CONFEDERATION SYNDICAT EUROPEAEN TRADE UNION

ETUC position on the Transatlantic Trade and Investment Partnership

On 12 March 2013, the European Commission adopted a draft negotiating mandate for a Transatlantic Trade and Investment Partnership with the USA. This represents a significant step-change in transatlantic relations, which collectively account for half of global GDP in terms of value.

EU Member States have been given a remarkably tight timeframe to agree this mandate, which the Commission aims to conclude in time to allow negotiations to start before the summer recess this year.

Considering the enormous implications of the proposed negotiations for workers on both sides of the Atlantic, the European Trade Union Confederation is concerned at the lack of opportunity given for public scrutiny of the EU's draft negotiating mandate by MEPs, trade unions or civil society. This contrasts starkly with the level of scrutiny given to the US negotiating mandate within the US Congress. It is a major challenge to democracy in Europe, and will not help engender public support for these negotiations or any resulting agreement.

Therefore, from the outset, the ETUC demands that the Commission submit the draft of the EU negotiating mandate to the European Parliament and the trade union movement and civil society for information and discussion to allow greater public scrutiny before the adoption by the Council and the launch of negotiations. The ETUC calls for the Council Trade Policy Committee to hold hearings with trade union and civil society representatives in advance of agreeing the negotiating mandate. This is a break from normal practice but essential to garner public acceptance of these negotiations.

The economic scale of such a transatlantic agreement, means there will undoubtedly be significant consequences (potentially positive and/or negative) not only for jobs and their quality in Europe, but also for the global regulatory framework and attempts to maintain multilateral approaches to trade and investment. The ETUC believes that a sustainability and employment impact assessment is crucial in advance of the adoption of the EU negotiating mandate, to inform the Council's decision. All stakeholders should be consulted in the preparation of the SIA.

The ETUC recognises that such an agreement could bring positive energy to the stalled multilateral negotiations, and if the agreement is based on the best practices on each side of the Atlantic it could have positive impacts on jobs and investment flows so long as demands set out below (inclusion of binding core labour standards, exclusions of public services and investment protection etc.) are met.

Therefore, for instance, the EU should promote Europe's regulation on chemicals (REACH) as a best practice in driving innovation and ensuring environmental protection and human health and safety, as well as elements of the European model of industrial relations such as transnational worker information and consultation (e.g. European works councils). Equally, Europe has much to learn from the US Federal instruments of industrial policy and innovation (e.g. DARPA and ARPA-E programme), and greater cooperation in the development of new technologies could drive mutual investment and jobs.

We therefore demand a commitment from both sides to achieve a 'gold standard' agreement, which ensures the improvement of living and working conditions on both sides of the Atlantic and safeguards from any attempt to use the agreement to lower standards or impinge on public authorities' right to regulate. In particular the agreement must not hinder national legislators in passing laws or otherwise deal with the fields of

employment policy, social security, environmental protection, occupational health and safety protection, consumer protection, protection of minority rights and the protection of small and medium sized enterprises on the local and regional level. Governments must not be prevented from taking any measures to protect the interests of workers and citizens.

This position sets the ETUC's primary concerns as regards the EU's negotiating mandate:

a) **Labour rights** must be enshrined in the body of the agreement, applicable to all levels of government in each party, and be subject to equivalent dispute settlement mechanisms as other issues covered by it, including enforcement. The ETUC has specific concerns about the lack of ratification of ILO conventions and the violations of fundamental labour rights in the US, notably on the right to organise and negotiate collectively, and particularly but not exclusively in Right to Work states. The EU should address this concern explicitly in its draft mandate. Dispute resolution must be based upon an independent and transparent complaints process, allowing trade unions and other Civil Society representatives to place complaints. The parties should commit to the ratification and the full and effective implementation of the core labour standards of the ILO, as an essential element of the agreement that shall not be undermined by either Party in the pursuit of trade advantage. The exchange of information between governments and social partners must be enabled as well as reactions of governments to complaints of social partners ensured. Independent experts should assess complaints. Considering that both parties are advanced nations and that there has been a long history of dialogue between DG Employment and the US Department of Labour, the EU should include in particular, but not exclusively, the implementation of ILO Convention 155 (Occupational Safety and Health Convention), the so-called "ILO Priority Conventions", i.e. Convention 122 (Employment Policy Convention), Conventions 81 and 129 (Labour Inspection Convention) and Convention 144 (Tripartite Consultation Convention) resp. the Conventions of the Decent Work Agenda, within the provisions on labour rights. As OECD member states, the Multinational Guidelines should also be referenced within this chapter. In no event should the agreement enable the weakening of labour rights in either party or undermine the standing of the ILO.

b) Moreover, **environmental protection** and the respect of international environmental conventions should also be addressed, notably the EU must address the impact of US exploitation of unconventional fuels (e.g. tar sands and shale gas) on efforts to tackle climate change and sustainable development globally.

c) **Parliaments and social partners** should not only be integrated deeply in the negotiating and planning process, but also in the monitoring process after the Agreement is in place. This monitoring process should focus on potential social and ecological impacts and the enforcement of rules laid down in the sustainable development chapter, but also on other parts of the agreement. The monitoring could be executed by a bilateral parliamentary commission (consisting of Members of the US and the European Parliament), in cooperation with the social partners. Furthermore, a monitoring mechanism involving trade union representatives should also be included in line with the joint ETUC/ITUC Statement of July 2007[1]. The continuous breach of

1 ETUC/ITUC, "Statement of Trade Union Demands Relating to Key Social Elements of "Sustainable Development" Chapters in European Union Negotiations on Free Trade Agreements (FTAs). Brussels, July 2007. http://www.ituc-csi.org/IMG/pdf/TLE_EN.pdf The recent EU-Korea FTA also contains a civil society monitoring mechanism that provides a possible model to be built upon.

minimum labour or environmental standards must be challenged by imposing withdrawal of trade privileges or monetary fines.

d) Labour rights must not be corroded by any **investor protection provisions**. Protection should not be at the expense of the host states' right to regulate, or civil society or domestic firms. States need domestic policy space to meet important public policy objectives, including labour rights, environmental protection, the provision of public goods (health, education and social security) as well as the development of coherent industrial policies[2]. The ETUC insists that the EU must clearly specify that the agreement will not interfere with the right of governments to regulate in the public interest, protect public services, or create new public programmes.

e) It is imperative that the failings of the NAFTA are not replicated, let alone aggravated, by any future TTIP. This applies in particular to investor rights. We oppose the inclusion of an **investor-state dispute settlement** provision in the agreement. Considering that both parties are advanced economies with well-developed legal systems, the ETUC sees no reason to create a by-pass to national courts for foreign investors, and therefore insists that a state to state dispute settlement mechanism and the use of local judicial remedies are the most appropriate tools to address investment disputes. The Executive Office of the US-President already made clear in its notification of US Congress that EU investors in the US should not have greater rights with respect to investment protection than US investors in the USA. The European side should also make clear that there should be no rights for external investors to bypass European courts through an investor-to-state dispute settlement body.

f) The EU mandate must maintain the current practice for **service** negotiations: liberalisation obligations must only be stated clearly within the scope of the so-called positive list approach (as used in the GATS). We fiercely reject the use of a negative list approach ("list it or lose it") and the incorporation of so-called stand still and ratchet clauses (which automatically lock-in future liberalisation measures and therefore contain an "autonomous built-in dynamic" towards liberalisation) in the agreement. We are concerned that universal access, equal treatment, public administration, affordability and sustainability of public services cannot be maintained through further liberalisation. Trade agreements must leave enough policy space to react on negative liberalisation results and to meet democratic demands for (re)regulation. Therefore negotiators should also develop a simplified modification procedure for liberalisation commitments and must ensure sufficient regulatory flexibility.

g) We demand an **exclusion of public services** from the negotiations. In any case the scope and the standard of existing horizontal protective provisions ("public utility" clause, horizontal subsidy reservation) must be safeguarded and subnational levels of government must be excluded from all liberalisation provisions. The negotiators must meet the demands to carve out public services from the scope of the agreement. These include, but are not limited to, services such as education, health and social services, water supply, postal services and public transport. Sectors such as gaming and telecommunications should be approached with caution as there are important implications from a public interest point of view.

h) Audio-visual and cultural goods and services should be expressly and comprehensively excluded from the EU mandate. This approach, which

[2] For further details on the ETUC's position on investment chapters please see ETUC resolution on EU investment policy adopted in March 2013 http://www.etuc.org/a/11025

should encompass both linear and non-linear services, would be consistent with the rights and obligations arising from the 2005 UNESCO Convention on the protection and promotion of cultural diversity, which the EU ratified, and also with art. 167 of the TUE. Audio-visual and other cultural services in Europe heavily rely on public funding, broadcast quotas, the promotion of European content distribution in the online environment and coproduction agreements, among other things, all of which could be jeopardised by the TTIP. The exclusion of audio-visual and cultural services would also be consistent with other FTAs currently negotiated or already concluded by the EU.

i) Governments must retain the authority to favour public delivery of services, such as water treatment and distribution, without fear that such a policy would be considered a barrier to trade in services. The agreement should not oblige the opening or liberalisation of **public procurement** at the subnational 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.

j) Furthermore, in view of the current financial crisis, we are opposed to any further liberalisation in the area of **financial services** and stand still-clauses in the agreement that may obstruct the (re-)regulation of the crisis prone financial sector. In this regard, we want to point out once again the recommendations of the UN-Commission of Experts on Reforms of the International Monetary and Financial System: "[A]ll trade agreements need to be reviewed to ensure that they are consistent with the need for an inclusive and comprehensive international regulatory framework which is conducive to crisis prevention and management, counter-cyclical and prudential safeguards, development, and inclusive finance. Commitments and existing multilateral agreements (such as GATS) as well as regional trade agreements, which seek greater liberalization of financial flows and services, need to be critically reviewed in terms of their balance of payments effects, their impacts on macroeconomic stability, and the scope they provide for financial regulation"[3]. The negotiations should be used to coordinate action on tax avoidance, the abolition of tax havens and the creation of a transatlantic/global Financial Transaction Tax.

k) Any further liberalisation of **Mode 4** of service supply remains a sensitive issue. The trade union Movement is aware of instances in which national labour law and collective agreement provisions are violated. In the context of an international legal vacuum to pursue violations, any further provisions must be subject to the condition that an effective international cooperation of the legal authorities is ensured. In case of non-compliance it should be possible to use the general dispute settlement mechanism and to impose sanctions in the form of substantial fines. The place of work principle must be applied from the beginning to all posted workers. Market access to Mode 4 service delivery must be complemented with an explicit mention that national labour, social, and collective agreement provisions will be upheld in the temporary posting and placement of workers for service provision. The TTIP should ensure that cross-border application and implementation of administrative and criminal penalties in cases of labour law violation and social fraud are upheld.

l) The TTIP should include effective measures against the illegal trade of intellectual property-reliant goods and services across borders. However,

[3] http://www.un.org/ga/president/63/commission/financial_commission.shtml

private individuals/consumers should be clearly exempted from the civil and criminal law measures contained in the agreement when using those goods or services on a not for profit basis.

m) **Agriculture** should not be part of the negotiations. A liberalisation of trade in agricultural products would not have any positive effect on agricultural workers in Europe and any commitments within a EU-US TTIP could make it even more complicated to find compromises in European agricultural policy.

The ETUC has consistently defended these principles in relation to European bilateral trade and investment negotiations. The manner in which the TTIP negotiations develop is of central concern to the trade union movement. The ETUC cautiously welcomes closer trade relations with the USA along the lines described above. We insist that these must be effectively regulated, guaranteeing that standards cannot be lowered via any future agreement. Such closer relations can bring deeper cooperation between the EU and US on flanking areas to trade such as research and development and the promotion of high health and safety standards - on nanotechnologies for example.

There are important transatlantic economic challenges that cannot be tackled by a traditional FTA while solving those problems would potentially have a bigger positive impact on growth and wellbeing than a standard FTA: a) tackling global imbalances in the current accounts by proposing a new approach to macroeconomic coordination could foster economic stability, b) stabilising volatile exchange rates could tackle the problem of uncertainty and could lower trade-costs much more, than a reduction of tariffs and NTBs, c) a closer cooperation and a common effort in the fight against tax evasion and tax-dumping could stabilise public revenues on both sides of the Atlantic.