



EPSU update on the Comprehensive Economic and Trade Agreement (CETA), Transatlantic Trade and Investment Partnership (TTIP), the Trade in Services Agreement (TiSA)

February 2016

This update reports on new trade-related reports and recent developments regarding CETA, TTIP and TiSA (and including a new ETUC position on TiSA, attached). It also includes information about ISDS and the new EC proposal for ICS (Investment Court System) and the TPPA (Trans Pacific Partnership Agreement)

All EPSU trade updates and briefings are available at <http://www.epsu.org/r/231>

ISDS

On 2 February UNCTAD released updated information on the number of ISDS cases see <http://investmentpolicyhub.unctad.org/News/Hub/Home/458>. UNCTAD's [Investment Dispute Settlement Navigator](#) shows that in 2015 70 ISDS cases were filed. Spain was by far the most frequent respondent in 2015, with 15 claims brought against it. The Russian Federation is second on this list with 7 cases. The total number of publicly known cases has reached nearly 700. In the coming weeks, UNCTAD will publish its annual report providing a more detailed analysis of the newly filed cases as well as an overview of the key decisions issued by arbitral tribunals over the course of 2015. Up to now just over half of all concluded ISDS cases have ended in an outright loss for the government or a settlement with the foreign investor.

For a good illustration of how problematic ISDS can be see ClientEarth's opinion piece for Euractiv on Keystone XL and the implications for CETA and TTIP. [You can find it here](#).

On 23 February the ETUC's trade group will discuss its position on the EC's proposal for a reformed ISDS, the Investment Court System (ICS). If EPSU members would like to comment on the draft text please contact the Secretariat.

Civil society organisations including the Seattle2Brussels Network and Peter Fuchs of PowerShift have identified five key serious concerns that exist in both the ISDS and ICS mechanisms:

- both ISDS and ICS give exclusive rights to foreign investors, thereby discriminating against domestic investors, citizens and communities, without any evidence of benefits to the wider society
- both ISDS and ICS can force governments to use billions in taxpayers funds to compensate corporations for public health, environmental, labour and other public interest policies, government actions and even court rulings. They do not ensure that private interests cannot undermine public policy objectives
- neither ISDS or ICS are subject to democratic principles and scrutiny. Parliaments will not be able to change the rules later on;
- both ISDS and ICS undermine the jurisdiction of European and Member States courts as foreign investors can by-pass them;
- both ISDS and ICS ignore the fact that European, U.S. and Canadian legal systems are perfectly capable of handling disputes with foreign investors, based on the law that applies to everyone else in society.

ISDS / ICS will be on the agenda of the 6th Civil society EU wide meeting on CETA and TTIP 22, 23, 24 February 2016 <https://www.collectifstopptafta.org/collectivites/>

Concerns about ICS have also been expressed by the German Magistrates Association - see <http://www.drb.de/cms/index.php?id=952> and in English. The European Association of Judges is also critical. See <http://www.iaj-uim.org/iuw/wp-content/uploads/2015/11/EAJ-report-TIPP-Court-october.pdf>

Friends of the Earth Europe (FoEE) are planning 10 days of social media activities to present 10 reasons why ICS reforms is not so different from ISDS. The idea is to build up critical momentum ahead of the next TTIP round on the topic of ISDS/ICS. During 10 days starting 8 February FoEE will release one infographic on social media (Twitter/Facebook) per day that corresponds to one argument that addresses a specific aspect of our criticism of the commission's attempt to present the system as new and acceptable. See FoEE facebook page <https://www.facebook.com/FoEEurope>.

For public services ISDS and other investment protection mechanisms are especially at odds with solidarity and risk-sharing that public services embody.

Report and upcoming webinar (2 March 2016) on regulatory cooperation

Corporate Europe Observatory (CEO) and LobbyControl published a report in January 2016 on regulatory cooperation: *Dangerous Regulatory Duet: How transatlantic regulatory cooperation under TTIP will allow bureaucrats and big business to attack the public interest* http://corporateeurope.org/sites/default/files/attachments/regulatoryduet_en021.pdf

The report is also available in French and German.

To present the findings of the report, CEO and LobbyControl with the support of Forum Umwelt und Entwicklung, PowerShift and Seattle to Brussels Network will organise a webinar **Cooperating to deregulate: A closer look at the CEO & Lobby control report "Dangerous Regulatory Duet"** on 2 March 2016 at 17h00. To register for the webinar see: <https://attendee.gotowebinar.com/register/6168535482037100290>

Trade in Services Agreement (TiSA)

On 25 January the European Parliament (EP) adopted in plenary its report on the TiSA negotiations. The text is available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0009+0+DOC+XML+V0//EN>

Here you can find the analysis of the vote <http://www.votewatch.eu/en/term8-negotiations-for-the-trade-in-services-agreement-tisa-motion-for-resolution-vote-resolution.html###vote-tabs-list-2>. The EP the report with 532 votes in favour, 131 votes against and 86 abstentions.

The EP has done an infographic about TiSA see <http://www.europarl.europa.eu/news/en/news-room/20160204IFG13043/TiSA-Parliament's-recommendations>

EPSU Secretariat and many EPSU members were active in the run up to the vote in exchanges with the EP. In the run up to the INTA vote on 18 January EPSU wrote to Committee members outlining our key concerns. We also worked with other organisations, including the public sector employers organisation CEEP and the Social Platform to build support in the plenary vote for a clear exclusion of public services from the scope of the agreement. EPSU agreed a joint press release (PR) on 3 February 2016 with the Social Platform, CEEP, and ETUC welcoming the European Parliament's call for the full exclusion of public services in TiSA. The PR underlines that public services are vital for social

cohesion, sustainable growth and job creation and calls on the EC to change its approach to public services not only in TiSA, but also in TTIP and future trade agreements.

- EPSU <http://www.epsu.org/a/12006>
- Social Platform <http://www.socialplatform.org/wp-content/uploads/2016/02/PRESS-RELEASE-Safeguard-of-public-services-set-as-red-line-in-EU-trade-agreements-030216.pdf>.
- CEEP [joint message on CEEP website](#),

It will now be important to build on the EP resolution and to stress that while there may be shortcomings, the EP clearly recognises that the current EU negotiating position regarding public services, labour standards and the public interest is not sufficient. It will also be important to 'iron out' inconsistencies and loopholes - see AK http://www.akeuropa.eu/en/eu-parliament-sends-warning-signals-to-ongoing-tisa-negotiation-round.html?cmp_id=7&news_id=2688&vID=37

To support lobbying by affiliates, on 14 January the ETUC's trade group adopted a detailed position on TiSA. The text is attached to this update. The ETUC calls for a reorientation of EU Trade Policy to promote economic, social and environmental justice. For the ETUC, an open trading system is important but should not be an end in itself. It should promote decent work in the EU and abroad.

To note, a meeting planned for 16 February to discuss developments regarding the long-awaited Sustainability Impact Assessment (SIA) for TiSA was postponed.

Transatlantic Trade and Investment Partnership (TTIP)

Both the US and the EU have indicated their intention to speed up negotiations. EU Trade Commissioner Cecilia Malmstrom confirmed the two sides would have three negotiating rounds in the first half of the year (week of February 22 in Brussels, April in the US, and another round will held in Brussels in July).

At the 12th round this month, Ms Malmstrom said the two sides will discuss procurement, services, and the EU's proposal for an international investment court (ICS).

DG Trade will organise two stakeholder engagement events on 24 February - see <http://trade.ec.europa.eu/doclib/events/index.cfm?id=1453os>

Comprehensive Economic and Trade Agreement (CETA)

As mentioned in the last EPSU update, on 9 December 2015 the EP's INTA committee debated CETA for the first time. You can find a short note of the debate at <http://www.epsu.org/a/11868> In the debate the EC confirmed that it would like to include elements of its ICS proposal in the agreement and that there are discussions on going with the new Canadian Government elected on 19 October. However, improving ISDS (or even removing it) will not make CETA a good agreement.

To note, the EC has still not published its response to the Sustainability Impact Assessment (SIA) that was carried out on CETA and finalised in 2011. The CETA SIA contained some helpful references to ILO Conventions (including EPSU favourite ILO C94)¹ and it also did

¹ Convention 94 is specifically mentioned with regard to government procurement (page 310): "The EU has established a strong commitment to the ILO's Decent Work Agenda, in part through the Lisbon Strategy to create more and better jobs. Moreover, a number of EU states have ratified ILO Convention No 94, which establishes a standard on labour clauses in public contracts and aims to avoid companies underbidding by cutting labour costs" and recommends (page 437) that Canada and

not recommend including ISDS. It is generally questionable how the findings of the SIAs are used by the EC. In the handbook on SIAs it is outlined that the EC issues a position paper in which it outlines how it took the findings of the SIA into account.² At the INTA debate on CETA on 9 December, the EC said that it would publish its response 'soon'.

In the next months it will be important for EPSU and affiliates to raise with governments and MEPs the many problems with the agreement. Many examples are in the EPSU publication 'public services under attack' and there is also a good briefing on CETA in English and French drafted by Michel Cermak, CNCD/11-11-11

<http://www.s2bnetwork.org/wp-content/uploads/2015/09/2015-09-01-CETA-briefing.pdf> (EN)

http://www.cncd.be/IMG/pdf/www_notepolitique_12.pdf (FR)

CETA will be the focus of an upcoming EPSU/ETUI training seminar.

The Trans-Pacific Partnership Agreement (TPPA)

The recently-agreed TPPA includes 12 countries: Australia, Canada, Japan, Malaysia, Mexico, Peru, the US, Vietnam, Chile, Brunei, Singapore and New Zealand. PSI published a statement outlining in detail the threats and giving links to protests, actions and movements worldwide – see . <http://www.world-psi.org/en/issue/tpp>. PSI's Steering Committee passed a resolution in November 2015 urging affiliates to work with other groups and mobilize in order to prevent the deal from being endorsed at national level. Protest actions against the TPPA can be see at www.participacion.org/actions

The US unions AFL-CIO launched a new blog on TPPA – see

<http://www.aflcio.org/Blog/Political-Action-Legislation/How-TPP-Could-Make-Our-Economy-Worse>

According to AFL-CIO, TPPA could cost [448,000 U.S. jobs](#), [suppress U.S. wages](#), and irreparably weaken our [democracy and sovereignty](#).

In Canada the CCPA (Canadian Centre for Policy Alternatives) have published a new series of reports to demystify the complicated trade deal and clarify its ramifications. The series, *What's the Big Deal? Understanding the Trans-Pacific Partnership*, analyses the impact on healthcare, jobs, labour, and environmental protection. To date, two reports have been released in the series and more will be published. The first two reports reveal significant risks and high public costs to the Canadian healthcare system within the text of the trade agreement.

- [Involuntary Medication: The Possible Effects of the Trans-Pacific Partnership on the Cost and Regulation of Medicine in Canada](#), by Joel Lexchin
- [Major Complications: The TPP and Canadian Health Care](#), by Scott Sinclair

Key findings from both studies include:

- The TPP includes many new rights for U.S. and Japanese drug companies to comment on, review and appeal Canadian regulatory decisions, which could adversely affect drug approvals and safety.
- Faster regulatory approvals of medicines, which might result from the TPP, have been shown to lead to a higher incidence of safety problems, including warnings and withdrawals.
- The TPP's carve-out for tobacco control measures will not provide meaningful protection for future Canadian plain-packaging rules, since U.S.-based tobacco companies will continue to have access to NAFTA's investor-state protections.

all EU member states should also agree to sign ILO Convention 94 on decency and quality of work in government procurement.

² The SIA handbook can be found here: http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc_127974.pdf

- Other forms of public health regulation, from controls on trans-fats to regulating legalized marijuana, are fully exposed to lawsuits from disgruntled foreign investors. The TPP expands these rights to cover investors from Japan, Malaysia, Australia and other countries.
- The TPP financial services chapter actually makes it easier for foreign insurers to challenge the expansion of public health insurance into new areas by allowing investor-state disputes involving a much-abused “minimum standards of treatment” rule.

See more at: <https://www.policyalternatives.ca/newsroom/updates/what%E2%80%99s-big-deal-understanding-trans-pacific-partnership>