

EPSU update on trade developments 26 July 2017

This update covers a number of recent developments including:

- Debates on the future of EU trade and investment policy
- EC non-paper on trade and sustainable development Chapters
- Multilateral Investment Court (MIC)
- UN Treaty on business and human rights
- EU Japan trade agreement (JEFTA)
- CETA
- TiSA
- Brexit
- EU-Ukraine DCFTA and health and social care

1. Debates on the future of EU trade and investment policy

There are many debates and consultations taking place on the future of EU trade and investment policy. These are partly in response to criticism of current trade policy (CETA, ISDS/ICS) and provide an opportunity to reflect on how trade policy should address current challenges such as climate change and sustainable development. In May the European Commission (EC) launched a reflection paper on 'harnessing globalisation'¹ that addresses some of the points in the Trade for All Communication² from last year. To contribute to this debate a number of organisations have published / updated positions including:

- ETUC resolution adopted June 2017 on trade and investment – see https://www.etuc.org/sites/www.etuc.org/files/document/files/etuc_resolution_for_an_eu_progressive_trade_and_investment_policy_en.pdf.
- Greenpeace '10 principles for trade' http://www.greenpeace.org/eu-unit/Global/eu-unit/reports-briefings/2017/201705_Greenpeace_10_Principles_for_Trade.pdf
- Global Justice discussion paper on 'Ten alternatives to a corporate trade agenda' www.globaljustice.org.uk/resources/ten-alternatives-corporate-trade-agenda

On 26 June the ETUC and civil society organisations organised a joint conference on that brought together some of the discussions on the future of trade policy – see for documents at [tradelab](http://tradelab.org).

For EPSU excluding public services from the scope of trade and investment agreements remains key. A recent paper from the Transnational Institute (TNI) prepared with the support of EPSU [Reclaiming Public Services: How cities and citizens are turning back privatisation](#) includes a section on the threats posed by trade and investment agreements and information the many (at least 20) recent international arbitration cases concerning public services. Here you can find [the entire book](#), the summary/media briefing in [English](#), [French](#) and [Spanish](#). The discussion on the future of EU trade and investment policy is linked to the wider 'future of Europe' debate launched by EC White Paper on the Future of Europe published earlier this year – see <https://ec.europa.eu/commission/sites/beta->

¹ See the reflection paper https://ec.europa.eu/commission/publications/reflection-paper-harnessing-globalisation_en and the ETUC's assessment [here](#).

² <http://ec.europa.eu/trade/policy/in-focus/new-trade-strategy/>

[political/files/white_paper_on_the_future_of_europe_en.pdf](#). This sets out 5 scenarios for the future.

EPSU supported a recent call by 257 in favour of a sixth scenario 'Scenario 6: Sustainable Europe for its Citizens', see <http://www.foeeurope.org/sites/default/files/other/2017/sustainable-europe-for-citizens-6th-scenario.pdf>

Gender and trade

Linked to the debate on the future of trade is renewed interest in the gender dimension of trade and investment policies. On 11 May the EP Trade (INTA) and Gender Equality Committee (FEMM) held a [joint hearing](#) on the impact of trade on gender equality. Participants and MEPs highlighted the need to give greater prominence to the gender dimension in trade agreements. The hearing served as a contribution to a joint INTA-FEMM [own initiative report](#) on Gender Equality in EU Trade agreements. This will include recommendations to the Commission for addressing gender inequality in trade policy. The EC also organised in June an event on gender and trade. EPSU has done a brief overview of developments – see [annex](#).

It is worth noting that in spite of the debates on the future of trade policy – and potentially some shift of direction - there are more EU trade negotiations than ever that are on-going or being initiated and that are based on the 'old' model. The EC provides an overview – see http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf

2. EC 'non-paper' on the Trade and Sustainable Development (TSD) Chapters of EU trade agreements

The EC published in July a non [paper](#) that is intended to contribute to a debate in the coming months on current Trade and Sustainable Development (TSD) chapters. The 'non-paper' follows up assurances from the trade Commissioner set out in a letter to the EP INTA Committee Chair Bernd Lange³ that the EC would seek to improve the enforcement of labour rights in CETA and other agreements.

The next ETUC working group on 26 September will address TSDs and the non-paper. A recent analysis from FES (Friedrich Ebert Stiftung)⁴ will also be discussed and other papers will feed the debate, including from University of Warwick that recently published research findings highlighting the limitations in the functioning of labour provisions in TSD chapters.⁵

The provisions of the TSD Chapters are related to the scope and breadth of other parts of trade and investment agreements. For example, failing (as in CETA) to protect in the public procurement Chapter the in-house provision of public services or to demand social clauses in public contracts; or introducing provisions in the financial services Chapter to liberalise social protection systems will impact negatively on decent work and fundamental rights. It is not clear however if/how improvements to the TSD Chapters can address this issue.

³ See letter of Commissioner Malmstrom to the Chair of the INTA Committee Bernd Lange on the Trade and Sustainable Development (TSD) chapter in CETA <https://ec.europa.eu/carol/index-iframe.cfm?fuseaction=download&documentId=090166e5af9d7b2e&title=letter.pdf>.

⁴ See http://www.bernd-lange.de/imperia/md/content/bezirkhannover/berndlange/2017/model_labour_chapter_draft.pdf/model_labour_chapter_draft.pdf

⁵ See [presentation](#) of the research, [article](#) and a full [list of publications](#).

3. Multilateral Investment Court (MIC) project and investors' rights

The EC has now published the responses to the public consultation on the EU's current policy on investment dispute resolution and the establishment of a permanent Multilateral Investment Court (MIC) that ran until March 2017 (see http://trade.ec.europa.eu/consultations/index.cfm?consul_id=233). Currently the Member States are discussing a possible mandate for the EC to begin negotiations on the MIC. Opposition to creating more rights for investors continues however. In June the Corporate Europe Observatory (CEO) and others published a useful campaign resource on investment protection (*for your use only - not to be webposted please*) "Winning the debate against pro-ISDS voices - An activist's argumentation guide". The guide includes the 20 most common claims you will hear on ISDS and ICS, and how to refute them. It also includes references to key publications that back up the arguments and a section with resources and ideas for action. The guide can be downloaded here <https://www.tni.org/files/9837452346812786.pdf>.

EPSU is supporting a joint initiative for a common letter / petition to national trade ministers to oppose the MIC (letter to follow). The letter will aim to:

- Raise awareness about the petition on the MIC
- Lay out red lines/criticism of the MIC proposal
- Propose the UN Treaty negotiations as an alternative to the MIC (see point below for details of Treaty)
- Initiate contacts for meetings with the minister/ministries (and national campaigners)

4. UN Treaty on business and human rights

Rather than strengthening investors' rights, EPSU, ETUC and others want the EU to support a UN Treaty to hold transnational companies (TNCs) that violate human rights to account. To achieve this pressure is needed on the EC and individual Member States. Since 2014 a open-ended intergovernmental working group has been elaborating "an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises." In October 2017 the UN Human Rights Council will start negotiations on the Treaty. Further information can be found on the website of the [Treaty Alliance](#) that is coordinating lobbying actions in support of the Treaty.

To note, the EP INTA Committee is drafting a report (2016/2301(INI) on the impact of EU's trade policies on global value chains. The ETUC, together with ITUC and other NGOs, sent a letter to INTA with comments on the draft to influence the vote and to ensure the INTA report builds on and strengthens previous European Union initiatives to improve accountability, responsibility and transparency in the supply chains of businesses operating in Europe and beyond. The report will be voted in Plenary on 12 September.

5. EU Japan (JEFTA)

In June EPSU and public services unions from Japan sent an open letter to Cecilia Malstrom and Fumio Kishida (Japanese Foreign Affairs minister) on the EU Japan negotiations (JEFTA). The letter calls for transparency and raises concerns that JEFTA will include many of the controversial elements that were in the EU - Canada (CETA) agreement, including investor-state dispute settlement, further liberalisation of public services, and extensive regulatory cooperation. There are fears to that JEFTA will not contain sufficient data privacy safeguards (and pave the way for including sub-standard provisions in TiSA is relaunched). For the letter see: <http://www.epsu.org/article/japanese-and-european-public-service-unions-condemn-secrecy-trade-negotiations>

The letter built on leaked documents by Greenpeace www.trade-leaks.org. Transparency is urgent as trade and investment agreements increasingly focus on areas outside the traditional remit of trade. The EC and Member States indicated that there would be a more open approach after the public outcry over CETA and TTIP negotiations but as JEFTA has shown the overall practice of the EU however has not changed. To improve transparency we need:

- A public discussion of the objectives of negotiations before they start.
- An open debate about the mandate that the Council gives to the European Commission. This debate should give a central place to the social partners and the impact on workers' and fundamental rights
- The mandate to be made public.
- Transparency in the preparation of the Sustainability Impact Assessments (SIAs) so that the Assessments are better able to identify potential economic, social, human rights, and environmental impacts of ongoing trade negotiations.

On 7 and 8 July the EU reached a political agreement with Japan for a [Economic Partnership Agreement and the Strategic Partnership Agreement](#). The political agreement paves the way for the conclusion of negotiations on JEFTA. Press reports however make clear that a number of issues are outstanding (ISDS/ICS, regulatory cooperation, data flows..) . It may be that a separate agreement on ISDS/ICS is sought. To recall, the European Court of Justice (CJEU) on 16 May ruled that the free trade agreement (FTA) with Singapore covers issues that are shared the competence of Member States and the EU (and so need ratification also by Member States).⁶ There had been uncertainty about this after the Lisbon treaty expanded the scope of the common commercial policy. The ruling however places almost all of the EU - Singapore FTA provisions apart from investment within the exclusive competence of the Union. Please find [here](#) the link to the Opinion.

Also to note is another ruling from the General Court of the CJEU on 10 May on TTIP, that [annulled the Commission decision](#) refusing the registration in July 2014 of the proposed European citizens' initiative (ECI) 'Stop TTIP'. The CJEU finds that the ECI proposal does not constitute an inadmissible interference in the legislative procedure, but it represents instead the legitimate initiation of a democratic debate in a timely manner. An appeal, limited to points of law, may now be brought by the EC before the CJEU against the decision.

6. CETA implementation

Following the EP February 2017 vote in favour of CETA, the agreement is now ratified at Member State level and provisional application is expected on [21 September](#). The S2B network is collecting information about national implementation - if you have further information you can send it to directly to the S2B network jucile@S2Bnetwork.org. National ratification processes are providing opportunities to discuss the content of CETA and to continue to lobby national parliaments to reject.

7. Trade in Services Agreement (TiSA)

As reported in the February EPSU trade update, TiSA negotiations have come to a halt and there are uncertainties about the future of the negotiations, at least until the position of the US is clearer. The draft final Sustainability Impact Assessment (SIA) and the report of the civil

⁶ The EP INTA committee published draft reports on the negotiating mandate for EU trade negotiations with [Australia](#) and [New Zealand](#) calling to distinguish between an agreement on trade, only containing issues under EU exclusive competence, and a second agreement on investment protection, which would be subject to an Investment Court System

dialogue meeting on 17 May that discussed the SIA is available here [website](#). EPSU reiterated its concerns over the lack of protection for public services and workers' rights.

A number of organisations have published further studies about the negative impact of TiSA:

- In May the ITF (International Transport Federation) published research into the effects of TiSA on transport workers, commissioned by the ITF and the Friedrich-Ebert-Stiftung (see the full report at <https://goo.gl/39AmQK> and the executive summary. ITF has a new project to coordinate actions to oppose TiSA – see www.tisameanstrouble.org.
- In July UNI Global published 'foul play' about the impact of TiSA on UNI's sectors - see <http://www.thefutureworldofwork.org/stories/uni-global/tisa-foul-play/>
- Also in July, Scott Sinclair drafted a comprehensive study "TiSA Troubles: Services, Democracy and Corporate Rule in the Trump Era" for the Rosa Luxembourg foundation. You can [download the English version here](#) (German, French and Spanish translations will be available soon).

8. Brexit

EPSU and the ETUC are closely following the Brexit negotiations and a number of positions can be found on <https://www.etuc.org/issues/brexit>. In April the EP adopted a [resolution](#) setting out its red lines on the upcoming negotiations with the UK. This emphasises that only when substantial progress has been made on how the UK is to leave the EU can there be any discussions on possible transitional arrangements and future trade relations.

The ETUC has set up a Brexit group including the European trade union federations to track sectoral aspects, and information on these is sought. All contributions are welcome (see for an example the European Public Health Alliance (EPHA) discussion on the links with between 'Brexit, Trade and Health' at <https://epha.org/wp-content/uploads/2017/06/Report-Brexit.pdf>).

9. EU-Ukraine DCFTA and AA

Ukraine, Georgia and Moldova have all recently concluded Deep and Comprehensive Free Trade Agreements (DCFTAs) and Association Agreements with the EU. In May EPSU organised with the ILO, PERC and ITUC an exchange with Ukrainian health unions about how these Agreements relate current healthcare reforms. The full article about this exchange is on the EPSU website <http://www.epsu.org/article/report-health-care-reform-seminar-ukraine-1516-may-2017-kyiv>

Trade unions outside the EU want to make use of references to healthcare services standards and requirements set at EU level (or commonly applied in many EU countries) to improve national healthcare systems and the employment conditions of the healthcare workers (individual and collective labour rights, health and safety of the workforce, staffing levels and access to continuous professional development). Ukraine as other eastern countries have committed to approximate national legislation to the existing EU acquis. However in healthcare and social services – as with other public services - the 'EU acquis' is largely based on common principles and values. These are recognised in the EU Treaties (Protocol on Services of General Interest) but do not have the same weight as EU economic or internal market rules. In EPSU's view therefore challenges to health and social care services stemming from the EU-Ukraine DCFTA are comparable to the ones identified in view to CETA, TTIP or TiSA (for more information see e.g. the article "[Free trade agreements: Health care and social services are not for trading!](#)")

Health and social care systems in Ukraine as elsewhere should be built upon public services principles of “universality”, “accessibility”, “affordability”, “continuity”, “user rights”, “transparency and accountability”. These principles are not dependent on the level of economic development but are the basic building blocks to ensure health services operate in the general interest of all citizens and patients. These principles apply also to funding mechanisms in the context of tax systems and/or social contributions. From reforms taking place in Ukraine and in many other countries, we see however that these principles are not at the forefront of reform processes, as they should be.

You can read the EPSU presentation in [EN](#) and in [RU](#) that summarises these issues. You can also read the statement of the Ukrainian Health Unions from the Health Care Reform in Ukraine Seminar (in [EN](#), [UA](#) and [RU](#)) and have a look at the [article](#) on the seminar on the webpage of the Ukrainian Trade Union Federation (in UA). EPSU and PSI sent letters to the [Minister of Health](#) and [Prime Minister](#) of Ukraine to stress a number of points raised in the exchange in relation to recently implemented and/or planned reforms in the health care system in Ukraine they are concerned about and they ask the Ukrainian Health Ministry and Government to reconsider and change.

Annex

Gender equality, women's rights and EU free trade agreements (FTAs) – EPSU briefing

The scope of recent trade agreements (TA) is larger and larger, dealing with issues indirectly related to the liberalization of trade such as public procurement rules, regulatory cooperation, intellectual property rights (IPR) or the creation of investor-state dispute settlement (ISDS) mechanism. Even if the European Commission (EC) has recently recalled that “*we have come a long way in Europe with how we ensure equality between women and men*”⁷, it is worth noting that the gender dimension of EU trade policy remains undeveloped.

To what extent EU FTAs are gender-blind?

The EC's trade policy appears as *gender-blind*. Gender and women's rights are missing. The last EC's Communication, the so-called *Trade for all*⁸, did not mention the words “*gender*” or “*women*” once. Almost an half of EU trade agreement has no reference to issues relating to gender and women. 9% of such EU's trade deals (3 trade agreement) have a more elaborated integration of gender and women⁹. In 2005, the EU signed an Association Agreement with Chile where one article was reserved to deal with gender issues: “*promoting the role of women in the economic and social development process*”. The EC is far from being the initiator of a feminist trade policy.

In June, the EC and the International Trade Centre (ICT) organised the first International Forum on Women and Trade. The EC Trade Commissioner Cecilia Malmström declared that the future EU-Chile deal will contain a “*gender chapter*”. She added that for the next negotiations at the WTO, the EC will push forward the gender dimension. Unfortunately, this meeting essentially focused on how women entrepreneurs could take advantage of increased market access offered by FTAs. It did not discuss potential impacts of FTAs on women's (and men's) wages and working conditions, skill levels, work-life balance, access to care and public services.

Recent steps toward gender-sensitive EU-TA

Over the last few years, the European Parliament (EP) has published several documents in favour of a gender-sensitive EU trade policy¹⁰. A recent working document underlines that “*trade is not gender neutral and that trade policies have gender specific effects*” and calls for “*trade policies [which] reflect gender equality objectives*”. There are deep concerns about the provisions on public services contained in future trade agreements. A number of organisations have also published recent papers on gender and trade, including “*Making trade work for gender equality*” by the Gender and Development Network and the Position of the Women in Development Network (WIDE+). These papers make a number of recommendations that EPSU can share, including:

- Enforceable provisions on women's rights articles in EU trade agreements
- Rejection of investor-state dispute settlement and limiting Intellectual Property rights
- Gender-sensitive binding regulations for Transnational Companies

⁷ European Commission, « Report on equality between women and men in the EU », *Report*, European Union, 2017, p. 5.

⁸ European Commission, « Trade for all. Towards a more responsible trade and investment policy », *Communication*, European Union, 2015.

⁹ WIDE+, « How to transform EU trade policy to protect women's rights », *Gender and Trade 2017 Position Paper*, 2017.

¹⁰ European Parliament (Directorate-General for External Policies), “The EU's Trade Policy : from gender-blind to gender-sensitive ?”, *In-depth Analysis*, European Union, 2015.

Eleonora Forenza & Malin Björk (MEPs), *Working document on Gender Equality in EU Trade agreements*, 2017.

- Trade agreements should not jeopardise food sovereignty with liberalisation of agriculture
- End the 'one-size-fits-all' privatisation of social services and public goods policy in WTO and other trade negotiations
- Ensure a transparent participation of –women's rights- Civil Society in trade negotiations and monitoring of agreements
- Sustainability Impact Assessments should have an encompassing gender human rights lens that is intersectional

Gender equality, women's rights and public services in FTAs

Public service remains an ally for gender equality and women's rights. For example, the liberalisation of health and care services for the elderly, contained in EU-FTAs, will particularly affect women because they tend to live longer and because they play a greater role as care providers for other family members. Privatizing public services such as healthcare – but also water and sanitation, education or public transport - can lead to a lower level of access and to a higher level of prices, reducing equal opportunities for all and increasing the poverty and the gender gap.

In recent FTAs, ISDS have been introduced. This dispute settlement bodies gather opaque panels of persons to treat a court case between states and private companies. This international mechanism tends to give more rights to private companies to sue sovereign states. Thus, a company can start a lawsuit against a state if the latter launched a policy which has negative impacts on the company profits. The Egyptian government is currently prosecuted in a law case by Velia, present in the country, because it introduced a national minimum wage. Setting an ISDS weakens policies which can threat business interests, such as gender issues.

The Civil Society Reflexion Group, whose PSI is member, argues in its spotlights on the Sustainable Development Goals (SDG) that *"the main conclusion is that the less negative experiences [for women's wages and labour conditions] were those where the regulation of private sector investment was more robust and/or was accompanied by public policies in the area of social services, social infrastructures and income maintenance policies"*¹¹. Now more than ever, gender equality and women's rights need a strong public service and a democratic regulation of the private sector.

EPSU recommendations

Gender equality has been a central objective for EPSU since its creation. EPSU's most recent resolution on Gender equality and women's rights¹² recalls that EPSU, with ETUC and PSI, will support social protection systems, access to public services and sustainable infrastructure for gender equality as well as the empowerment of women and girls as called for by the UN economic and Social council's Commission on the Status of Women in 2019. In general, EPSU considers that the most important demands are to exclude public services from the scope of FTAs and to ensure that FTAs contain binding and enforceable labour rights.

¹¹ <http://www.world-psi.org/en/corporate-power-threatens-womens-human-rights>

¹² <http://www.epsu.org/article/epsu-resolution-and-roadmap-gender-equality-and-women-s-rights>