



May 2014  
AK Position Paper

Position paper on the draft inception report of the  
Trade Sustainability Impact Assessment of the  
Transatlantic Trade and Investment Partnership  
(TTIP)

## About us

**The Federal Chamber of Labour is by law representing the interests of about 3.4 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.**

**The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.**

### **Organisation and Tasks of the Austrian Federal Chamber of Labour**

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.4 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudi Kaske  
President

Werner Muhm  
Director

# The AK position in detail

The Austrian Federal Chamber of Labour (AK) would like to submit comments and suggestions concerning the draft inception report of the Trade Sustainability Impact Assessment (SIA) in respect of the trade and investment agreement between the EU and the US (the Transatlantic Trade and Investment Partnership, TTIP). For our general positions on the TTIP, we refer to the AK EUR-OPA position paper of May 2013.<sup>1</sup>

## General comments

In general, we believe that Sustainability Impact Assessments can play an important role in assessing in detail the potential effects of EU trade and investment agreements on employment, working conditions, social, environmental and consumer protection, human rights etc. However, we think that the proposed actual research design, the methodology and the process of drafting the report does **not constitute a solid foundation for an analysis** which is able to guide EU trade and investment policy towards a socially and environmentally sustainable orientation.

To begin with, we believe that a sound **Sustainability Impact Assessment** should have been produced **before the adoption of the EU's negotiation mandate**. The fact that an analysis of potential effects of the TTIP on sustainable development commissioned by the European Commission will only be available one and a half years after the launch of the negotiations demonstrates that the negotiation mandate and the currently ongoing negotiations are not based on solid considerations of social, environmental and human rights impacts.

## Consultation with stakeholders

We would like to clearly emphasize the need to base the research process on a truly balanced consultation process which is key for ensuring democratic representativeness of the Trade SIA drafting process. However, the short timeframe for comments after the Civil Society Dialogue on 1 April 2014 until the inception report was set to be finalized did not allow for a timely engagement of key stakeholders. Moreover, the list in Annex C demonstrates that the stakeholders whose input on the selection of sectors has been considered so far are constituted by a majority of business interests, as opposed to labour, consumer, environmental and other public interest organizations. Moreover, the consultation process further suffers from the fact that most stakeholders lack sufficient information of the negotiation topics as they do not have access to the negotiation documents.

## The existing economic studies on TTIP: a flawed basis for the SIA

The draft inception report refers to a number of existing economic studies about the economic effects of TTIP. In this context, amongst others, the studies by Ecorys<sup>2</sup>, CEPR<sup>3</sup> and Ifo/Bertelsmann Stiftung<sup>4</sup> are referred to as key contributions. The draft inception report states that "it is the aim of this Trade SIA to take the results from these studies as a basis and go beyond them by expanding on the expected social, environmental and human rights effects as well as providing more detail on the expected sectoral level impacts"<sup>5</sup>.

However, from the point of view of the AK, **the studies which are taken as a basis for the SIA contain serious flaws** and do not provide a solid foundation for an assessment of potential impacts of the TTIP on sustainable development. In respect of analyses of the methodological flaws of these studies, we would like to refer to our short overview paper containing an analysis of the key TTIP impact assessment studies<sup>6</sup> as well as a new economic study by the Austrian Foundation for Development Research (ÖFSE)<sup>7</sup> including a critical assessment of the findings and the methodology of selected existing studies on TTIP. The following remarks will present only an overview of the shortcomings of the economic studies on the effects of the TTIP.

Firstly, the definition of non-tariff barriers (NTBs) or non-tariff measures (NTMs) is in many studies very vague. For example, the very broad definition of NTMs used in the study by Ecorys<sup>8</sup>, which is also used as a basis for the CEPR<sup>9</sup> study, includes any form of regulatory differences between the two economic blocs. Moreover, it has been argued that the **quantification of the costs of NTMs** for businesses – which in turn determine the findings of the economic effects of TTIP – has an **upward bias**.<sup>10</sup>

Secondly, the mentioned economic **studies on TTIP neglect the social costs** which may result from **regulatory change**, i.e. the elimination or alignment of NTMs. As ÖFSE clearly demonstrates,

“[a]ll studies, but particularly the Ecorys study, assume that a reduction of NTMs is welfare-enhancing. This ignores that NTM such as laws, regulations and standards pursue public policy goals. They correct for market failures or safeguard collective preferences of a society. As such they are

themselves welfare-enhancing. The elimination or alignment of an NTM thus will imply a social cost for society. This applies equally to NTM elimination, harmonization and mutual recognition. Firstly, harmonization of NTMs, e.g. technical standards, will imply both a short-term adjustment cost for public institutions and for firms required to align their administrative procedures, production processes and products to the new standards. Secondly, mutual recognition of regulations and standards will increase information costs for consumers, since the latter will be confronted with a more complex and potentially less transparent multiplicity of permissible standards, e.g. on consumer goods and services. Thirdly, the elimination of NTMs will result in a potential welfare loss to society, in so far as this elimination threatens public policy goals (e.g. consumer safety, public health, environmental safety), which are not taken care of by some other measure or policy<sup>11</sup>.

Thirdly, the **economic studies on the effects of TTIP mostly ignore or downplay macroeconomic adjustment costs**, in particular in relation to changes in the current account balance, losses to public revenues due to tariff reductions and effects on the level of unemployment.<sup>12</sup> When it comes to the latter aspect, it is important to note that most TTIP studies, notably the CEPR study, project considerable **job displacements** away from sectors which experience strong import competition as a result of the trade agreement. The assumption that the effects of job losses according to TTIP would be negligible as they could be quickly absorbed by sectors with increasing demand is highly questionable. In contrast, considerable adjustment costs can be expected as a result of job displacements which are

not assessed in the relevant economic studies on TTIP. This is all the more problematic as empirical studies

“suggest that (i) most displaced workers will earn lower wages in their new jobs, (ii) retraining expenses particularly for less-skilled workers might be substantial, and (iii) a fraction of the displaced workers, in particular older and less-skilled persons, will in all likelihood remain unemployed for a long time, thus inferring substantial costs on national unemployment benefit schemes and social spending. These adjustment costs will be generally higher during times of economic crisis and low levels of labor mobility. Both of these conditions apply to the current situation in the EU”<sup>13</sup>.

### Weaknesses of CGE models

On a more general note, there exists a strong body of academic literature which highlights the weaknesses of the application of Computable General Equilibrium (CGE) models in order to measure effects of trade liberalization. Available experience with CGE models of trade liberalizations suggests that the validity of their results heavily depends on the availability of reliable and robust data which is often not fulfilled. Moreover, CGE models **tend to overestimate the economic effects of trade liberalization**. This was, for example, the case with NAFTA and the WTO Uruguay Round. It must be stressed, therefore, that on epistemological grounds CGE-models are thought-experiments, and it must be kept in mind that their predictions are speculative. The level of confidence that policy-makers should attach to such predictions, must therefore be low.<sup>14</sup>

If the quantitative analyses envisaged in the Trade SIA take the results of the mentioned studies, notably the CEPR

study, as their basis, the SIA therefore risks **basing its calculations on flawed assessments of the social impacts of the TTIP**.

### Assessment of implications of investment protection provisions

Against the background of the currently ongoing political debate about the threats resulting from investment protection provisions and investor-state dispute settlement mechanism (ISDS), the short reference to ISDS in the draft inception report is clearly insufficient in order to meaningfully examine the **effects of investment protection provisions and ISDS for policy space** in order to regulate in the public interest and for **public budgets**.

In the draft inception report, it is stated that “we will specifically discuss the way the ISDS works in the context of environmental regulation and to which extent the proposed improvements of the investment protection provisions could change the picture from an environmental point of view”<sup>15</sup>. This provokes the question why the implications of ISDS in TTIP are only to be considered in respect of environmental policy. From our point of view, this is an insufficient focus as investment protection provisions and ISDS may have implications for a broad number of policy fields, which also include labour protection, social, public health, economic and tax policy, to name but a few.

In order to be able to comprehensively assess the effects of the Commission’s proposed “improvements” of investment protection provisions within an analysis of ISDS cases, the ISDS cases under NAFTA need to be analyzed. After all, the so-called “improvements” correspond with the investment protec-

tion provisions included in NAFTA. The assessment of the implications of the inclusion of investment protection provisions and ISDS must encompass an analysis of the effects on governments' policy space to regulate in the public interest and potential burdens for public budgets due to substantial compensation payments to be paid to foreign investors.

These effects can be well shown with **reference to those ISDS cases under NAFTA in which Canada or Mexico lost the investor-state dispute settlement process**. ISDS cases against the US government should not be the object of this analysis as these cases do not give an undistorted picture of the expected effects on the regulatory space and public budgets. Due to the political power of the US and the clear bias of the arbitration panels in the cases with involvement of the US government, these cases are not representative for the international investment law. Furthermore, those ISDS cases which involved companies with a seat in the NAFTA region suing other, in particular South American, states should be included in the analysis.

We would like to bring to your attention that the inclusion of interpretative annexes in the treaty text – which is pursued by the Commission as a new approach – has brought about no improvements in practice in the case of agreements which adopt this approach. This is because, in fact, in several cases the arbitration panels did not recognize the annexes in their decision as being relevant.

In the assessment of ISDS, it must also be taken into consideration that international investment law is no case law. In contrast, arbitration panels are free to apply their respective interpretation of investment treaties, which makes a

serious depiction of possible effects of ISDS on the welfare state very difficult.

### **Potential of biased selection of economic sectors for in-depth analysis**

As the Trade SIA is supposed to focus more on sectoral level impacts as opposed to the macroeconomic impacts of the TTIP the selection of sectors which are to be the object of in-depth analysis as well as the applied methodology are of crucial importance. In this context, we would like to voice our **critique concerning the process of selection of sectors** for in-depth study.

As already explained above, we do not think that the CEPR study constitutes a solid foundation on which a Sustainability Impact Assessment should be based. Having said that, it is nevertheless noteworthy that out of the eight sectors which have been proposed for in-depth study, only one of them (electrical machinery) is expected to experience a decrease in employment due to TTIP according to the CEPR estimations. Given the purpose of a Sustainability Impact Assessment, it seems questionable whether the proposed selection of sectors for detailed analysis of which the vast majority has been expected to benefit from TTIP will lead to unbiased results of sectoral impacts on sustainability.

### **Assessment of potential liberalizations of trade in services and movement of natural persons**

Against the backdrop of the prolonged economic crisis, there are also serious concerns about the impact of trade agreements like TTIP on labour markets, national labour law and collective agreement provisions. This issue is not restricted to low-wage low-skilled jobs, but increasingly extends to occupations

with higher levels of skills and expertise, and consequently, better payment. Current efforts to liberalize trade in services and the movement of natural persons (mode 4) by so called "GATS plus"-provisions point in the same direction. In this regard, any further liberalization of Mode 4 (temporary movements of natural persons) remains a sensitive issue – i.a. against the background that offensive approaches on **Mode 4** provisions even call for the general abolishment of the possibility to apply economic needs tests in committed sectors. Thus, the (adjustment) costs of job losses to the EU as a consequence of trade liberalization have to be put under scrutiny as well as how national labour, social and collective agreement provisions will be affected by possible commitments on the temporary posting and placement of workers for service provision.

When it comes to the **potential threats for public services** stemming from trade agreements, we would like to refer to the report of the seminar "The politics of Globalization and public services: putting EU's trade and investment agenda in its place"<sup>16</sup>.

We strongly support the comment given by EPSU in the context of the stakeholder inputs that the EU should – in accordance with its values and principles for its internal and external policy enshrined in the Treaties – promote the solidarity mechanisms that are essential to the **development of universally accessible, high-quality public services with good employment conditions** (as referred to in Protocol No 26 of the Treaty of Lisbon on services of general interest, the Charter of fundamental rights etc.) and ensure that Member States (and local authorities) have wide discretion on how to organize these services (subsidiarity principle e.g. in healthcare as

well as social services). It is important to assess in how far the TTIP may counter these goals if public services would be included in the trade agreement.

From the perspective of policy coherence, it would be particularly relevant that the SIA also assesses the potential impacts of the TTIP on the human right to universal access to water and sanitation and the respect of the demands of the European Citizens' Initiative "right2water"<sup>17</sup> in the TTIP negotiations. In this context, we wish to refer also to our recent AK EUROPA position paper on concessions and public-private partnerships in TTIP.<sup>18</sup>

### **Qualitative social and human rights analysis**

When it comes to the planned qualitative social analysis of the TTIP, the report suggests a case study which should assess "the likelihood that standards on employment protection legislation are lowered in a selection of EU Member States"<sup>19</sup>. This research is supposed to be carried out using interviews and desk research. However, it remains unclear as to how exactly this research will be pursued.

Although the draft inception report of the SIA mentions ILO conventions as elements of the rules under which employers and workers operate, ILO conventions are not proposed as an actual object of the study. We believe that a key task of the Sustainability Impact Assessment should be to analyze in how far the **Chapter on Trade and Sustainable Development** of the TTIP should be designed in order to effectively contribute to sustainable development in the areas of labour, human rights and the environment. Since the launch of the Global Europe Strategy in 2006,

the EU includes Sustainability Chapters in its trade agreements. However, the provisions on labour rights in existing EU trade agreements are often very vague and there is **no binding enforcement mechanism** to impose sanctions if provisions on labour standards are breached. In order to guide policy recommendations on how to design the Sustainability Chapter in a trade agreement with the US, it would be necessary to assess in how far recent EU trade agreements (e.g. the EU-South Korea trade agreement) have been successful in preventing violations of labour rights.

We also wish to refer you to a study commissioned by the Vienna Chamber of Labour on “Social standards in sustainability chapters of FTAs” for further information<sup>20</sup>.

In respect of the human rights impact assessment, we wish to refer to additional sources containing concrete suggestions for human rights analyses of trade agreements<sup>21</sup>.

### **Lack of analysis of threats for consumer protection**

There is also the need to assess **potential implications of regulatory convergence in the course of TTIP for consumers** in a systematic way. Harmonization or mutual recognition of standards may lead to a lowering of consumer protection standards (such as food safety, health and safety provisions, data protection etc.). The current draft inception report includes references to consumers in relation to expected impacts on price levels and in the section on environmental impacts. However, the wide variety of potential negative effects on consumer protection due to regulatory convergence in TTIP needs to be addressed in a systematic way.

(Endnotes)

- 1 [http://akeuropa.eu/\\_includes/mods/akeu/docs/main\\_report\\_en\\_284.pdf](http://akeuropa.eu/_includes/mods/akeu/docs/main_report_en_284.pdf)
- 2 ECORYS (2009): Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis. Rotterdam, [http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc\\_145613.pdf](http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc_145613.pdf).
- 3 CEPR (2013): Reducing Transatlantic Barriers to Trade and Investment. An Economic Assessment. Centre for Economic Policy Research. London, <http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc150737.pdf>.
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- 5 Ecorys (2014): Trade Sustainability Impact Assessment on the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the United States of America. Draft Inception Report, Rotterdam, 17 March 2014, p. 13.
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- 7 ÖFSE (2014): ASSESS\_TTIP: Assessing the Claimed Benefits of the Transatlantic Trade and Investment Partnership (TTIP), [http://guengl.eu/uploads/plenary-focus-pdf/ASSESS\\_TTIP.pdf](http://guengl.eu/uploads/plenary-focus-pdf/ASSESS_TTIP.pdf).
- 8 Ecorys (2009).
- 9 CEPR (2013).
- 10 ÖFSE (2014).
- 11 ÖFSE (2014), p. VI.
- 12 ÖFSE 2014.
- 13 ÖFSE 2014, p. VI.
- 14 See Little, Daniel (2005): Economic Models in Development Economics, In: D.Little (ed.): On the Reliability of Economic Models: Essays in the Philosophy of Economics, Kluwer.
- 15 Ecorys (2014), p. 38.
- 16 <http://www.epsu.org/a/9746>.

- 17 <http://www.epsu.org/a/10312>.
- 18 [http://akeuropa.eu/\\_includes/mods/akeu/docs/main\\_report\\_en\\_333.pdf](http://akeuropa.eu/_includes/mods/akeu/docs/main_report_en_333.pdf).
- 19 Ecorys (2014), p. 29.
- 20 [http://media.arbeiterkammer.at/wien/PDF/studien/Studie\\_Nachhaltigkeit\\_englisch.pdf](http://media.arbeiterkammer.at/wien/PDF/studien/Studie_Nachhaltigkeit_englisch.pdf).
- 21 Harrison, James (2013): Human Rights Impact Assessments of Free Trade Agreements: What is the State of the Art?, [http://www.oefse.at/Downloads/veranstaltungen/doku\\_04\\_11\\_2013/James\\_Harrison\\_Trade\\_HRIA%20paper\\_5\\_11\\_2013.pdf](http://www.oefse.at/Downloads/veranstaltungen/doku_04_11_2013/James_Harrison_Trade_HRIA%20paper_5_11_2013.pdf) Raza, Werner (2013): Human Rights Impact Assessment of Free Trade Agreements: comment to James Harrison, presentation, ÖFSE Workshop Vienna, 5 November 2013, [http://www.oefse.at/Downloads/veranstaltungen/doku\\_04\\_11\\_2013/Werner\\_Raza\\_Presentation\\_5\\_11\\_2013.pdf](http://www.oefse.at/Downloads/veranstaltungen/doku_04_11_2013/Werner_Raza_Presentation_5_11_2013.pdf).

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