

## CEEP OPINION ON THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP)

### Executive Summary

#### **Focus 1: The respect of the EU Treaty Principle and EU political balance on Public Services**

*The TTIP mandate refers the aim of having high quality public utilities, respecting the EU Treaty. Mirroring the special nature of public services, many previous Free Trade Agreements (FTA) and the GATS have already put in place protective measures of such services. Nevertheless, the European Commission does not seem to follow the same approach in the TTIP negotiations.*

#### **Focus 2: The economic added value of the future agreement – is it worth?**

*The European Commission frequently mentions the economic benefit of a transatlantic trade and investment partnership, based on figures of an economic study that they have endorsed. Nevertheless, those figures depend on how far the negotiations will go. Should we achieve much more realistic challenges than those announced by negotiating partners, it may appear that the economic added value of the future TTIP is significantly lower than expected.*

#### **Focus 3: The safeguard of EU values and standards**

*The future TTIP aims at making the EU and US legislation more compatible (“better fit together”). This does not only concern technical standards but also social, environmental and health standards are directly related to EU values that are part of the DNA of the European Economic and Social Model. Furthermore, public services rest upon those values and standards.*

#### **Focus 4: The transparency of the process**

*Given the special nature of any negotiation process, it may be difficult to access information about its impact on European authorities and companies. This has been strongly criticised by stakeholders.*

## Introduction

In July 2013, the European Union (EU) and the United States (US) began negotiating upon a Free Trade Agreement (FTA) referred to as the Transatlantic Trade and Investment Partnership (TTIP), aiming at removing trade barriers in a wide range of sectors to increase trade in goods and services between the two parties. However, as the EU-US trade relationship is already the biggest in the world, the current negotiations will have a substantial impact on future EU trade policies, future FTAs and shape global trade rules. As a part of its influential role, the TTIP could also affect the way that public services are provided, and it may do so in a way which could be contrary to the Lisbon Treaty.

Therefore, CEEP finds it pertinent to safeguard public services through underlining the unique nature of public services and their fundamental role in EU citizens' everyday life, which creates a strong need for public services to be distinguished from other services and goods of a commercial nature. This is a reality that primary EU law reflects through Article 14 TFEU and Protocol No.26 TFEU, allowing for distinguishable treatment while upholding the principle of subsidiarity. These custom made provisions are essential due to the many expectations that EU citizens have on public services, since they must be of quality, accessible, affordable, and available.

Consequently, public services providers should continue to be able to fulfil those expectations, as well as their missions. However, it is also worth keeping in mind the fact that public services contribute to 26.6% of EU GVA (Gross Value Added), equivalent to €2.926 billion, and represents 30% of the total employment within the EU. For these reasons, the TTIP, and future FTAs should respect this unique nature of public services. Despite this demand, the TTIP negotiations raise a number of issues that could question and endanger public services being provided. As a result of this, CEEP and our members firmly question the European Commission's strategy and negotiation priorities.

### **FOCUS 1: the economic added-value of the TTIP – is it worth?**

- Through the DG trade endorsed CEPR Report on the TTIP, the European Commission (EC) refers to an expected annual growth of 0.5%, which represents almost €120 billion for the EU, as well as 2 million new jobs being created. Nevertheless, these numbers are based on the presumption that the ambitious aim to reduce tariffs with 98% and Non-trade barriers (NTBs) with 25% is achieved. Most commentators say that it will be difficult, perhaps even impossible, to decrease NTBs with 25%, because NTBs is a controversial area protecting many environmental, health and social standards. Consequently, CEEP believes that the estimated gain without a 25% NTBs reduction is important, and this would leave an annual growth of 0.1% representing €23.8 billion (0.1%) for the EU, as opposed to €120 billion.
- In the current financial climate, any growth is welcomed by CEEP and its members, though we question whether a 0.5% annual growth (best case scenario) or 0.1% annual growth (reducing 98% tariffs, but no NTBs) is adequate considering the amount of obligations that we would become subject to, particularly in times of unemployment and struggling State finances.
- CEEP supports the potentially increased productivity that the TTIP could encourage. Although, it needs to be highlighted that the increased competition would have to allow for a significant

adjustment period, if other market actors are to survive but for large enterprises. Included herein are public services' providers, since they would need time to adapt to new competitive conditions as to avoid negative effects. It is therefore vital that the adjustment period would allow for flexibility concerning public services, to ensure that they are well-prepared and informed. A failure to do so could have detrimental effects on the European society and economy.

- When one considers the high unemployment figures within the EU (according to Eurostat figures from November 2013 and January 2014), increased trade and growth through the TTIP is advantageous. However, as a part of this development, some companies will rationalise employees, and there is nothing in the EC's impact assessment mentioning the loss of jobs, nor how to deal with it, even though it is unlikely that people losing their jobs in rationalising processes will be automatically reemployed. Therefore, the reference to 2 million new jobs is doubtful, and then EU citizens could become more dependent on social security support from their Member State.

## **FOCUS 2: the respect of EU Treaty Principle and of the EU political balance on Public Services**

- First, it seems important to remind the EC of its Trade Policy Paper in "Global Europe" in 2006: "*...as we pursue social justice and cohesion at home, we should also seek to promote our values, including social and environmental standards and cultural diversity, around the world*". EU standards should thereby be respected and protected in trade agreements; any provision or tool undermining them does not respect nor promote EU treaties and European standards.
- Public services/ services of general interest in Europe and their special role are recognised in the Lisbon Treaty, as common constitutional EU values<sup>1</sup>. Article 14 TFEU and Protocol 26 on Services of General Interest are the results of years of heated debates about the definition and the role of Services of General Interest in the EU, as well as their treatment in connection to the internal market and competition rules. It would be unacceptable to endanger this equilibrium when negotiating FTAs.
- EU's commitments in the area of Services of General Interest have been clearly identified by CEEP in its Acquis+ analysis, as the "5 golden rules" of public services in the EU. Thus, there are several principles that need to be respected and included in the TTIP negotiations; Member States (national, regional and local authorities) have the general competence and wide discretion to 'define, provide, commission and organise' SGIs, as well as funding them, and European institutions should only control manifest errors thereof. For non-economic services, the rules of the internal market and the competition rules do not apply, because non-economic services come under the general EU principles. For Services of General Economic Interest (SGEIs), the rules of competition and the rules of the internal market

---

<sup>1</sup> See Markus Krajewski *Public Services in EU trade and investment agreements*, page 5 (Draft version of 14 November 2013)

apply, only if those rules do not hinder the fulfilment of SGEIs' specific mission being achieved (Article 106 TFEU). The effective performance of a task of general interest prevails over Treaty rules in the event of a conflict. Further, competent authorities are free to choose the modes of management: 'regie', 'in house', externalised etc. The European institutions are neutral regarding the ownership of undertakings providing SGEIs. For all SGEIs, the standards of 'quality, security, affordability, equal treatment, the promotion of universal access, and of users' rights must be implemented.

- Until now, public services have been subject to specific treatment and protective measures in many previous FTAs and in the GATS, due to their special nature they have benefitted from a positive list approach. While the TTIP negotiations seem to favour the negative list approach, or at least the US does. A negative list approach would require all sectors that should not be included to be expressly referred to in the agreement, which would require Member States to actively campaign to the EC for exclusions in the agreement. Otherwise, all services are *de facto* within the scope.
- CEEP opposes the use of a negative list approach due to the consequences of adopting this approach, because it does not provide an adequately strong shield for public services when every service that is not explicitly excluded is included. Potential consequences could be that a public service is included by default, and without public debates, markets could become subject to liberalisation. Naturally, this is something that is not within competence of the EU, but for the Member States to initiate such changes.
- Surely, the EC argues that a similar level of protection of public services can be achieved through a negative list approach, by having referred to the EU-Canada Agreement (CETA), where the negative list was applied. Though, the CETA has not been approved of yet, and there were troublesome accusations of the EU seeking to liberalise the Canadian water market. Following this, CEEP questions the ability to equally protect public services under this approach, as it is neither flexible nor safe.
- The negative list approach is the US's preferred alternative, and if the EC was to agree to such an approach it could bring negotiation advantages to the EC that may benefit the EU. This could be one reason why the negative list approach could be the preferred alternative. Nonetheless, CEEP argues this jeopardises the ability to protect public services and providing flexibility in their practices. Regarding the CETA, the European Parliament stated in its resolution from 8<sup>th</sup> June 2011 that the negative list approach in the CETA should be seen as a mere exception. Thereby, the CETA should not serve as a precedent for future negotiations.
- Should the TTIP as currently presented be adopted, this could amount to an adjustment period destroying smaller businesses that would not survive market changes. This is a development which may be justified by EU competition law rules, but simultaneously these losses would take a while to recoup from. There would not be an automatic and proportionate placement by new actors. Hence, European productivity would decrease, if that would be the case.

### FOCUS 3: the safeguard of EU values and standards

- The EC states that through the TTIP they aim to solve the regulatory and NTBs issues, where examples often are the differences between safety and environmental standards for cars. Although, the European market is not only full of technical standards, but it includes health, social and environmental standards which often diverge from the US market. Those standards cannot be undermined by external commitments without breaching EU law. Thus, the EC has declared that high levels of health, safety, consumer and environmental protection will be maintained, CEEP finds that there is a need to further underline the importance of upholding these EU standards because they are the results of democratic choices and should be respected. Furthermore, these standards mirror the values and priorities in the EU and Member States. As stated in Article 7 TFEU, the consistency between all EU policies and activities must be upheld.
- In spite of the EC's statement about them safeguarding European values, their quest is to make legislation more 'compatible' through the abolition of 25% NTBs. Those are two opposite aims, where a conflict could pose a risk to significant European standards, as this could weaken the possibilities of introducing new necessary standards, and would become less likely as well as expensive. One alarming impact could be that the US legal system which does not favour, the in Europe well-established precautionary principle (shale gas, labelling, REACH regulations etc.), would endanger European standards through it. The EC seems to avoid addressing these issues.
- Moreover, European standards and policies are constantly evolving as they respond and react to new technological, environmental, social, economic and demographic challenges, as well as new expectations of citizens and businesses. In a democratic system, competent authorities (European, national, regional or local level) are expected to reflect these norms and wishes. However, the substantial threat arising from the proposal of including an ISDS tool does not correspond to the continued survival of EU values and priorities. Responsible authorities would find it difficult to further enact standards as they would be endangered by corporate claims.
- Since the financial crisis, the US has enacted stricter financial regulations (Frank Dodd Act), as a proactive stance against another financial crisis. Despite this, some actors on the financial market in Europe and the EC are pushing for a harmonised system, which would weaken this proactive regulatory system. The EC pushes for harmonisation, because the EU at the present cannot implement an equally strong regulation, therefore, they urge the US to lower their standard. Safety measures taken to tackle future financial crises should be encouraged, while actions to the contrary should not because it could encourage bad practices within financial institutions and banks that negatively impact public bodies, public budgets and the ability to provide public services. Instead, the EC should keep to sustainable paths, leading to long-lasting and productive developments.

#### Focus 4: The transparency of the process and the participation of relevant stakeholders

- CEEP joins in, in the complaints against the low level of transparency, which is a reoccurring topic in the TTIP debate. It is clear that the EC aims to increase the communication and transparency in connection to the TTIP. Nonetheless, there are several issues of concern to CEEP and our members, i.e. things which have not been alleviated by the EC.
- Draft negotiations have not been made available by the EC, despite the US counterpart having done so. Instead, the EC argues that a better deal is more likely to follow if one does not reveal all one's cards. For inexplicable reasons the argument seems more relevant to the EC than the US. Thereby, the lack of transparency continues to hinder citizens, our members and other stakeholders to participate in the debate and scrutinise negotiations. Additionally, the WTO does not withhold trade negotiating documents. As an agreement is likely to have a tremendous impact on people, states and businesses, a greater possibility to scrutinise the negotiation procedure is required, which would even improve the end result.
- CEEP urges for more opportunities for stakeholders to influence the negotiations, and not only respond to developments after they have occurred. Hence, the announcement of an ISDS consultation by Commissioner De Gucht is a step in the right direction. However, parts of the ISDS provisions will be made public, but this transparency will not be transferred to other chapters of the agreement.
- The newly EC appointed Advisory Group on the TTIP is welcomed by CEEP. It is a step in a better direction, as stakeholders will find it easier to influence the negotiations and put their expertise on the table. However, the lack of public services providers in the Group is naturally a missing element, which CEEP argues should be altered by increasing the number of members in the Advisory Group.