

Demand for the democratisation of EU trade agreements

The criticism of the problems in terms of the content and democratic policy of TTIP, CETA, TISA and other trade and investment agreements has now almost become common practice. In contrast, proposals on how the trade policy should be changed in the future, are very seldom made. This article has the purpose of bringing into discussion demands, which will allow EU trade agreements to be democratised.

In principle, the proposals made in relation to the TTIP-, CETA- and TISA negotiations are also transferrable to other international agreements that are concluded by the EU. Many of the improvements can only be implemented by making amendments to the EU contracts, others can be swiftly introduced by practical action on part of the participating institutions - in particular the EU Commission - or by interinstitutional agreements between the Council, the Commission and European Parliament. This text focuses on specific proposals for action within the framework of the EU and it does not discuss broader proposals for the democratisation of global trade policy, for example, a reform of the WTO or the relationship between bilateral and multilateral trade agreements.

A Improvements without amendments to the EU agreements

1. The draft negotiating texts of all parties must be published

All proposals for negotiations (be it in the form of draft agreements or draft chapters or otherwise), which the EU Commission and the negotiation partner mutually provide to each other, must be published in a timely manner. If a potential negotiation partner does not agree to this, negotiations shall not commence. The public must be kept continuously informed throughout the negotiations.

There is a fundamental lack of transparency in the TTIP negotiations simply because the US refuses to release its proposals to the public. Even though there are some improvements on part of EU, not all of the proposals from the EU Commission are being published.

The actual negotiations do not have to be published.

2. The publication of the mandate is compulsory

The mandates for TTIP, CETA as well as the TISA have now been published, while the mandates for other agreements, for instance for the EU-Singapore Free Trade Agreement, have not. This inconsistent transparency is completely unsatisfactory. A general rule must be created, which provides for the immediate publication of adopted mandates.

3. Comprehensive report to the European Parliament

Previously, only the EU Commission has been negotiating with the contract partner. The Council is intensively involved via the Trade Policy Committee. Based on the doctrine of Separation of Powers, it would not be appropriate for the European Parliament to be directly involved in the negotiations. However, there must be a comprehensive and continuous report to the entire European Parliament.

4. Balanced participation of stakeholders

The EU Commission must involve the stakeholders equally, both BEFORE the commencement of negotiations and THROUGHOUT the negotiations.

According to its own statement, prior to the commencement the TTIP negotiations, 90% of the EU Commission's consultations were held with economy and industry representatives. The Commission only switched to a more balanced involvement of the players when the public protest against TTIP could no longer be ignored.

5. No non-terminable contracts and no very long term contracts

Democratic control also means the reversibility of decisions that have already been made. This is a huge problem with trade agreements and/or more generally with international contracts. Amendments can usually only be made with the consent of all contract parties. Terminations are aggravated by long contract periods (for investment contracts effectively up to 20 years) or due to a lack of termination clauses.

Therefore, future trade and investment agreements should only be concluded with termination clauses. Long notice periods and effective protection measures in investment contracts, which survive the cancellation, must also be excluded. Following a pre-defined period (e.g. 10 years), the contract must be evaluated.

6. No provisional application

The provisional application derives from International Contract Law (Vienna Convention on the Law of Treaties) as well as from the TFEU (Treaty on the Functioning of the European Union). This means that a trade agreement can be brought into force through a Council resolution, even if the ratification process is incomplete¹ with regard to CETA or TTIP, this means e.g. that Investor-State Dispute Settlement (ISDS) claims can already be brought before arbitration courts, even though the debates and decisions are still pending in the national parliaments. The provisional application is undemocratic because it presents the parliaments and citizens with a fait accompli and also increases the pressure to ratify the agreement. For instance, Russia was ordered to pay damages amounting to 50 billion US dollars as a result of an investor claim relating to the Energy Charter Treaty, even though the Russian Parliament never ratified the agreement.

Therefore, the Council should generally refrain from allowing the provisional application of international agreements. A time limit may be considered to prevent a delay in the ratification of undesirable contracts.

¹ This solely pertains to those parts of the agreement that are subject to the sole or joint jurisdiction of the EU.

B Improvements, with amendments to the EU agreements.

7. The European Parliament (in cooperation with the Council) adopts the mandate

The negotiation mandate sets out the general framework and the direction of trade agreements. Previously, the Council makes this decision solely at the recommendation of the Commission. In future the Council and the European Parliament should make these decisions jointly, in the same way as it is done in the co-decision procedure. The Council and the European Parliament should additionally also be entitled to initiate negotiation mandates. This would clearly increase the parliamentary control and enhance the public debate during the pre-negotiation stages and with regard to the purpose and meaning of specific contracts.

8. The European Parliament can enforce subsequent negotiations

Compared to the European Parliament, the US Congress has a wider range of control options. Not only can it say "yes" or "no" to a negotiated clause, it can also resolve amendments (in reality this means subsequent negotiations). Such a right should also be granted to the European Parliament. In order to prevent negotiations from being postponed as a result of continuous, tactically-motivated, new proposals for amendments, this right could be limited to the single enforcement of subsequent negotiations.

9. Direct democratic control of trade agreements is enabled

The citizens must also be able to decide whether an agreement should enter into force. At present however, a referendum can only be held after the negotiations have been concluded and the ratification process has been completed. There should be sufficient time for this process, the text must be translated into all of the official languages of the EU.

A European Citizens' Initiative, which allows a negotiation mandate to be issued or annulled, should be admissible. Additionally, consideration might be given to influencing ongoing negotiations by collecting a certain number of signatures for a petition in order to include a proposal for negotiation.

Status as at: 18.4.2016