility, not the lowering of standards. EU regulatory autonomy will be maintained. Much can be done to remove / simplify 'red tape' differences regarding cars, pharmaceuticals, medical devices, food products. For the EC, the EU South Korea Free Trade Agreement (FTA) is a model. This FTA has led to a big increase in trade for EU companies. Tom Jenkins for the ETUC reaffirmed ETUC concerns (no ISDS; guarantees for public services and enforceability of labour rights). He noted Mr Berbero's assurances on public services but said ETUC was not convinced they went far enough, e.g. because of use of negative listing. He clarified that ETUC is not opposing TTIP as there is not enough information on what TTIP will do, and because ETUC is not against trade as such. CETA is not however acceptable and ETUC opposes its ratification. In her conclusion Marita Ulvskog pointed out that the debate had highlighted the most contentious issues: ISDS, public services, and expectations about quantity / quality of jobs.

### **Upcoming INTA resolution on TTIP**

The INTA Committee will now prepare a resolution on TTIP for March / April 2015. The timetable is as follows:

21-22 January: consideration of working document in INTA;

23-24 February: consideration of draft report in INTA;

6 March (12.00): deadline for amendments in INTA;

27 March: deadline under Rule 53(3) for other committees to submit their opinions;

14 April: committee vote in INTA;

18-21 May: plenary vote.

The resolution will be an important instrument to define more clearly the EP's position on TTIP (but also TiSA) in the future negotiations (the next TTIP round takes place in early February 2015).

### **2) EC civil dialogue meeting, 4 December**

On 4 December the European Commissioner for trade, Cecilia Malmström attended her first civil society dialogue meeting on trade. The Commissioner has confirmed that the EC wants a 'fresh start': *"I look forward to discussing with civil society actors about trade issues and hearing everyone's suggestions and concerns. Engaging more with civil society is a high priority for me as Trade Commissioner."* A video of the debate is available on the EC website <http://trade.ec.europa.eu/civilsoc/meetdetails.cfm?meet=11436>.

Her presentation to the civil dialogue meeting was very much about the benefits of traditional trade agreements; i.e. more trade brings lower prices and more choice for consumers (examples were given of textiles and pharmaceuticals); more jobs (and adjustment mechanisms could provide support for displaced workers/farmers); and more opportunities for SMEs (not just big companies). The Commissioner did not say how trade could address growing inequalities (for example in the US the wealthiest 0.1 percent have 22 percent of wealth, more than triple what it was three decades ago). On public services, she said including sectors would be beneficial in terms of recognition of qualifications but that she was looking to confirm 'in a more legal way' that public services will not be included in TTIP. She also agreed that it was not coherent that the TTIP mandate was available but not the services offer, whereas in TiSA it is the other way round.

The EC's stated objective to improve transparency is a response to many complaints, including from EPSU, for example the [joint initiative calling for transparency](#) that was endorsed by the EPSU Executive Committee in April 2014. Similarly, the ETUCE has repeatedly called for transparency, for instance in [the ETUCE Statement on TTIP](#). The European Ombudsman, Emily O'Reilly has also been active and ran a public consultation on transparency in TTIP. The European Ombudsman is expected to make further

recommendations on transparency in January 2015. For more information see <http://www.ombudsman.europa.eu/en/press/release.faces/en/54636/html.bookmark>. The response of the ETUCE to the European Ombudsman's public consultation is available at [http://etuce.ei-ie.org/images/Statements2014/ETUCE\\_reponse\\_European\\_Ombudsman\\_Public\\_Consultation.pdf](http://etuce.ei-ie.org/images/Statements2014/ETUCE_reponse_European_Ombudsman_Public_Consultation.pdf). The EC is also conscious of growing opposition to TTIP, CETA and TiSA. The 'self-organised' European Citizens' Initiative (ECI) topped a million signatures by November, see <https://stop-ttip.org/about-the-eci-campaign/>. The initiative is supported by a number of trade unions.

However, at the same time the EU is proposing [a new European Union \(EU\) directive on trade secrets \(link is external\)](#) that contains an unreasonably broad definition of "trade secrets" and inadequate safeguards to ensure access to data that is in the public interest. (See [joint statement](#) regarding the Directive for more details.) Furthermore, the [latest leaked document](#) of the Trade In Service Agreement ([TISA](#)) negotiations regarding threats to privacy and data protection raises questions about the extent of the EC's transparency initiatives (see PSI website <http://www.world-psi.org/en/tisa-new-leaked-document-reveals-us-corporations-threat-privacy-and-data-protection>).

### **3) EC Advisory Committee on TTIP meeting on (public) services 21 November**

On 21 November a meeting took place in the Advisory Group on public services, with the participation from EPSU, ETUCE and ETUC. A full minute of the meeting will be provided by the European Commission. In the meeting the EC services negotiator Mr Duerkopf welcomed the discussion acknowledging the complexities of the discussion but underlining that the EU had not changed its approach to public services which has been followed consistently for some 20 years since the GATS (in CETA and also TTIP and TiSA). He presented the different elements being negotiated within the services chapter. The EU remains convinced that FTAs pose no threats to non-discriminatory standards including quality standards and the rule of law; and that positive /negative listing approaches are equivalent and only a matter of technicality. However, when asked about possibilities to change commitments once made in FTAs he said this was not easy: GATS commitments can be changed for example but this needs to be negotiated with all 160 partners (example of Bolivia and Ukraine who want to change their commitment on healthcare).

Regarding TTIP he said that the US also had a cautious approach to public services and would seek broad reservations in Annex II. He insisted that there is no ratchet mechanism in Annex II, which is why public services feature here and not in Annex I. 'New' services can also be protected by making a reference to them in the agreement, however he mentioned that the EU do not think that entirely new services will appear.

When asked about problems to regulate the 'private' part of the given public services sector (e.g., education in the US), he said that regulation of a sector is not an issue although investors who are present may have a claim if there is market closure. EU regulated for example the financial services sector very quickly when there was the banking crisis.

EC was asked if the 'traditional' approach to dealing with public services in FTAs was (still) satisfactory given the recent Treaty changes (SGI Protocol etc) that emphasise the shared responsibility of the EU and Member States for ensuring access to quality public services such as healthcare. The recent report from the Social Protection Committee and the European Commission for example recommends that long-term care should be integrated into social protection systems for equity and efficiency reasons. How will it be possible in Member States that do not take out reservations for the sector? If country X liberalises all its public services is there not a problem for Europe as a whole (as well as for the people of that country if the government changes)? The EC thinks Member States are able to regulate

(private) providers of public services whether or not these services are committed and irrespective of reservations taken. Is this really correct - what about limitations on profit-making that is a common feature of social service provision; and won't regulatory mechanism come under pressure and seen as 'red tape', (licensing and authorisation procedures in order to ensuring the quality of the service e.g. limits on hospital beds...)?

There was some discussion on postal services – in US they are (wrongly in the EU's view) seen as being under governmental authority.

There was also some discussion on mode 4 (mobility / qualifications), public procurement and concessions, but not very specific, as well as a brief update on ISDS where it was said that it would not apply to public procurement. The EC recognised that it is important for public service / general interest questions to link these different elements of the negotiations.

#### **4) PSI TiSA Forum 17- 18 October 2014**

To recall, two recent PSI publications on public services and TiSA give information on the main concerns: "TiSA versus Public Services"<sup>2</sup> launched in April 2014 (see also <http://www.epsu.org/a/10451>); and a special report by Ellen Gould entitled *The Really Good Friends of Transnational Corporations Agreement*. See <http://www.world-psi.org/en/psi-special-report-really-good-friends-transnational-corporations-agreement>. Both reports were discussed on 17-18 October 2014 PSI's forum on TiSA – see <http://www.world-psi.org/en/open-tisa-public-debate-say-experts-first-global-forum>. More than 150 participants attended the event from trade unions, civil society organisations, Members of the European Parliament and Governments. This forum was organised in cooperation the Friedrich-Ebert-Stiftung (FES) and Our World Is Not For Sale (OWINFS) network.

The keynote speech on the TiSA negotiations and the rule of law was given by Herta Däubler-Gmelin, Professor of law and former MP and Minister of Justice, Germany. It was noted that modern FTAs are much more than "traditional" trade deals on tariff and quotas. She stressed that according to TFEU Art 21 regarding the principle of democracy, policies must be legitimised. The goals of TiSA are free access to markets and setting the rules for services including public services. TiSA will have serious consequences not only for the negotiating countries, but also for emerging and developing countries. According to TFEU Art 21, the EU should promote multilateral solutions to common problems in particular in the UN system. However, TiSA is a plurilateral negotiation. While it is open to other countries in principle, the countries coming in at a later stage cannot make any changes. Transparency is important in particular in the context of changes of law in order to be legitimate. This is also visible from the growing demands for transparency in TTIP. Many international negotiations are negotiated in full transparency, which shows that there is no need for complete secrecy as often stressed by trade supporters. It is necessary to look at the legal relations between the different trade agreements and discuss them together. These free trade agreements may be overlapping and it is not sure which rule will prevail. These questions need to be clarified before the end of negotiations. Concerning investment protection, it seems to include the state-to-state mechanism as in the WTO, however ISDS could it reappear later due to criticisms of ISDS in TTIP and other currently negotiated free trade agreements.

Jane Kelsay, Professor of law at the University of Auckland made a presentation on the current services liberalisations and content of TiSA explaining that GATS was an experiment, which was pragmatically adopted from GATT. Now, the attempt is to rewrite GATS through free trade agreements to avoid the consensus rules of the WTO and impose behind the borders' disciplines on governments. TPP, TTIP, CETA and TiSA need to be seen as a package. In the context of TiSA it is important to note that countries can access only on extraordinary terms. In TPP, Japan, Canada, Mexico were blindfolded; they had to accept

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<sup>2</sup> "TiSA versus Public Services" report at: [www.world-psi.org/en/issue/TISA](http://www.world-psi.org/en/issue/TISA) in English, French and German

everything that had been agreed on without even knowing what was agreed. This is the similar approach adopted in the TiSA negotiations. The negative list means that current levels of liberalisations are locked-in. While it is possible to make limitations, it is important to consider that such limitations depends on the negotiated outcome and consequently results in limited protection. The negative list also results in high risks of errors and unforeseen consequences as no flexibility is permitted if conditions change. As a result, failed liberalisation and privatisation cannot be reversed.

Ellen Gould, Canadian Centre for Policy Alternatives made a presentation on Domestic Regulation:

- TiSA aims at disciplining:
- differences in regulations between governments
- localisation requirements
- restrictions on cross-border flows
- “government influence and control” of services
- Regulations are attacked as “red tape”, “unnecessary burdensome” or “undue”. The difference between GATS and TiSA is that while GATS has a mandate to negotiate domestic disciplines, TiSA aims to include such disciplines. Also, the controversial necessity test may appear in TiSA as well. The disciplines on domestic regulations add particular risk to the education sector with a range of regulations possibly being “disciplined”. This could impose significant risks to the quality and level of fees to be charged. Regulations are potentially challenged as “unnecessarily burdensome”, not “objective”, not “as simple as possible”, causing “undue” delays. Regulations could also be challenged as not “established in advance”. Even public consultations could be challenged as not being “objective”. Regarding the right to regulate, in the WTO US-Gambling case the trade panel ruled that trade obligations trumps the right to regulate!

## 5) How to achieve adequate protection / safeguards for public services?

The EC continues to affirm that public services are fully protected in trade agreements. However as mentioned above in the comments from the EC Commissioner, further clarification of this is in the pipeline. This is likely to build on the points outlined in the EC’s dedicated page on its TTIP website called “*Protecting public services in TTIP and other EU trade agreements*”, see <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1115>.

**EPSU and ETUCE will need to develop further arguments that highlight the weaknesses of protections. Below are some points that we have raised – please think about these in relation to developments in your sectors so that we can discuss further:**

- Public services / Services of General Interest (SGI) are part of the EU ‘acquis’ (Article 14, SGI Protocol) and EU and Member States must uphold principles of universality, quality, continuity etc..
- Member States and the EC have agreed that long-term care should be included in social protection systems, so it is not logical that many Member States do not make reservations for old-peoples’ homes.
- A good healthcare system (or education or water system) needs to work as a whole. Governments need to be able to regulate all service providers to ensure that public service objectives are met (universality, equal access, affordability, continuity, non-discrimination..). Increasingly we see problems in the way certain sectors are (inadequately) regulated...
- It is not possible to distinguish ‘publicly-funded’ healthcare/ education from ‘privately-funded’ healthcare/education (i.e., what criteria of funding 100% or less, do you take into account costs of training doctors or supplying infrastructure, what about subsidies and tax benefits?)

- Healthcare was excluded from the Services Directive (which removes / brings into question regulations on a wide range of areas such as licensing requirements, authorisation schemes and economic necessity tests) for good reason. This exclusion may come under pressure if 'privately-financed' healthcare is included in TTIP etc.
- On the other hand, education was not entirely excluded in the Services Directive and the pressures of commercialisation and marketisation are already visible as the result of the European Commission's infringement case against Slovenia's Higher Education Act. The European Commission claims that the Slovenian law is "incompatible with freedom of establishment and freedom to provide services" in its reasoned opinion. This is despite that fact that the provisions' of the Service Directive clearly exclude from the scope of the Directive education as a service of general interest and having special meaning. Also, the infringement case illustrates how public services like education face similar threats from the ongoing TTIP negotiation and the Services directive.
- Up to today, the EU has followed a *positive list* approach to making commitments applying to privately funded health/education services. Consequently, the European Commission claim that public services such as health and education are protected. CETA, and TTIP, include a negative list approach to public services, which means all that is not excluded is covered. Negative listing is more challenging and makes it harder for public authorities to take account of new or changing needs. It is also a very cumbersome process, necessitating many pages of exclusions.
- Local and regional government may lose decision-making space. An opinion from the Committee of the Regions (CoR) warns that the trade agreement's impact on local and regional authorities has not been sufficiently clarified, especially with regards to public procurement and public services (see [draft opinion](#) on the Transatlantic Trade and Investment Partnership (TTIP) adopted on 17 December by the CoR Commission for Economic and Social Policy (ECOS).
- ISDS is horizontal so applies to all sectors included in the Agreement (although the EC argues that it does not apply to public procurement)
- TTIP and similar free trade agreements may make it easier for the EU to pursue further liberalisation policies. For example, on 27 November the European Commissioner for Health and Food, Vytenis Andriukaitis launched the idea of an EU "single market for health services". EPSU has asked for a meeting with the Commissioner to clarify what is intended. EPSU has serious concerns about this idea and how it would achieve better quality care for all EU citizens. An internal market would involve a fundamental reform of healthcare systems including competition and privatisation. <http://www.epsu.org/a/10975>
- Market access obligations may undermine local self government, as set out in the EU TFEU. Municipalities<sup>3</sup> for example are concerned that water and waste water services could be liberalised thereby undoing their exclusion from the EU Concessions Directive.
- Trade agreements such as TTIP, CETA and TiSA may make it more difficult for municipalities to remunicipalise services (see EPSU study on remunicipalisation <http://www.epsu.org/a/8865>).
- TTIP etc could make it harder for people to have access to medicines. Oxfam recently published a paper: "*Trading away access to medicines - revisited: How the European trade agenda continues to undermine access to medicines*", see <http://oxf.am/KUP>. The paper argues that insufficient innovation and a lack of access to affordable medicines are major barriers to achieving the right to health in low- and middle-income countries and that trade policies should not be used as a tool to defend strict (and indeed extend) Intellectual property (IP) provisions which put in jeopardy access to medicines in developing countries and beyond.

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<sup>3</sup> See <http://www.staedtetag.de/presse/mitteilungen/071024/index.html> of the umbrella organisations of the German municipalities Deutscher Städtetag, Deutscher Landkreistag, Deutscher Städte- und Gemeindebund as well as the Verband kommunaler Unternehmen (VKU). The group of large municipalities represented in Eurocities have adopted a similar and equally critical position. [http://nws.eurocities.eu/MediaShell/media/EUROCITIES%20statement%20on%20TTIP\\_October%202014%20final.pdf](http://nws.eurocities.eu/MediaShell/media/EUROCITIES%20statement%20on%20TTIP_October%202014%20final.pdf)

Given that CETA has been declared to be finalised and that CETA will now have to be approved by the Council and European Parliament, we have an opportunity to assess what it means for public services. **This process is expected to take up to two years. It is important for EU members to give feedback on the impact of CETA, and especially to check what sectors / services have been committed (to check the Annex II reservations – see annex for example).**

EPSU is supporting a study on health and trade from the UK LSE that will be finalised soon and is being coordinated by the European Public Health Alliance (EPHA) and there are a number of critical studies available, e.g., from the Finnish expert Meri Koivusalo, about the impacts of trade policy on health. A recent World Health Organisation (WHO) report states "*Opening the health sector to trade, reform processes have split purchasers and providers and have seen increasing segmentation and fragmentation in health-care systems.... The Commission considers health care a common good, not a market commodity. Underlying these reforms is a shift from commitment to universal coverage to an emphasis on the individual management of risk. Rather than acting protectively, health care under such reforms can actively exclude and impoverish....*" (page 95)  
[http://www.who.int/social\\_determinants/thecommission/finalreport/en/](http://www.who.int/social_determinants/thecommission/finalreport/en/)

## 6) Other issues

### ***Investor-State dispute settlement (ISDS)***

The EC has indicated that it will publish mid-January its response to the consultation on ISDS provisions in TTIP. ISDS is the most controversial part of TTIP (and CETA) negotiations. As mentioned in the ETUC letter to the previous EC trade Commissioner De Gucht<sup>4</sup>, trade unions are fundamentally opposed to the inclusion of ISDS in TTIP (and in CETA as it may act as a 'Trojan horse' for the ISDS)<sup>5</sup>. All the critiques of ISDS stress that modern democratic societies have developed ways to separate power, i.e. between the legislature, government, and courts. ISDS on the other hand concentrates power. The ISDS system gives arbitrators the power to review all decisions by legislatures, governments, and courts. It does not observe the separation of powers, lacks basic institutional safeguards of judicial independence, and ultimately undermines democracy. EPSU supported the publication of a briefing on ISDS and CETA – available in <http://www.world-psi.org/en/ceta-trading-away-democracy> in many languages – coordinated by Corporate Europe Observatory. A more detailed study is available from Markus Krajewski on "Modalities for investment protection and Investor-State Dispute Settlement (ISDS) in TTIP from a trade union perspective" will be presented on 5 November in Brussels to a meeting organised by the Friedrich Ebert Stiftung (FES). To view the study please visit: [http://www.fes-europe.eu/attachments/486\\_FES%20Study%20ISDS%20in%20TTIP%202014.pdf](http://www.fes-europe.eu/attachments/486_FES%20Study%20ISDS%20in%20TTIP%202014.pdf)

The ETUCE Statement on Investment Protection in EU Investment agreement stresses that the Investor-State Dispute Settlement (ISDS) is a flawed mechanism, which is contradictory to and limiting on the right to regulate. It raises the specific concerns in respect to the education sector. Private companies could in the future challenge the quality and accreditation standards through ISDS if they felt these standards were "disguised barriers to trade" or "more burdensome than necessary". As emphasised in the Statement: "These quality and accreditation standards are crucial to ensure the quality of education and therefore ISDS poses very significant risks to the education sector and democratic decision-making in general".

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<sup>4</sup> [http://www.etuc.org/sites/www.etuc.org/files/other/files/20140625\\_karel\\_de\\_gucht.pdf](http://www.etuc.org/sites/www.etuc.org/files/other/files/20140625_karel_de_gucht.pdf)

<sup>5</sup> See response from the Canadian Centre for Policy Alternatives [here](#).

For an interesting interview about the political context of ISDS see:

[http://www.euractiv.com/sections/trade-society/analyst-isds-model-australia-not-canada-310835?utm\\_source=EurActiv+Newsletter&utm\\_campaign=bbb416e1f7-newsletter\\_daily\\_update&utm\\_medium=email&utm\\_term=0\\_bab5f0ea4e-bbb416e1f7-245771169](http://www.euractiv.com/sections/trade-society/analyst-isds-model-australia-not-canada-310835?utm_source=EurActiv+Newsletter&utm_campaign=bbb416e1f7-newsletter_daily_update&utm_medium=email&utm_term=0_bab5f0ea4e-bbb416e1f7-245771169)

ISDS provisions are part of the EU – Singapore trade negotiations, and the text was made public in October, see <http://trade.ec.europa.eu/doclib/html/152844.htm>

### **Regulatory cooperation**

Regulatory cooperation has had less attention than ISDS but it poses a number of serious threats, and is rather similar to the current 'better regulation' / REFIT agenda of the European Union that fundamentally challenges social rules.

The Friends of the Earth Europe, Corporate Europe Observatory and LobbyControl have produced a short guide that shows how negotiators envisage "cooperation" that will lead to coherent "standards". The guide shows how regulations that protect health, environment and welfare, may be affected and, not least, how if adopted regulatory cooperation will be a major obstacle to new and better rules and laws. See:

[http://corporateeurope.org/sites/default/files/ttip\\_covert\\_attacks.pdf](http://corporateeurope.org/sites/default/files/ttip_covert_attacks.pdf)

### **Employment aspects and the Labour Chapter**

Although EPSU and ETUCE's discussions focus on public services, we share the broader trade union concerns on employment aspects of FTAs and we contribute to ETUC discussions on these issues. In the CETA text agreed in 26 September and on the EC website [http://europa.eu/rapid/press-release MEMO-14-542 en.htm](http://europa.eu/rapid/press-release_MEMO-14-542_en.htm) contains a weak and non-enforceable labour chapter. On the ILO Conventions, the text only says '*The parties will make continued and sustained efforts towards ratifying the fundamental ILO Conventions to the extent that they have not yet done so.*' Furthermore, health and safety standards and in particular the precautionary principle are questioned: "*When preparing and implementing measures aimed at health protection and safety at work, each Party shall take account of relevant scientific and technical information and related international standards, guidelines or recommendations if they exist, particularly if such measures may affect trade or investment between the Parties.*" This statement is very much at odds with the EC's claim to uphold EU social standards.

Given that CETA text is weak, and given that workers' rights are under attack in many EU Member States, it seems to us very unlikely that TTIP, or TiSA, might achieve 'gold standards'. However there is some discussion on what these might be, e.g., obligations on investors, reference to OECD multinational guidelines, arrangements for transnational works councils, inclusions of range of labour standards, not just fundamental ILO Conventions.

## **7) Some national positions and developments**

### **France**

On 23 November the French Parliament and on 27 November the French Senate voted in favour of a resolution clearly speaking out against ISDS in CETA. The resolution also includes some interesting aspects about transparency, mixity, regulatory cooperation. <http://www.assemblee-nationale.fr/14/ta/ta0339.asp> and <http://www.senat.fr/rap/l14-134/l14-1341.pdf>

## **UK**

The possible implications for Scotland of an EU trade agreement with the USA was discussed at the Scottish Parliament in November 2014. The Scottish Government has previously stated that it believes that TTIP could deliver significant economic benefits for Scotland and confirmed that it has been engaging with the UK Government to maximise the benefits of TTIP for Scotland and to ensure that concerns about TTIP are addressed.

Papers for the Committee meetings are available on here when published:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29814.aspx>

In the UK a new video for the NHS campaign groups has been very popular:

[www.facebook.com/peoplesnhs](http://www.facebook.com/peoplesnhs) or <http://youtu.be/qMfFUSFExY>

## **Germany**

The German Government's position seems uncertain. In November Economic Affairs and Energy Minister Sigmar Gabriel gave a very disappointing speech at the Bundestag. "If the rest of Europe wants CETA, Germany will be in favour too ..." clearly contradictory to his Party Congress resolution adopted only weeks beforehand indicating opposition to ISDS.

<http://www.spiegel.de/politik/deutschland/ceta-abkommen-gabriel-kanzelt-freihandels-kritiker-ab-a-1005367.html>

## **Annex 1: EPSU members' assessments of CETA – to complete!!**

### **UK**

#### Services supplied in the exercise of government

Does not apply to services provided on a commercial basis or in competition with other service providers. Not adequate for public services in 21st century. Does not adequately cover health services in UK or across EU which is why a further exclusion for health has been included in CETA. However, nor would not apply to whole swathes of UK public services which haven't got specific exclusions

#### Exclusions for certain named publicly-funded services

Distinction between publicly- and privately-funded services is open to considerable interpretation. Indeed an arbitration tribunal using ISDS a could have a field day

CETA text: 'The EU reserves the right to adopt or maintain any measure with the regard to the provision of all *education/health/social services* which receive public funding or State support in any form and are therefore not considered to be privately funded'

Education: UK ONS doesn't classify FE, HE or adult education as publicly-funded. This exclusion may not be sufficient to protect these areas.

Health: the exclusion probably is sufficient although we need to drill down with regard to PFI for example, would this apply to a PFI hospital?

Social services: EU reservation for social services only refers to CPC 933 'Other social services with accommodation'. No reservations have been entered for CPC 932 Residential care services for the elderly and disabled; CPC 934 Social services without accommodation for the elderly and disabled or CPC 935 Other social services without accommodation. Why? Is this an oversight. For education they have used CPC 92 which covers all categories of education. For the social services exclusion they could have used CPC 93 Health and social services but they have chosen not to. Potentially whole swathes of social services have not therefore been excluded and shows the danger of negative listing if you don't get the classifications absolutely right

Services supplied in the exercise of government: the UK already has outsourced whole sections of these services so the horizontal exclusion above would not be sufficient. However there are no EU or UK exclusions for the following:

Probation: no reservations for CPC 9128 administrative services related to the detention or rehabilitation of criminals

Courts: no reservations for CPC 9127 public administrative services related to law courts

Police and crime: no reservations for CPC 9126 police and fire services

Emergency services: no reservations for CPC 9125 civil defence services

### **Italy**

In the reservation applicable in Italy (in comparison with other countries, such as Germany, Austria, UK) we do not have the explicit description of:

- Waste management: Sewage, refuse disposal, and sanitation services;
- Water
- Health and Social Services;
- Hospital Services;

More general issues are

The definition in the CETA text of services of general economic interest (SGEI) - (Chapter 19 Competition Policy, Article X-04: Definition). CETA has the same wording on SGEI as put into the State Aid rules, which we tried to oppose at the time but without success. We argue with Italian government that putting this into an international treaty goes even further and will close off any discussion about what is a SGEI. The EC and many Member States clearly link SGEI (public services) to market failure but our definition is broader (and at least Member States should be able to have a broader definition).

The definition of investment (Chapter 10, Article X.3 Definitions) is very broad; there are some concerns that this will mean that obligations for market access might contradict and undermine the rules laid down in the procurement and concessions Directives regarding the in-house award of contracts (which are allowed in the Directives but not (or not to the same extent) in CETA).

**Annex II – QUESTIONNAIRE**  
**Who's who in trade, who's doing what and what can we do together?**  
**EPSU/ETUCE mapping exercise**

EPSU/ETUCE wants to collect as much information as possible about the main actors at EU and national level on current trade agreements TTIP, CETA and TiSA. EPSU will complete the information for the EU level.

Please think about the questions below and bring your answers to the seminar. You may like to discuss with other participants from your country – see attached list of registered participants. Please include weblinks where possible.

EPSU/ETUCE members who are not participating in the seminar are also invited to give input (to Penny Clarke [pclarke@epsu.org](mailto:pclarke@epsu.org) or Louise Hoy Larsen [Louise.Hoj.Larsen@csee-etuce.org](mailto:Louise.Hoj.Larsen@csee-etuce.org)).

EPSU will also send the questionnaire to affiliates in countries where we have no participants.

**Trade minister / government / political contacts**

- 1) What is the position of your Government on TTIP, CETA and TiSA – in favour or not and why? Is it really shared by all Ministries (for example health minister may be more critical)?
- 2) Is the national Government position shared by local and regional government?
- 3) Have you discussed with your Government and / or local government about the need to exclude public services (health and social services, education, water etc)? What does the Government say?
- 4) Has there been any debates on trade and public services in your national / regional parliaments? And positions?
- 5) Can you identify some sympathetic politicians at national and / or local level?

**Trade unions**

- 6) Does your national confederation(s) have a position(s) on TTIP, CETA, and TiSA? In favour or not and why? What are the main elements and how do they compare with EPSU/PSI/ETUCE/EI/ETUC concerns regarding ISDS, negative listing of commitments/liberalisation of public services?
- 7) Do some sectoral unions have a position(s) on TTIP, CETA, and TiSA? In favour or not and why?
- 8) Are you in discussion with other unions about TTIP, CETA and TiSA? Could you compile a list of national contacts? Would it be possible to coordinate actions / events with these trade unions?
- 9) Are you analyzing the impact of CETA on public services in your country? How are you doing this (in cooperation with the national confederation, legal expert, other...)
- 10) Do you know of anyone else analysing the impact of CETA in your country (who..)?

## **Civil society**

- 11) Are there civil society groups active on trade? Please give details of main groups.
- 12) What are their main concerns?
- 13) Do you / can you work together on public service issues and/or other issues?

## **Press and media coverage**

- 14) Are trade issues picked up in the national press? If yes what are the main points, if not why is this?
- 15) Are there any key journalists / press contacts that could be developed?
- 16) What type of stories / information could we develop to get more media attention and public debate?

## **Possible events / actions in support of EPSU/ETUCE and trade union demands**

- 17) What do you think might be effective to raise awareness and campaign on TTIP, CETA, TiSA? E.g.
  - Coordinated press releases (i.e. PR in every country at the same time)
  - Coordinated letter writing (i.e., letter to MEPs at same time)
  - Coordinated national and European events to mark the TTIP, TiSA negotiation rounds
  - Coordinated national and European events to discuss CETA
  - Day of action 23 June for public services day – what could we do in each country?
  - Other days / hooks for coordinated actions? (e.g., 18 April is also a proposed action day by some civil society groups)
  - Other ideas?