

Why is trade policy important for workers and public services



Challenging the liberalisation of public services in TTIP and beyond

Training seminar organised by
EPSU, ETUCE, AK, ÖGB

Vienna, 15 January 2015

Thomas Fritz

PowerShift



EU-FTAs covering public services



Multilateral:

GATS 1994 (WTO), EU 2006: Consolidated GATS Schedule

Bilateral:

FTAs containing services and investment (s/i) chapters:

South Korea, Colombia/Peru, Central America, EPA

New generation of FTAs (s/i + investment protection):

India, Canada, Singapore, Egypt, Jordania,
Morocco, Tunisia, Japan, US, Malaysia,
Vietnam, Thailand, Myanmar, China

Plurilateral:

GPA (Government Procurement Agreement)

TiSA (Trade in Services Agreement)

CETA, TTIP, TISA



CETA: Comprehensive Economic and Trade Agreement

Negotiations started in 2009

Sept 2014: EC publishes consolidated text

Start of ratification: probably by mid-2015

TTIP: Transatlantic Trade and Investment Partnership

Negotiations started in July 2013

EC objective: consolidated text by the end of 2015

TiSA: Trade in Services Agreement

Negotiations started early 2013

23 parties: inter alia, US, EU, Canada, Australia, Japan, Switzerland, South Korea, Turkey, Mexico, Norway, Chile

Public Services in CETA



CETA negotiations most advanced: template for TTIP

Governmental Authority-Exemption:

“services supplied in the exercise of governmental authority means any service that is supplied neither on a commercial basis, nor in competition with one or more service suppliers.”

- **Narrow exemption: excludes only government functions (law enforcement, judicial system, etc.)**

CETAs core obligations



- **Market Access (MA)**
- **National Treatment (NT)**
- **Most-favoured Nation (MFN)**
- **Fair and Equitable Treatment (FET)**
- **Direct and Indirect Expropriation (Exprop)**

General dispute settlement mechanism:

State-state dispute settlement

In case of investment disputes:

Investor-state dispute settlement (ISDS)

CETA: Negative List



All measures subject to CETAs obligations unless excluded:

- Annex I: Reservations for Existing Measures and Liberalisation Commitments

- Standstill and ratchet, i.e., lock-in of future deregulations

Amending reservations only allowed,

„to the extent that the amendment does not decrease the conformity of the measure“ with the market access, national treatment and most-favoured nation obligations.

- Annex II: Reservations for Future Measures

- Supposed to retain policy space, but many loopholes

Annex I - Example



EU: market access limitation: postal services

“In the EU, the organisation of the siting of letter boxes on the public highway, the issuing of postage stamps, and the provision of the registered mail service used in the course of judicial or administrative procedures may be restricted in accordance with national legislation.”

- **Extending market access restrictions beyond these activities (e.g., business mail or parcel services) would be a violation of the ratchet clause.**

Annex II: Public Utility-Clause



“Type of Reservation: Market Access

Description: Investment

In all EU Member States, services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators. (...)

This reservation does not apply to telecommunications and to computer and related services.”

Loopholes:

- **Covers only investment, not cross-border services**
- **Covers only MA, but not NT, MFN, FET, Exprop**
- **Only minority of public services provided as “monopolies” or “exclusive rights”**
- **Exclusion of telecommunication inconsistent with EU’s Universal Service Directive**

Annex II: Water services



Collection, purification and distribution of water

***“Type of Reservation: Market Access, National Treatment
Description: Cross-Border Services and Investment
The EU reserves the right to adopt or maintain any
measure with respect to the provision of services relating to
the collection, purification and distribution of water to
household, industrial, commercial or other users, including
the provision of drinking water, and water management.”***

- **Doesn't cover MFN, FET, Exprop, and sewage!**
- **By separating drinking water from sewage, the exemption undermines interconnected multi-utilities providing both water and sewage services.**

ISDS: procurement and subsidies



Investment Chapter (Art X.14: Reservations/Exceptions):

“Article X.4 (Market Access), Articles X.6 (National Treatment), X.7 (Most-Favoured Nation Treatment) and X.8 (Senior Management and Board of Directors) do not apply to:

***(a) procurement (...); or
(b) subsidies (...)*”**

- **Consequently, Articles X.9 (FET), X.11 (Exprop) and Section 6 (ISDS) of the investment chapter do apply.**
- **Procurement and subsidies may therefore be subjected to ISDS claims!**

Chapter on Subsidies



A party considering it is adversely affected by subsidies of the other party may request consultations.

“On the basis of the informal consultations, the responding Party shall endeavour to eliminate or minimise any adverse effects of the subsidy, (...)”

- Although this article is exempted from the general dispute settlement mechanism, these consultations may still jeopardize specific subsidies.

Government Procurement Chapter



Thresholds for purchases of goods, services and works

Scope: Procurement of central and sub-central government entities, state or public enterprises, utilities

Risk: Due to lack of binding social clauses, tying of public contracts to collective agreements or minimum wages may contravene CETA's procurement obligations.

Prohibition of „offsets“: Local content or local development requirements are forbidden.

Weak exceptions: Measures to protect human health must be „necessary“, must not constitute „arbitrary discrimination“ or a „disguised restriction on trade“.

Education, health and social services



*„**Type of Reservation:** Market Access, National Treatment, Performance Requirements, Senior Management and Boards of Directors*

***Description:** Cross-Border Services and Investment*

The EU reserves the right to adopt or maintain any measure with regard to the provision of all educational services which receive public funding or State support in any form, and are therefore not considered to be privately funded.”

- **Loopholes: MFN, FET and Exprop are not covered.**
- **Unresolved: How to distinguish publicly from privately funded services?**
- **Potential conflicts: Tuition fees in public universities, health insurance contributions in statutory social security systems**

Energy and remunicipalisation I



EU-Annex II reservation:

“Sub-sector: *Electricity and gas transmission systems, oil and gas pipeline transport*

Type of Reservation: *National Treatment, Market Access, Performance requirements, Senior Management and Boards of Directors*

Description: *Investment*

(...) the EU reserves the right to adopt or maintain any measure with respect to Canadian enterprises controlled by natural persons or enterprises of a third country which accounts for more than 5% of the EU's oil or natural gas or electricity imports, in order to guarantee the security of the energy supply of the EU as a whole, or of an individual EU Member State.”

- **Energy “transmission” does not cover local energy distribution networks.**

Energy and remunicipalisation II



- Remunicipalisation of local energy distribution networks (electricity, gas) is not protected.
- The public utilities-clause wouldn't apply as it is restricted to market access. It does not cover national treatment, which would be necessary to enable remunicipalisations.
- A service provider once granted market access enjoys national treatment, including protection against the reversal of privatisations.

Positive Example: Belgium's Annex II reservation potentially enabling remunicipalisation:

***“Description: Cross-border services and Investment
Belgium reserves the right to adopt or maintain any measure related to energy distribution services and services incidental to energy distribution.”***

Audiovisual Services



- Audiovisual (AV) services are exempted from CETA's chapters on services, domestic regulation and subsidies.
- But scope of exemption is unclear as no definition of AV services is provided (broadcasting maybe covered).

Investment chapter AV exemption contains gaps:

“For the EU, the Section on Establishment of Investments and Section on Non-Discriminatory Treatment do not apply to measures with respect to Audiovisual services.”

- Thus, section 4 (FET, Exprop) and 6 (ISDS) do apply to audiovisual services!

Labour standards in CETA



Gap: No human rights clause as an essential element!

- These clauses enable unilateral suspension of trade agreements in case of human rights violations.
- Important gap given the Troika's interference with collective agreements in EU countries hit by the crisis and receiving financial aid conditioned on wage cuts. These conditions violated core labour standards.

Non-binding Trade and Labour Chapter

- No access to CETA's dispute settlement mechanism
- Canada proposed economic sanctions in case of non-compliance with labour chapter (fines of up to \$15 million per year). EU blocked this proposal.

Thank you for your attention!



www.power-shift.de