



# TTIP, CETA and TISA – what you need to know about EU trade agreements

A UNISON briefing

March 2015

## Introduction

- **The European Union is currently negotiating three major trade agreements that could have a profound impact on public services, regulation in the public interest and employment and labour rights. Many people will have heard about TTIP, the Transatlantic Trade and Investment Partnership between the EU and the USA but the EU is also negotiating an agreement with Canada, the Comprehensive Economic and Trade Agreement (CETA), and a wider agreement with 23 other countries, the Trade in Services Agreement (TiSA).**
- **Historically trade agreements sought to reduce tariff barriers to trade (taxes on imports). TTIP, CETA and TiSA are different: all three agreements are seeking to liberalise the trade in services, including public services; TTIP and CETA are also treaties seeking to protect the rights of foreign investors; finally TTIP aims to reduce 'regulatory barriers' to trade, forcing through a deregulatory agenda.**
- **This briefing sets out why UNISON opposes TTIP, CETA and TiSA and what UNISON members can do to stop the negotiations.**

## The European Union and trade

The European Commission has the power to negotiate trade agreements on behalf of the 28 member states of the European Union, including the UK, and it is currently negotiating three trade agreements that could have a profound impact on public services, regulation in the public interest and employment and labour rights. Many people will have heard about TTIP, the Transatlantic Trade and Investment Partnership between the EU and the USA but the EU has already concluded negotiations with Canada on the Comprehensive Economic and Trade Agreement (CETA), and has started negotiations on an agreement with 23 other countries, the Trade in Services Agreement (TiSA).

The negotiations are being led by the European Commission with frequent reports to European Council meetings (heads of national governments). The final deal will have to be approved by the Council (national governments) and European Parliament. It is likely that both CETA and TTIP will also have to be approved by the national parliaments of the EU's 28 member states. However, neither the Council, the European Parliament nor national parliaments will be able to make amendments to an agreement; they can only accept or reject the final deal.

Furthermore, the negotiations are shrouded in secrecy. National governments and MEPs from the European Parliament's Trade Committee have only limited access to documents. MPs at Westminster have no access to the texts being negotiated. Both the European Court of Justice and the European Ombudsman have criticised the high level of secrecy and the European Commission has been forced to publish some negotiating texts. The CETA agreement is now public as negotiations have been finalised and it can give us some indication of what will be in TTIP but we cannot assume that the two agreements will be identical as the US and Canadian governments have different agendas in the negotiations.

# Why we should be worried about TTIP, CETA and TiSA

## **Liberalisation of public services**

All three agreements seek to create a global market in the trade of services, including public services. Whilst the EU has opened up services in other trade agreements in the past, it always explicitly excluded public services from the beginning by using what is known as the 'positive list'. However, negotiators have decided to use the so-called 'negative list' approach for TTIP, CETA and TiSA. This means that all services are open to market liberalisation unless a specific reservation is entered which has to be done on a service-by-service basis, and in some cases, on a country-by-country basis. Experience from other trade agreements shows that the negative list approach leads to the creeping liberalisation of public services as negotiators have failed to include sufficiently watertight exclusions.

Using a negative list also means a 'ratchet-clause' can be included in relation to market liberalisation. This means that even if a reservation is included in a treaty for a particular service, if a country then decides to liberalise the market for this service they are then obliged to maintain that level of market liberalisation and cannot reverse it. A 'ratchet-clause' locks in liberalisation and privatisation and would prevent bringing services back in-house.

The EU-Canada agreement (CETA) is now public and we know the European Union has negotiated exclusions for public services, including health, education and social services, from market liberalisation. However, CETA does include a ratchet clause and importantly there is no exclusion for public services from the controversial investment chapter.

## **Investment chapter**

Both TTIP and CETA include investment protection chapters designed to protect the assets of foreign investors. This is despite the fact that there is already US\$1.5 trillion of investment by European and North American companies on both sides of the Atlantic. Both the European Union, the US and Canada have long-established legislation protecting the rights of investors and transparent and effective judicial systems. There is no justification, therefore, for an investment chapter in either CETA or TTIP.

Furthermore, the investment chapter in both TTIP and CETA includes the controversial Investor-State Dispute Settlement (ISDS) mechanism. The ISDS is an international instrument that will grant companies the possibility to sue the European Union or member states when they believe a regulation is not in line with the investment agreement and that it threatens their profits. The claim can lead to compensation, and litigation takes place outside the established legal system in special international arbitration tribunals. These tribunals are private bodies run by private trade lawyers. Each individual tribunal is deemed 'sovereign', meaning it can make its final ruling regardless of international law or the decisions of previous tribunals. In addition there is no right of appeal against a tribunal ruling.

## **ISDS and public services**

Public services have not been excluded from the scope of the investment chapter of CETA. This could mean that a government seeking to end the liberalisation of a service and bring it back in-house, as Labour has said it would do in reversing NHS privatisation brought in by the Health and Social Care Act, could be sued in an arbitration tribunal as such a move could impact on the profit of the private service provider.

This is not just scaremongering. A report from the London School of Economics, commissioned by the Department for Business, Innovation and Skills in 2013 concluded that: “Based on Canada’s experience under NAFTA, we would expect an EU-US investment chapter to be regularly invoked by US investors against the UK for governmental actions that would normally not be challengeable under UK law.”<sup>1</sup>

In fact there is a growing ‘ISDS industry’. Although ISDS was first included in investment treaties in the 1960s between 1965 and 2000 there were only 50 cases or 1½ a year taken to an arbitration tribunal. However, by the end of 2013 there were 568 recorded cases meaning 40 cases a year since 2000 and 119 of those were against EU member states.

### **Threats to regulatory standards including health and safety legislation**

One of the main aims of TTIP is to reduce the supposed ‘regulatory barriers’ to trade. Negotiators are seeking to do this by the ‘mutual recognition’ of regulatory standards between the EU and US. This could include regulations with regard to chemicals, pharmaceuticals, food, environmental protection and public health.

There is real a concern that the higher regulatory standards found in the EU will be undermined by mutual recognition of the lower US regulations. For example, the EU uses the precautionary principle that requires proof that any new product causes no harm before it can be marketed. There are no such safeguards in the USA.

The ability of the state to introduce additional regulation to protect environmental and health standards is also threatened by the ISDS provision in the TTIP. To better understand how ISDS could affect health and safety in the EU, it is worth looking at what the impact has been under the North American Free Trade Agreement (NAFTA). The investment chapter of NAFTA gave corporations for the first time the right to sue governments in international courts. Several cases referring to Canadian health and safety laws have been filed under the NAFTA complaints mechanism and both the Canadian government and provincial governments have been forced to pay compensation to US companies.

In June 2014, the European Commission issued its Strategic Framework on Health and Safety at Work 2014-2020, with seven priority objectives, including ‘simplifying existing legislation where appropriate to eliminate unnecessary administrative burdens’. This coincided with the announcement of the shared EU-US objective of achieving regulatory coherence and eliminating, reducing or preventing unnecessary regulation. TTIP will place the EU on a fast track to deregulation.

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<sup>1</sup> Costs and Benefits of an EU-USA Investment Protection Treaty, London School of Economics Enterprise, April 2013



## **Limiting the role of government to act in the public interest**

ISDS allows investors to challenge government actions, which they perceive as 'expropriation'; i.e. threats to their investment or profits. However, what is understood as 'expropriation' by investors can be the legitimate exercise of government regulation for the public good. For example, Veolia is currently using ISDS mechanisms to sue the Egyptian government for increasing the minimum wage in the water industry. ISDS was also used against Slovakia when it sought to bring health insurance back into the public sector and against Australia and Uruguay for legislating for plain cigarette packaging. Even when the state is not under threat of legal action from investors, ISDS creates a 'regulatory chill' that stays the hand of governments to regulate in the public interest for fear of litigation.

## **Economic impact**

One of the main justifications for TTIP from its supporters is that it will bring substantial economic benefits. However, the benefits estimated by the key impact study for the European Commission are very small indeed: a 0.5% increase in growth rate in the most optimistic scenario by 2017. That only means an increase in disposable income of £2 per week per person in the EU based on the most optimistic scenario, or only £1.10 in a more realistic one, after 10 years!

The European Commission study was unable to predict any net impact on employment levels from TTIP. It did, however, recognise that at least 1.3 million European workers would lose their jobs as a result of the labour displacement arising from TTIP under the European Commission's preferred 'ambitious' outcome, and that over 680,000 European workers would lose their jobs even under a less ambitious outcome. According to the report, over 715,000 US workers also stand to lose their jobs under the 'ambitious' TTIP scenario, and more than 325,000 under a less ambitious outcome. Whatever new opportunities these workers may or may not be able to find afterwards, therefore, the Commission study predicts that TTIP will cause at least 1 million people to lose their jobs in the EU and USA combined.

## **Trade union rights**

The EU has historically included a chapter on trade and labour rights in trade agreements. These include references to obligations arising from International Labour Organisation (ILO) membership and adherence to the ILO's declaration on fundamental principles and basic rights.

However, unlike the other chapters of these treaties, the trade and labour sections lack effective enforcement mechanisms so if the rights set out are broken by one of the parties the other party cannot impose financial or trade sanctions as a penalty. The EU-Canada agreement is no exception and there is no reason to believe that TTIP will be any different either.

In addition, the USA has not ratified a number of the most important ILO Conventions, including the rights to freedom of association and collective bargaining. The US has also passed 'Right to Work' legislation in 24 states, most recently in the traditional union stronghold of Michigan, which clamp down on unions' capacity to bargain and organise.

## What is UNISON's position?

UNISON believes that the threats outlined above mean that we should oppose TTIP, CETA and TiSA. We are working with the TUC, the European federation of Public Service Unions (EPSU) and our global union federation Public Services International (PSI) as well as sister unions in Canada and the USA to stop these agreements. We have also joined a broad group of other organisations such as War on Want, Global Justice Now and Friends of the Earth in the #noTTIP coalition.

## What can you do?

To stop these agreements, we have to act now. Negotiations on CETA, the EU-Canada agreement, have been completed and the process to ratify it by the European and national parliaments is likely to start in the second half of 2015.

TTIP negotiations are scheduled to be completed by the end of 2015 and ratification could take place in the latter half of 2016. The timetable for TiSA is not yet clear.

The UK government is a major supporter of all three deals, however, given the secrecy surrounding the negotiations many MPs and MEPs are not aware of the dangers. That's why it is essential that trade unions and other civil society organisations ensure that critical voices are heard in Westminster, the European and Scottish Parliaments, the Welsh and Northern Ireland assemblies.

1. Contact your MP, MEP, MSP or Assembly Member and raise these concerns about these agreements. Ask them to oppose the deals.
2. Get your branch to link up with other organisations locally which are campaigning against TTIP such as War on Want or Global Justice Now and then organise a public meeting, lobby your MP's surgery and write to your local paper.
3. Spread the word about the dangers of TTIP, CETA and TiSA using social media such as Twitter (#stopTTIP #noTTIP) and Facebook

## Where can you get more information?

#noTTIP [www.noTTIP.org.uk](http://www.noTTIP.org.uk)

European federation of Public Service Unions (EPSU) [www.epsu.org/r/230](http://www.epsu.org/r/230)

Public Services International (PSI) [www.world-psi.org/en/issue/Trade](http://www.world-psi.org/en/issue/Trade)

Corporate Observatory Europe [corporateeurope.org/international-trade](http://corporateeurope.org/international-trade)

War on Want [www.waronwant.org/campaigns/trade-justice/ttip](http://www.waronwant.org/campaigns/trade-justice/ttip)

Global Justice Now [www.globaljustice.org.uk/campaigns/trade](http://www.globaljustice.org.uk/campaigns/trade)

Trade Justice Movement [www.tjm.org.uk](http://www.tjm.org.uk)

TUC [www.tuc.org.uk/international-issues/trade](http://www.tuc.org.uk/international-issues/trade)

European TUC (ETUC) [www.etuc.org/issue/trade-and-globalisation](http://www.etuc.org/issue/trade-and-globalisation)

UNISON is committed to working internationally. We believe that an injury to one is an injury to all and that solidarity between workers cannot stop at national borders. The key issues facing our members at home – austerity, privatisation and outsourcing, attacks on wages, pensions and other terms and conditions and the erosion of employment rights – don't happen in isolation. These policies are internationally driven by the international financial institutions and by multinational companies bidding for public service contracts across the world. That's why UNISON is an active member in both the European federation of Public Service Unions (EPSU) and our global union federation, Public Services International.

**Find out more at: [unison.org.uk](http://unison.org.uk)**



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