

Key points of SER's advisory report on TTIP

April 2016



Request for advice

The Minister of Foreign Trade, Lilianne Ploumen, has consulted the Social and Economic Council (SER, the tripartite advisory body to the government) to provide recommendations on guarantees for labour standards in the Transatlantic Trade and Investment Partnership (TTIP). The request for recommendations refers to a number of concerns within society regarding TTIP, such as pressure on labour standards in Europe, job losses, and loss of discretionary power in the area of public services. The Council's advisory report discusses not only these concerns and objections but also the guarantees in TTIP for protecting public interests. It considers in particular – but not exclusively – protection in the social context, including the position of workers and the potential consequences that TTIP will have for them.

By providing its advice, the SER hopes to contribute to well-considered assessment of the content and procedures of TTIP by the Dutch Government and the Dutch Parliament. What conditions must a TTIP agreement meet? The report does not, however, express any judgment in favour or against TTIP. That would be impossible, given that negotiations between the EU and the US are still ongoing.

Background to TTIP

The EU and the US have been negotiating since June 2013 on a comprehensive trade and investment agreement, the Transatlantic Trade and Investment Partnership (TTIP). In the past, concern that a bilateral agreement of this kind could be detrimental to the global trading system was one

of the reasons for caution. However, negotiations on innovations in the global trading system have come to a standstill. An agreement between the US and the EU – given the great importance of these two trading blocs in the total global market – can provide important components for a new multilateral agreement. Countries such as China and India can sign up to it at a later stage. TTIP can also strengthen the transatlantic alliance in an increasingly unstable world.

Purpose of the negotiations between US and EU

TTIP negotiations cover trade in goods and services and investment. The aim is to improve market access, for example by lowering the trade tariffs for goods, regulatory cooperation to eliminate unnecessary barriers to trade (“non-tariff barriers”), and developing a common approach in such areas as intellectual property and the relationship between trade and sustainability.

Basic principles for assessing TTIP

The broad concept of prosperity and the pursuit of sustainable globalisation, as previously endorsed by the SER have provided guidelines for this SER report.



7 Basic principles for assessing TTIP

1 The EU and the US must strive to focus the globalisation process on increasing social prosperity that is sustainable, including in emerging economies and developing countries. TTIP must be designed in such a way that third countries will also be able, on balance, to profit from it. TTIP will thus contribute to reducing global inequality.

2 TTIP is expected to establish a “gold standard” for future European trade and investment policy. It should promote European values, including the protection of human rights and workers’ rights, the environment, democracy, and the rule of law. Compliance with the core labour standards – freedom of association in trade unions, the right to collective bargaining, a ban on child labour, forced labour and discrimination – must be the mandatory foundation for the economic activity of the EU and all its trade and investment partners.

3 Europe must be able to maintain its relatively high level of protection, both in legislation and regulations and via other (policy) measures, and to raise that level if so desired. TTIP and its provisions for regulatory cooperation liberalisation of the services market, lowering of tariffs, and arrangements for investment protection should not be detrimental to this.

4 Governments must retain sufficient policy leeway to be able to adequately safeguard and improve the levels of protection afforded to people and the environment. Shortcomings concerning decent work will be

tackled, and transition problems and distributional effects dealt with by means of flanking policies.

5 Governments must remain free to declare certain services – according to their own preferences – to be “of general public interest” and thus to exclude them from the provisions of TTIP.

6 In addition to enshrining human and workers rights in the agreements themselves, flanking policies are needed in order to properly manage the effects of trade and investment agreements, so that they contribute to inclusive growth.

7 To promote more effective involvement of the Dutch parliament, the business community, the trade unions, and civil society organisations, it is essential for the negotiations to be transparent. The Dutch Government must also communicate the findings of the sustainability impact reviews to parliament and the general public in good time.



Conclusions of the Social and Economic Council on the basis of these seven basic principles

Regulatory cooperation

Trade barriers take the form not only of tariffs and quotas; they can also consist of divergent rules for products and services. The basic assumption for the SER is that the EU must be able to maintain and increase its relatively high level of protection, both in legislation and regulations and via other (policy) measures. TTIP and the regulatory cooperation which it envisages must not be a reason for reducing the levels of protection afforded to people and the environment. Regulation of those levels of protection is an important instrument for promoting social prosperity. The European Commission's proposals include safeguards to prevent impairment of these levels of protection. The SER considers that those safeguards should be strengthened in a number of areas:

- The scope of regulatory cooperation in the European Commission's proposal is too broadly conceived. It should focus on specific measures that lead to unnecessary barriers to trade.
- The mandate of the regulatory cooperation board and the sectoral boards should be defined precisely. This body should only have advisory powers. It must not interfere with democratic procedures, on both sides of the Atlantic, for adopting legislation and regulations.
- All relevant stakeholders – including trade unions, the business community, environmental organisations and consumer organisations, etc. – should be able to make an equal, balanced, and meaningful contribution. This must be the starting point for the further development of the

institutional framework for involvement of stakeholders in harmonising regulations. This goes beyond merely consulting stakeholders about the annual report of the regulatory board.

Exclusion of public services

The basic principle adopted by the SER is that governments must remain free to declare certain services to be of general public interest. At the present stage, one can say that the EU's negotiating efforts are steps in the direction desired by the SER. However, a genuine assessment of this point is only possible on the basis of the outcome of the upcoming negotiations.

Trade and core labour standards

The SER considers that the EU and the US should lay down in TTIP that they will not promote trade and investment by lowering standards for the labour and health and safety, or by adversely affecting the core labour standards. Effective safeguards – both substantive and procedural – are needed to ensure that the US and the EU respect core labour standards and other important ILO conventions that are relevant in the context of the ILO's Decent Work Declaration, both in law and in practice.



The SER also argues for an effective monitoring mechanism to enforce these provisions. There must also be a mandatory mechanism for settling disputes – with proper involvement of the social partners and the ILO – so that abuses can be addressed. Given past experience, it is desirable to seek ways to give this monitoring process “teeth” in the form of sanctions. One may consider to give access to trade unions and civil society organizations in some way.

Investment protection and the Investment Court System

The European Commission’s proposals for a public Investment Court System (ICS) are a step in the right direction as regards addressing the shortcomings of traditional investor-state dispute settlement mechanisms (ISDS). Important elements of a substantive nature are the explicit reference to the right of states to adopt measures aimed at protecting people and the environment, and the provision that such measures should not be considered as a form of indirect expropriation for which compensation can be claimed.

The SER considers that the proposed Investment Court System must be further improved in a number of respects if it is to actually function as an international judicial body with a public and independent character. Amongst other things, this involves the financial independence of arbitrators/judges with regard to the duration of the legal proceedings. The material safeguards should be aimed at ensuring that the Investment Court System only assesses how a government measure has been introduced and applied, and not whether the government is permitted to

introduce a particular measure to protect people and the environment. Various considerations are relevant to deciding whether or not an Investment Court System is necessary. An ICS could provide a solution for as long as not every EU Member State and State of the United States has a properly functioning legal system. It is therefore relevant whether national systems can be expected, within the foreseeable future, to provide sufficient guarantees for investment protection (the “royal road”). A modernised system of dispute resolution in the form of an ICS can constitute a positive step if the intention is for it to replace and modernise existing investment agreements that still include an “old” ISDS. This does demand, however, that the proposed ICS be given a multilateral character. None of this alters the fact that – in the eyes of the trade union movement – there would still be a one-sided form of dispute resolution in the interest of foreign investors, without guarantees of a balanced consideration of interests in relation to other interests (public interests, people and the environment, labour standards). This aspect must be assessed in the context of whether – and if so how – TTIP will provide for a mandatory mechanism for settling disputes as regards respecting the core labour standards.



Customisation in reducing tariffs in connection with EU animal welfare standards

Abolishing most of the remaining import tariffs between the EU and the US is not expected to have any major effects. However, there are a few high tariffs (up to several dozen percent). These apply specifically to certain agribusiness segments. For the agricultural sector, the consequences for each subsector need to be considered, and appropriate measures should be put in place, if necessary, for each subsector. That may be the case if reducing the import tariffs in the EU undermines the sustainability of the relatively high animal welfare standards in the EU.

Economic effects of TTIP

As a result of TTIP, both the US and the EU will be able to specialise further in the economic activities in which they are relatively good. TTIP therefore has the potential to contribute to growth, prosperity, and employment. The various studies that are available on the effects of TTIP show greatly divergent results. On balance, slightly positive effects are expected on employment and wages. For individual companies and certain groups of workers, the consequences may indeed be negative and severe. Effective management of these adjustment processes is therefore necessary in order to improve the labour market position of those concerned and if necessary to help them find a new job and guarantee adequate income protection. This is important for workers – with particular attention being paid to older workers with a lower level of education – and for businesses.

The full advisory report is available at <http://www.ser.nl>.



About this publication

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