



ETUCE Newsletter

Special Edition on the Transatlantic Trade and Investment Partnership

 Education International

The Transatlantic Trade and Investment Partnership (TTIP)

The controversial Transatlantic Trade and Investment Partnership (TTIP) is a comprehensive trade agreement currently being negotiated between the European Union and the United States. The deal is only peripherally about trade, as the tariff rates and quotas between the EU and the US are already very low. Instead, the main issue concerns regulatory convergence and so-called “non-tariff” barriers to trade in goods and services – such as regulations governing providers of goods and services.



The aim is to establish new rules, standards and procedures in a number of areas that are not covered by other trade agreements. The fifth round of trade talks was concluded on 23 May 2014, in Arlington, Virginia, US. The chief negotiators have declared that they are aiming to finalise TTIP by the end of 2015, previously negotiators have been reluctant to set any time frame for the negotiations because of the May European Parliamentary election and the US midterm election in November. During the fourth round of negotiations both sides called into question their partner’s level of ambition. During his visit to Brussels on 26 March 2014 for the EU-US Summit, U.S. President Barack Obama tried to reassure critics that the trade agreement will not cause harm to consumers and the environment.

Education and the Transatlantic Trade and Investment Partnership (TTIP)

During the fourth round of negotiations it became evident that education is being targeted in the trade deal. The US chief negotiator, Dan Mullaney, said the US is aiming to expand access of US for-profit companies to all European service sectors including higher, adult and other education services. At the same time, no sector of education is excluded from the US target list. This stands in contrast to the message from the European Commission, which has stated many times that public services including education will not be affected.

Despite the different announcements from the EU and US negotiators in the field of education, the European Commission has nevertheless repeatedly emphasised the need to open up service markets and making it easier to invest.

The vague formulation regarding the anticipated exemption of public services in the TTIP, which encompass education, gives rise to conflicting interpretations and therefore aggravates the issue. Negotiators have indicated that they will



follow the GATS (General Agreement on Trade in Services) exemption for public services. In GATS, public services are defined as services provided in the exercise of governmental authority that are delivered on a non-commercial basis and not in competition with other providers.

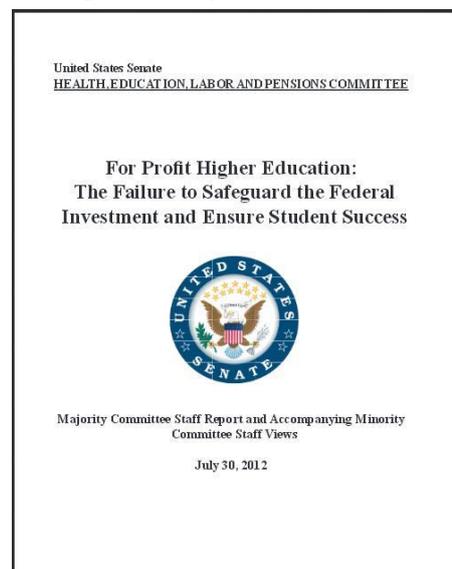
In cases where countries agree to liberalise education services, rules governing market access could restrict the ability of EU member states to limit the entry and regulate the quality of private and for-profit schools and institutions. Any measure adopted to promote high quality standards in licensing and accreditation processes could potentially be interpreted as a “disguised barrier to trade” or “more trade burdensome than necessary”.

With most education systems in the EU containing a mix of public and private, not-for-profit and for-profit provision, the line between public and private education is not easily defined. Therefore commitments taken on private education services might also affect public education.

Existing problems with propriety and for-profit schools and colleges

These examples of possible consequences are not simply hypothetical. The existing problems with proprietary and for-profit school and colleges in the US give a clear indication of the kind of problems that can be anticipated. A number of reports have investigated the problems with these institutions. In 2012 the US Senate’s Health, Education, Labour and Pensions Committee published the critical report For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success.

The report confirms that the for-profit education sector in the US is plagued with problems of poor quality, with many students paying a heavy price for diplomas, certificates and degrees of dubious value. In addition, huge amounts of taxpayer money (\$36 billion/year) are wasted by financing such institutions. It is telling that for-profit institutions value profit distribution (19.4% of revenue), marketing and recruiting (22.4% of revenue) over teaching and training students (17.7% of revenue). In addition, huge amounts of



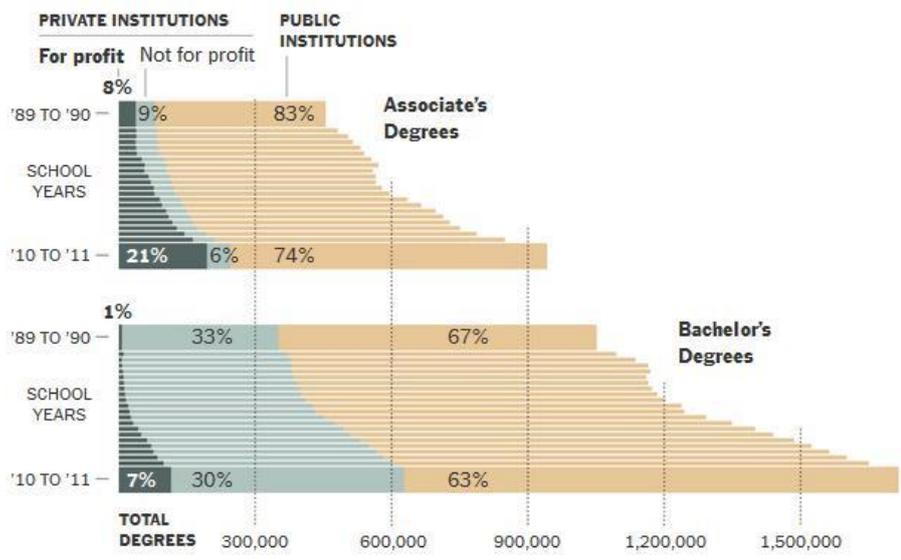
taxpayer money (\$36 billion/year) are wasted by financing such institutions. It is telling that for-profit institutions value profit distribution (19.4% of revenue), marketing and recruiting (22.4% of revenue) over teaching and training students (17.7% of revenue).

The outcome is that large numbers of students at for-profits institutions fail to earn credentials, with very high dropout rates. For example, the dropout rate is as high as 64% in associate degree programmes. The majority of students graduating earn on average less than high school dropouts. Simultaneously, the institutions charge very high tuition fees, which many students are then unable to pay back. The associate-degree programmes at for-profit colleges cost at least four times as much as comparable programmes at public community colleges \$34,988 versus \$8,313. Over the period from 1989 to 2011, for-profit education institutions significantly increased their share of college degrees as presented in the graph below.

Plugging the College Supply Gap

For-profit private colleges are educating a greater share of students seeking post-high school degrees.

COLLEGE DEGREES AWARDED, BY INSTITUTION TYPE



Source: National Center for Education Statistics

Percentages may not add to 100, because of rounding.

Since
2011 the
US

Education department has been working on strengthening the regulations of the for-profit schools. It is barely a month ago that the US Department of Education published its new proposal to regulate the for-profit schools. New strengthened regulations in the area were planned for July 2012; however these were not put in place as the for-profit schools launched a campaign against the new regulations. The Association of Private Colleges and Universities took the US department of Education to court with the result that the new regulations were overturned by the Federal District Court in 2012.

The main issues at stake regarding the Transatlantic Trade and Investment Partnership (TTIP)

The TTIP is unprecedented because of its very broad scope. The negotiators intend to cover areas that have traditionally been beyond the purview of trade treaties. Consequently, there are a number of issues of general concern.

- Secrecy of the TTIP negotiations
- Assumptions of growth and jobs
- “Ratchet” clause and the “negative list” approach
- Transatlantic Regulatory Cooperation Council
- Investment and investor-state dispute settlement

A first general concern is the secrecy of the TTIP negotiations. While the negotiators on both sides admit that the TTIP is exceptional both in its scope and depth, the negotiators still see no need to seriously involve more stakeholders in such a wide-ranging free trade agreement. The European Commission frequently states that TTIP is the most transparent trade negotiation to date. However, even the EU’s negotiating mandate is still not available for the public almost a year after negotiations officially were launched. Furthermore, in [a letter](#) to the US chief negotiator the EU promised full secrecy of all documents related to the negotiations or developments of the TTIP agreement.



The European Commission claims that the secrecy is necessary because the negotiations concern international relations, but when the negotiations have impacts on domestic issues as in the TTIP much greater transparency and possibilities for consultation are required.

Assumptions of growth and jobs

The European Commission largely promotes the TTIP negotiations by claiming that the deal would bring enormous benefits to both sides. In particular, the European Commission declares that the European Union would benefit in terms of growth and jobs. However, the figures of the [CEPR study](#) cited by the European Commission are based on what is called the most ambitious outcome, meaning the elimination of so-called non-tariff barriers (i.e. domestic regulations) to assure quality in goods and services. In such economic models as used in the CEPR study regulation is measured in terms of cost, but benefits are not considered. The European Commission states that the European economic crisis was one of the crucial conditions for entering into the TTIP negotiations because it

will create new jobs in Europe. The job fairy-tale is however only one part of the expected consequences of a TTIP agreement. The European Commission's [Impact Assessment](#) pointed out that there are *legitimate concerns* and *there could be prolonged and substantial adjustment costs*. In particular, the impact assessment calls attention to sectors that will likely see job losses and that these workers' re-employment is not guaranteed due to the likely mismatch between workers' skills and the need for retraining along with the geographical and structural conditions in the EU labour market.

"Ratchet" clause and the "negative list" approach

Another very worrying element concerns the possibility of the inclusion of a "ratchet" clause and a "negative list" approach. The adoption of a "ratchet" clause, as in the Canada-EU Comprehensive Economic and Trade Agreement (CETA), would expand the coverage of the TTIP by requiring the parties to automatically bind any autonomous liberalisation. This means that if a government were to experiment with liberalising a sector in whole or in part, future governments would be unable to undo this without paying significant compensation. For instance, if a government agreed to open up its market to foreign education providers this arrangement would automatically become "bound" in the agreement. If that experiment proved costly it would be difficult to undo that commitment. Similarly, the approval of a "negative list" approach means that all measures and regulations will be covered by the TTIP unless they are specifically excluded. This stands in stark contrast to the process under the General Agreement on Trade in Services (GATS) in which parties create a "positive list" of commitments thereby avoiding the need to list all non-conforming measures. The negative list also provides trade negotiators with a clear target list for future negotiations. In relation to the TTIP agreement this is particularly troublesome as negotiators have suggested that the TTIP should be a so-called living agreement because of its complexity.

Transatlantic Regulatory Cooperation Council

A strong element of such a living agreement is the proposal to establish a Transatlantic Regulatory Cooperation Council (TRCC). This body would bring together representatives of regulatory agencies in the EU and US to monitor the implementation of commitments made and consider new priorities for regulatory cooperation including joint development of future regulations. The European Commission claims that the negotiators will establish the framework of such a regulatory cooperation and that regulators will do the "technical work". Nevertheless, the proposal would mean that the Cooperation Council would consider both new legislation and non-legislative acts. This is an enormous area and the consequences of such an arrangement are likely to be huge.



Investment and investor-state dispute settlement

Investment and investor-state dispute settlement (ISDS) – the granting of legal rights to private investors to sue governments for alleged violations of the TTIP - is the issue that has received the most attention and criticisms of all the contentious areas. For that reason the European Commission decided to launch a [public consultation](#) on investment protection and investor-state dispute settlement (ISDS) in the end of March. The deadline for submission will be on 6 July 2014. The consultation is accompanied by a consultation notice, consultation document and privacy statement. ETUCE welcomes the public consultation and encourage all member organisations to contribute to the consultation.

The European Commission's aim with the consultation is to convince critical voices of the necessity to include ISDS in the TTIP by suggesting some modifications to the model. Shortly after launching the public consultation the European Commission announced that it is planning to fund a new international transparency database for ISDS. The European Commission thereby made the case that such a database will increase transparency and accessibility to the public as part of the new UN transparency rules on ISDS.

Criticisms are not only coming from trade unions and civil society, but also from the member states. Both France and Germany have called for dropping the ISDS mechanism pointing out that there is no need for such a mechanism between the EU and US as national courts provide sufficient legal protection. ISDS provisions are controversial as they enable foreign investors to directly sue states before arbitration panels which have a narrow mandate. As a result, foreign investors are given legal rights to challenge any regulatory or policy measure of the host-state it feels violates its rights to access a market or diminish the value of their investments. It will likely result in a policy chill because of the extraordinary cost of defending ISDS cases, which on average is between \$500,000 and \$1 million. Previous ISDS cases raise serious concerns both about the ability of states to maintain domestic regulatory space, but also about the accountability of foreign investors for damage caused by investment operations.

The way forward

The ETUCE Committee adopted the [ETUCE Statement](#) on the Transatlantic Trade and Investment Partnership on 15 April 2014. The statement demands that education is entirely excluded from the TTIP negotiations. It is central to get this message broadly across the EU. ETUCE has therefore asked all member organisations in the EU to approach their national governments to ensure that education is entirely excluded from the negotiations on the Transatlantic Trade and Investment Partnership (TTIP).

