The Consequences of TTIP for employees

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Even from the standpoint of a relatively small and therefore determined to be open and in many ways highly competitive market economy as the Austrian one, a dry analysis of TTIP shows little evidence for economic or even social benefits. Moreover a closer inspection of TTIP, CETA and other likeminded agreements makes certain drawbacks apparent. This particularly refers to certain trade liberalizing instruments, such as provisions on investment protection, on regulatory cooperation, or on public services, that might undermine significantly the European social model. Despite of certain reforms, these poison fangs are still far away from being sufficiently pulled out in the course of political decision-making. From a progressive political approach, the negotiations are first and foremost a missed opportunity to foster our essential values of (not only European) welfare states, high standards of human rights and democracy.

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POLICY BRIEF

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I. The effects on growth and employment: minor advantages and high levels of risk

The European Commission views TTIP as an engine of growth and jobs. However, according to the Commission's own analysis, which was based on a study by the London Research Institute (CEPR)[1], in an optimistic scenario, TTIP will increase EU economic output by around 0.5% over a period of ten years. This would mean an average annual GDP increase of just 0.05%. In the study's 'less ambitious' scenario, which is far more realistic, TTIP would merely produce a one-off increase in GDP of around 0.3% within ten years.

Mainstream studies: questionable assumptions and no consideration of adjustment costs

The European Commission and business mainly base their figures on analyses conducted by Ecorys[2], CEPR and Ifo/Bertelsmann Stiftung[3]. These studies use so-called **general equilibrium models** which provide for short-term changes in the labour market, and assume that equilibrium will be reached in the long-term. This of course ignores situations such as long-term unemployment.

In addition, the majority of the growth picked up by these studies is based on reductions in so-called **non-tariff barriers** (NTB) such as production standards, food safety or regulatory processes. Reducing trade barriers in this manner could refer to harmonising but also repealing laws, administrative procedures and standards. However, these studies do not take into account the **social costs** of making such regulatory changes in areas like health, and consumer and worker protection. Furthermore, they ignore the **costs of adjustment** incurred through changes in technical standards by administrations and companies, and the costs of informing consumers about such changes.

Moreover, these studies tend to **underestimate the importance of imports** and either ignore or underestimate the costs of macroeconomic adjustment (such as the costs of changes in current account levels, the loss of customs revenues, and the costs associated with supporting the unemployed or retraining).[4]

Finally, these studies also disregard the effects of **trade diversion**: it is highly likely that TTIP will affect world trade flows[5], and especially intra-EU trade[6]. In fact, a decline should be expected in trade between EU member states on the one hand, and between the European Union and other countries

[1] CEPR (2013): Reducing Transatlantic Barriers to Trade and Investment. An Economic Assessment. Centre for
[2] ECORYS (2009): Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis. Rotterdam, http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc_145613.pdf
[3] Bertelsmann Stiftung/Ifo (2013): Transatlantic trade and investment partnership (TTIP): Who benefits from a free trade deal? Part 1: Macroeconomic Effects, http://www.bfna.org/sites/default/files/TTIP-GED%20study%2017June%202013.pdf
[4] ÖFSE (2014): ASSESS_TTIP: Assessing the Claimed Benefits of the Transatlantic Trade and Investment Partnership. http://www.oefse.at/fileadmin/content/Downloads/Publikationen/Policynote/PN10_ASSESS_TTIP.pdf.
[5] Capaldo, Jeronim (2014): The Trans-Atlantic Trade and Investment Partnership: Implications for the European Union and Beyond. Global Development and Environment Institute. Tufts University.
[6] Breuss, Fritz (2014): TTIP und ihre Auswirkungen auf Österreich. Ein kritischer Literaturüberblick. WIFO Working papers Nr 468/2014. (in German)

on the other. This would hit EU member states with sluggish growth and developing countries particularly hard.

Job and income losses are supposable

Based on the outcomes of the CEPR study it has been calculated that TTIP will lead to **employment shifts**: 430,000 to 1.1 million workers in the EU will temporarily lose their jobs[7]. This trend was confirmed by another – however contested – study[8] that forecasts that TTIP will lead 600,000 people to lose their jobs and which even goes as far as predicting an annual **loss of income** of between €165 and €5000 per citizen in the EU.

What are the consequences of TTIP for Austria?

An overview of the main studies has shown that we should expect a reduction in Austria's trade balance because the level of US imports is expected to grow twice as fast as the level of Austrian exports to the United States.[9] Some sectors, such as textiles, clothing, chemicals, machinery and the automotive sector, are likely to see **increased trade** with the United States through TTIP. However, this will occur **at the expense of trade with European countries**. Furthermore, the sectors that will see the **strongest reductions in exports** to the US are precisely those that are currently experiencing the highest growth in such exports.[10]

Conclusions

Although foreign trade with third countries has certainly contributed towards growth in the European Union, the importance of **export-induced growth** through TTIP has been highly **exaggerated**. Aspects such as the negative consequences of higher levels of **imports** on employment are hardly mentioned in discussions. Furthermore, the public is expected to bear the **social and adjustment costs** of the reduction of **NTB**.

Increased bilateral trade between the EU and the United States, and between the EU and Canada, will come **at the cost of intra-European trade**. Consequently, TTIP and CETA could have negative consequences for Austria, since the **internal market** is the crucial determinant of growth and employment in the country. Until now, around 88% of demand for Austrian goods and services has

[7] ÖFSE (2014). ASSESS_TTIP: Assessing the Claimed Benefits of the Transatlantic Trade and Investment Partnership http://www.oefse.at/fileadmin/content/Downloads/Publikationen/Policynote/PN10_ASSESS_TTIP.pdf. (in German) The Austrian Foundation for Development Research (ÖFSE) has based on the Replacement Index presented in the CEPR study and the employment rates presented by Eurostat (labour force of 2007) calculated a shift in employment for 430,00 – 1.1 Million employees

[8] Capaldo, Jeronim (2014): The Trans-Atlantic Trade and Investment Partnership: Implications for the European Union and Beyond. Global Development and Environment Institute. Tufts University

[9] Breuss, Fritz (2014): TTIP und ihre Auswirkungen auf Österreich. Ein kritischer Literaturüberblick. WIFO Working Papers, Nr. 468. S 12 (in German)

[10] Breuss, Fritz (2014): TTIP und ihre Auswirkungen auf Österreich. Ein kritischer Literaturüberblick. WIFO Working Papers, Nr. 468, S 14 (in German)

come from EU member states; only 13% has come from other countries.[11] As such, the expected trade diversion from intra-European trade to trade with the United States could potentially jeopardize the economic recovery.

The **studies** that have become known so far on the economic effects of TTIP have at best predicted **modest positive improvements** in economic performance; however, these claims are not supported by credible evidence. Moreover, **workers and consumers are expected to bear the high costs** associated with the negative impact of trade agreements caused by increased **competitive pressure**. This situation leads to increase unemployment and low wages instead of an economic miracle.

Against that background it becomes apparently relevant to examine thoroughly supposable shortcomings of the agreements. Three liberalizing instruments, designed to crack the traditional legal order on both sides of the Atlantic and therefore being aggressively pushed forward by business lobbies, are to be emphasized: investment protection, regulatory cooperation and the handling of public services in the agreements.

II. Assessment on selected liberalizing instruments

1. Investment protection and investor-state-dispute-provisions cannot be justified

Since the entry into force of the Lisbon Treaty[12], direct investment protection policy has formed an integral part of EU trade and investment agreements. The idea of investment protection stems from agreements made between industrialized and developing countries or those in transition. On the one hand, investment protection was aimed at encouraging new investment in countries with weak legal systems. On the other, companies that invested abroad wanted to be protected from arbitrary, unfair treatment and losses. However, the lessons learned from investment protection agreements raise issues about their effectiveness in the sense of fostering inward investment. In particular bearing in mind that businesses 'price in' the risks associated with foreign investment in countries with weak legal systems by foreseeing high profit margins.

Austria has signed 63 bilateral investment treaties with former socialist and developing countries. Even though Austrian firms made use several times of the powerful tool investor-state-dispute-settlement (ISDS) to sue host states for compensation payments bypassing national courts. Therefore the positive discrimination of foreign investors granted in investment treaties has been a contested issue for a long time.[13] Against that background a comprehensive European investment policy reform

[11] Feigl, Georg; Zuckerstätter, Josef (2012): Wettbewerbs(des)orientierung. Wien: AK (Materialien zu Wirtschaft und Gesellschaft, Nr 117), http://wien.arbeiterkammer.at/service/studien/MaterialienzuWirtschaftundGesellschaft/Ausgabe_117.html (in German)

[12] On 1st December 2009 the Lisbon Treaty came into force.

[13] As for as we know, all in all 18 Austrian firms have sued home states until 2016; a spectacular case is „B.V. Belegging-Maatschappij Far East" versus Austria; the traditional Austrian bank company Meinl AG has established an offshore company in Malta to sue Austria on the basis of the Austrian – Malta bilateral Agreement (2015)

towards sustainable economic development and a balance between rights and obligations of foreign investors appears definitely useful. But unfortunately the European Commission intends to apply the existing asymmetrical investment protection regime and its one-sided jurisdiction with only limited reforms on a global scale by including investor-state-procedures in free trade and investment agreements with industrialized countries like USA, Canada, Japan and Singapore.

Secure a positive climate for investment through equal treatment

The investment protection provisions stipulated in CETA or TTIP go **far beyond the constitutionally guaranteed rights of EU citizens and entrepreneurs** in the case of direct expropriation. It also covers government measures such as new laws, regulations, decisions, etc. that could have an effect similar to expropriation.[14] This wide-ranging right to state compensation comes with no discernible benefits to the public or citizens. On the contrary, the ability of parliaments to make legal changes that reflect the interests of the common good is being severely limited; thus, even the sovereign right to regulate is under threat. In fact, it is likely that the mere threat of an investor's claim would be enough to block any new legislation[15]. In addition, these changes would severely hamper competitiveness of domestic companies vis-à-vis foreign ones.

Countries such as EU-Member States, Canada and the United States are **democratic states with fully developed judiciaries.** These countries' legal systems do not pose risks to investment. Fundamental rights such as the right to property and equal treatment are strongly anchored in their judicial systems. Moreover these industrialized countries are highly economically intertwined; proof in itself that investment protection in this form has so far not been needed and will not be needed in future.[16] Finally, the introduction of an investment protection regime would signal to the rest of the world that we question our own judicial system, system of governance, and the separation of powers. Therefore investment protection provisions and investor-state-dispute mechanisms should not be included in CETA, TTIP or any other comparable EU trade and investment agreement, as sovereign rights to regulate would be limited at the expense of the common good, democracy and taxpayers. The national legal systems already provide far-reaching provisions for the protection of property. European investors, that form the greatest pillar of the European labour market, would be in a far worse position due to unequal treatment and would suffer significant competitive disadvantages on the internal market.

[14] This situation is known as 'indirect expropriation'. For example, if the European or any national parliament were to amend provisions on environmental or labour protection this could be viewed as in breach of the minimum standard of 'fair and equitable treatment' in cases when Canadian or US-factory owners incurred additional costs. Moreover, if investors could demonstrate before a private arbitration tribunal a 'legitimate' expectation that no legal changes were to be implemented during their business activity, they would be entitled to compensation.

[15] An illustrative example for „regulatory chill" is the case Philipp Morris versus Australia triggered by a plain-packaging-regulation for cigarette packages; inter alia New Zealand and Great Britain have postponed their plain-packaging-regulation, when Philipp Morris threaten the countries to fail a claim. They explained to the public to wait and see the outcome of the claim against Australia.

[16] The jurisdiction in some new EU Member States like Bulgaria and Romania are still weak and there is a great need to seriously address it by the EU; but the solution for this challenge cannot be to grant investment protection provisions in trade and investment agreements.

This investment protection regime cannot be sufficiently reformed by the proposed investment court system

In response to massive resistance from trade unions, workers' interest groups and civil society against its plans to provide multinationals with exclusive rights to call tribunals the European Commission **suspended negotiations** on the investment protection chapter with the United States in spring 2014 and launched a public consultation. Participation in the online consultation on the ISDS in TTIP was higher than in any previous consultation: nearly 150,000 people and institutions provided answers to the highly technical questions. The overwhelming majority (97%) opposed either ISDS reform or the mechanism altogether. A total of 33.753 responses came only from Austria[17] where TTIP is being broadly publicly debated.

Regardless the **rejecting public opinion,** the European Commission presented limited reforms to the most controversial aspects of ISDS in TTIP in autumn 2015, and finally in CETA on 29th of February 2016.[18] The reform agenda contains mechanisms to include greater transparency, a change from arbitrators to judges, more public scrutiny, participation of third parties and an appeal body. In May 2015 the European Parliament made its own position. Unfortunately it did not make ISDS a clear red line but backed the Commission plan of a reform agenda.[19]

The arbitration system has now the **new acronym ICS** (Investment Court System). However, many were quick to see that the cosmetic changes proposed would not resolve the fundamental concerns about granting special privileges to foreign investors, undermining national laws and bypassing domestic courts. ICS remains unpredictable and unilateral as ISDS. It still has the authority to make judgements on the appropriateness of specific state regulatory measures, serving individual economic interests rather than the public interest. The clauses on "fair and equal treatment" and "indirect expropriation" provide investors with the right to sue for compensation regardless of how the investment court is structured. Investment protection is a **privilege provided to foreign investors which disadvantages domestic investors.**

2. Regulatory cooperation: a wolf in sheep's clothing

Trade agreements are focused on the removal of trade barriers. In particular, this means that existing and future regulatory differences between the EU and the US that are interpreted as "unnecessary" or "burdensome" barriers to trade are to be removed. Differences in regulation could refer to areas such as technical regulations, environmental and labour standards, food standards, labelling conditions and process as well as product approvals, and lead such standards to be wound down by mutual recognition, harmonisation or through the 'simplification' of specific arrangements.

[17] To support citizens to participate on the consultation, the Austrian Chamber of Labour – in cooperation with Austrian Trade Union Federation and Friends of the Earth – set up the online tool http://www.no2isds.eu
[18] http://europa.eu/rapid/press-release_IP-16-399_en.htm
[19] European Parliament resolution of 8 July 2015 containing the European Parliament's recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP) (2014/2228(INI))

All areas of legislation are affected

In principle, the scope of application covers any planned or existing regulatory measures that could have an impact on transatlantic trade. This includes regulations, directives and delegated acts at the EU level and that of EU member states. This broad definition means that almost any form of legislation or regulation in the EU or the US could be affected by the regulatory cooperation in CETA or TTIP. Many of these regulations also serve to protect workers, consumers and the environment.

Undemocratic decision making - parliaments are being ignored

From a democratic point of view, the European Commission's proposals regarding a **"living agreement"** are highly questionable. In the context of regulatory cooperation, they would lead to the establishment of long-term mechanisms to ensure that after TTIP or CETA has entered into force existing and future regulatory differences will be avoided or reformed.

Regulatory cooperation is to be implemented by three bodies: the **"Regulatory Cooperation Body",** a **"Joint Ministerial Body"** and so-called **"Focal Points**". Each of them is composed of representatives of the EU (EU Commission/GD Trade) and the US who are to submit proposals aimed at increasing regulatory coherence. After all they adopt unanimous and binding decisions (e.g. amendments to annexes, enclosures, protocols and notes). This places preliminary decisions about legislation in the hands of transatlantic bodies and means significant consequences for democratic decision making: Further regulatory changes of the agreement after it´s entering into force do not need any involvement of the European and national parliaments any more.

Furthermore, an **'early information mechanism'** is to provide impact analyses of the effects of proposed regulatory measures on transatlantic trade. This will enable representatives of corporate interests in the EU and the US to influence draft laws at a very early stage if they view them as running counter to their trade and investment interests.

Current standards have not been safeguarded

There are fears that current levels of protection for consumers, workers and the environment will be reduced or that restrictions will be placed on improving them in the future. This is especially true in areas governed by entirely different regulatory philosophies. For example, in many areas of health and environmental protection (such as genetic engineering, food safety or hazardous chemicals) the EU applies the **precautionary principle**. This enables products and production methods to be banned as a preventative measure in the absence of definitive scientific certainty about their safety. However, the US government has criticized this principle as 'unscientific'. Many of these regulations also serve to protect workers, consumers and the environment. In the US, there are no special approval procedures or requirements for genetically modified organisms (GMO) and no commitments to have them identified as such.

The European Commission has repeatedly asserted that cooperation in this field would not lower the level of protection and that the right to regulate would not be touched, and that this was stated in

TTIP.[20] Nevertheless, the European Commission also attempted to meet the demands of the US agricultural industry on the regulatory issue right at the beginning of TTIP negotiations. Examples include the approval of **lactic acid treatment for cattle carcasses**, and the non-requirement of **labelling for cloned meat**.[21] The re-assessment of **glyphosate** by the European Food Safety Agency (EFSA) illustrated this tendency recently. By contrast to the WHO, who judged the herbicide as carcinogenetic early 2015, the report concludes that glyphosate is "unlikely to pose a carcinogenic hazard to humans".[22] Glyphosate is the most widely used pesticide to kill weeds in crop fields, green areas and home gardens. There is evidence that glyphosate can cause harmful chronic effects to human and animal health as well as to the environment.

Therefore following demands have to be met:

- **Decisions** as to which laws and regulations are unnecessary or burdensome must not be made purely according to commercial considerations or due to costs. **Parliaments and relevant stakeholders such as social partners** must be involved in all levels of regulatory cooperation and must hold exclusive decision-making authority (and not ministerial committees). As such, democratic regulations must not be allowed to be modified to reflect TTIP or CETA after it has come into force, and the treaty must not lead to restrictions on future regulatory developments. The establishment of transnational bodies to scrutinize future regulations must be rejected.
- The scope of Regulatory cooperation has been defined far too broadly; it has to be **clearly defined and limited**. Striving for high levels of protection is not enough; **existing** levels of protection must be secured and **future** development guaranteed. **Sensitive regulations** governing the fields of health, safety, consumer protection (in particular, privacy laws), labour standards and environmental protection must be exempt from the scope of the treaty. In addition, a number of **further exemptions** must be implemented in certain sectors such as chemicals, pharmaceuticals, food and on topics such as genetically modified organisms, hormones, antibiotics and veterinary matters.
- The EU's **precautionary principle** must be explicitly anchored in the text of TTIP, CETA and other trade agreements. A reference to WTO law is counterproductive.
- **Impact analyses** in connection with proposed new regulations must not be reduced to trade-related aspects. The social costs of any changes or the repeal of specific laws must also be taken into account.

3. Trade in services: Priority rules for offensive commercial interests?

Public services, such as for example education, healthcare and social services, sewage, waste disposal, water supply, energy, public transportation, and cultural and audio-visual services,

[20] Commission's brochure, 30th March 2015
http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153266.pdf

[21] Answers to questions of the German Bundestag, June 2014
http://www.bundestag.de/blob/285528/06f3f2e05961988245dc531f817d19e7/stellungnahme_dbv-data.pdf

[22] http://www.efsa.europa.eu/en/press/news/151112

constitute a key element of the European social and welfare model. However, multinational services companies are particularly interested in **realizing new business opportunities** also in sectors of public services through trade agreements. The new generation of EU trade agreements could put considerable pressure on states' capacities to regulate how public services are provided, organized and financed. In its recently published trade strategy the European Commission is following once more an offensive liberalisation approach to trade in services. This is of immediate relevance for the enhanced negotiation and deep integration agenda that underpins the pending negotiations for "mega-regionals" like the Trade in Services Agreement "TiSA" as well as TTIP or CETA to be discussed in this paper.

On the one hand the prevailing discussion on so-called "trade barriers" in the services sector is characterized by an area of application that tends to be very expansive (in line with the overall goal "progressive liberalisation"). Laws and regulations in particular are being negotiated here under the heading "obstacles behind borders" that could potentially have a limiting effect on the business activity of a service provider. This is a wide scope of application that can cover a prohibition on economic needs tests, for example, abolishment of equity caps for foreign investments, specific standards for granting licences and granting public subsidies, quality and test methods, measures to strengthen public service provision (e.g. universal service obligations) as well as regulations regarding social, environmental or consumer protection that could potentially be reframed as a "trade barrier".

On the other hand, simply **taking note of the critical findings** on liberalization of services within the EU would suffice to get an overall view of the negative effects of the European Commission gold-plating liberalization. For example, we can refer to proven negative consequences on the volume of employment, employment conditions, security of supply and quality of services, to the ongoing cost of reversing failed outsourcing to private entities in the area of services of general interest, as well as the need for sufficient regulation in the public interest as a result of the financial and economic crisis of 2008.[23] However, these contradictions in the liberalisation approach of the European Commission have been ignored in the recent trade strategy as well as in pending negotiations like for TTIP and TiSA.

It is all the more important to protect socially desirable regulation of services against a reframing as barriers to trade or investment, as well as against offensive commercial interests. Therefore **EU negotiations on services and investments need clear priority for regulations in the public interest.** This holds especially true in the case of public services: To date the European Commission has neglected in this regard to advocate a **comprehensive and unequivocal exemption of public services from the field of application of trade and investment agreements.**

Therefore following demands have to be met:

- Public services must be **exempted comprehensively and unequivocally from the full scope of application** of trade and investment agreements. Current exemption clauses (such as the public

[23] For example, the results of studies carried out for the research project „Privatisation of Public Services and the Impact on Quality, Employment and Productivity" (www.pique.at); Public Services Research Unit/PSIRU (2014): Exposing the myths around Public-Private Partnerships (http://www.epsu.org/IMG/pdf/PSIRU_PPP_briefing-_final_.pdf); AK (2015): Regulatory Fitness and Performance (REFIT) Position paper (http://www.akeuropa.eu/en/publication-full.html?doc_id=360&vID=43)

utilities clause) are full of **loopholes** and in particular do not provide protection against the challenges of new generation agreements like TTIP, CETA or TiSA, e.g. in areas such as investment protection, national treatment, public procurement and service concessions[24], or domestic regulation. Trade and investment agreements must in particular not endanger the scope for action of democratic decision-making bodies at a local, national or even European level, especially in the services sector and domestic regulations. Clear priority rules must be determined for the right to maintain, assert and extend high standards with regard to collective bargaining agreements, as well as labour, environmental and consumer protection regulations and public services. "Necessity tests" or similarly weighted obligations to "enhanced regulatory disciplines", which can exert pressure on regulations in the public interest as unnecessary barriers to trade and investment, must be rejected all the more.

- Negotiations on the further liberalisation of the **cross-border provision of services by workers ("Mode 4")** have to be rejected as long as an effective cross-border cooperation of administrative and legal authorities is not guaranteed. This is a precondition in order to be able to ensure compliance with the respective provisions on the minimum wage, working conditions and other labour standards set out in social and labour law and collective bargaining agreements.

- The **positive list approach**, which has been the standard approach in GATS and in bilateral negotiations of the EU to date, **must be maintained** (possible obligations to liberalize must be listed explicitly). The about-turn of the European Commission to the application of a negative list approach ('list it or lose it": not the obligation to liberalize itself, but an exemption clause to full liberalization must be stated) undermines not only the framework of multinational negotiations (and consistency with the gold standard positive list applied therein). Enforcing a negative list approach also includes standstill and ratchet clauses which can severely limit the regulatory independence of future parliaments and governments by carrying forward obligations to liberalize in the long term. The European Commission has already partly undertaken an about-turn from a positive to a negative list approach or a hybrid approach (including the corresponding standstill and ratchet clauses) in current negotiations. However, this new aggressive direction must in any case be rejected.

- Instead of a **one-sided orientation to the aim of progressive liberalization** (liberalization as a one-way ticket) we need more comprehensive protective regulations to safeguard the scope for democratic action (e.g. as a response to the negative experience with liberalization and in the case of de-privatization). Therefore, with regard to regulatory flexibility, a **simplified procedure must also be incorporated to modify obligations** to liberalize already entered into in agreements such as GATS, TiSA, CETA or TTIP.

[24] AK (2014): Position paper on the approach to public-private partnerships (PPP) and quotas in TTIP (http://www.akeuropa.eu/_includes/mods/akeu/docs/main_report_en_333.pdf); AK (2015): Position paper on current negotiations on the plurilateral trade in services agreement) (TiSA) (https://media.arbeiterkammer.at/wien/PDF/Publikationen/PSA_TISA_6_13.pdf); AK (2015): Position paper on TTIP negotiations: EU proposal for a „Title on trade in services, investment and e-commerce and the related revised EU offer (http://akeuropa.eu/en/publication-full.html?doc_id=388&vID=43).

III. Workers´ Rights: minimum labour and environmental standards must be binding

Trade agreements could and should in fact introduce a level playing field establishing a high common ground on **"fair cross-border competition"**. Among others, it is essential that international competition should by no means put any pressure on lowering down social or environmental standards in order to improve the competitive position vis-à-vis trading partners. The most feasible way to reach that goal is the introduction of common rules. Indeed, CETA´s and TTIP's proponents like to refer to their goal of reaching high labour and environmental standards in both economic areas, but the proposed content of the agreement in this respect is poor. What are the stumbling blocks to meaningful provisions?

The US has only ratified two of the ILO's eight core labour standards

Respecting the International Labour Organization (ILO) core labour standards is an important requirement to avoid a **race to the bottom** in terms of labour conditions. All ILO member states are obliged to ratify, implement and respect these ILO conventions. However, the US has only ratified two conventions on child and forced labour and refuses to this day to ratify the other six conventions. They concern trade union rights (freedom of association for trade unions, and the Right to Organize Convention), child labour (abolition of the worst forms of child labour, and minimum age for workers), discrimination (the right to equal remuneration for men and women, and non-discrimination in the workplace) and forced labour (elimination of all forms of forced or compulsory labour).

Labour unions face a very difficult climate in the US

In its 2012 annual overview, the International Trade Union Confederation described US employers as "extremely hostile towards unions".[25] In the private sector less than 7% of employees are unionized. Even though public employees have a 37% rate of unionisation, the Republican Party prioritizes the abolishment or reduction of the right to collective bargaining for public sector employees.

About half of the federal states in the US have adopted the highly criticized **Right-to-Work Laws**. In Ohio, the opposition was able to prevent these anti-union laws as they target the funds of trade unions. Within the US system, trade unions have traditionally negotiated over union dues with the employer and defined them in collective agreements. With the entry into force of the Right-to-Work Law **union dues are to become voluntary**. Trade unions, however, are supposed to represent the interests of all employees in a particular establishment, even those who do not pay fees. As a result, the number of union members and therefore the trade unions' funds quickly have dropped in all

[25] International Trade Union Confederation: http://survey.ituc-csi.org/Neue-Ubersetzung-USA-background.html?lang=de (in German)

federal states that have passed a Right-to-Work Law. Yet, wages will also fall in the longer term and so will the employer's contribution to health and pension insurance. Under the Right-to-Work Law, worker protection has also suffered. As the Center for American Progress states, employees in Right-to-Work states earn US$ 1,500 less a year on average than employees in states that have not passed this type of legislation.[26]

Moreover since the legal framework in the US provides possibilities for anti-union campaigns and does not offer sufficient protection against anti-union discrimination there is a whole **consulting industry** built around this issue. These consultants thwart union campaigns and hinder the right to association by intimidating and putting pressure on employees. In more than 80% of all union organizing campaigns the employers have hired external advisers.

Also **Republican politicians** in Tennessee set up an intense anti-union campaign lasting several weeks before an important union election at a VW plant in Chattanooga in 2014. The politicians pushed the workers to vote against the United Auto Workers union and threatened to pull tax breaks and other financial benefits if the workers joined the union. United Auto Workers filed an appeal before the National Labour Relations Board (NLRB) and called for the vote to be declared invalid.[27]

It is with deep concern that European trade unions have observed how US trade unions have been weakened financially. Excessively low wages in the US are a direct result of this development. Moreover, it could also have consequences for employees in Europe, as the same **business interests** that promote competition through low labour costs at the expense of an equitable distribution of income and social justice are also gaining strength in the EU.

The chapter on sustainable development should cover the following aspects in order to reach higher standards in these areas:

- **Human rights** must be included in the form of a so-called "essential elements" clause (e.g. EU-Colombia free trade agreement). It is not enough to merely mention human rights in the preamble; human rights must be explicitly stated in a separate part of the agreement.
- All eight **ILO core labour standards** need to be ratified, implemented and effectively applied by all contracting parties.
- The core labour standards must be **enforceable and there should be a possibility to impose sanctions**. TTIP and CETA should provide for dispute settlement in cases where labour standards have been breached with the ultimate aim of imposing financial penalties.
- The US must ratify, implement and apply **further** ILO conventions according to their level of development. Finally, the US should strive to implement the **Decent Work Agenda** as a long-term objective. In addition to the ILO core labour standards, the Decent Work Agenda includes ILO conventions on social security and social dialogue

[26] Center for American Progress Action Fund: https://www.americanprogressaction.org/issues/labor/report/2012/02/02/11103/right-to-work-101/

[27] International Trade Union Confederation: http://survey.ituc-csi.org/USA.html?id_edi=336&print=yes

IV. Concluding remarks

In choosing a down-to-earth rather than a business biased perspective, agreements like TTIP or CETA cannot be considered beneficial for European employees, in particular in overcoming Europe´s ongoing economic and social crisis. Blinded by the idea of free economic stimulus packages in times of budgetary restraints, European politicians overestimate the relevance of foreign trade and external competitiveness in contrast to the necessary strengthening of domestic demand and stimulating investment in Europe. Therefore, progressive Europeans should dare more self-confidence, when those European players, that are professionally determined to get agreements like TTIP and CETA through the decision making machine, are insisting on the benefits of their agenda.