

IndustriAll European Trade Union Position on the ongoing TTIP talks

A contribution from the industrial workers' perspective

Executive Summary

To be taken into account: social, employment and workers' interests

Since July 2013, the European Union (EU) and the United States (US) have been engaged in a negotiation process for a comprehensive trade and investment partnership, commonly known as "TTIP". As this agreement will cover areas accounting for 60% of global GNP and will be 'a treaty like no other before' (because it will deal with topics that go far beyond trade), it will require trade union input to ensure that social, employment and labour interests are duly guaranteed.

This position paper concentrates on considerations that are important for workers in manufacturing.

- **To be guaranteed: Transparency and Democratic Legitimacy**

As the agreement is being negotiated in great secrecy, industriAll European Trade Union demands full transparency as regards the content of the discussions while the negotiations are still ongoing. Transparency is the key condition for social acceptance of such an agreement. This requires comprehensive democratic participation and checks and controls by parliaments and civil society.

- **To be recognised and promoted: ILO Conventions on workers' rights**

A free trade agreement between the EU and the US requires compliance with the ILO core labour standards and should contain binding mechanisms for monitoring and enforcing these standards.

- **Workplace Democracy: extend workers' rights**

In the context of a common internal market between the EU and the US, a common ground for worker participation needs to be defined, at the highest level, in order to avoid social dumping. To enhance economic democracy in the US and to consolidate the hard fought rights of European workers, the TTIP should extend the area of application of social legislation and enforcement mechanisms embodied in European Directives (on European Works Councils or Information and Consultation for example) and in international conventions like the ILO core labour standards.

- **No Replacement for an active industrial and investment policy**

All too often, TTIP is proposed as a cost-free economic recovery programme. Even though trade and investment can boost economic growth, the projected positive effect of this agreement between the EU and the US is limited and might have negative consequences on employment in some sectors. TTIP can in no way replace active industrial policies or macro-economic stimulus programmes.

- **TTIP is in no way an instrument for deregulation**
Regulatory convergence (mutual recognition or harmonisation of standards) may in no way lead to stalling necessary action to improve standards regarding health and safety, or the environment, or to address new challenges regarding these issues. In no way may it endanger either the precautionary principle (e.g. Reach) that is at the basis of European health and safety policies, or the right of public authorities to regulate.
- **ISDS: no replacement for democratic legislation**
IndustriAll European Trade Union is strongly opposed to the inclusion of an ISDS chapter in the agreement. There is no objective need for specific provisions on investment protection (giving legal recourse to foreign companies under 'fair and equitable treatment' clauses) because both the US and the EU dispose of highly-sophisticated legal systems. The right of governments to regulate must be protected and governments must be able to make legislation to the benefit of the people without the risk of being sued by multinational companies.
- **Services: No need for deregulation**
Regarding the liberalisation of services, industriAll European Trade Union advocates a positive-list approach (meaning that only the markets for services that are explicitly mentioned in the treaty can be opened) and the exclusion of public services and services of general interest (healthcare, education, transport, energy, national defence and utilities) from the agreement. Governments must maintain the possibility of protecting and strengthening their public services. The trade and investment deal may in no way lead to a degradation of the labour conditions of posted workers.
- **Public Procurement: a tool for industrial policy**
Regarding public procurement, the agreement should not compel the liberalisation of public procurement at sub-national level. Public procurement should remain an important tool for industrial policy. Local governments should be able to use social and environmental criteria to ensure the use of public money in support of sustainable regional economic development.
- **Intellectual Property Rights:**
Keeping the right balance between consumer, worker and producer interests
In order to strike the right balance between workers' interests and the protection of intellectual property rights, the agreement should not go beyond the global standards already set in the framework of the World Trade Organisation (WTO) agreement on TRIPS.
- **Fair Trade: a tool for social progress for all, not for profits for a few**
Finally, a free trade agreement between the US and the EU will only receive our support when it is a deal on fair trade as a tool for social progress for all, not for profits for a few. Therefore, the TTIP agreement should either be a progressive 'gold standard' agreement in social and environmental terms, or it should not come into being at all because it will have no added value for industrial workers.

Introduction

Since July 2013, the EU and the US are engaged in a negotiation process that should lead to a comprehensive trade and investment partnership, commonly known as “TTIP” (Transatlantic Trade and Investment Partnership). The agreement will cover many areas, such as the reduction of tariffs, regulatory convergence, liberalisation of services and public procurement, as well as trade-related policies like sustainable development, labour rights, intellectual property rights, digital trade, etc. The agreement would cover areas accounting for 60% of global Gross Domestic Product (GDP), 33% of world trade in goods and 42% of world trade in services. It will therefore have major implications, not just for the EU and USA but for the entire world. It could even fundamentally change the way in which we use democratic institutions for setting regulations.

All sectors of the economy will be affected by the agreement and there is a risk that the negotiations will weaken social, environmental, sanitary and cultural standards, since the objective is to remove all obstacles to trade.

The comprehensive dimension and the importance of the EU/US international trade exchange will have an unprecedented impact on both partners – no agreement covering such large economies has ever been negotiated, or concluded, before – and will fundamentally influence any future multi- and bilateral agreement. It will indeed be ‘a treaty like no other before’. For that reason, the perspective of the creation of a transatlantic economic area will require trade union input to ensure that social, employment and labour interests are duly guaranteed in a forthcoming agreement.

Several trade union organisations at national, European and international level have already published positions and political declarations. IndustriAll European Trade Union has contributed to some of these and continues to support and share in these opinions.

The specific considerations important to workers in the sectors industriAll European Trade Union represent are taken up in the following sections.

Transparency and Democratic Legitimacy: more openness required

The current negotiations suffer from a lack of transparency but there was apparently a major influence on the part of the business community in the preparation of the process. It would be unacceptable if the Commission were only to present the final document to the public and to the European Parliament (with only the ‘nuclear’ option left, to approve or disapprove). Such negotiations must be open to key stakeholders such as the social partners. Therefore we welcome the organisation of public hearings, the establishment of a European Advisory Committee and the organisation of a public consultation on the sensitive issue of Investor-State Dispute Settlement (ISDS). Such stakeholder involvement must remain an integral part of the ongoing negotiations. A similar openness must apply at national level through the respective competent structures.

IndustriAll European Trade Union demands full transparency as regards the content of the discussions while the negotiations are still ongoing. Transparency is the key condition for social acceptance of such a far-reaching agreement. This requires comprehensive democratic participation as well as checks and controls by all parliaments and civil society.

Fundamental Labour Rights: Ratification and enforcement of ILO labour standards needed

The US and the EU have different levels of engagement with regards to international labour standards. While all EU Member States have implemented the ILO's eight fundamental labour conventions, this is not the case in the US (which has implemented just two: child labour and forced labour). For industriAll European Trade Union the labour rights, as expressed through the ILO core convention, are basic human rights and fundamental for any kind of fair trade. As the US has promoted and signed the ILO Declaration on Fundamental Principles and Rights at Work, in which it agreed to uphold core labour standards, in 1998, there is no longer any reason to postpone the ratification of all fundamental labour standards. Therefore, the ILO core labour standards must be included in the TTIP in a legally binding chapter.

IndustriAll European Trade Union emphasises that overall, the rights of workers in the US are being severely and increasingly circumscribed (e.g. working time, paid leave, OSH, workers' participation rights and restructuring,) and must be upgraded to conform with international and existing EU norms in any agreement. In this respect, industriAll European Trade Union shares the conditions and criteria put forward by the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) for acceptable provisions on labour within this kind of agreement.

Moreover, industriAll European Trade Union asks that the existing European basic social standards as defined in the European Convention on Human Rights and in the European Social Charter be confirmed in the TTIP.

Furthermore, the agreement should actively promote workers' rights and labour standards at global level. Reference should be made to key international agreements like Agenda 21 or the UN Decent Work Agenda.

Finally, the treaty should also promote the role of the ILO as the competent body not only to set but also to enforce international labour standards, while giving it the necessary tools and support to do so.

IndustriAll European Trade Union, as the trade union federation representing manufacturing workers in Europe, demands that the TTIP agreement assign a higher ranking to the fundamental rights of workers and labour standards than to the financial or economic interests of companies.

Workplace Democracy: extend workers' rights

Europe has a strong tradition of a social market economy and democracy at the workplace through workers' participation. In the period since WWII, this model has proved to be successful and has resulted in a coherent approach by the EU as a whole. In the US, the model of workers' involvement in the economy is different and inhomogeneous across the continent. American and European trade unions agree that in the context of a common free trade area, a common ground for such social standards needs to be defined in order to avoid social dumping. At the same time, the share of jobs belonging to transnational enterprises, either US companies with subsidiaries in Europe, or vice-versa, keeps increasing – and this might even be further accelerated through the

opening of a common free trade area. In this context, the importance of creating a common system of workers' participation rights, on the highest level, is obvious.

IndustriAll European Trade Union demands that precise language be included in the future TTIP agreement, defining the highest level of workplace democracy as the compulsory common standard for the whole free trade area. To enhance economic democracy in the US and to consolidate the hard-fought rights of European workers, the TTIP should extend the scope of application of social legislation and enforcement mechanisms embodied in European Directives on European Works Councils (2009/38/EC), for example, or Information and Consultation (2002/14/EC). These regulations already cover both European and US-based companies operating in Europe, and are specifically directed at multinational investment and production regimes.

Limited economic impact: no alternative to growth-enhancing economic policies or sustainable industrial policies

For industriAll European Trade Union, the main objective of the TTIP should be the creation of quality jobs in industry by supporting investments and sustainable development. However, there is no evidence so far that the reduction of tariffs and the elimination of non-tariff barriers will contribute to this. Indeed, an additional growth of 0.5% over 10 years (figure retrieved from the impact survey made by the Centre for Economic Policy Research for the Commission) looks rather trivial. Nevertheless, the TTIP is often proposed as a cost-free economic recovery programme. Moreover, it should be ensured that the extra-proceeds of the deal are distributed equitably throughout the whole of society.

Therefore, for industriAll European Trade Union, the TTIP can in no way replace active industrial policies or macro-economic stimulus programmes based on investments in infrastructures for energy, transport, housing and health, and on promoting activities that cannot be relocated.

Furthermore, the reduction of tariffs can have a significant impact on employment (even if trade tariffs between the EU and the US are low – 2.8% on average - the vast scale of transatlantic trade means that even a small change can have negative consequences). This can lead to initial restructuring in a number of sectors (such as agriculture, food processing and electrical machinery) and to social distress, particularly for the less-qualified workers in industry. In order to minimise the negative social consequences of structural change, the TTIP must be accompanied by solid social protection mechanisms supporting the anticipation and responsible management of industrial change.

Finally, the TTIP should be used as a lever to promote sustainable economic development and the creation of new 'green' jobs. To support the objectives of the European Climate Plan, TTIP should dedicate a specific chapter to energy.

Regulatory convergence of industrial standards: No tool for de-regulation

Standards ensure the technical compatibility of systems, and the attainment of what is described in the EU as "essential requirements" of public interest: workers' health & safety, protection of the

environment and protection of consumers. They are tools to reach general policy and industrial policy aims.

The announced grand ambition of TTIP is to have the industrial standards “converge”, either by mutual recognition (so that firms only need comply with one set of technical requirements on either side of the Atlantic) or by harmonisation of standards. In essence, it intends to extend the existing European Internal Market to a transatlantic setting.

For these reasons, the process of “regulatory convergence” is central to industriAll European Trade Union’s concerns on TTIP.

The European tradition in the field of technical regulation, whether introduced through the legislative process or through standard-setting bodies, recognises the importance of health and safety and of protection of the environment. This process shows a few specific characteristics:

- The approach to technical regulation is governed by the precautionary principle
- Workers and their representatives can participate in the discussing and setting of standards and rules
- Standard-setting bodies are notified bodies, supervised by government.

European trade unions have made efforts during the past decade (e.g. the CEN/CENELEC process in the early nineties) to improve and develop efficient regulation. Our practical experience with the thus defined technical rules has shown that this approach is highly appropriate and offers adequate levels of protection. It should be clear that non-trade barriers should not be seen as unjustified bureaucratic requirements that need to be dismantled but as key tools to protect workers, the environment and consumers.

The US approach is different in all the above-mentioned aspects in that it relies, to quite a large extent, on the threat of subsequent legal proceedings and the risk of having to pay substantial amounts in compensation to keep products safe.

IndustriAll European Trade Union therefore underlines that:

- Technical standards are political in essence. They are the translation, in technical terms, of political decisions. The Treaty on the Functioning of the European Union clearly stipulates in its Article 114 that “European legislation and standards have to ensure the highest protection of the environment, of the health and safety of workers in industry and of the consumers of the products introduced to the market by industry”.
- A system of mutual recognition of standards can only be acceptable for a specified short transitional period and only when there is clear evidence of ‘equivalence’. If this is not the case, regulatory convergence would create leeway for multinational firms to cherry-pick the weaker one on either side of the Atlantic, thereby leading to a race to the bottom.
- The TTIP talks should be used as an opportunity to reinforce the precautionary principle with respect to technical regulations on health and safety; in no way may the TTIP endanger REACH, the European ground-breaking legislation on evaluating and restricting chemical products.

- Workers and their representatives must be involved at every stage of the process; a future TTIP agreement needs to strengthen this aspect of openness and transparency for future (and joint) standard-setting.
- Occupational health and safety standards should be raised to the highest possible level, the TTIP needs to be the occasion where the US and the EU agree on this agenda, and defend this approach jointly in international bodies.
- The intention to establish an overarching body (the Transatlantic Regulatory Cooperation Council), composed of EU and US trade representatives and regulators, may jeopardise democratic decision-making and impede better regulation in the future (e.g. by the introduction of trade impact assessments for essentially every significant regulatory or legislative proposal). Guarantees should be built in to ensure that this body will only exchange information between regulators of both sides and will in no way have any impact either on the right to regulate or on the process of setting regulations. The agenda of this Committee can only be set by the relevant democratic political bodies.

In general, regulatory convergence may in no way lead to stalling necessary action to improve standards regarding health and safety or the environment or to address new challenges regarding these issues.

Investment protection: no Trojan horse to replace lawmaking

There is no objective need for specific provisions on investment protection (giving legal recourse to companies under ‘fair and equitable treatment’ clauses) between the EU and the US). Both are highly developed countries, with a high level of legal protection. In particular, no need is seen for investor state dispute settlement (ISDS) mechanisms (especially when this is not reciprocal and not enshrined in a higher-ranking system of fundamental rights).

We underline the need to protect the rights of governments and the EU to make legislation to the benefit of the people in terms of taxation, environment, social and employment rules, as well as public health.

Therefore industriAll European Trade Union firmly opposes any inclusion of investment protection provisions that go beyond nationally available dispositions, or that would result in transferring some of the entrepreneurial risk to the state and society at large.

Services: no need for ‘negative list’ or further degradation of the rights of posted workers; exclusion of public services

IndustriAll European Trade Union organises the manufacturing trade unions in Europe. Yet, the evolution of production processes leads to a considerable amount of labour being transferred from manufacturing sectors to service sectors, yet all the while continuing to do the same work. Our members are therefore very directly concerned by provisions from this chapter. Indeed, an increasing part of the value chains from the industries we represent are being transferred to the service sector, through outsourcing of various kinds (e.g. supply of staff, on-site service contracts or components supply). That is why industriAll European Trade Union closely monitors any regulation on trans-border supply of services. In particular, with respect to Mode-IV, industriAll Euro-

pean Trade Union fears that liberalisation will further push outsourcing in manufacturing, and transform traditional, permanent jobs in industry into precarious jobs with clearly lower labour conditions in the service sector.

Mode-IV service and posting of workers provisions must foresee host-country employment and working conditions for all workers at the same level as permanent local staff. The European Temporary Agency Work Directive should not be touched.

The impact of the international banking system's lack of robustness on manufacturing jobs has sadly been demonstrated during the post-2008 financial and economic crisis. The necessary improvement of (international) regulation of the banking and financial services sector has only partly taken place. Many manufacturing jobs depend on the ready availability of liquidity to enterprises and thus of a healthy financial sector, even more so for SMEs. The TTIP should be used positively in a joint effort to re-regulate financial markets and to tackle tax avoidance and tax havens. Incorporating a Financial Transactions Tax (FTT) in TTIP would also help stabilise markets and would provide sorely needed revenues to support public investment in infrastructure, education and social services.

IndustriAll European Trade Union therefore demands that both the EU and the US take clear, firm and enforceable engagements for the outstanding improvement and reinforcement of regulation of the financial services sector.

Finally, industriAll European Trade Union advocates a positive-list approach as the basis for all mutual market openings being decided through the TTIP, and the exclusion of public services and services of general interest (healthcare, education, transport, national defence, energy, utilities) from the agreement. Governments must retain the authority to favour public delivery of services, without fear that such a policy would be considered a barrier to trade in services

Public Procurement: a tool for industrial policy

Many of our industries depend on public procurement procedures. Modifications in respect of conditions and frameworks for this do affect our members directly. At the same time, the right of governments, at all levels, to develop an industrial policy approach for geographically close economic activities needs to be guaranteed: labour markets are local ones. This includes policies which involve procurement as qualified demand to support technological development. The agreement should not oblige the opening or liberalisation of public procurement at the sub-national level, including at the municipal level. Local governments should be able to use social and environmental criteria to ensure the use of public money in support of sustainable, local, economic development. Against this background, the reform of existing policy frameworks should in particular take into account ILO Convention 94 regarding public procurement and collective agreements.

Intellectual Property Rights: Keeping the right balance between consumer, worker and producer interests

Intellectual Property Rights (IPRs) must find a balance between the financial and economic interests of industry on the one hand, and the legitimate interests for cultural, economic, educational and health development of the people on the other.

Issues like data protection, cyber-security and the regulation of access to radio frequencies need to be addressed during the talks.

The agreement must include effective provisions against illegal trade resulting from counterfeiting and non-respect of patents and should also protect the rights and legal status of the inventor. IndustriAll European Trade Union demands that no provision going beyond the global standards already set in the framework of the WTO agreement on TRIPS should be included in a potential TTIP agreement.

Generally: Fair trade as a tool for social progress for all, not for profits for a few

While it could be true that the process of market opening may be beneficial for overall growth and employment, the benefits need time to take their full effect and are usually diffuse and opaque (lower prices for consumers, economies of scale, diffusion of technologies), and this process also creates social distress among workers because of restructuring processes. Therefore free trade cannot be a tool on its own, but must be part of a strategy for growth and development, not only in the US and the EU, but also in the rest of the world.

IndustriAll European Trade Union gives a cautious welcome to closer economic cooperation with the US. Closer collaboration on issues like research and development, climate change, energy supply, health and safety standards, sustainable industrial policy or the fight against tax evasion could indeed be mutually beneficial, especially when this is embedded in broader multilateral cooperation.

Nevertheless industriAll European Trade Union will only support TTIP with the US if the following minimum requirements are met:

1. TTIP can never be used as an excuse for doing nothing

As its contribution to economic growth will be limited, TTIP can never be used as an excuse for doing nothing with regard to macro-economic stimulus programmes (the ETUC Investment Plan for Europe) or an active industrial policy (the industriAll European Trade Union Manifesto).

2. Transparency is being negotiated

There is maximum transparency on what is being negotiated, with a bigger role for the social partners (also after the negotiations).

3. Improvement of workers' rights

Improvement of social and environmental standards, especially workers' rights, as well as binding mechanisms for monitoring and sanctioning respect of the relevant ILO labour standards.

4. Active promotion of decent work

Active promotion of the 'Decent Work Agenda' and the principles of sustainable development, not only in the EU or the US but also at global level.

5. TTIP is in no way an instrument for deregulation

Regulatory convergence may in no way lead to lowering existing health and safety standards, to regulatory shopping on the continent with the lowest standards, or reducing the room for a sustainable industrial transition.

6. Preservation of the precautionary principle

Preservation of the precautionary principle as the basic principle of EU health, safety and environmental policies (e.g. Reach).

7. Services: no liberalisation

A positive-list approach (only the markets for services explicitly mentioned can be opened) and exclusion of public services and services of general interest from the agreement.

8. No inclusion of an ISDS (investor-state dispute settlement) mechanism.**9. TTIP: No replacement for democratic rights**

The agreement may in no way impinge on governments' right to regulate (e.g. by impact assessments of new legislation by some kind of 'transatlantic regulatory convergence council'). The right of governments and the EU to legislate for the benefit of the people in terms of environment, health, social protection and public services must be protected.

Respect for this checklist will determine whether or not industriAll European Trade Union will further support the ongoing negotiations. As the declared intention of European governments is to set global standards through a transatlantic partnership, we need also to consider that the 21st century economies do learn the lesson from the past financial crisis, previous economic recessions, austerity programmes and black Fridays. Excessive market-based policies or competitiveness approaches driven only by financial and cost-based logic, without taking social needs and rights into account, is surely not what we want. In no way should the agreement lead to even more austerity and deregulation.

An EU-US agreement on trade is likely to determine much of a future economic system for the world. It will bring economic integration to a completely new level. Rather than promoting competition, industriAll European Trade Union advocates a cooperative, culturally diverse and open approach to the international economy, founded in the general interest of the many. IndustriAll European Trade Union considers that the TTIP should be a lever for promoting labour rights and sustainable development on a global scale. Only then will the agreement have an added value for workers. This requires strong labour, social and environmental chapters with efficient implementation and enforcement mechanisms. For industriAll European Trade Union, full employment and decent work for all industrial workers is at the heart of our priorities and should be the key priority of trade policy. Therefore, the TTIP agreement should either be a progressive, gold standard agreement in social and environmental terms 'like no other treaty before', or it should not come into being at all.