

TTIP: The Need For A New Trade Model Dedicated To Shared Prosperity

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The AFL-CIO believes, like our German DGB counterpart, that increased trade between the United States (US) and the European Union (EU) has the potential to spur job creation and income growth for workers on both sides of the Atlantic. This can only be accomplished, however, if the negotiating partners break with trade deals of the past and adopt a new model that focuses on decent work, shared prosperity and equitable development.

Unfortunately, the US has a long history of negotiating agreements that ignore these goals in favor of policies that benefit corporations and shareholders, while disempowering workers and communities. These deals combine extraordinary protections for investors with enhanced deregulation, which has contributed to stagnant wages, precarious employment, increased inequality and a weaker relationship between citizens' policy preferences and the policies implemented by our government.

Unions on both sides of the Atlantic are coming together to demand a new set of pro-worker objectives for the TTIP agreement. The AFL-CIO shares information, develops shared proposals and meets regularly with both partners' negotiators to make clear that the status quo on trade is unacceptable. In 2014, the AFL-CIO and the European Trade Union Confederation (ETUC) [published a joint statement](http://www.aflcio.org/content/download/132421/3553131/AFL-CIO+TTIP+Report_6+%282%29.pdf) (http://www.aflcio.org/content/download/132421/3553131/AFL-CIO+TTIP+Report_6+%282%29.pdf) urging the Trans-Atlantic Trade and Investment Partnership (TTIP) negotiators to adopt an "open, democratic and participatory" process. The document reflects the importance of building a strong, united coalition. On October 15, unions and civil society organizations throughout Europe will be demonstrating in their countries to demand a new trade model that protects workers, consumers and the environment.

The AFL-CIO believes that TTIP can embody a high-road trade model that puts the interests of workers and their families on both sides of the Atlantic before those of corporations. Though we recognize that, given the history of US trade deals, even negotiating the TTIP is fraught with risks to workers, we maintain an open mind as we continue to work with TTIP negotiators to ensure that the deal does not assume you are OK with this (more info: <http://www.socialeurope.eu/cookie-policy/>)

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Unfortunatly, the TTIP hrouded in to do with tariffs, and much [more to do with](#) regulatory

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[office/speeches/2014/October/Opening-Remarks-by-US-and-EU-Chief-Negotiators-for-TTIP-Round-Seven-Press-Conference#](http://www.socialeurope.eu/office/speeches/2014/October/Opening-Remarks-by-US-and-EU-Chief-Negotiators-for-TTIP-Round-Seven-Press-Conference#)) Meanwhile, global corporations brazenly search for ways to "overcome regulatory sovereignty. (<http://www.popularresistance.org/nafta-origins-the-architects-of-free-trade-really-did-want-a-corporate-world-government/>)" We believe that trade agreements should aim to build a prosperous, equitable society. Unfortunately past deals have fallen remarkably short of that goal, and TTIP is in danger of repeating mistakes of the past and do not meet the needs or priorities of local communities. A preferred method is using closed-door trade negotiations to secure rules that would be defeated if they were open to public scrutiny.

ISDS

Investor to State Dispute Settlement (ISDS) has drawn heavy criticism, as it gives foreign investors the extraordinary ability to bring claims against governments for any action that harms current or even future profits. Instead of engaging with domestic procedures, foreign investors bring these claims directly to private international tribunals. While these panels cannot reverse policy, they can order states to choose between reversing policy and paying monetary compensation.

ISDS is increasingly being used to target regulations designed to benefit the public. Germany is currently facing a claim brought by the [Swedish company Vattenfall](http://www.iisd.org/sites/default/files/publications/state-of-play-vattenfall-vs-germany-ii-leaving-german-public-dark-en.pdf) (<http://www.iisd.org/sites/default/files/publications/state-of-play-vattenfall-vs-germany-ii-leaving-german-public-dark-en.pdf>) over the decision to switch from nuclear energy to renewables. The company is demanding compensation for both current and future profits stemming from the closure of two nuclear power plants.

Considering a complex problem with wide-ranging social implications through the narrow lens of investor rights is inherently problematic. The danger is compounded by the fact that ISDS panels are [structurally biased in favor of investors](http://corporateeurope.org/sites/default/files/publications/profitting-from-injustice.pdf) (<http://corporateeurope.org/sites/default/files/publications/profitting-from-injustice.pdf>). Arbitrators have a direct financial stake in the system. Unlike judges, arbitrators are individually selected and paid by the investor bringing the claim and the government defendant. Issuing investor-friendly legal interpretations and rulings both expands the overall caseload and increases the likelihood the arbitrator will be selected again in the future. There are no strict conflict of interest rules, so many arbitrators rotate between deciding cases and representing companies bringing claims.

Democratic justice systems have corrective mechanisms. Erroneous judgments can be appealed, rogue judges can be impeached and legislatures can pass or repeal laws in response to unintended interpretations. It is extremely difficult to appeal ISDS judgments for any reason, private arbitrators cannot be impeached and there is no legislative body with the authority to override rulings that contradict democratic decisions.

Even if the state wins, defending a case costs an average of \$8 million. Given the expense and potential for biased decision-makers, governments can be pressured to change regulations or drop new proposals at the mere spectre of an ISDS case. In fact, Vattenfall first threatened a lawsuit against Germany years earlier over proposed regulations on coal-fired power plants, [which were subsequently modified](http://corporateeurope.org/sites/default/files/publications/profitting-from-injustice.pdf) (<http://corporateeurope.org/sites/default/files/publications/profitting-from-injustice.pdf>).

On 16 September, the European Commission revealed a new proposal dubbed an "[Investment Court System](http://europa.eu/rapid/press-release_IP-15-5651_en.htm) (http://europa.eu/rapid/press-release_IP-15-5651_en.htm)," intended to address many of the criticisms of ISDS. Indeed, the proposal seeks to eliminate much of the pro-investor bias, limit conflicts of interest and establish an appellate mechanism. These important changes represent an improvement over the current model. Nevertheless, the new proposal retains an overly broad definition of investment, fails to impose any obligations on investors, fails to adequately protect non-discriminatory regulatory measures from challenge, and leaves unchanged the unequal justice created by an investor-only "court." The new proposal fails to demonstrate the need for special, privileged justice for a select few (the AFL-CIO continues to review this recent proposal and will have more to say at a later date).

This spring, an ISDS panel split 2-1 in *Bilcon v Canada*, with the majority deciding a mining company deserved compensation for being denied a permit to expand a quarry. Two arbitrators concluded Canadian taxpayers should pay the corporation, in part because government decision-makers gave too much weight to "core community values." In dissent, the third arbitrator noted the perverse effect the decision would have on regulators' ability to respond to community opposition and promote responsible environmental stewardship. It is not clear that the new proposal would prevent a similar case from advancing or being similarly decided under the TTIP.

When critics try to raise these issues with trade negotiators, we are assured that ISDS has been 'fixed.' But ISDS is intrinsically and fundamentally flawed. As the economist [Joseph Stiglitz wrote in November 2013](http://www.theguardian.com/business/2013/nov/08/trade-agreements-developing-countries-joseph-stiglitz) (<http://www.theguardian.com/business/2013/nov/08/trade-agreements-developing-countries-joseph-stiglitz>), its true goal is to restrict governments' ability to regulate corporate behavior, achieving "by stealth – through secretly negotiated trade agreements" what could not be attained "through an open political process."

Critical Public Services

Public services, including healthcare, education, sanitation services, transportation, infrastructure and water management, play a critical role in alleviating poverty and ensuring equitable access. They are essential to addressing market failures and ensuring sustained economic growth, which is negatively impacted by high levels of income inequality. The US and the EU should be exchanging best practices, and adopting policies that result in the highest possible quality services. Many European countries have particularly robust state-provided services and there is much to be learned from comparing experiences, ideas and outcomes.

Unfortunately, if rules in the TTIP reflect the language in prior agreements, public service provisions could be subjected to restrictive policies that favor deregulation and privatization. Privatization has often resulted in declining quality, deteriorating working conditions and wages for service workers, and exclusion of the poor and those too geographically isolated to make delivery profitable. The rules in current trade agreements not only promote private provision of public services, they [make it difficult and often costly for government to reverse a decision](http://www.aflcio.org/content/download/83241/2300531/AFL-CIO+Comments+on+TTIP+%26+Request+to+Testify+May13.docx.pdf) (<http://www.aflcio.org/content/download/83241/2300531/AFL-CIO+Comments+on+TTIP+%26+Request+to+Testify+May13.docx.pdf>) to privatize

if the results negatively impact service provision. For example, we understand that [education services are receiving particular attention](http://www.universityworldnews.com/article.php?story=20150204080738725) (<http://www.universityworldnews.com/article.php?story=20150204080738725>) in the TTIP negotiations. Private education providers are eager for access to the European market, although their performance record in the US is [sometimes abysmal](http://www.nytimes.com/2012/03/24/opinion/for-profit-education-scams.html?_r=0) (http://www.nytimes.com/2012/03/24/opinion/for-profit-education-scams.html?_r=0).

The TTIP should protect and promote public services, but it is not clear it will do so. Absent firm commitments to ensure protections, it presents a serious threat to effective, equitable public services. Service commitments should only be made on a “positive-list” basis. Positive lists ensure that states only commit the services they intend to commit and leave policy space open for services yet to be invented that negotiators cannot even contemplate today. There is no evidence that pre-committing a yet-to-be-invented service to the rules of a trade agreement leads to the best possible policy outcomes.

Financial Services

Troublingly, the TTIP appears poised to open financial services to the same restrictive requirements that other services are currently subjected to under trade agreements. This has troubling implications for maintaining [balanced economic policymaking that ensures sustainable, stable growth](https://www.globalpolicy.org/component/content/article/270-general/52694-warning-from-civil-society-ttip-threatens-to-undermine-financial-reform.html) (<https://www.globalpolicy.org/component/content/article/270-general/52694-warning-from-civil-society-ttip-threatens-to-undermine-financial-reform.html>). Antiquated and often unclear rules risk not only delaying needed reforms to rein in the excesses of the past decades, but could actually prevent sensible measures to ensure stability. Past trade agreements have included language that promotes long-discredited Washington-consensus era policies. Recent deals have placed limitations on the use of capital controls, which even the [International Monetary Fund has concluded](http://www.imf.org/external/np/pp/eng/2012/111412.pdf) (<http://www.imf.org/external/np/pp/eng/2012/111412.pdf>) can be useful to alleviate market volatility. Given the precarious conditions in Greece and other Euro-zone countries, and the incomplete efforts to rein in Wall Street deregulation in the United States, it is critical that the TTIP protect the ability to create stable financial services.

ISDS already presents a threat to governments’ ability to guard against economic crises. Argentina has the dubious distinction of [being sued at least 51 times](http://corporateeurope.org/trade/2011/11/legalised-profiteering-how-corporate-lawyers-are-fuelling-investment-arbitration-boom) (<http://corporateeurope.org/trade/2011/11/legalised-profiteering-how-corporate-lawyers-are-fuelling-investment-arbitration-boom>), most of it related to the financial collapse of 2001-02. There are several pending [claims against Greece](http://corporateeurope.org/sites/default/files/publications/profitting-from-injustice.pdf) (<http://corporateeurope.org/sites/default/files/publications/profitting-from-injustice.pdf>) over measures the country implemented that were required to secure an international loan package to stabilize the economy. Making explicit financial services rules commitments in the TTIP will heighten this danger.

Public Procurement

In the past, trade agreements have limited public procurement programs, making it difficult or impossible for government contracts to state even a preference, let alone a requirement, for local companies or local employment. In addition, such commitments have never made clear that preferences can be given to businesses that adhere to enhanced human rights or environmental standards. Governments should be able to tackle social problems like youth unemployment, climate change or a legacy of discrimination by attaching standards to public contracts. The growing movement to include human rights due diligence in government purchasing, which could protect labor standards throughout the supply chain, could also be undermined by restrictive trade rules.

Labor Protections

Workers on both sides of the Atlantic face hardship, with high levels of unemployment, increasing precarious work and reduced social protections. TTIP must not become a vehicle to promote failed policies centered on austerity and labor ‘flexibility.’ Already, there is a push to destroy worker protections and cut back on public services and investment. The result has been a spiral of economic contraction, sparking increasingly frenzied cuts and job losses.

Worker protections are not [just critical to ensuring](http://www.imf.org/external/pubs/ft/sdn/2015/sdn1514.pdf) (<http://www.imf.org/external/pubs/ft/sdn/2015/sdn1514.pdf>) that workers are treated with respect for their fundamental dignity, strong protections for freedom of association are critical to tackle income inequality and thereby ensure sustained economic growth. Unfortunately, in the US, only two of the ILO Core Labor Standards have been ratified and anti-union legislation continues to violate workers’ rights. For example, in Chattanooga, Tennessee, corporate and political influence prevented workers at a VW plant from organizing a works council. The AFL-CIO and our EU counterparts need to work to ensure that TTIP does not undermine important industrial relations in the EU like co-determination and works councils.

At its best, TTIP could be an opportunity to move beyond the “lowest common denominator” approach to labor rights and create truly people-centered rules. Unfortunately, labor commitments are usually treated as an after-thought to commercial provisions, not a central mechanism to achieve shared, stable growth and reduce inequality.

The AFL-CIO looks forward to continuing to work with the DGB and our union counterparts throughout Europe, as well as consumer, environmental and student organizations to advocate for strong and environmental standards and greater prosperity for the workers of the EU and US. Without a new model of trade that reflects the needs of workers and allied organizations, it appears increasingly unlikely that.

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