



Swedish trade unions' policy on the negotiations between USA and EU on a Transatlantic Trade and Investment Partnership (TTIP)

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This paper aims to provide a brief background to the ongoing negotiations on a Transatlantic Trade and Investment Partnership (TTIP) between the EU and the United States. It describes the starting points and the minimum demands of the Swedish trade union movement in order for us to maintain a positive view on the transatlantic agreement.

Background

Throughout the post-war period, trade barriers have gradually decreased. This was achieved through several negotiating rounds under the General Agreement on Tariffs and Trade (GATT). The global trading system was further developed in the 1990s with the formation of the World Trade Organization (WTO) in 1995, where GATT was one of the three main agreements. WTO is a permanent international organization for free trade negotiations and trade dispute settlements between countries. Today 159 countries are members of WTO.

The latest free trade round, the Doha Round, was launched in 2001 and has not yet ended. In lack of a multilateral approach, the trend has instead been to strengthen bilateral relations. The Transatlantic Trade and Investment Partnership (TTIP) is part of this development.

After the Lisbon Treaty came into force, the EU has a unique competence to conclude investment agreements, in the same way that it already had on trade agreements. EU member states all in all have about 1,400 bilateral investment agreements, and most likely there will be a long process before the EU investment policy is as coherent as the trade policy. The TTIP is one of the first tests of the new EU competence and will be the largest bilateral investment and trade agreement in the world.

On March 12, 2013 the European Commission decided to submit a draft mandate for negotiations on an agreement on trade and investment with the United States. After the draft mandate was addressed, the Council adopted the final directives for the negotiations on June 17, 2013.

There are essentially three purposes for TTIP, Firstly, to increase trade between the two largest trading blocs in the world, the United States and EU, which is deemed to increase growth and employment. Secondly, to set a standard for future bilateral negotiations, in particular with China. Thirdly, to deepen the transatlantic link, i.e. the economic, political and security relations between the US and the EU.

The negotiations will address trade in both goods and services. The obligations arising from the Agreement will be binding for all government levels. The EU mandate for the negotiations emphasizes, among other things, the social dimension and that the agreement should aim for full employment and good working conditions. The objective of the agreement, according to the mandate, is to ensure respect for international agreements on the protection of workers. According to the EU, the objective should be that trade cannot take place at the expense of reduced levels of national legislation on the protection of workers and the environment. The mandate also states that the agreement should ensure that the laws and regulations on working conditions in the EU and the member states will apply.

A particular article in the Council directives deals with the ILO conventions and implies that the agreement must include mechanisms promoting "an effective national transposition" of the ILO core conventions. In this context it should be noted that the United States has not even ratified the fundamental ILO Conventions on freedom of association and collective bargaining. It is stated that the agreement should include a supervisory body of some kind, including on the implementation of ILO conventions, where civil society should be included. There should also be a body that can settle disputes in this area.

Trade union main standpoints

1. Trade unions in Sweden are in favour of free trade.

Increased trade between the EU and the U.S. is good for the Swedish economy and for our members. Fair competition between two developed economies promotes necessary structural change and creates jobs in sustainable businesses.

2. Defend the rules on protection of workers.

The negotiations involve many important areas, and a future agreement must not have any adverse effects on workers. Free trade and increased investments will stimulate innovation and efficiency. It must not lead to ruthless exploitation of people through competition on employment conditions.

The international community has agreed on an absolute basis of labour standards, the ILO core conventions. It is our firm conviction that the core conventions are of the utmost importance to protect workers, and a free trade agreement must be based on the principle that the parties shall respect the basic rights of workers according to these conventions. For that reason, it is essential that the EU's negotiating mandate has made clear that the agreement must include mechanisms that urge the TTIP parties to nationally ensure that the ILO core conventions are met in an efficient manner.

Rules on the protection of workers shall not in any way be able to be regarded as trade barriers. Accordingly, the Agreement shall not be able to affect the rules on the protection of workers in national laws, regulations and collective agreements, nor collective trade union rights such as freedom of association, the right to collective bargaining and the right to take industrial action.

In labour market matters, the supervisory body proposed in the EU's mandate should be a tripartite body including representatives of the social partners. The supervisory body must be able to act in such a way that the parties cannot violate their obligations under the agreement without consequences, i.e. to effectively ensure compliance with the ILO core conventions. Meanwhile, the supervisory body must not undermine the ILO's exclusive competence in interpreting the ILO conventions and recommendations, as this would implicate parallel monitoring systems and significantly weaken the ILO's position. Most likely, it will be possible to find a solution based on a close dialogue between the supervisory body and ILO, but this requires further legal analysis from the trade union federations.

3 Defend the political discretion.

For the Swedish trade unions it goes without saying that the agreement must not affect the political room for manoeuvre when it comes to fundamental political issues. Ultimately this is about safeguarding the legitimacy of democratic decisions. In addition, we consider that the principles of the Vienna Convention on state sovereignty and non-interference in internal affairs of States are applicable, which means that the agreement cannot in any way limit states' decisions on issues such as how to organise public services, what should be run by society under public management and what should be performed by a state monopoly, the outlining of welfare schemes and the like. State monopolies are specifically mentioned as an area to be covered by the negotiations. Again, the Vienna Convention on the Law of Treaties is applicable, which means that the agreement should not be allowed to affect the right of states to maintain, establish or abolish monopolies, but only become applicable if these monopolies compete on the market of another state. To defend the political discretion can also be applied on the possibilities of the states to defend cultural diversity.

4. On public procurement in particular.

Public procurement is also subject to the negotiations. The agreement must not restrict the political discretion on procurement on decisions regarding in what form an activity should be run. Nor may the agreement restrict the political room for manoeuvre in procurements when it comes to setting requirements on what is to be procured and demands on e.g. labour and employment conditions. Public procurement is today regulated largely by EU law and the agreement must not restrict the ability to make social demands, as stated in the new EU directives on public procurement.

5. Investor State Dispute Settlement – ISDS.

Dispute settlement mechanisms between investors and states (ISDS) are found in many bilateral investment treaties, and provide an opportunity for an individual company to sue a country which it feels has violated the agreement. ISDS exists to protect investors from e.g. nationalization or expropriation, and is particularly justified for the protection of investors in countries with corrupt or dysfunctional legal system. According to the negotiating mandate, the EU should strive for the highest possible protection for European investors in the United States.

To enable investors to complain on states' decisions in a special scheme, outside the regular court system, may in itself risk affecting the democratic decision making process. Such a scheme is in conflict with the aforementioned principles of state sovereignty and non-interference in domestic affairs. Moreover, such dispute resolution systems are characterized by a lack of transparency, high costs, unjustified lawsuits and also carry the risk that human rights are violated.

The Swedish trade union movement finds that the benefits of ISDS in TTIP in the form of increased investment are likely to be minimal, but that the costs risk becoming all the higher. Rights and obligations in the agreement are for the contractual parties, i.e. the EU and the United States, who have a responsibility to resolve any disputes that may arise. TTIP is an agreement between two democratic states with developed economies and rule of law, which means that the arguments sometimes given for ISDS are not applicable here. Our view is consequently that the negotiations should aim *not* to include an investor state dispute settlement mechanism in the agreement. *If* however such a system is established, it is imperative that it is legally secure and transparent, does not restrict states' democratic decision making or restrict the social partners' autonomy and trade union rights.

Furthermore, the agreement should clarify the obligations that apply to investors in accordance with the OECD Guidelines for Multinational Enterprises and the UN Framework for Business and Human Rights.