

TTIP

PROMOTING AARHUS PRINCIPLES IN THE EU-US TRADE NEGOTIATIONS

TTIP: a brief introduction

- ▶ Transatlantic Trade and Investment Partnership (TTIP)
- ▶ A wide-ranging trade and investment partnership agreement with the US covering areas from food safety; health; environmental standards; climate to digital rights and public services.
- ▶ Huge potential impact on relationship between environment, economics and society. Consequently a very high level of public interest and engagement.
- ▶ What successes and challenges have been experienced in applying Aarhus principles to the process and substance of the TTIP negotiations?

Transparency

- ▶ Initially extremely difficult to get negotiating documents.
- ▶ Concerted campaigning, EU Ombudsman “own initiative” investigation- received 315 submissions and over 6,000 emails.
- ▶ Clear improvement in transparency.
- ▶ BUT still a long way to go.
- ▶ EU Commission refuses to publish US proposals and consolidated texts when available (in contrast to WTO and UNFCCC for example).
- ▶ European Ombudsman: *“US resistance...not in itself sufficient to keep (documents) from the European public. The Commission has to ensure at all times that exceptions to the EU citizens fundamental right to get access to documents are well-founded and justified.”*

Investor-State Dispute Settlement (ISDS)

- ▶ Controversial “corporate courts”: investor courts operating outside usual legal frameworks/scrutiny.
- ▶ Originally created to prevent expropriation but increasingly used to challenge environmental and social legislation that impacts on economic profits. <https://www.foeeurope.org/isds>
- ▶ Legal costs in ISDS cases average \$8 million.
- ▶ Evidence that ISDS cases can and have deterred Governments from passing environmental and social legislation.
- ▶ As a result of high public concern European Commission launched a public consultation on ISDS. 150,000+ responses, approx 97% of which were against it.
- ▶ Commission has now submitted a proposal for a ‘fixed’ ISDS system, with a permanent court and right of appeal. Doesn’t address core concerns and unlikely that the US will accept such a proposal.

Regulatory Cooperation

- ▶ TTIP a “living agreement” with ongoing regulatory cooperation envisaged.
- ▶ 4th May 2015 text: Commission proposing a “Regulatory Cooperation Body” - would demand early input on regulatory decisions made by either party at a “central” or “non-central” level if deemed to have an impact on trade.
- ▶ Negotiations already having a chilling effect, important protections, such as regulations on pesticides or fuel quality controls, are considered “trade barriers”.
<http://www.theguardian.com/environment/2015/may/22/eu-dropped-pesticide-laws-due-to-us-pressure-over-ttip-documents-reveal>
- ▶ Creates further risks of vested interests (eg. large corporations) restricting environmental legislation.

Impact on third countries

- ▶ Impacts on wider trade system. EU-US have said they wish to “multilaterise” the deal- but third countries will have had no say in its contents.
- ▶ Could undermine developing country gains at WTO level- a WTO chapter supporting domestic service industries could be undermined by services chapter in TTIP.

Conclusions

- ▶ Some improvements in process- more documents being released- but some way to go.
- ▶ Responses to public consultation on ISDS have resulted in new proposal for how it functions. But can ISDS be compatible with A2J?
- ▶ TTIP remains very controversial: Recent EU Parliament vote postponed (even though was to give an opinion and not approve it): 116 amendments proposed and apparently concerns re whether it would pass- reflects high level of public concern.
- ▶ Underlying Aarhus principles is the presumption of an adequate framework of environmental legislation that the public can use to protect the environment. As a result of TTIP and other developments at EU level, it is this very framework that is under threat. This should be as of much concern to Aarhus parties as process.