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Abteilung
Wirtschafts-, Finanz- und Steuerpolitik

Statement of the German Trade Union Confederation (DGB)

Concerning the planned negotiations for a Transatlantic Trade and Investment Partnership Between the EU and the US (TTIP)

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1.) General points on the Negotiations

The European Commission submitted a draft mandate on 12 March 2013 for starting negotiations for a comprehensive Free Trade Agreement with the US, ("Transatlantic Trade and Investment Partnership", TTIP). The governments of EU Member states are now deliberating this draft mandate. The mandate is expected to be finalised in June 2013, which is when the EU Commission will be asked to commence negotiations.

The prospect of a trans-Atlantic free trade agreement raised huge expectations from the moment the planned negotiations became public. An agreement between such economically and politically powerful regions as the US and the EU is generally assumed to have a global impact and to be more than a "standard" trade agreement. In the opinion of the German Trade Union Confederation (DGB), the planned agreement should go beyond a conventional free trade agreement. Equally, procedures and transparency in the negotiations as well as the essential passages should be handled differently from previous EU agreements. For example, social and ecological objectives should be given equal status with economic interests.

As far as the planned negotiations are concerned, politics and businesses expect in particular the removal of non-tariff trade barriers to reduce costs, intensify economic exchange and provide welfare gains on both sides of the Atlantic. In its first draft opinion, the European Parliament even claims the agreement might contribute to resolving or mitigating the current crisis in the euro area.

While warning against exaggerated expectations, the DBG also argues that a European trade agreement with the US could yield positive welfare effects. Trade between the USA and Europe is already highly liberalised so that a future treaty's economic effects are likely to be focussed on harmonised standards and norms. Such a reduction of standardisation and regulation, sometimes called behind-the-border trade barriers, cannot be done easily and comprehensibly, and may not always be entirely desirable: there are, after all, frequently good reasons for specific regulations.

The EU Commission itself, which expects a trade agreement to be fairly wide-ranging and comprehensive, without harmonising all the different regulations, counts on long-term welfare gains as a result of the agreement, amounting to 0.27 to 0.48 per cent of EU economic output. One should also note that studies on the economic impact of a TTIP do not sufficiently take into account that structural economic shifts (shifts in the relative importance of different industries and sectors) do not happen smoothly and without upset.

All things considered, the agreement does not constitute an effective remedy against the crises in the Euro area (as some MEPs appear to expect). This would require other measures, completely different in both scope and focus. Measures can be envisaged to promote transatlantic trade and stabilise the global economy, which would far exceed the positive effect of a free trade agreement: for example, pronounced fluctuations in the Euro/Dollar exchange rate lead to high additional costs for trading companies. Stabilising exchange rates, along the lines of the French government's proposal, could reduce the costs of transatlantic trade. Greater macroeconomic coordination, and coordination of economic policies on both sides of the Atlantic, could be achieved by targeting a reduction of global imbalances, by strengthening the joint struggle against fiscal evasion and tax avoidance, or by promoting the introduction of a global financial transaction tax. Greater welfare effects can be expected from such joint projects - at political level - than from an agenda of pure liberalisation.

Apart from this, it is the concrete concept of a planned free trade agreement between the US and the EU which will decide the extent to which possible macroeconomic welfare gains will actually improve living conditions for people in Europe and the United States. From a union viewpoint, to achieve a positive impact, the agreement needs to:

- be negotiated and controlled with comprehensive democratic participation by both parliaments and civil society,
- include clear, binding and enforceable provisions on the protection and extension of employee rights and social and environmental standards, while in no way obstructing social and ecological government regulation (which includes the option of making public procurement conditional on compliance with social standards),
- guarantee that at least the minimum labour standards and rights, valid for other employees in the target country, apply to posted employees as well,
- not lead to liberalisation or privatisation of matters belonging in the public arena - especially public services - nor obstruct reregulation,
- include no investment protection provisions which could lead to a restriction of worker's rights, or to limitations on government powers to pass sensible rules which would be in the interest of either the population or the environment.

Taking into account factors including how such an agreement would reflect on future agreements, and on the possible global standards it might generate, it is important to have a clear social and ecological focus.

As negotiator, the European Commission needs to be given concrete negotiating guidelines on these points. This requires a change of the current draft negotiating mandate. The following paragraphs will provide a comprehensive explanation of those aspects the unions judge to be critical.

2.) Transparency and Stakeholder Participation

A transatlantic trade agreement can have a profound impact on employees and also affect the concerns of other stakeholders – for example it could influence environmental or consumer standards. Against this background, the DGB holds that national and European-level parliaments, as well as the social partners and other civil society representatives, should be deeply and permanently involved in the negotiation process from the outset.

This also means the negotiations must be conducted with the utmost transparency. A core problem, common to all EU trade agreements, is secrecy surrounding the negotiating mandate of the EU Commission. Civil society activists can only assess possible subject-matters for the negotiations if the text finds its way into the public domain – as happened with the draft negotiating mandate on the EU-US agreement.

A comprehensive and transparent impact assessment, including possible social and ecological effects, should be undertaken before the negotiating mandate is finalised.

However the involvement of parliaments and the social partners should not end if, or when, an agreement comes into force. The DGB view is that the wording of every trade agreement should

include a binding, effective monitoring mechanism to oversee its impact, sustainability chapter compliance and compliance with other provisions of the agreement. This monitoring procedure must also entail the binding and effective participation of the social partners. Both the international and the European Trade Union Confederation defined general requirements for sustainability chapter compliance as early as 2007[1]: for example, binding mechanisms are to be introduced, obliging governments to take action within a specified period, when receiving complaints, reports and suggestions from the social partners. Independent, qualified experts are to deal with complaints about social wrongs. A forum with equal representation of labour, management and NGO stakeholders should be established, and meet several times a year, to advise on such problems and make them public. Given this background it is incomprehensible why standards for monitoring process participation achieved earlier (e.g. through "national advisory bodies" as in the agreement with South Korea), even though as yet insufficient, could not be matched in other, more recent agreements.

Considering the importance of an agreement between the EU and the US, and its possible role model function for more (multilateral) agreements as well as the fact that the agreement may well set international standards, the Trade Unions propose taking the planned negotiations a step further: A bilateral parliamentary commission should be set up, comprising MPs from the US and the EU Parliament, with comprehensive social partner participation to provide democratic supervision of the implementation and impact of the agreement, regarding social and ecological effects, the enforcement of the sustainability chapter and other parts of the agreement. Such a demand should be part of the Commission's negotiating mandate.

3.) Worker's Rights and Sustainability Chapter

There are major differences between the US and the EU member states concerning the features and regulations of industrial relations, the social partnership, and the application and enforceability of workers' and union rights. The German Trade Union Confederation, DGB, views with grave concern the non-ratification by the USA of six out of the eight basic core labour standards of the International Labour Organisation (ILO), including conventions 87 and 98, on the freedom of assembly and the right to collective bargaining. Time and again, union activities have been obstructed, sometimes even in subsidiaries of large German companies. From a DGB point of view, these are problems the EU draft mandate needs to mention explicitly.

Setting the Highest Standards

From a union perspective, one of the objectives of the agreement with the USA must be an improvement of labour rights everywhere. This includes the establishment of standards for employee rights, industrial relations and co-determination rights, corresponding at the very least to the highest level so far achieved in any country. The agreement has to have a clause, explicitly prohibiting any reduction of workers' rights or social standards and ensuring the highest existing standards are maintained. The agreement must not contribute in any way to restricting government powers of regulation. And, especially, the agreement must not prevent the contractual parties from passing or amending laws - or taking other measures - regarding the political areas of the labour market, social insurance, environmental protection, occupational safety and health, consumer protection, the protection of minorities and local businesses. The

[1] http://www.ituc-csi.org/IMG/pdf/TLE_EN.pdf

agreement must not prevent the contractual partners from taking any measures intended to protect the interests of workers and the population at large.

International Standards

The contractual partners must commit to the ratification and the complete and effective implementation of all current ILO conventions; including, though not exclusively, Convention 155, Occupational Safety and Health Convention as well as the so-called priority conventions (Labour Inspection Conventions N o 81 and No 129; the Employment Policy Convention, No 122 on employment policy and No 144 on the involvement of the Social Partners). We consider the ratification and effective implementation of the ILO core conventions as a prerequisite. After all, even Chancellor Merkel has emphasized elsewhere the importance of a comprehensive anchoring of increasing numbers of core labour standards, covering basic rights such as the freedom of assembly or the freedom to conclude collective bargaining agreements, the elimination of discrimination of employment and, last but not least, the abolition of forced labour, especially child labour(…)"[2]

Furthermore, the contracting parties to the free trade agreement should ensure compliance with the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy, particularly in the field of public procurement, investment protection or foreign trade promotion.

Enforceability

These demands should be part of the EU negotiating mandate and need to be defined in the text of the agreement as of equal status with other clauses and just as enforceable. This entails applying the general dispute settlement mechanism for all regulations pertaining to social and ecological issues, i.e. for all parts of a possible sustainability chapter. Any continuous violation of minimum standards in the above areas must be sanctioned by withdrawing trade privileges or by imposing fines.

Dispute settlement has to be based on independent and transparent complaints proceedings allowing trade unions and other civil society representatives to lodge complaints. Information exchange between governments and social partners must be ensured, as must timely government reaction to complaints by the social partners. Independent ILO experts are to be involved in the assessment of complaints.

The social and ecological clauses of the agreement have to be binding at all levels of government.

4.) Liberalisation in the services sector

There are considerable differences between the USA and the EU regarding the composition and scope of the public services sector, and on how certain services are to be supplied and funded. Moreover, in the opinion of the DGB some liberalisation and privatisation steps in the EU have had negative repercussions on the population. In such cases, it must be possible to reverse liberalisation and privatisation once again.

[2] http://www.bundesregierung.de/Content/DE/Rede/2011/06/2011-06-14-merkel-ilo.html

Public Services

According to the DGB, public services should be completely removed from the negotiations with the USA. The draft mandate should be clarified in this respect. Services which must not be a subject for negotiation include education, health care, social services, even audiovisual and cultural services, water supply, postal services or public municipal transport, even if one or both of the contractual parties have already liberalised the service in question. At any rate, the protection level of existing horizontal exceptions for public services ("public utility clause" and "horizontal subsidy reservation") must be maintained. In no case must liberalisation rules apply below the national level (in Germany, this particularly applies to the "Länder" = regional level and Local Authorities = local level). In this case the EU must insist on there being no changes vis-à-vis previous EU agreements in wording, or EU-side interpretation of public service exemptions, which might otherwise - directly or indirectly - cause greater pressure for liberalisation in the public sector.

Exceptions

The EU mandate has to maintain existing negotiating practices in the services sector: Obligations to liberalise should only be accepted within the confines of the so-called positive list approach (as per GATS practice). The DGB emphatically rejects a negative list approach (obligation to liberalise all areas not otherwise specified), or accepting standstill and rollback clauses into the agreement (which would anchor the maximum achieved level of liberalisation, prevent re-regulation and promote one-sided development towards ever greater liberalisation). Trade agreements need to leave sufficient room for political manoeuvre enabling reaction to counter liberalising negative results and comply with democratic demands for (re-)regulation. Regulatory flexibility has to be guaranteed, existing obligations to liberalise have to be subject to verification and alteration. The DGB feels these concepts need to be explicitly written into the negotiating mandate.

Mode IV

There should be no negotiations about further liberalisation of Mode IV of service supply (Mode IV = the presence of natural persons from one country in the other country to provide services), as long as there is a danger of infringing national labour laws and collective bargaining regulations. Continued shortcomings in the straightforward prosecution and sanctioning of such offences are a problem in this context. This is one reason why, in cases of non-compliance with the relevant rules, the general dispute resolution mechanism, and sanctions in the form of fines, should become effective. There has to be principal compliance with destination country national labour laws, social and collective bargaining provisions. The workplace principle is to be applied to all posted workers if it is more favourable.

Financial Market Liberalisation

There should be no further liberalisation steps concerning the financial sector and the movement of capital, given the ongoing financial crisis and recent negative experience with de-regulation in the financial sector. Liberalisation always occurs in parallel with the elimination of national regulations, i.e. with de-regulation which in this area can cause instability and a susceptibility to crises. It is clear that restoring the functioning of the sector and returning it to stability, requires comprehensive regulation for the financial sector and improved supervision structures. Because of this, the Expert Commission of the UN on Reforms of the Financial System* expressed reservations that regulations in trade agreements might run counter to necessary re-regulation and improved supervision. The commission therefore recommends a review of all existing trade

agreements regarding compatibility with the necessary comprehensive and effective financial market regulation. Existing agreements have to be critically analysed and assessed for their effect on macroeconomic stability. Macroeconomic stability, an efficient regulatory framework and functioning institutions are indispensable prerequisites for liberalisation[3]. We are still far removed from such a situation. As a result, promoting further financial sector liberalisation would be irresponsible. Above all, there must be no standstill clauses in a trade agreement with the US which might prevent resetting the level of liberalisation or re-regulation. The agreement should instead be used to achieve joint comprehensive standards in financial market regulation, with its constituent parts corresponding at the least to the highest level achieved one of the countries concerned.

5.) Investment Protection

The contracting parties, the EU and the US, are both legal entities with sophisticated legal systems, comprehensive property rights protection and high investment protection. The fact that a good 30% of European foreign direct investments (FDI) are made in the US while as much as 40% of FDI in Europe is of American origin, demonstrates the lack of concern investors have about investing in the other parties' region of the world. In its draft mandate, the Commission also expressly and prominently stresses that both the EU and the USA rely on the rule of law. Objectively, bearing in mind the need for additional and well-anchored investment protection in any agreement between the USA and the EU, the situation here seems to differ from agreements with countries where they may be legitimate doubt regarding effective investment protection.

The German government should use these arguments, making them totally clear in order to convince the other Council members of the need to exclude investment protection in the draft mandate of the EU Commission. Instead, the EU should argue convincingly in the negotiations against investment protection having a place anywhere in the agreement.

This is particularly relevant because protected rights for investors have been interpreted far too generously in the past, leading to abuse and a restriction of democratically legitimised government opportunities for regulation. There are examples, such as a report concerning a French company's attempts to have recourse to investor-related redress, in order to take action against measures including the raising of the minimum wages in Egypt. Because Germany has phased out nuclear power, investors are currently employing similar opportunities for redress against governments in international arbitration to try and enforce the payment of billions in damages. It is unacceptable to subordinating labour rights protection, or environmental protection, or other government measures for the benefit of the people to the interests of foreign investors.

Should investment protection clauses be included in the TTIP agreement after all, the following should be observed as an absolute minimum requirement: there must be no investor-state dispute settlement which would allow investors to avoid regular legal action in national (or European) courts. The EU draft mandate urgently needs changing on this point. The White House explicitly stated in its official notification to Congress on the planned negotiations that foreign investors in the USA should not enjoy more investment protection rights than domestic investors. From the DGB's view this should also apply to questions of legal action and redress. The EU

[3] http://www.un.org/ga/econcrisissummit/docs/FinalReport_CoE.pdf (Seite 103 ff.)
*) Tranlator's Note: official title in English: Commission of Experts of the President of the UN General Assembly on Reforms of the International Monetary and Financial System

should state explicitly that foreign investors in the EU will not be given the opportunity to circumvent European law by applying to arbitration tribunals. In addition, the EU mandate should make clear that the agreement will not allow the inclusion of so-called "umbrella clauses". These could, for example, mean that putative infringements of other contractual agreements vis-à-vis an investor would be seen as a direct infringement of the agreement – with attendant consequences. Misuse and too comprehensive an interpretation must be prevented even where different standard regulations on investment protection chapters are concerned (national treatment, most-favoured status, expropriation etc.). The European Trade Union Confederation has put forward current and relevant criteria for this.[4]

6.) Public Procurement

Public procurement can be an appropriate tool for ensuring business compliance with social and ecological standards, for example by linking public procurement in with collective bargaining compliance, the payment of minimum wages or similar such conditions. The pending negotiations with the US should be used to further promote this principle of socio-ecological procurement criteria on both sides of the Atlantic.

Procurement market liberalisation must never lead to non-application of existing and corresponding rules in a procurement situation. ILO Convention No 94 in particular, and its provisions on public procurement and collective bargaining agreements, should be taken into account in this context. Existing exceptions are allowed to be continued – also those which favour small and medium-sized enterprises. The agreement should not include obligations to open or liberalise public procurement at sub-national even local level. The relevant clauses need to be included in the draft mandate.

7.) Liberalisation of Goods Trading/Other Regulations

The DGB considers that agriculture should not be a subject for the negotiations. Liberalising trade in agricultural goods will not bring about improvement for people employed in the Europe's agricultural sector. Beside which, there are concerns that contractual obligations from the agreement could impair compromise-building within European agricultural policy.

Where common product standards are the objective, an area all but ignored by the EU negotiating mandate, attention must be paid to make sure that this is not at the expense of health, labour, consumer and environmental protection. The decisive factor should be the level of protection each society wants to achieve, irrespective of so-called scientific clearance declaration certificates.

[4] http://www.etuc.org/a/11025