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Workers' rights and transatlantic trade relations: The TTIP and beyond

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Abstract

In the context of the working-class backlash against free trade represented by Brexit, the recent surge of right-wing political parties in Europe and the 2016 US presidential election, it is timely to take stock of the threats to jobs and wages posed by recent negotiations over the Transatlantic Trade and Investment Partnership. The European Commission selectively relied on econometric analyses, predicting a positive impact of the Transatlantic Trade and Investment Partnership. Its proposed legal text on 'Trade and sustainable development' fell short of the European Parliament's negotiating guidelines, which themselves failed to ensure protection of labour standards. The activities of corporate lobbies threatened the effective protection of workers' rights. Major risks to workers' rights are posed by discrepancies between US and European Union labour and social law and labour standards. The most recent legal text lacks compliance monitoring provisions and sanction mechanisms against member states failing to ratify core labour conventions. The investment court system does not resolve the problems of the discredited investor-state dispute settlement mechanism for which it is the proposed replacement. The year 2016 has provided a foretaste of the dislocation likely from trade and investment regulation that sees social and environmental standards and labour rights simply as barriers to corporate profits.

JEL Codes: F13, F16, F21, F23, F66, J83, K33

Keywords

Enforcement of standards, labour rights, labour standards, trade agreements, trade policy, Transatlantic Trade and Investment Partnership

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Introduction

The initiative to establish the Transatlantic Trade and Investment Partnership (TTIP), also known as the Transatlantic Free Trade Area (TAFTA; Fung, 2014: 445), was taken in November 2011 during a European Union (EU)–US summit. After its conclusion, a High Level Working Group on Jobs and Growth was set up, chaired by the European Trade Commissioner Karel De Gucht and the US Trade Representative Ron Kirk. The purpose of the Group was to identify ways to increase trade and investment between the EU and the US. Its final report of February 2013 included a recommendation to enter into negotiations aimed at a wide agreement in the field of trade and investment (Best et al., 2015: 64; Matthews, 2013: 491).

During the 15 rounds of negotiations that took place up to November 2016, the lead proponents of the TTIP were German Chancellor Angela Merkel and US President Barack Obama. In 2016, French President François Hollande led European opposition to the terms of the negotiations (Farrell, 2016). Popular opposition to global trade liberalisation was among the explanations advanced for the 23 June British referendum vote to leave the EU ('Brexit'). The 'leave' vote was strongest in regions whose manufacturing industries have borne the brunt of global competition. Colantone and Stanig (2016) argue that 'import shock', not immigration, has fuelled support for Britain's UK Independence Party (UKIP), the National Front in France and the Northern League in Italy. In the US, Democrat presidential candidate Hillary Clinton was forced by support in rust-belt states for Republican candidate Donald Trump's anti-free trade rhetoric to contradict Obama's continuing support for the TTIP (Roberts and Felton, 2016). Following Trump's November 2016 election, Merkel and Obama published a statement reaffirming that the TTIP would 'without a question' benefit American and German 'employers, employees, consumers and farmers', despite the unlikelihood of a partnership agreement's being concluded before, or during, Trump's presidency (Oltermann, 2016).

This article focuses on the reasons why inclusion of 'workers' among the supposed beneficiaries of the TTIP failed to carry conviction. It may well be that the events of 2016 represented a disastrous loss of trust in 'Social Europe's' promised safeguards of social protection and labour rights and left the way open for conservative pressure for the further deregulation of working conditions (De Ville and Siles-Brügge, 2016; see also Ewing, 2015). But typical of commentary in the wake of the US presidential election results is the claim that for as long as traditional working-class parties continue to support economic policies driving inequality and decimating working-class regions, right-wing politicians will continue to rise (Johnson, 2016). It is therefore imperative to document the specific threats to workers' rights embodied in the TTIP. Failure by democratic parties to take these concerns seriously is likely to continue to drive workers to seek socially destructive alternatives. This article therefore provides a detailed exploration of the basis of concerns about the impacts of the TTIP on labour conditions and workers' rights.

In 2013, the US and the EU accounted for almost half of global gross domestic product (GDP) and 30% of trade, and their mutual investment equalled more than USD3.7 trillion (Akhtar and Jones, 2013: 111; Schott and Cimino, 2013; Tourkochoriti, 2014: 161; Weaver, 2014: 226). Taking into consideration the existing relatively low custom tariffs,

the emphasis in the negotiated trade agreement has been on eliminating non-tariff barriers and harmonising regulations between the parties (Bickel, 2015: 558; Bull, 2015: 1264; Easton, 2014: 74; Kordos, 2014: 8, 14; Kraatz, 2014: 1).

TTIP negotiators have been guided by the experience derived from other recently concluded agreements between Europe and Canada (the Comprehensive Economic and Trade Agreement (CETA), 2014), and between the US and the Pacific countries (the Trans-Pacific Partnership (TPP), 2015) and those currently under negotiation (between Europe and China, and between Europe and Japan). Their common goal is to create a situation in which the EU and the US will play a leading role in setting standards, without the need for adopting the standards set by third parties (Liptáková, 2015: 7; Simonazzi and Faioli, 2015: 7).

The article begins with an outline of the methodology, on which the argument, literature review and data analysis are based. It then outlines two competing assessments of the likely impact of the TTIP on jobs and wages. The first is from the point of view of econometric analysis based on the Computable General Equilibrium (CGE) model, and the second uses the United Nations Global Policy Model (GPM; Capaldo, 2015). The two models are shown to lead to different results, but the article argues that the European Commission (EC) – favourable to the TTIP – relies only on the more advantageous. Subsequent sections of the article explore whether the TTIP, and especially the EU's draft legal text on 'Trade and sustainable development', represents an effective protection of workers' rights. This question is explored in the light of discrepancies between US and EU labour and social law, the approach of both to labour standards and the activity of various lobby groups. These questions are examined in the context of the implications of the degree of compliance with directives, declassified on 9 October 2014, for the negotiation on the TTIP and with the European Parliament resolution of 8 July 2015, containing recommendations to the EC on negotiations for the TTIP. An assessment of the implications for labour rights of the proposal to introduce an investment court system (ICS) in place of the investor-state dispute settlement (ISDS) mechanism is made before concluding remarks are presented.

Methodology

A hypothetical-deductive methodology is adopted, involving the formulation of hypotheses in response to the posed research problems. These hypotheses are tested through critical analysis of primary source texts – legislation, 'mega trade treaties', trade agreements and negotiation documents. The secondary literature is also subject to analysis and critique. The investigative technique involves building a synthesis of the accumulated literature, which is used to help determine the veracity of the research hypotheses.

The hypotheses are as follows:

The EC has selectively taken into account only studies predicting the positive impact of TTIP on labour and, therefore, the economic model on which policy decisions rely is flawed;

Workers' rights are insufficiently taken into account in the 2016 form of the TTIP;

Effective protection of labour rights is likely to be undermined by different approaches to labour standards in the US and the EU;

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The ratification of core labour conventions should be mandatory, but in its most recent state, the TTIP lacks a sanction mechanism in the case of failure of ratification of core conventions by a Member of the International Labour Organization (ILO) and there is no provision for a body which could monitor and assess compliance with commitments connected with the protection of workers' rights;

Directives for the negotiation on the TTIP themselves do not ensure enforcement of labour standards;

Important recommendations to the Commission appear not to have been observed, when assessing the EC's proposal from the perspective of the European Parliament resolution of 8 July 2015;

Effective protection of workers' rights may be threatened by the activity of corporations and various lobbies;

The proposed 'investment court system' does not constitute a proper solution for existing problems.

It is crucial in legal empirical studies to clarify the content of law itself. In this respect, an important role has been assigned to a logical-linguistic method which allows the exegesis and interpretation of the content of legal norms (or negotiation documents) and the removal of emerging doubts. The analysis applies a variant of the traditional comparative method, which consists of comparing regulations in different countries. According to Bogg and Ewing (2015),

> In a changed and changing world … the comparative exercise may have a new and different function, which in part is to identify trends and patterns in the regulation of labour globally. This is undertaken with a view to respond to these global trends, particularly where the latter are thought to challenge the values that underpin the study of labour law. (p. 298)

This method facilitates the formulation of *de lege ferenda* postulates.

A significant added value is the examination of law (proposed legal texts) from the perspective of the need for realisation of fundamental workers' rights. An axiological method has been used in a natural way here. The study of law in axiological terms is a consequence of understanding the law as a set of standards of conduct in relations between people, built on the basis of some values to their implementation and defence. Positive law is not only a carrier of specific values but also their guarantee. The author refers to them in the interpretation of law.

Literature review and data analysis

This article has been developed from a labour law researcher's perspective, preoccupied with the necessity of establishing safeguards against any undermining of the protective function of labour law. It is argued that TTIP policy-makers hitherto have focused most of their attention on identifying opportunities to improve the regulation of global processes only in order to foster economic growth, without considering that social justice

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and effective protection of fundamental labour rights should equally be matters of concern. The main task should be to try to find a balance between the protective function of labour law and the quest for flexibility, that is, between strengthening labour standards and free trade and investment.

On one hand, this article reviews influential econometric analyses developed in support of the TTIP for major advocacy and consultancy organisations such as ECORYS (Berden et al., 2009), Centre d'Etudes Prospectives et d'Informations Internationales (CEPII; Fontagné et al., 2013), the Bertelsmann Stiftung (Felbermayr et al., 2013) and the Centre for Economic Policy Research (CEPR; Francois et al., 2013). On the other hand, it refers to research findings from the study by Capaldo (2015), based on the United Nations GPM. Taken together, these studies indicate the contentious nature of conclusions regarding the influence of TTIP on jobs and wages.

From the secondary literature on the TTIP, detailed reference is made here only to the labour law issues that are the focus of the article. There is also some reference to conclusions derived from analysis of the North Atlantic Free Trade Agreement (NAFTA), the Central America Free Trade Agreement (CAFTA), the TPP and other trade agreement texts (Bolle, 2016; Cody, 2015; Compa, 2015; De Ville et al., 2016; Vogt, 2015). Most of the data come from source texts available on the EC website. These reference documents include the following: the EU's initial proposed legal text on 'Trade and sustainable development' in the TTIP (EC, 2015a); 'Directives for the negotiation on a comprehensive trade and investment agreement, called the transatlantic trade and investment partnership, between the European Union and the United States of America' (Council of the European Union, 2014); the European Parliament (2015) resolution of 8 July 2015 containing recommendations to the EC on the negotiations for the TTIP (European Parliament, 2015); the report of the 12th and 13th TTIP rounds of negotiations (EC, 2016a, 2016b) and the draft legal text entitled 'Investment protection and resolution of investment disputes' (EC, 2015b). I will also refer to the 'Declaration of joint principles', published by the European Trade Union Confederation (ETUC) and the American Federation of Labor and Congress of Industrial Organisations (ETUC/AFL-CIO, 2014).

The CGE model versus the United Nations GPM

Within the above-mentioned key econometric analyses in favour of the TTIP (ECORYS, CEPII, Bertelsmann Stiftung and CEPR), the fourth seems to be the most influential. The EC recognises it as a major analysis of the economic effects of the TTIP. However, there are doubts as to whether CEPR can be accepted as an independent report because its title page states that the EC is a client for whom the study has been carried out. A similar situation occurs in the case of ECORYS. It is worth noting that the same methodology (the CGE model) has been used in all the expert analyses (Capaldo, 2015: 37; Celi, 2015: 15).

The EC expects that the TTIP may result in EU export-dependent jobs increasing in number by several million (Cagnin, 2015: 81). It indicates that

> a comprehensive agreement covering all sectors would be overwhelmingly positive, opening up trade and bringing a welcome boost to economic growth and job creation on both sides of the Atlantic. […] The TTIP would be the cheapest stimulus package imaginable. (Stephan, 2015: 61)

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Taking into consideration a less ambitious tariff scenario, the authors of the Bertelsmann Stiftung analysis predict the following number of new jobs created: 23,466 in Poland, 29,921 in France, 44,831 in Germany, 35,538 in Italy, 10,878 in Portugal, 36,457 in Spain, 106,134 in United Kingdom, 276,623 in the US and 518,558 in the Organisation for Economic Co-operation and Development (OECD). A more ambitious scenario of deep liberalisation estimates that 1,085,501 new jobs will be created in the US and 2,043,178 in the OECD (Felbermayr et al., 2013: 41).

The CEPR simulation of wages after the signing of the TTIP includes estimates, by 2027, based on a division between more and less skilled labour. The less ambitious experiment suggests a wage increase of 30% in the EU and 22% in the US in the case of less skilled labour and 29% and 21%, respectively, in regard to more skilled labour. The analysis based on a more ambitious scenario suggested that less skilled workers can expect wage growth of 51% in the EU and 38% in the US, while more skilled workers can expect increases of 50% and 36%, respectively (Francois et al., 2013: 71).

The results of the ECORYS study are even more optimistic for the EU, if not for the US. In its less ambitious long-run scenario, wages of unskilled workers will increase by 36% in the EU and 16% in the US. Skilled workers can count on an increase of 34% and 17%, respectively. The more ambitious experiment yields wage increases of 82% in the EU and 35% in the US in the case of unskilled workers and 78% and 38%, respectively, for skilled workers (Berden et al., 2009: 26). The CEPII analysis does not include the issue of job creation and wages.

The positive forecasts presented in econometric analysis have been approached by some other researchers with distrust. According to research based on the United Nations GPM, the agreement will not only lead to net losses in terms of GDP, personal incomes and employment but will also reinforce the downward trend in the labour share of GDP. Pre-Brexit, of course, the authors were foreseeing a loss of about 600,000 jobs in Europe, including 3000 in the United Kingdom, 134,000 in Germany, 130,000 in France, 3000 in Italy, 90,000 in other Southern Europe countries and 223,000 in other Northern Europe countries. Only the US would benefit by about 784,000 new jobs. Moreover, a reduction in wages is predicted from €165 to more than €5000 per capita, depending on the country. For instance, annual salary per worker was predicted to decrease by €5500 in France, by €4800 in Northern European countries and by €3400 in Germany. In contrast, there would be an increase in employment income in the US (Capaldo, 2015). The authors deduced (Capaldo, 2015: 47) that reductions in jobs and wages in the EU would increase demands on the social security systems. In this context, the economic model on which policy decisions rely needs to be rethought. The EC should take into consideration not only studies predicting the positive impact of TTIP on labour but also those showing less favourable results.

US and EU approaches to labour standards

A year after the US Democrat Party won a majority in the House and Senate in November 2006, the Bipartisan Agreement on Trade Policy (10 May Agreement) between Congress and the White House was reached. According to its new trade template, each party was required to ‘adopt and maintain in its statutes, regulations, and practices’ the ‘rights as stated in the ILO Declaration on Fundamental Principles and Rights at Work and its

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Follow-Up (1998)' (Vogt, 2015: 833). It should be noted, however, that the 1998 Declaration was a promotional document, did not constitute an ILO standard and was not legally binding (Bronstein, 2009: 101).

The EU and the US approaches to labour provisions in trade agreements show some significant differences. Indeed, the US statement mostly refers to the ILO 1998 Declaration and allows for the possibility of sanctions when labour commitments are violated, while the EU relies more on the ILO agenda, including a commitment towards ratifying its core conventions, and foresees only cooperative mechanisms. EU countries have all ratified the eight core labour conventions in full, while the US has ratified only two and its labour law and practice deviate considerably from the core labour conventions in several respects. The US ratifications do not include Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining (Ewing, 2015: 94).

The implication of the US position seems to be that restricting trade unions' rights in some parts of a free trade area may result in unfair competition for other parts. As a consequence, it may further aggravate the weakening of trade unions' bargaining power. It is hard to disagree with De Ville et al. (2016) that if there is no request for ratification of ILO core conventions, the benchmarking and monitoring of labour conditions can be restrained in the case of non-ratification by partner countries all core conventions.

In regard to the TTIP, unions in the EU and the US want it to include new pro-worker objectives. In 2014, the AFL-CIO and the ETUC published a 'Declaration of joint principles', insisting on approaching and concluding the TTIP 'in an open, democratic and participatory fashion'. They demand a commitment from the EU and the US to achieve a 'gold standard' agreement that upgrades living and working conditions on both sides of the Atlantic (ETUC/AFL-CIO, 2014). The document highlights the importance of creating a strong, united coalition (Lee, 2015: 317–318). Paradoxically, becoming financially dependent on trade unions, the Democratic Party in US also supports labour issues (Van Roozendaal, 2015: 23).

In order to illustrate the US approach, we can evoke the example of the latest generation of trade agreements between the US and South Korea, Panama, Colombia and Peru. These stipulate that the parties adopt and maintain and effectively enforce labour and employment laws in line with fundamental ILO standards. Unfortunately, while the US has made the commitments, they exist only in writing. Employers still have permission to replace workers who exercise their right to strike with new personnel. They can also aggressively campaign against workers to prevent them from exerting their right to organise (Compa, 2015: 94).

It is worth noting that the US is committed to promoting strong intellectual property rights through a variety of mechanisms, for example, the negotiation of bilateral and multilateral free trade agreements (Osling, 2010: 3). Representatives of labour organisations have claimed that there is no difference between linking the negotiation of trade issues with labour standards and seeking to have other countries strengthen their rules of intellectual property. The US, in both cases, has been shown to attempt to impose its views and values on other countries (Burtless et al., 2010: 122).

Referring to the experience of the labour provisions under NAFTA, CAFTA and TPP, any finalisation of the TTIP would need to avoid some of the manifest mistakes of these previous agreements and partnerships. For example, the CAFTA does not require labour

law of states parties to be consistent with the rules laid down in the basic ILO conventions. Trade unions, human and labour rights organisations have criticised its labour chapter for doing little to improve labour laws and law enforcement or to restrain the future abuses (Vogt, 2015: 831–832).

In relation to the TPP, the president of the AFL-CIO has pointed out that

> After much talk about labor standards, the TPP falls woefully short. It retains the totally discretionary nature of enforcement and does nothing to streamline the process so labor cases will be addressed without delay, leaving workers with no assurance of improved conditions. (Trumka, 2016: 18)

The TPP's chapter 19 on labour follows the US approach to labour provisions in trade agreements (De Ville et al., 2016), and it reiterates the above-mentioned 10th May model. The AFL-CIO has declared its opposition to the TPP, emphasising the lack of enforceable labour provisions (Vogt, 2015: 835–836) and has described it as 'a handout to Big Business, an attempt to strip worker protections, and a Trojan horse for deregulation' (Cody, 2015).

Under NAFTA, countries agree to enforce their own labour laws and standards. The labour side agreement – the North American Agreement on Labor Cooperation (NAALC) – includes only one provision enforceable with sanctions: a country must enforce its labour standards connected with child labour, minimum wages and occupational safety and health. A country is not required to enforce its laws related to the right to organise and bargain collectively, even if these fundamental core labour rights account for the majority of the labour submissions filed under the NAALC. In comparison, under NAFTA, all provisions related to commercial operations are enforceable. Moreover, the NAALC has different enforcement procedures than the main agreement and places limits on monetary enforcement assessments, with suspension of benefits for non-compliance (Bolle, 2016: 2–3). Additionally, it should be remembered that 'previous agreements such as NAFTA cost 870,000 US jobs when it [sic] was supposed to generate 200,000' (Healy, 2014: 2).

The secondary literature argues that effective protection of workers' rights is also threatened because of the very distinct differences in labour law and social law between the US and the EU. In Europe, an employer must not terminate an employee's employment unless there is a valid reason, while the US upholds the at-will doctrine. US law does not provide, based on seniority, severance pay for laid-off workers, or the need to ensure pensions and health insurance for them. There are no limits on overtime and mandatory rest or meal breaks are provided only by seven states. A US employer can require that employees work on public holidays and are not hindered from closing a workplace from day to day. These arguments justify concerns regarding a race to the bottom (Cagnin, 2015: 83; Compa, 2015: 93). As indicated by Di Pietro (2015: 12), in the case of mutual recognition of standards resulting from the existing legal provisions, companies will tend to choose those that are less expensive and to pick whichever regulation appears to be weaker.

Draft chapter entitled 'Trade and sustainable development' – the EC's proposal

The EU's initial proposal for legal text on 'Trade and sustainable development' in the TTIP (EC, 2015a) was made public on 6 November 2015. It is important to determine

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whether the document ensures effective workers' rights protection and whether it complies with 'Directives for the negotiation on a comprehensive trade and investment agreement, called the transatlantic trade and investment partnership, between the European Union and the United States of America', adopted at the Foreign Affairs Council (Trade) on 14 June 2013 (declassified on 9 October 2014; hereinafter directives for the negotiation on the TTIP; Council of the European Union, 2014), and with the European Parliament resolution of 8 July 2015 containing the European Parliament's (2015) recommendations to the EC on the negotiations for the TTIP. It should be mentioned that, according to the report of the 12th TTIP round of negotiations (EC, 2016a), the US also tabled its proposals on labour and the environment. Unfortunately, the report states that the US' proposals refer to the results achieved on labour and environment in the TPP, as well as on related domestic procedures. The actual text of the US proposal remained secret and shrouded in mystery. Report readers were simply informed that work would now proceed to establish a consolidated text. The report of the 13th TTIP round of negotiations (EC, 2016b) indicated that 'the EU and the US concurred on the importance of including in the text commitments related to the International Labour Organisation (ILO) core labour standards', a statement that did little to allay concerns.

In order to assess the EU's proposal for a legal text on 'Trade and sustainable development' (EC, 2015a) through the prism of directives for the negotiation on the TTIP, we need to evaluate those directives themselves (Council of the European Union, 2014). Even if they include lofty phrases, they may not ensure enforcement of labour standards. Indeed, they appear to provide soft, promotional formulations, for example, 'the Agreement will include provisions to promote adherence to and effective implementation of internationally agreed standards and agreements in the labour and environmental domain as a necessary condition for sustainable development', and 'the Agreement will include mechanisms to support the promotion of decent work through effective domestic implementation of ILO core labour standards, as defined in the 1998 ILO Declaration of Fundamental Principles and Rights at Work'.

The directives for the negotiation on the TTIP ambiguously stress 'the importance of implementation and enforcement of domestic legislation on labour'. The EU's approach manifests itself in its vague references, in this document, to civil society participation as a mechanism for the monitoring of the implementation of the agreement provisions (Council of the European Union, 2014). This ambiguity makes it possible for the EU's proposal for the 'Trade and sustainable development' (EC, 2015a) chapter to omit specific provisions on civil society participation. These are to be developed at a later stage in an additional proposal. A 'disclaimer' to the legal text reads as follows:

> The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time. In particular, additional proposals, including on institutional aspects, civil society participation, and dispute settlement, will be developed at a later stage.

Directives for the negotiation on the TTIP raise serious concerns not only about the possibility of the implementation and proper enforcement of all assumed safeguards but also about the ratification by the US of the eight ILO core conventions. Moreover, there is a question of how to reconcile different guidelines – for example, that regulatory

compatibility shall be without prejudice to the right to regulate in accordance with the level of labour protection that each party deems appropriate – with the expression that the parties will not lower domestic labour or occupational health and safety legislation and standards, or relax core labour standards (Council of the European Union, 2014).

Assessing the EU's proposed chapter on 'Trade and sustainable development' (EC, 2015a) from the perspective of the European Parliament (2015) resolution of 8 July 2015, it should be mentioned that it fails to observe an important recommendation to the Commission, namely, 'to ensure that the sustainable development chapter is binding and enforceable and aims at the full and effective ratification, implementation and enforcement' of the eight fundamental ILO conventions and their content, and the ILO's Decent Work Agenda. Rather than complying with the recommendation, the Commission's proposal does not guarantee the enforceability of the labour provisions and only states that 'each Party shall continue to make sustained efforts towards ratifying the fundamental ILO Conventions'; 'each Party shall ensure that its laws and practices respect, promote, and realise within an integrated strategy, in its whole territory and for all, the internationally recognised core labour standards, which are the subject of the fundamental ILO Conventions'; or 'each Party shall effectively implement in its laws and practices and in its whole territory the ILO Conventions it has ratified' (EC, 2015a). Yet, according to the European Parliament (2015) resolution, the parties should 'ensure that the implementation of and compliance with labour provisions is subjected to an effective monitoring process, involving social partners and civil society representatives and to the general dispute settlement which applies to the whole agreement'. As indicated, no such provisions exist in the submitted proposal.

If and when negotiations resume, the actual text in any final agreement will be a result of negotiations between the EU and the US. However, particularly in the face of the likely changed climate for labour rights in the US post-November 2016, it is difficult to assume that the final agreement will effectively protect workers' rights if the EC, from the very beginning, has proposed the above-mentioned soft formulations. There is also concern that the lack of a sanction mechanism will encourage the US to accept commitments but only in writing, as in the case of other trade agreements. The conclusions drawn from the conducted research also help confirm the veracity of another research hypothesis – that the ratification of core labour conventions should be mandatory and that there is a lack of a body which could monitor and assess compliance with commitments connected with the protection of workers' rights. As an example, we can observe the NAALC Secretariat. Although it is now defunct, it was responsible for issuing detailed reports on labour matters in North America. I concur with Vogt's viewpoint, that a more powerful institution for monitoring standards should be created as part of any resumption of TTIP negotiations (Vogt, 2015: 860).

Activity of corporations and lobbies

The effective protection of workers' rights can, however, be 'endangered' through the activity of corporations and various lobbies. It is worth noting that the TTIP's supporters emphasise that the EC is organising a number of meetings with representatives of businesses, consumer associations, trade unionists, representatives of non-governmental organisations,

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governments and national parliaments, and the members of the European Parliament to listen to the voice of each of them (Mosca and Bordonaro, 2015: 139). However, it is clear that the scale and frequency of talks have been highly differentiated, according to the power and perspectives of the various groups. Up to December 2013, the Commission had conducted 119 sessions with corporations and their lobbyists, as opposed to only 8 with civil society groups. In addition, the latter meetings were closed to the public and were not disclosed on the Internet (Fung, 2014: 466).

The pressure exerted by the various lobbies on the shape of a negotiated agreement is also a source of anxiety. Transnational corporations concerned primarily with their own profits do not necessarily take into account workers' interests. In the context of TTIP negotiations, Google, IBM, Toyota, GlaxoSmithKline and AstraZeneca significantly increased their representation in Brussels and Washington. The Confederation of European Paper Industries (CEPI) and American Forest & Paper Association (AF&PI) have been the TTIP's strong supporters. This powerful lobby represents the paper industries of 17 EU member states and 47 US states and accounts for 40% of global paper production (Best et al., 2015: 67). Lobbyists have used 'the EU-US trade negotiations (TTIP) as leverage to block any regulation tighter than more lax US rules' (Healy, 2015: 8). As Jasper (2013: 41) has noted, 'the real force for the TTIP comes from a coterie of think tanks and their associated multi-national banking and corporate cohorts'.

An ICS in place of the ISDS mechanism?

The proposal for an ICS has direct implications for labour rights. The ICS would replace the original Investor State Dispute System through which individual companies could sue member countries for imposing regulatory controls alleged to be 'discriminatory'. Unfortunately, the ICS proposal still refers to the provision of an investor-to-state dispute settlement mechanism, despite the legitimate criticism of the doctrine (Baker, 2014; Botsford, 2015: 4; Compa, 2015: 88–92; Di Pietro, 2015: 128–129; Faioli, 2015: 108–114; Hamilton, 2014: 34; Treu, 2015: 146–147; Walls et al., 2015). An opinion issued by the German Magistrates Association and promulgated through the Deutsche Richterbund (DRB, 2016) criticised the proposed investment court as unnecessary, given existing remedies, and as a limitation on the legislative powers and established court systems of both the EU and its member states. It is submitted that the decisions to be made within this system would also relate to questions of labour and social law. For example, labour regulations and collective agreements could be subject to investor claims when the state is a party to a collective agreement or transforms it into law. Furthermore, an investor could claim that the lack of state action in the context of a collective agreement violates certain provisions in the EU's proposal for 'Investment protection and resolution of investment disputes' (EC, 2015c) or that the inactivity of a state in a long-term strike infringed its right to full protection and security, *expressis verbis* mentioned in this document (Eberhardt, 2016: 9, 35).

Under the new ICS, foreign investors are still granted access to special courts in order to claim their rights. In comparison, no other group, including domestic investors, workers or civil society, has an equivalent route to justice. Moreover, foreign investors could challenge collective agreements in special courts, significantly undermining meaningful

collective bargaining (Trades Unions Congress (TUC), 2016). As it is pointed out, the right to regulate does not protect against foreign investors, who can subject that regulation to multimillion euro settlements.

The Tribunal, which would be established under the proposal, would continue to work on the basis of commonly used arbitration rules: the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (the International Centre for Settlement of Investment Disputes (ICSID)-Convention), ICSID Additional Facility Rules and United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules (EC, 2015c). On the basis of these findings, it can be argued that this situation could raise problems such as in the Veolia versus Egypt case, where a corporation opted against the introduction of a minimum wage. Since 2012, the French utility corporation Veolia has been suing Egypt, seeking at least €82 million in compensation, for an alleged failure to comply with a contract for waste disposal in Alexandria. The city had refused to introduce amendments to the contract requested by Onyx Alexandria (Veolia's subsidiary) with the aim of meeting higher costs, in part due to the introduction of a minimum wage (Eberhardt, 2016: 17).

Discussion and conclusion

Over the course of 2016, there were growing signs that the EU is moving towards disintegration, and the 2016 US presidential election campaigns and outcomes make us focus on the threats to workers' rights posed by the TTIP, at the stage of negotiations reached by the end of 2016. The analysis demonstrates the contentious character of conclusions regarding the impact of TTIP on jobs and wages. This calls into question why the EC has selectively taken into account only studies predicting the positive influence of the TTIP on labour, based on the CGE model. As we have seen, this stance could be linked with the noticeable activity of corporations and various lobbies. The findings presented indicate that the effective protection of workers' rights may be threatened by this activity. The overall results also indicate that the 2016 form of the TTIP implies disregard for workers' rights.

This article has highlighted problems arising against the background of different approaches to labour standards in the US and the EU, the lack of mandatory ratification of core labour conventions, the lack of a sanction mechanism in the case of failure of ratification of core conventions by a Member of the ILO and the lack of a body which could monitor and assess compliance with commitments connected with the protection of workers' rights. The negotiation documents analysed here suggest that the EU's proposal for legal text on 'Trade and sustainable development' (EC, 2015a) does not meet the directives for the negotiation on the TTIP (Council of the European Union, 2014), for example, it does not include provisions on civil society participation. Moreover, the directives for the negotiation on the TTIP, providing only soft, promotional formulations, do not ensure enforcement of labour standards themselves.

The article has also problematised non-compliance of the EU's proposal (EC, 2015a) with the European Parliament (2015) resolution of 8 July 2015. Indeed, the EU's proposal (EC, 2015a) does not ensure that the sustainable development chapter is binding and aiming at the full and effective ratification, implementation and enforcement of the eight fundamental ILO conventions, and the ILO's Decent Work Agenda, as stated in the resolution.

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As demonstrated in this research, the proposed ICS is only a camouflaged version of the ISDS. Tripartite and/or generalised collective agreements can be subject to these settlements. As it is pointed out, the right to regulate labour standards such as a minimum wage does not protect against foreign investors, who can subject that regulation to multimillion euro settlements (UNI Europa, 2016).

Given the new political situation in regard to the rise of right-wing parties in the EU, Brexit and Trump's election, the outlook is far from certain. It is more than ever important for traditional working-class parties to overcome their feeble reticence in opposing EU policies directed against workers.

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