

ÖGB Position EU Trade Agreements

Since the 1990ies, the European Union has been pursuing an offensive neoliberal trade policy strategy, which aims at opening the market and reducing trade barriers. The end of the 90s saw the rise of massive opposition against further liberalisation and deregulation plans through the Multilateral Agreement on Investment M.A.I. within the framework of the OECD and through the General Agreement on Trade in Services GATS within the framework of the World Trade Organization (WTO). The liberalisation negotiations threatened to call Labour Law, regulations on the protection of workers, the environment, health and safety and the provision of important public services - water, healthcare, education and social services - into question. In Austria, civil society organisations and trade unions jointly protested on the occasion of the Stop GATS campaign against the WTO negotiations.

Following the failure of M.A.I. and the WTO negotiations, a change of direction took place at the start of 2006 towards bilateral trade agreements with threshold countries but also with industrial nations. The public debate is focussing on three trade agreements:

- The Free Trade Agreement of the EU with the USA: TTIP (“Transatlantic Trade and Investment Partnership”) and
- The Free Trade Agreement of the EU with Canada: CETA (“Comprehensive Economic and Trade Agreement”)
- The Trade in Services Agreement of the EU with 22 further WTO countries: TiSA.

Trade unions are very concerned about these agreements. Their fears and points of criticism are shared by a large variety of civil society organisations. Cooperating with these organisations is again very important today.

Free Trade Agreement of the EU with the USA: TTIP

The EU Commission has been negotiating with the US Government since July 2013, based on a negotiation mandate issued by EU trade ministers to enter into negotiations on an Investment and Free Trade Agreement, and aiming at creating the world’s largest free trade area. It has to be feared that these new agreement provisions e.g. on investment protection and setting up a regulatory Cooperation Council, can call the European Social Model into question.

The EU Commission promotes the Agreement as an engine for growth and employment, even though its own commissioned studies only hold out the prospect of a very modest impact on growth - an additional annual economic growth of 0.03 to 0.05 percentage points. No details are provided on the distribution of these expected effects on growth. Apart from that, possible adjustment costs due to unemployment as well as problems in connection with the deregulation of standards for the protection of employees, health or the environment were omitted. An investigation commissioned by the EU Commission expects over 1 million job losses (0.7 % of the labour supply in the EU) in sectors, where competition will increase as a result of the Trade Agreement. This will in particular also affect small and medium-sized enterprises.

Free Trade Agreement of the EU with Canada: CETA

CETA is the basis for TTIP (EU Free Trade Agreement with the USA), TiSA (Trade in Services Agreement) and all other agreements of the EU, such as the one with Japan. Even if the Commission has announced to discuss the necessity of an Investment Protection Chapter (private

arbitration court for investors) in TTIP, CETA still includes the firm intention to include investment protection.

Following the political breakthrough in the negotiations on a Free Trade Agreement of the EU with Canada in autumn 2013, the negotiators have now concluded the deal, without signing the Agreement. The Agreement has still to be signed by the Trade Ministers by mid-2015.

As our core demands (no investment protection, exception of public services, obligation to comply with core labour standards, guaranteeing standards to protect health, employees and environment) have not been fulfilled in the case of CETA, ÖGB and AK asked Vice Chancellor Reinhold Mitterlehner in a joint letter from 25th August to reject the Agreement in this form.

Our points of criticism on TTIP and CETA in detail:

Intransparent Negotiations, democratic deficit

The negotiations are held away from the public gaze. The European Parliament is not able to participate in the decision-making process during the negotiations. The European Parliament is involved once the Agreement has been adopted by the Trade Council. However, the European Parliament is only able to vote “in favour” or “against” the Agreement. Hence, the complete intransparency towards the public, in particular towards trade unions and other interest groups, civil society organisations as well as national Parliaments reveals an enormous democratic deficit.

Investment protection provisions and Investor-state dispute settlement

As in the past, investment regulations are highly controversial. Even the EU Commission is now concerned.

The introduction of investment protection in free trade agreements shall empower foreign corporations to sue a state for damages before private arbitration courts, if for example, from their point of view, new laws or rules “treat them unfairly” or “indirectly expropriate” them, thereby cutting their profits. Hence, in future, governments have to expect that they - because of improved social policy and economic measures for employees, health and consumers - will be sued for damages running into millions, which means that the taxpayer, thereby also employees, will be asked to pay up. Canada, the USA and the EU are democratic nations with a highly developed constitutionality and judicial culture. Hence, introducing a parallel private arbitration system is therefore not required. Apart from that, the practice has shown the inadequacies of this unacceptable system: it is marked by intransparency and inefficiency, inconsistency, unpredictability and a lack of independence due to the interest-oriented actions of law firms and investors.

The clarifications brought forwards so far in respect of individual provisions - for example in case of CETA - do - with regard to content - not alter the fact, that the contractual partners will have to face massive constraints, since an explicit exception for the “the right to regulate” does not exist. The current private arbitration system cannot be reformed and no further contracts may be concluded on this basis.

Danger for services of general interest

Public services such as water, education, health or transport are subject of the trade negotiations. Basically, all services are included, provided they have not been expressly exempt. This creates further liberalisation pressure. Apart from that, the European Commission itself demands market access in many public sectors from the negotiating partners.

Another danger for public services concerns provisions, according to which failed privatisations could never be revoked. If a privatisation went wrong, it would nevertheless remain in place and any remunicipalisation of services would be impossible. This would mean that a privatisation would be set in stone forever.

Equal treatment of nationals means that all private profit-oriented undertakings would also be entitled to public subsidies. So far, attempts to find a consistent and definitive formulation for the subsidy clause have not been successful. Hence, services in the public interest might come under pressure because private providers would be able to sue for benefits from the public purse. The health sector or the education system would for example be turned upside down as a consequence.

The right to offer services to municipalities and cities autonomously - hence as public services - as well as intercommunal cooperation and local community associations, can also be called into question through the backdoor. Furthermore, the procurement rules of the Agreement are also lacking an unequivocal enshrinement of provisions on compliance with collective agreements and other social and labour standards.

Fundamental rights of employees are non-binding

The provisions concerning internationally recognized labour standards of the International Labour Organisation are not subject to the general dispute settlement mechanism of the Agreement. Hence, the Trade Ministers support the idea that fundamental provisions for employees are not enforceable in a legally binding manner and that infringements remain without any consequence.

Neither the USA nor Canada has ratified the conventions on freedom of association and collective bargaining to enforce trade union rights. The attitude of employers is extremely hostile to trade unions, preventing the establishment of works councils, if necessary with the aid of law firms specialised on breaking up trade unions. In the USA, collective agreements are negotiated for individual enterprises, in some cases even for operational groups. They only apply to trade union members. As there is no social security legislation as in Europe, occupational health, accident and pension schemes are also part of the negotiations. Co-determination by works councils, as is the case in Austrian companies, is also not legally enshrined. Labour law and collective agreement standards depend on the goodwill of corporations.

Reducing trade barriers

The ÖGB is concerned that establishing a regulatory cooperation council for the harmonisation and mutual recognition of certain technical standards would endanger important protection standards for health and employees in the area of food, pharmaceuticals, cosmetics or the use of chemicals.

Within this scope, regulations, technical standards, bans, admissions and labelling obligations are treated under the aspect of reducing unnecessary trade barriers. Genetically modified organisms (GMOs) and pesticides or meat of animals treated with hormones, none of them are currently permitted in the EU, could be introduced into the EU through the backdoors of CETA or TTIP.

Therefore: Changing the course of trade policy demanded

Due to the way the already concluded Free Trade Agreement with Canada was negotiated and because of serious content-related reasons, CETA must be prevented - for the fact alone that CETA is always cited as an example for TTIP and all other trade agreements.

The ongoing negotiations on TTIP and TiSA - but also on free trade agreements with Japan or Singapore - in their current form must also be stopped.

The ÖGB recognizes the significance of increased trade relations with a wide range of trading partners; however, we demand changing the course of trade policy, which has to be based on the **following principles**:

No investment protection provisions and Investor-state dispute settlement (ISDS)

Investment protection provisions and Investor-state dispute settlement (ISDS) are superfluous, and the states' respective legal systems provide sufficient protection for investors. The current private arbitration system cannot be reformed; and no further agreement may be concluded on this basis.

Public services should not be included in a trade agreement

Services of general interest including public procurement and licenses must be unequivocally exempt from the scope of application. This concerns among other areas of public infrastructure (water, energy, transport), social security (social insurance, healthcare), communal services (waste disposal), education, culture and audiovisual services.

No wage and social dumping

Trade agreements must under no circumstances be allowed to undermine labour and social law and collective agreement provisions. Possible negotiations on the cross-border posting of workers must be bound to functioning cross-border cooperation in administration and justice in Labour and Employment Law issues as a condition for the guarantee of collective agreement wages and working conditions. It must be possible to make any lack of enforcement by the contractual parties subject to dispute settlement including sanctions.

Binding establishment of ILO Core Labour Standards and international environmental agreements

Countries with low social and environmental standards may not gain a competitive advantage from this circumstance. Therefore, Core Labour Standards and any ILO Labour standards in trade agreements going beyond this have to be bindingly enshrined and sanctions have to be determined in case of violations.

No to the Regulatory Cooperation Council

Trade agreements must not be allowed to lower standards for the protection of employees, health, protection of the environment and of consumers and their improvement must not be restricted. Involving a Regulatory Cooperation Council on the harmonisation und mutual recognition of standards must be rejected.

No negotiations in the food sector

Both the agricultural and the food sector have to be exempt from the negotiations. A harmonisation of regulations entails the risk of levelling down with effects on food quality and safety. A further liberalisation of the food sector would impact the sustainability of small and medium-sized enterprises in the food sector.

No secret negotiations

Transparency and comprehensive participation of Parliaments, trade unions and civil society in the negotiations are indispensable. The European Parliament must not solely have the possibility to vote on the negotiation result only after the negotiations are concluded and the Agreement has been signed by member states; it must also have the possibility to decide on the negotiation position of the European Union.

Fairer trade and distributive justice

A new orientation of trade policies must be based on fair trade, high standards for employees, health and environment for all worldwide as well as on democracy and transparency. What is also needed is a European economic policy, which relies on distributive justice and investments in healthcare, education and social infrastructure.