



TUC response to the TTIP Sustainable Impact Assessment interim report

June 2016



Introduction

1.1 The Trades Union Congress (TUC) has 52 affiliated unions, representing almost six million members who work in a wide variety of sectors and occupations. The TUC welcomes the opportunity to respond to the draft interim technical report of the Sustainable Impact Assessment (henceforward referred to as the ‘SIA report’) on TTIP produced by Ecorys.¹ We believe the report flags up important potential negative impacts TTIP could have on workers’ rights, job quality, wages and public services that the European Commission and UK government must address in forthcoming TTIP negotiations.

1.2 The TUC is opposed to TTIP due to the threats it poses to workers, social and environmental protection, public services and democratic decision making.²

1.3 We are concerned that TTIP in its current form is likely to have a negative impact on sustainable development. The USA has not ratified all eight core ILO conventions which could lead to EU companies relocating to US states where labour laws are weaker. Furthermore, the agreement currently contains no enforcement mechanism to guarantee labour standards are respected. The deal also threatens employment rights and other social and environmental protections through the proposed process of regulatory cooperation. Meanwhile the negative list and investor protection provisions in TTIP pose a significant threat to public services and democratic decision making.

1.4 While the SIA report states it consulted widely with stakeholders in its research, there are a number of sections where trade unions concerns have not been adequately reflected, as detailed below. We call on Ecorys to engage more fully with trade unions in its subsequent stages of research for the SIA.

1.5 We call on the European Commission and the UK government to do more to engage regularly with trade unions to address concerns with TTIP in detail.

Threats

Workers’ rights

2.1 The SIA report projects that regulatory cooperation (the harmonisation or removal of non-tariff barriers) will account for 59% of the overall impact of TTIP. The TUC is concerned that this process of regulatory cooperation may be used to undermine labour standards, as well as other social and environmental protections.

2.2 Such threats are suggested by the EU’s current proposal on Regulatory Cooperation which states in Article x1d that one of its objectives is to ‘reduce unnecessary burdensome...regulatory requirements’³ and the current proposal for the chapter on Good Regulatory Practices which notes that Parties will be required to

¹ <http://www.trade-sia.com/ttip/draft-interim-technical-report-published-online/>

² See TUC Congress 2014 composite motion on TTIP: <https://www.tuc.org.uk/international-issues/trade/congress-2014-composite-resolution-transatlantic-trade-and-investment>

³ <http://trade.ec.europa.eu/doclib/html/154380.htm>

examine ‘non-regulatory alternatives (including the option of not regulating)...that would achieve the objective of the regulatory act.’⁴ Such language could invite regulations that safeguard consumer, labour and environmental rights to be interpreted as ‘burdensome’ and thus not implemented.

2.3 The TUC believes any process of regulatory cooperation and assessment of the importance of regulatory standards that is established by TTIP must provide trade unions with equal representation and the same opportunity to input as business groups.

2.4 It is welcome that the SIA report calls for TTIP to secure labour standards and other aspects of sustainable development, stating: ‘the Sustainable Development Chapter needs to be clear in terms of its ambition to uphold the highest levels of labour and environmental levels of protection, create a level playing field and be legally binding’ (p.138).

2.5 The TUC calls for the TTIP sustainable development chapter to contain effective mechanisms to enforce labour standards, with a meaningful role for trade unions to monitor labour standards and be part of a process to trigger sanctions as the ultimate penalty for violations of labour rights.

Jobs

2.6 A number of different studies have been conducted of the potential impact of TTIP on employment that come to very different conclusions due to different models used, as the SIA report acknowledges (p.30).

2.7 The TUC has concerns about the assumptions on which the SIA report’s modelling is based. In particular, it assumes a scenario of full employment which does not correspond to labour markets presently found across the Eurozone that are experiencing high levels of unemployment. It is therefore likely that the SIA report underestimates the number of jobs that may be lost due to the impact of TTIP.

2.8 The TUC is concerned by the indication in the SIA report that there would be significant job losses in electrical machinery, non-ferrous metals and iron and steel due to TTIP (p.114). The steel sector in the UK has already suffered heavy job losses due in part to the dumping of cheap Chinese steel. Should TTIP cause more job losses in this sector, it will increase the hardship not just facing workers but whole communities that depend on jobs in steel. Rather than exposing the steel sectors to further risks, the TUC believes the EU must take stronger measures against dumping and oppose China being granted Market Economy Status.⁵ At the national level, the TUC is calling for the UK government to stop blocking the Lesser Duty Rule in the Council to enable higher tariffs to be levied against cheap Chinese imports such as steel, tyres and ceramics.

2.9 Should TTIP cause jobs to be lost in the electrical machinery, non-ferrous metals and iron and steel sectors, we are concerned that it may result in the short-to-medium term in workers who are generally in well paid jobs in these sectors being forced

⁴ <http://trade.ec.europa.eu/doclib/html/154380.htm>

⁵ <https://www.tuc.org.uk/international-issues/countries/china/europe/tuc-letter-eu-trade-commissioner-china-dumping>

into low pay, lower skill jobs in the sectors the SIA report projects will see most expansion, namely: the leather, textiles and clothing sectors (p.114).

2.10 Furthermore, we are concerned that jobs in the public sector are placed under threat by the inadequate protections the deal has provided for public services (see section 3.8).

2.11 The danger that TTIP may cause a growth in low pay jobs is also suggested by the very low level at which the SIA report predicts wages are due to grow as a result of TTIP. The report projects that both high and low skill workers in the UK will see wage gains of 0.4% (p.77). Such wage gains appear minor when set in the context of wage declines workers in the UK have experienced since 2010. The government's policy of pay restraint for public sector workers has resulted in their pay falling by 8.4% in last four years⁶ meanwhile pay for workers in the private sector has fallen by over £2,000 a year in real terms between 2010-2014.⁷

2.12 The SIA report also highlights that TTIP may cause a race to the bottom on jobs, stating: 'If we assume that adhering to labour standards is related to higher labour costs, which seems likely to be the case, removal of tariffs and enhanced trade could lead to economic pressures to look for cheaper solutions. These solutions may be found by 'cutting corners' regarding labour standards...' (p.138)

2.13 The European Commission must make clear the measures it plans to take to provide training and stimulate decent jobs for workers made unemployed after a TTIP deal is signed, including how the Globalisation Adjustment Fund would be used.

Public services

2.14 The SIA report flags up the danger of 'regulatory chill' to public services created by the current investment protection provisions in the deal and calls for public services to be carved out of the investment protection provisions of TTIP (p.144).

2.15 We call on the Commission to act on this recommendation, as well as introduce a range of additional measures to protect public services, discussed in section 3.8.

Areas to address

Labour standards

3.1 The SIA report inaccurately claims ILO standards in the USA are effectively being upheld by existing laws (p.133). This seems to be as a result of using analysis from a free-trade business advocacy group, the United States Council for International Business (USCIB), rather than consulting trade unions. If adequate evidence had been taken from the US trade union centre the AFL-CIO the researchers would be aware that Right to Work laws in 26 US states essentially outlaw freedom of association.⁸

⁶ <https://www.tuc.org.uk/economic-issues/britain-needs-pay-rise/average-wage-worth-£2500-less-year-cameron-became-pm-says-tuc>

⁷ Ibid

⁸ <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldcom/179/17912.htm>

3.2 The credibility of the section on US labour standards is also undermined by the fact that it cites legal analysis from over 30 years ago to support the suggestion that there are technical barriers in place which prevent ILO conventions being ratified in the US (footnote 192 on p.134).

3.3 Furthermore, the SIA report's analysis of trade union rights in the EU is limited by the fact it only examines approaches towards of social dialogue at an EU level (p.145).

3.4 While formal social dialogue structures exist at an EU level, it is important to note that they are not present in a number of Member States and in some States trade union activities are being actively undermined by governments. This is the case in the UK where the Trade Union Act has recently been passed (2016) which will place unacceptable limits on unions' ability to take strike action, among other restrictions.

3.5 The TUC believes the European Commission must call for the ILO conventions to be effectively upheld in the USA and EU and laws and practices violating these conventions must be overturned.

3.6 The sustainable development chapter of TTIP must establish a mechanism whereby trade unions can monitor the impact of the deal on labour standards, jobs and wages. Trade unions should be able to trigger sanctions against offending countries or companies as the final penalty for violations of the terms of the sustainable development chapter.

Public services

3.7 While the SIA report flags up potential dangers to regulation of public services that are posed by the investment protection measures in TTIP (see 2.14, above), elsewhere the SIA report states exemptions for public services are broad enough. It states: 'no major impact on EU Member States' health care systems is to be expected – which is in concordance with the EU treaties on subsidiarity. This means that civil society's concerns regarding the definition of public services in the context of TTIP are unnecessary.'

3.8 This assumption is not supported by analysis of the TTIP text themselves which show that public services are not adequately protected in TTIP due to the following reasons:

- i) the public utilities exemption in the EU's latest offer on services does not provide explicit wording that all public services funded by state, private for-profit and non-profit organisations would be excluded from the deal. The definition of 'public utilities' in TTIP is vaguely worded which means interpretation is likely to be based on the public utilities exemption found in GATS Art 3(I). This exemption only applies to 'services supplied in the exercise of governmental authority' which are defined as 'services that are supplied neither on a commercial basis nor in competition with other suppliers'. This would not cover sectors in the UK such as health, social services, criminal justice, transport and defence that have been subject to wide ranging outsourcing.

- ii) The negative list approach taken to service listing in Annexe II of the Services chapter means government regulation in any service not listed adequately will be exposed to potential challenges by the US government through state-to-state dispute proceedings for breaches of national treatment or most favoured nation commitments. The UK government has failed to provide comprehensive lists of all services connected to the provision of public services which could mean a range of services including health, social services, education, transport and fire and rescue services could be locked into liberalisation/privatisation commitments by this chapter.
- iii) The investor protection measures in TTIP provide broad scope for lawyers to make a claim for compensation against a government for ‘indirect expropriation’ for attempts to renationalise or regulate public services including health, social services, education, transport and fire and rescue services. This will result not only in an increased cost for governments implementing regulatory change, but also a ‘chilling effect’ on policy. While spurious claims may be less likely to succeed in the Investment Court System (ICS) than in the traditional ISDS system, the existence of such a court system still raises the risk of costly legal action by investors against governments.
- iv) Governments may calculate that they cannot afford to compensate investors that might be successful through ICS, or to compensate the US government – or suffer the trade retaliatory measures that may follow – if they are found to be in breach of the terms of their TTIP service liberalisation commitments. Governments are thus likely to decide against policies they might have otherwise introduced to improve the quality of public services and the conditions for workers involved in their delivery.

3.9 The SIA report also states that the deal will not contain a ‘ratchet’ mechanism (p.142), yet analysis by the European Parliament suggests there will be a ratchet clause in the EU’s offer for services in TTIP.⁹

3.10 Public concern about TTIP’s potential negative impact on public services is being used by some to oppose UK membership of the EU. These concerns will only be addressed if the TTIP text puts beyond doubt that public services are broadly exempted from the deal.

3.11 The TUC believes that TTIP must take a positive list approach to service listing and eliminate special courts for foreign investors and ‘ratchet’ and ‘standstill’ mechanisms to protect public services.

⁹ See European Parliament, *Comparison of the EU Service Offers for TTIP and TiSA* (2015) at <http://bit.ly/1Uza63C>