

WHAT FUTURE FOR SOCIAL RIGHTS UNDER THE NEW TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP)? SOME REFLECTIONS ON TTIP

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This essay presents the new Transatlantic Trade and Investment Partnership (TTIP) whose negotiations are still going on between the EU and the USA, on both its positive and negative aspects. Particular consideration is given to the effects that will eventually be felt in Europe in respect of social rights and labour market issues. The pursuit of sustainable development is proposed as a key guiding principle to be followed if rights are to be protected. Finally, the author reflects on the implications of the publishing of *the Mandate*.

Nel presente saggio si affronta il tema del Partenariato transatlantico per il commercio e gli investimenti (TTIP), attualmente in via di negoziazione tra l'UE e gli USA, presentandone gli aspetti positivi e negativi. Viene posta particolare attenzione sugli effetti che verranno percepiti in Europa in termini di diritti sociali e mercato del lavoro, proponendo il perseguimento dello sviluppo sostenibile come un principio guida fondamentale per la tutela dei diritti sociali. Infine, l'autrice conduce una riflessione sulle possibili implicazioni della pubblicazione del Mandato negoziale.

1. WHAT IS THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP)?

The TTIP is potentially the biggest regional free-trade agreement in history, but it is not the only one. In fact, such agreements are numerous, and over recent decades they have spread in number and deepened in content. They are of quite diverse kinds. There are custom unions, free trade areas, and single market arrangements distinguished by having a single currency, free movement of labour, capital and services, and substantial regulatory harmonization (such as is the case of the European Union). They vary in other ways also. For example, regional free trade agreements differ substantially in their treatment (if at all) of issues such as freedom of labour and capital mobility, and investment, and more broadly in terms of overall scope. For example, MERCOSUR (the South American Common Market which includes Argentina, Brazil, Paraguay, Uruguay, Venezuela, Chile, Bolivia, Colombia, Ecuador and Peru) has been created specifically as a free trade area which enables the fluid movement of goods, people, and currency. In contrast, ASEAN (the Association of Southeast Asian Nations covering ten countries) also has broader political and economic objectives having been created to accelerate economic growth, social progress and cultural development in the region, while promoting regional peace and stability among member countries. Then NAFTA (the North American Free Trade Agreement between Canada, United States and Mexico) is a free trade agreement with a parallel accord: the North

American Agreement on Labour Cooperation (NAALC), which commits all three countries to close cooperation on labour issues and provides for the effective enforcement of laws relating to labour standards.

This new agreement, TTIP, will create the world's largest free-trade zone: the EU and the USA are the biggest economies in the world, and the two areas combined account for 40% of world GDP, and 1/3 of the globe's total trade exchanges amounting to 2 billion Euros of trade of goods and services annually. Negotiations started in July 2013 in Washington DC. On October 3rd 2014, EU and US officials ended a 7th round of week-long negotiations. Although a successful conclusion of negotiations was initially envisaged to occur in late 2014, now it has been postponed to the end of 2015.

It will not be a simple trade agreement. It will include not only the abolition of tariffs but also regulatory "non-tariff barriers" (NTBs). NTBs cover bureaucratic procedures for regulating trade, social, environmental, privacy, and food safety issues. It has been suggested that as much as 80% of the total potential gains from TTIP could come from cutting costs imposed by duplicative bureaucracy¹. TTIP also aims to encourage a strong trans-Atlantic general collaboration by promoting mutual recognition, harmonisation and cooperation between regulators on important global regulation issues, such as in respect of energy, environment, agriculture, privacy, health and safety, sustainable development, food and financial security, social standards and privacy standards.

1.1. *The light side of the TTIP*

It has been asserted that TTIP would help to boost European and US prosperity for decades to come². It has been defined as «an essential relationship»³ and in the state-of-the-union address «as a good idea that business should rush to support»⁴, and an agreement which will «create a global gold standard»⁵.

Expected benefits are in fact very positive. It is said that by 2027 TTIP could boost the EU's economy by €120 billion, the US economy by € 90 billion, and that of the rest of the world by € 100 billion. Moreover, once the agreement is fully implemented, it has been suggested that a consequence could be 2 million new jobs worldwide, and an extra € 545 in disposable income each year for a family of four in the EU, and € 655 per family in the US⁶. These increased incomes will result from the combined effect of wage increases and the price reductions that will follow thanks to common regulatory approaches between the EU and the US reducing costs for exporters.

This agreement should also have a positive impact on worldwide trade and income, increasing GDP in the rest of the world by almost Euro 100 billion⁷. This will occur for two main reasons: *a*) the other countries will gain because EU and US citizens will have more money to spend, and this would mean a higher demand not only for goods and services

¹ European Commission, *Transatlantic Trade and Investment Partnership, the economic analysis explained*, European Commission, September 2013, p. 6.

² FT view, *No time to waste on transatlantic trade – US and EU must not lose momentum on the TTIP talks*, "The Financial Times", February 16, 2014.

³ A. Panebianco, *Una relazione indispensabile*, "Corriere della Sera", 5 July 2013.

⁴ Leaders, *A good idea in the state-of-the-union address, that business should rush to support*, "The Economist", 16 February 2013.

⁵ P. Robinson, K. Dybvad, U. Bäckström, *The 'T' in the TTIP will create a global gold standard*, "The Financial Times", 10 March 2014.

⁶ Source: Memo, *Independent study outlines benefits of EU-US trade agreement*, Brussels, 12 March 2013.

⁷ European Commission, Memo/13/211, 12 March 2013.

produced in the EU or in the US but also from elsewhere in the world; *b*) the agreement would lead to more production, which could imply more orders to EU and US companies for suppliers in other countries.

It is also expected that the adoption of TTIP by such economically important blocs as the EU and the USA will provide partners with the incentive to also move towards adhering to the new transatlantic standards, leading to a global harmonization. Collectively, the EU and the US would form the world's biggest trading bloc, and there is a very real possibility that mutually agreed regulations and standards would also be adopted, at least partially, by third countries. Thus, thanks to the establishment of regulatory hegemony by the EU and the US, there is the possibility for creating *de facto* common, global standards. This implies that the reduction of NTBs following the bilateral agreement will give the EU and the USA improved market access to third markets. In addition, as third countries converge further towards establishing common standards there will be scope for reductions in NTBs amongst them. Therefore, indirect spill-overs will lead to lower costs and greater trade between third countries as well⁸.

A successful conclusion of this agreement, it is said, would not only bolster prosperity in the participating countries: it could be a springboard for new global trade talks. If the EU and the USA move along the route of mutually recognizing common standards, the importance of TTIP will not be exclusive to only EU and US firms. Third country products meeting the rules of one partner will also meet the rules of the other⁹ and this would be an important step in the process of a social globalisation.

1.2. *The dark side of the TTIP*

Even though, according to many important and recognised studies¹⁰, TTIP should have positive economic effects on both side of the Atlantic, the agreement is not without its strong critics. These are to be found especially amongst consumers, NGOs, and antitrade campaigners, but also include journalists, researchers and professors, on both sides of the Atlantic, worried that a deal will damage consumer, labour and environmental regulations, and induce a kind of regulatory competition leading potentially to a general standards race to the bottom.

The first most common criticism issued against TTIP is that there has been a lack of transparency during the negotiation phases, and this has aroused suspicion. The construction of the TTIP text still continues and still remains secret (even from the European

⁸ J. Francois, *Reducing transatlantic barriers to trade and investment. An economic assessment*, Centre for Economic Policy Research, London, March 2013, p. 29, in http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf.

⁹ J. Rollo, P. Holmes, S. Henson, *Potential effects of the proposed transatlantic trade and investment partnership on selected developing countries*, 2013, in <http://unstats.un.org/unsd/trade/globalforum/tsbPublication/pubsPublic?currentFilterC=2¤tFilterF=1>. This paper evaluates some of the potential effects of EU-US TTIP economic integration on the trade in goods of 43 low-income countries (LIC). It first assesses the impact of removing the most-favoured nation (MFN) tariffs that apply to trade between the EU and the US. It then examines the impact of regulatory integration on sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT) on LIC.

¹⁰ The most famous studies include: 1. Francois, *Reducing Transatlantic Barriers to Trade and Investment*, cit.; 2. G. Felbermayr, M. Larch, L. Flach, E. Yalcin, S. Benz, *A study commissioned by the Federal Ministry of Economics and Technology*, IFO Institute, München 2013; 3. Idd., *Dimensionen und Auswirkungen eines Freihandelsabkommens zwischen der EU und den USA*, Studie im Auftrag des Bundesministeriums für Wirtschaft und Technologie – Endbericht, IFO Institut, München 2013, in <http://www.cesifo-group.de/de/ifoHome/publications/docbase/details.html?docId=19077502>; 4. G. Felbermayr, B. Heid, S. Lehwald, *Transatlantic Trade and Investment Partnership (TTIP). Who benefits from a free trade deal?*, Bertelsmann Stiftung, Gütersloh 2013, in http://www.bertelsmann-stiftung.de/cps/rde/xbcr/SID-7BC4ACC1-C3B7B3C3/bst_engl/xcms_bst_dms_38061_38062_2.pdf.

Parliament), and is being negotiated privately in Brussels by the EU Commission. The only official document, *The Mandate*, containing the guidelines for negotiators, has been very recently published, in October 2014¹¹, but the draft agreement has not been made public. It is felt that rather than secret negotiations a broad public discussion is needed in order that both sides can be given social and environmental negotiating mandates. This would require the provision of comprehensive and timely information, and a full public disclosure of all negotiation documents.

A second criticism is that the claims of positive economic consequences of the agreement are disputed. Even should the TTIP result in the complete abolition of tariff barriers, in fact tariffs on import duties on industrial goods entering both economic blocs are already quite low, just 3 % on average. Consequently the alleged positive impact of TTIP on a family's yearly disposable incomes, and the potential profits to be made by transnational corporations, are not seen by some observers as being as credible.

Moreover, if the number of people living on welfare benefits is high, then the overall impact on incomes is less. In fact the economic gains of TTIP would only amount by 2027 to 0.5 % and 0.4 % increases in EU and US GDPs. This would mean in excess of 10 years to wait for what would amount to a trivial increase. In fact, if we consider all the main important studies, the estimated impacts on GDP for the EU and US range between 0.2 and 0.5 per cent. A 0.2 % increase would be really insignificant.

Another concern is that the agreement might have a hidden political objective, to do with the assertion of power. That is to say it is alleged that TTIP is far more than an economic project. The USA is currently negotiating in parallel the Trans-Pacific Partnership (TPP) covering 12 countries¹² (USA, Canada, Japan, Australia, New Zealand, Singapore, Malaysia, Brunei, Vietnam, Chile, Mexico, and Peru), and it appears that the US is designing these agreements (TTIP and TPP) as a means of regaining competitiveness lost to emerging countries (especially China and India¹³). The hidden agenda for TTIP is one of deregulation, reductions in minimum labour standards, and the encouragement of a race to the bottom. TTIP has for those reasons been defined as «an assault on European and US societies by transnational corporations»¹⁴, as «the corporation invasion»¹⁵, as «a full-frontal assault on democracy»¹⁶, and also as «a new threat for Europeans»¹⁷.

In respect of third countries, it is claimed the situation would also not be as positive as has been alleged because TTIP partially devalues existing preference agreements. In fact, according to a Bertelsmann Foundation study, EU trade with neighboring states in North Africa and Eastern Europe would decline by an average of 5 %, and if there was complete tariff elimination, «the countries of West Africa, which traditionally trade a

¹¹ The Council of the EU published the negotiating directives for talks on an EU-US trade agreement, the Transatlantic Trade and Investment Partnerships (TTIP). The document, called *The Mandate*, is available at: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>. See below, PAR. 3.

¹² According to UNCTAD, the three main regional groups currently under negotiation (TPP, TTIP and the Regional Comprehensive Economic Partnership – RCEP – each account for a quarter or more global FDI – Foreign Direct Investment) flows but Asia-Pacific Economic Cooperation (APEC) remains the largest regional economic cooperation grouping, with 54 % of global inflows (UNCTAD, 2014, p. 9).

¹³ J. G. Felbermayr, M. Larch, *The Transatlantic Trade and Investment Partnership (TTIP): Potentials, problems and perspectives*, "CESIFO Forum", 2, 2013; A. Cerretelli, *USA-UE la vera sfida al Dragone cinese*, "Il Sole 24 Ore", 14 March 2014.

¹⁴ John Hilary, Executive Director of campaign group War on Want.

¹⁵ L. M. Wallach, *The corporation invasion*, "Le Monde Diplomatique", 2 December 2013.

¹⁶ G. Monbiot, *This transatlantic trade deal is a full-frontal assault on democracy*, "The Guardian", 4 November 2013.

¹⁷ L. Gallino, *TTIP: Un'altra minaccia pendente sulla testa degli europei*, "la Repubblica", 13 February 2014.

lot with Europe, lose up to about 7%»¹⁸. Moreover, for those countries that do not gain from tariff reduction, unemployment would rise slightly. This can be explained by relative higher trade costs between these countries and the EU and the USA which would lead to a smaller trading volume (i.e., less demand for products from these countries), which reduces production in the affected countries. This weakened demand translates directly into a lower employment demand from companies in the affected countries, which leads to increased unemployment¹⁹.

Unfortunately, evaluating the pros and cons of TTIP is not simple. The results of studies carried out are not reliable. In fact, the results from studies which have simulated the impact of TTIP have been quite different. This is because they typically start on bases of different assumptions; or they might only consider some data; or they might be using different models. In general, most findings produce very optimistic scenarios, but conclusions are conditional. Estimating the monetary benefits of trade deals is notoriously hard, and estimates are often over-inflated. There are many reasons why prices, employment rates, volumes of imports and exports, and levels of GDP might change, and international trade is only one of the factors to be considered.

2. TTIP AND LABOUR AND SOCIAL RIGHTS: CONFLICT OR CONVERGENCE?

TTIP will have effects on the everyday lives of European citizens and workers. The agreement would certainly have consequences for the labour market, and for social rights, wages and working standards.

According to certain studies, the increased level of economic activity and productivity gains resulting from the agreement will benefit EU and US workers in terms of both overall wages and new jobs opportunities. For example, a study by CEPR (Centre for Economic Policy Research) predicts that a consequence of the agreement would be that wages for workers would likely rise by roughly 0.5%. Also Bertelsmann predicts that TTIP will lead to the creation, in the long term, of approximately one million jobs in the USA and 1.3 million jobs in the EU, while for the OECD estimates an additional job growth range from half a million to 2 million (For Italy, the percentage rise in employment due to TTIP is expected to be 0,62%)²⁰. iFo studies predicting job creation in the EU are less optimistic, estimating that a total closer to 400,000 jobs might be created²¹: lower trade costs will result in greater demand for goods from the EU and USA, which will translate into new hires and ultimately into a lower unemployment rate. According to iFo studies the effect of TTIP on employment rises in all EU countries as well as the USA would be very small, with changes for individual EU states typically lying around 0.1 percentage points²². Nevertheless, it seems that the overall conclusion from the above is that the impact of TTIP on the labour market would be good. But there is a problem that the data is contested.

According to the European Commission, TTIP might result in EU export dependent jobs increasing in number by several million²³. Confusingly, the Commission also cites a CERP

¹⁸ Felbermayr, Heid, Lehwald, *Transatlantic Trade and Investment Partnership (TTIP)*, cit., p. 41.

¹⁹ Felbermayr, Heid, Lehwald, *Transatlantic Trade and Investment Partnership (TTIP)*, cit., p. 34.

²⁰ Bertelsmann, *Transatlantic Trade and Investment Partnership (TTIP)*, Bertelsmann Stiftung, 2013.

²¹ G. J. Felbermayr, M. Larch, W. Lechthaler, *The shimer puzzle of international trade: A quantitative analysis*, iFo Working Paper No. 134, 2012, p. 56.

²² Felbermayr, Heid, Lehwald, *Transatlantic Trade and Investment Partnership (TTIP)*, cit., p. 34.

²³ European Commission, *Transatlantic Trade and Investment Partnership*, cit., p. 8.

study which claims “hundreds of thousands” of extra EU jobs might be created²⁴. Even leaving aside the conflicting predictions, there is a problem that an in-depth review of the CERP study finds no support for the Commission’s assertion. In fact, the study only refers to positive effects of TTIP on wages for both the EU and the US, but even then all estimated changes are only equal to or less than 0.5 per cent of the wage rate (the changes in wages are shown to be similar for both skilled and unskilled labour, with the impact being marginally lower for skilled workers)²⁵.

Moreover, according to other studies, TTIP would result in job losses for some countries. For example, there would be up to 100,000 job losses in Canada, 50,000 in Australia, 70,000 in Japan, 11,500 in Norway, 30,000 in South Korea, 95,000 in Turkey and 18,000 in Switzerland²⁶. Also the Northern European countries would suffer export losses amounting to two per cent of GDP, lower growth rates, a loss of more than 200,000 jobs, downward pressure on wages, and loss of revenue for the public coffers. Approximately 600,000 jobs would be lost in the EU. Northern European countries would be the most affected (–223,000 jobs), followed by Germany (–134,000 jobs), France (–130,000 jobs) and Southern European countries (–90,000)²⁷.

TTIP is sold to the general public as an engine for job creation but the history of other similar bi-lateral trade agreements around the world supports the case that there would in fact be job losses. If we consider for example the American experience, the North American Free Trade Agreement (NAFTA) between the US, Canada and Mexico caused the loss of one million US jobs over 12 years, instead of the hundreds of thousands of extra jobs that were promised. The NAFTA expanded North American trade «but resulting benefits flowed to already-wealthy elites, not to workers, their families, and the general population in any trading partner. Wages stagnated, social protections declined, and violations of workers’ organizing and collective bargaining rights continued unabated»²⁸.

Then we can also consider what has happened in the EU. Given the mass unemployment, pressure on wages and the expansion of precarious employment, we can say that the liberalized internal market within the EU has not led to real harmonization of working conditions nor to the strengthening of social rights. On the contrary, even within EU borders there are big problems of social dumping thanks, for the most part, to the availability of low-cost labour in the eastern countries.

The main problem of TTIP, and the main source of criticism, is the huge difference between the two EU and USA systems, from a social and labour point of view. It is a similar problem which affects also other regional free trade agreements: the difficulty of harmonising labour law conditions in order to avoid a competitive race to the bottom. The EU Commission has pledged time and again that it will not negotiate the lowering of EU standards, and in theory having very similar social standards in both trading partners could block a “race to the bottom” on wages and working conditions. However, in view of the very different industrial relations systems and regulatory frameworks on the two sides of the Atlantic then simply allowing the mutual recognition of standards of different

²⁴ Cf. <http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/>.

²⁵ Cf. CERP study, p. 71.

²⁶ Calculations: IFO Institut, Felbermayr, Heid, Lehwald, *Transatlantic Trade and Investment Partnership (TTIP)*, cit., pp. 41-4.

²⁷ J. Capaldo, *The Trans-Atlantic Trade and Investment Partnership: European disintegration, unemployment and instability*, Global Development And Environment Institute Working Paper No. 14-03, October 2014.

²⁸ L. Compa, *Labor rights and labor standards in Transatlantic Trade and Investment Negotiations: An american perspective*, Transatlantic Stakeholder Forum, Working Paper Series, July 2014.

quality could have the effect of lowering EU standards, even without a formal change of EU regulations. The regulatory differences can be seen in the fact that European labour law and practice generally complies with core labour standards of the International Labour Organization, and, for example, every country has ratified ILO Conventions 87 and 98 on freedom of association. In contrast, in the USA six out of the eight core labour norms of the ILO have not been ratified, and these include conventions on freedom of association and the right to collective bargaining.

Also, in Europe, generally, an employer must have a good reason “una giusta causa” for dismissing an employee but in the USA dismissal can be carried out without any reason, according to an “at-will” rule. In the USA, employers have the power to dismiss staff or to cut pay and benefits at any moment, and for any reason – including “a good reason, a bad reason, or no reason at all” – as long as it is not a reason prohibited by law. Also, no US law requires that dismissed workers be given severance pay based on their length of service. No US law requires employers to provide pension benefits or health insurance. No US law limits the power of companies to abruptly close workplaces. No US law limits the amount of overtime work that employers can impose on workers. No US law requires employers to allow workers holidays, or prohibits employers from forcing employees to cancel their holidays or to work on holidays. Only seven states have laws requiring rest breaks or meal breaks; no federal law does so²⁹.

Overall, we can say that among industrialized countries the USA has the lowest labour standards³⁰. This threatens Europeans with a transatlantic race-to-the-bottom. There is a risk for the EU that subsequent to the implementation of TTIP unemployment levels would rise as jobs switched to the US, where labour standards and trade union rights are lower. Also, there would be a risk that labour law would be harmonized down towards the bottom. Overall TTIP threatens for the EU job losses, declining wages, weakened minimum labour standards and growing income disparities.

This agreement would definitely affect the European Labour Market and have consequences for European workers, and could potentially include as objects of negotiation a whole range of labour and social matters, such as in respect of: minimum wages, health and safety standards, unemployment insurance benefits, social safety nets, pensions, unemployment benefits and other welfare programs, family/maternity/ paternity leave and pay, health insurance, retirement issues, workers’ organizing and collective bargaining rights, and rights to information and consultation.

The problems when it comes to negotiation are several. Industrial relations in the EU and US are totally different. Welfare provision is different. Workers’ rights are different. Consequently, European negotiators must prevent governments and firms from exploiting US-style deregulation in order to gain competitive advantages in trade, and labour rights must be protected by clear and enforceable binding rules.

2.1. Sustainable development as a guarantee of social rights

One of the most important aspects of TTIP is the constant reference to the principle of sustainable development. This principle is frequently quoted as defined by the *Our*

²⁹ Compa, *Labor rights and labor standards in Transatlantic Trade and Investment Negotiation*, cit., p. 9.

³⁰ M. Fichter, D. Stevis, *Global framework agreement in a union-hostile environment: The case of the USA*, Friedrich Ebert Stiftung Study, Berlin, November 2013, p. 7.

Common Future Report, also known as the Brundtland Report³¹: *Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs*. In other words it is a kind of development that ensures that today's growth does not jeopardise the growth possibilities of future generations. Sustainable development comprises three elements – economic, social and environmental – which must be considered in equal measure at the political level. Adherence to sustainable development could reduce any potentially negative effects of TTIP on the European labour market.

The preamble and general principles governing the negotiations from the EU's side reiterate the bloc's commitment to sustainable development: «the commitment of the Parties to sustainable development and the contribution of international trade to sustainable development in its economic, social and environmental dimensions, including economic development, full and productive employment and decent work [...]»³². Thus the inclusion of the principle of sustainable development in TTIP presents both a real opportunity and a challenge. Further, in addition to the recognition of a commitment to sustainable development the preamble also references labour conditions when it says: «(it is)... an overarching objective of the Parties that they will aim at ensuring and facilitating respect of international [...] labour agreements and standards while promoting high levels of protection for [...] labour»³³. Moreover, it is stated that social (and economic and environmental) impacts will be examined through the means of an independent Sustainability Impact Assessment (SIA), involving civil society, which will aim to propose measures to maximise the benefits of the Agreement and to prevent or minimise potential negative impacts³⁴.

The aim of including the objective of sustainable development is to ensure that increased trade is accompanied by a commitment to environmental protection and social development. That is to say, increased trade must not be at the expense of, or to the detriment of, the environment or of labour rights. Consequently, the EU and the USA must not weaken domestic labour standards as an encouragement to trade and investment. That is to say, domestic labour standards must not be lowered as a means of competing for trade or investment. The only way to achieve such a result is by adhering to the principle of sustainability. Sustainable development must therefore be used as a reference paradigm during negotiations.

TTIP has the objective of «generating new economic opportunities for the creation of jobs and growth through increased market access and (by achieving) greater regulatory compatibility and setting the path for global standards»³⁵. In effect, TTIP should be an opportunity for the creation of global social standards and rights and the development of global rules by building into the agreement a strong social dimension³⁶. It follows the EU must insist on US ratification of ILO core labour conventions, from which the two blocs

³¹ World Commission on Environment and Development (WCED), *Our common future*, Oxford University Press, Oxford 1987, p. 43.

³² Council of the European Union, *Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America, The Mandate*, Brussels, 9 October 2014, p. 3, in <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>.

³³ Cf. *The Mandate*, p. 4.

³⁴ Cf. *The Mandate*, p. 15.

³⁵ Cf. *The Mandate*, p. 4.

³⁶ Final Report High Level Working Group on Jobs and Growth, February 11, 2013, in http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf.

could together create new international common standards. These would be not minimum standards, but high standards, and certainly not lower than existing European ones. As one commentator put it: «If the United States and the European Union fail to build a strong social dimension into transatlantic trade and investment, they would send a signal to the rest of the world that they are not serious about labour rights and standards and that other countries and regions can ignore them, too. Conversely, strong protection for labour rights and standards will confirm their importance in the global trade system»³⁷.

It is essential for organized labour on both sides of the Atlantic to push for the inclusion in TTIP of better and more comprehensive labour standards, with ILO standards considered as the basic minimum.

We will only know the real TTIP effect once it has started; and we hope that it will then not be too late to stop it if consequences are not very positive for Italy and more generally for the EU. However, even before TTIP comes into force at the end of the negotiations a council containing representatives of Member States' governments and the European Parliament will sit to approve or reject the agreement. We hope they will make the right choice, including, if necessary, a decision to exit from an agreement which could lead to environmental, social and economic crisis.

3. THE MANDATE: ANYTHING NEW ON THE TABLE?

As mentioned earlier, in October 2014 the guiding directives for the negotiation on the TTIP between the EU and the USA, adopted by the Foreign Affairs Council (Trade) on 14 June 2013, were finally published. This document is called *The Mandate*.

What is the content of this Mandate? Can we find in this document a guarantee for social rights? In fact, the document sets out the negotiation guidelines, which, if respected, could indeed provide a strong and real guarantee for social rights protection. For example, in respect of the nature and scope of the agreement, it is made clear that the «TTIP is based on common values, including the protection and promotion of human rights». Also, in the section “general principle”, it is written that «the partnership with the US is based on common principles and values consistent with the principles and objectives of the Union's external action».

More broadly, in this respect it is worth noting the existence of art. 9 TFEU which states the so-called *Horizontal Social Clause* (HSC) according to which «in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health». In other words, this clause underlines the importance for the European Union and its Member States to carry out a precautionary evaluation of the social impact of each new action, internal or external action³⁸, and implies there should be a constant monitoring of the EU's political impact on the social dimension. The achievement of the different objectives included in this HSC (such as in respect to employment, social protection, education, and human health issues) can be considered as litmus paper tests³⁹

³⁷ Compa, *Labor rights and labor standards in Transatlantic Trade and Investment Negotiation*, cit., p. 17.

³⁸ See A. Perulli, *Fundamental social rights and market regulation. The EU external actions*, “IJCLL”, 1, 2014.

³⁹ See U. Villani, *La politica sociale nel Trattato di Lisbona*, “Riv. Giur. Lav.”, 1, 2012, p. 47. As for the impact evaluation on the internal market, see COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PAR-

for verifying if EU and Member States choices, in every field of competence (competition, monetary politics, internal market and so on) are acceptable (or not), from a social point of view⁴⁰. As the Belgian Presidency of the EU states, «in order to strike the right balance between the EU's economic goals and its social objectives, it is essential to consider seriously the social ramifications in the conduct of economic policy; [...], as long as it is employed fully and properly, the horizontal social clause may be a very suitable means to that end»⁴¹.

Further, in the paragraph titled *Rules*, it is said that «the Agreement will include commitments by both Parties in terms of the labour and environmental aspects of trade and sustainable development» and it «will also include provisions to promote adherence to and effective implementation of internationally agreed standards in the labour domain as necessary conditions for sustainable development»⁴². Also *The Mandate* says «The importance of implementation and enforcement of domestic legislation on labour [...] should be stressed as well»⁴³. This statement should prevent EU deregulation even if the words used are not so mandatory («the importance should be stressed»).

The risk is that although this Mandate sets out a full list of principles and objectives they are not so simple to achieve in reality. But if the content of this Mandate is mandatory⁴⁴ then a weakening of social rights should not be an object of competition. Although it will only be possible to comment properly on the agreement once its full text is known, the decision to publish this document in different languages has been a very important step for TTIP, providing as it does a concrete answer to all requests for full transparency, and it should provide, if respected *in toto*, a real guarantee for social rights.

LIAMENT, *Better regulation for growth and jobs in the European Union*, Brussels, 16 March 2005, COM(2005) 97 final; D. Gottardi, *Tutela del lavoro e concorrenza tra imprese nell'ordinamento dell'Unione europea*, Giornate di studio AIDLASS, Parma, 4-5 giugno 2010.

⁴⁰ On the HSC see P. Pochet, C. Degryse, *Social policies of the European Union*, «Global Social Policy», 10, 2, 2010, p. 249; M. Ferrera, *Mapping the components of social EU: A critical analysis of the current institutional patchwork*, in E. Marlier, D. Natali (eds.), *Europe 2020, towards a more social EU?*, «Work & Society», 69, 2010, p. 60; A. Jacobs, *Labour law, social security and social policy after the entering into force of the Treaty of Lisbon*, «European Labour Law Journal», 2, 2011, p. 135; A. Alaimo, B. Caruso, *Dopo la politica i diritti: l'Europa "sociale" nel Trattato di Lisbona*, WP CSDLE, «Massimo D'Antona», INT – 82/2010, p. 11.

⁴¹ Belgian Presidency of the European Union, *The horizontal social clause and social mainstreaming in the EU. The Horizontal Social Clause as a call for intensified cooperation and exchange of knowledge through the Commission's Impact Assessment*, Federal Public Service and Social Security, Brussels 2010, p. 19.

⁴² Cf. *The Mandate*, p. 14.

⁴³ Cf. *The Mandate*, p. 15.

⁴⁴ As stated by Carlo Calenda (Deputy Minister of Economic Development of the Italian Government) during the International Conference TTIP Reloaded, Additional Insights & New Perspectives held in Rome on 20 October 2014.