



# TTIP, what it is about and why it must be stopped

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## Introduction

When Commission President Barroso and US president Obama launched the negotiations for a Trans-Atlantic Trade and Investment Partnership (TTIP) in June 2013, Barroso stated: *"I am delighted we have a mandate to negotiate an agreement on trade and investment with the United States....These negotiations can be a game changer. We are already each other's biggest trade and investment partners. Strengthening this relationship will bring more jobs, more growth to Europe and the United States. The potential economic gains for the EU are estimated at around €120 billion a year. And the real beauty of this deal is that it will offer real returns of around €545 per average household in Europe almost for free. This makes it the cheapest stimulus package one can imagine."*<sup>1</sup>

When leaders announce something like that, you need to be careful. Very careful. If something looks too good to be true, it usually is. And it only looks too good to be true because such promises serve another purpose: to hide the downside of such projects.

## A new drive for deregulation and liberalization

Looking closer at the TTIP project, it quickly becomes clear that in reality it is less about trade and more about a new drive for deregulation and liberalization. Such an agenda cannot be promoted openly these days – on neither side of the Atlantic.

After the financial crisis of 2008 the neo-liberal model became deeply unpopular and many people thought this era of liberalization and deregulation is now over for good. It used to be consensus from right to left, from Bush to Blair, from Sarkozy to Schröder. It had gradually lost its legitimacy even before 2008, with inequality growing more and more in almost every country. The claim that more inequality is good for a society, is good for growth and development, looked increasingly like a

frivolous lie in the eyes of more and more people. Public opinion has swung drastically against the neo-liberal project of a completely deregulated and liberalized economy in the wake of the financial crisis. Elections were won with the promise of "new policies" – but these political parties failed to deliver. We got a new rhetoric but not much of new policies. You all know the reports being published almost monthly that banks are back in the same old business as before the crisis. Key regulatory changes announced years ago such as the Financial Transaction Tax are still lingering in endless legislative limbo and are being watered down more and more. But at least – people got the impression, the era of deregulation is over.

But it's not.

Since deregulation cannot be sold openly to a sceptical public any more, you have to be a little bit more ingenious, or to be precise: deceptive. Agreements like TTIP are not necessary, except if you want more deregulation and liberalization. The trade between the EU and the US is already the highest trade volume between major economic blocs in the world. The EU trades more with the US than with China. Tariffs are low, there are no major protectionist obstacles to trade, perhaps with the exception of the agricultural sector.

The TTIP project is actually not so much another free trade agreement, it is a project for a massive new wave of deregulation and liberalization, in the US as well as in Europe. This is the economic agenda of European industry, of the EU Commission and of key economic ministries in member states such as Germany, UK, and Netherlands – essentially those countries with at least some strong and competitive sectors looking for access to new markets.

Amazingly, with all the debates about re-regulation in the wake of the financial crisis – trade policy has managed to escape public scrutiny almost easily. So why not present an agreement about deregulation as a trade

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agreement? Free trade sounds so much better than de-regulation.

### **“Regulatory Harmonization” - a Trojan horse**

TTIP is designed to reach “regulatory harmonization”. That does not only refer to existing regulation but also to future regulation. If TTIP would not address future regulation, the regulatory harmonization would quickly erode over time, so this agreement is about keeping this harmonization locked in forever. Trade Commissioner De Gucht recently proposed a “Regulatory Cooperation Council”<sup>2</sup> an unelected body stuffed with bureaucrats and industry representatives who would have the last word on any proposal for new regulation, no matter whether such proposals come from the American or European side, from the US Congress or the European Parliament. It would mostly aim at reaching a joint position on the kinds of rules and standards that would be drawn up in the future, not so much to revamp the existing ones.

Unlike the negotiation mandates, the positions of the business lobby are no secrets. The US Chamber of Commerce and BusinessEurope, uniting business on both sides of the Atlantic, have jointly called for “proactive requirement”, “advising” governments how to change laws. TTIP should “put stakeholders at the table with regulators to essentially co-write regulation”<sup>3</sup> Stakeholder obviously refers not to you or civil society, it is corporations.

This is not only a democratic scandal. Imagine how much sovereignty a parliament would give up when such proposals get ratified – quite a lot. After all, we elect parliamentarians to do their job and not to hand over their responsibilities on a silver plate to unelected technocratic committees. It would also take away our potential to take the necessary steps for the transformation to a green or sustainable economy, steps proposed in a Sustainable Development Strategy, steps to achieve biodiversity or climate or energy targets, steps to make our agriculture greener and so on. It will be a big obstacle to any regulatory measures to be taken in the future – the Regulatory Cooperation Council would veto anything powerful business interests don’t like.

But what about existing regulation? Make no mistake, we are not talking about the abolition of regulation as such. One of the ideas that has been put on the table for the TTIP negotiations is “mutual recognition of standards” - since we are unlikely to achieve common standards across the table between the EU and the US for many issues at stake. Mutual recognition will mean,

for instance, you can get your permission to bring a new chemical to the market in Europe or America. If you find Europe’s REACH system for chemicals too cumbersome, you just get an American permission and this will be valid in Europe as well. You don’t have to abolish REACH, one of the key environmental achievements in Europe over which we had many fights with industry - you just make it meaningless.

For future instances, this will make a higher level of regulation only possible if both the US and Europe agree – which is rarely the case. Imagine, as an example, in five years’ time the problems with antibiotics in animal farming have taken such proportions that the EU decides to ban them. The agribusiness lobby would disagree, the US as well, the Regulatory Cooperation Council says no, and that was it. It would be against regulatory harmonization, and so it would be incompatible with TTIP. Period. Your parliamentarians get vetoed by unelected technocrats.

But don’t think Europe’s regulations are always better than the American ones. When it comes to financial markets, public outrage over Wall Street’s greed and misbehaviour has led to more comprehensive regulations of the financial sector in America compared to Europe in Europe, the UK successfully has blocked every meaningful regulation of the financial sector – essentially Britain’s only economic sector where this country still is globally competitive. American banks are already looking to the TTIP project to get rid of any regulation that is stricter than the European ones. The big banks and insurance companies are already lobbying for making the Dodd-Frank rules enacted after the Lehman Brothers crash “compatible” with the proposed TTIP, as Business Week reports.<sup>4</sup>

TTIP will not create something like the Single Market that the EU created twenty years ago. It would create something like a Single Market without a European Parliament, without a European Council, without a European Commission – except for DG Trade and DG Competition as the only institutions, and of course with a Regulatory Cooperation Council. It would be fundamentally undemocratic.

Let me summarize this: Regulatory harmonization is one of the key components of the TTIP project, and it is totally unacceptable from a democratic point of view, and also from an environmental point of view. We will get a race to the bottom in standards and regulation – forget the promises of governments and Commission that we won’t get this race. The entire logic of “regulatory harmonization” is based on making higher standards of regula-



tion a competitive disadvantage. This is the essence of deregulation and “regulatory harmonization”.

### More market access – let’s globalize everything that is not yet globalized

But TTIP is not only about deregulation, it is also about trade. It’s an agenda of market access, of opening America’s markets to European exports, and to some extent also vice versa. Remember, the WTO got stuck about 10 years ago and essentially nothing has been moving in this organization since then. But, corporate interests and the trade ministries, DGs and representatives are flexible about their instruments. As long as the WTO advanced their agenda, it was fine. As it got stuck, they switched to bilateral and regional agreements – in this sense they have been much more flexible than the NGOs. The NGOs lost interest in the trade agenda when the WTO got stuck – but that was a mistake. Many, many agreements were concluded in the last ten years with hardly anybody taking notice.

So what is on the trade agenda in TTIP? If you look at the public debate in Europe, it may seem like US corporations are about to invade Europe – but this is only the case for food and agriculture. Any other sector of the US economy that is internationally competitive today has no market access problem at all in Europe. Food and agriculture is the only sector where US corporations face significant protectionist obstacles to enter the European markets. US agribusiness companies have long been annoyed by Europe’s opposition to things like GMO food, growth hormones in beef and milk production, chlorine treatment for chicken and so on. Regulatory harmonization could do away with all this stuff at once, so they hope. But these issues are highly emotional in Europe, nobody wants to eat GMO stuff here, in particular not if it comes as part of a treaty where the US can force Europe to do it. So these issues are set to be the Achilles’ heel of the TTIP in European public opinion: if TTIP protagonists don’t dump them, the public may well dump the entire project – but if these issues are dumped, it will mean America’s most important “offensive interests”, i.e. market access interests would be dumped. And that would be a problem for the negotiations.

Europe’s offensive interests, however, are much more comprehensive. In some regards, the US is less of a single market than the EU. America’s states have many different regulations that are barriers to trade. It is full of state and local “Buy American” stipulations. Foreigners cannot have majority ownerships of airlines or ports and other “strategic assets”. In terms of market access, it is obviously the EU that is a powerful exporter – while America has

a notorious trade deficit. The question is, who will benefit from complete and total market access more? And why should it be in the public interest that the US trade deficit should grow even more, and why should regional economic structures in US states be challenged by European exporters? The export surpluses of those EU countries that stand to gain from this market access are big enough, and except for the Germans everybody believes they are already too high.

### Secretive courts as supranational authority

Now let’s address the third and probably most scandalous issue that TTIP is about. It is called the “Investor-state dispute settlement mechanism”, acronym ISDS. This will become the last resort for an investor - if the Regulatory Cooperation Council fails to stop regulatory measures a company does not like. Remember, TTIP means Trans-Atlantic Trade and Investment Partnership, so it’s also about protecting investors. Any measure a foreign investor claims is equal to “indirect expropriation”, such as policies reducing their profits, can be challenged in offshore secretive courts, created by treaties containing ISDS clauses, bypassing our democratic legal system. *“Each Party shall accord fair and equitable treatment and full protection and security to investments and investors”*<sup>5</sup> - that is the phrase used in the EU’s draft text and well-known from many other ISDS treaties guaranteeing the right to sue governments for protection from regulatory measures they deem to be “unfair and inequitable”.

If an investor sues, a panel is created for this case. The panel will enforce investor protection in trials which markedly differ from the courts we know: The trials are held in secret. The judges are corporate lawyers, not judges working in the public interest. Civil society or the public have neither access nor a right to participate. There is no right of appeal on the merits of the case. But such secretive courts can overthrow the sovereignty of parliaments and the rulings of supreme courts.

ISDS is already being used in many parts of the world to stop regulations in the public interest, in so called bilateral investment treaties. But they are becoming increasingly controversial. Australia now requires that cigarettes must be sold in plain packets, marked only with shocking health warnings. The decision was validated by the Australian Supreme Court. But, using a trade agreement Australia struck with Hong Kong, the tobacco company Philip Morris now wants an ISDS tribunal to award it a vast compensation. Australia has decided not to conclude such treaties any more. Likewise, South Africa has started to terminate all such treaties it concluded in the past.



When Argentina imposed a freeze on energy and water bills, it was sued by the international utility companies whose vast bills had prompted the government to act – and sentenced to pay over a billion dollars in compensation. When El Salvador's government refused to give permission for a gold mine threatening to contaminate water supplies, a Canadian company that wanted to operate the mine sued El Salvador for \$315m – for the loss of its anticipated future profits. Canada itself is also affected. Canadian courts revoked two patents owned by the American drug company Eli Lilly, because the company had not produced enough evidence that they had the beneficial effects it claimed. Eli Lilly now sues Canada for \$500m, and demanding that Canada change its patent laws. A US company called Lone Pine demands \$250m compensation from Canada because the province of Quebec has put a moratorium on gas fracking.

Something like what we currently experience in Germany with Sweden's Vattenfall Company. They are suing Germany in such a secretive court for a 3.7 billion compensation for the nuclear power plants they had to close after Fukushima. In every European country we have laws and courts dealing with such complaints, but in a secretive investor protection court your likelihood to win is much bigger.

These are only a few examples how corporations use ISDS treaties signed by the countries they are suing. Originally, ISDS treaties were invented to facilitate investment in unstable jurisdictions. An investor did not have to trust the Pakistani legal system to invest in Pakistan, he could have resorted to an offshore investment court in Washington. But when all sides are fully-fledged democracies such as Europe or the US, ISDS becomes a way to bypass the constitutional legal system and pervert the meaning of "the rule of law". Members of parliament who approve such treaties are essentially creating special laws for foreign investors that probably would be declared null and void by a Constitutional Court if they ever were challenged. Hardly any parliamentarian is aware of that – remember, we are talking about treaties they have ratified, apparently without reading them. But if you believe in neoliberal deregulation ISDS is a wonderful instrument to challenge – or prevent - regulation you oppose.

Nobel Laureate Joseph Stiglitz put this crystal-clear in his op-ed piece congratulating South Africa's termination of ISDS treaties: *"Those supporting the investment agreements are not really concerned about protecting property rights. The real goal is to restrict governments' ability to regulate and tax corporations – that is, to restrict their ability to impose responsibilities, not just uphold rights. Corporations*

*are attempting to achieve by stealth – through secretly negotiated trade agreements – what they could not attain in an open political process."*<sup>6</sup>

### Secret negotiations

So now we have regulatory harmonization, market access to the detriment of consumer protection and regional economic structures, and an outrageous secretive court to serve corporate interests.

On top of all that comes the secrecy with which TTIP is negotiated. The EU's negotiation mandate has been discussed between the Commission and the European Council, i.e. the governments of the member states. Neither the European Parliament nor the parliaments of the member states have a say in its draft, it is secret and neither they nor the public have no right to know it. It remains a mystery to me why parliaments let themselves to be side-lined and marginalized in such a way. Whistle-blowers, not parliamentarians are the heroes and heroines of transparency and accountability today – the mandate was leaked in various phases of its being drafted and can be read online<sup>7</sup>. Negotiation documents are equally secret, and so are the reports about the negotiations themselves. When you look at the far-reaching consequences of such agreements, it is entirely unacceptable in a democratic society that laws and treaties are made in such a secretive way.

Germany's second parliamentary chamber, the Bundesrat which represents the federal states, on 7 June 2013 approved a resolution about TTIP calling on the government to make sure that Europe's high standards in consumer protection and the precautionary principle are maintained, that investor protection is dealt with in a balanced way and it called for more transparency, including making the mandate public. Apparently the resolution had no impact on the government – only 5 days later, then-minister of economics Rösler tweeted out of the Cabinet meeting "TTIP negotiation mandate approved without changes and reservations". The Bundesrat will have to vote one day about TTIP ratification – let's see whether they will remember their 2013 resolution.

While Germany's Cabinet ignored the wishes of its Bundesrat, other interests were not ignored. In response to an access to information request from Corporate Europe Observatory, the European Commission has released a list of 130 'meetings with stakeholders' on the EU-US free trade talks (TTIP). At least 119 meetings were with large corporations and their lobby groups. This means that more than 93% of the Commission's meetings with stakeholders during the preparations of the negotia-





tions were with big business. The list of meetings reveals that, in addition to the civil society dialogue meetings reported on the DG Trade website, there is a parallel world of a very large number of intimate meetings with big business lobbyists behind closed doors - and these are not disclosed online<sup>8</sup>.

The secrecy around TTIP is no exception, it is the rule for trade negotiations and agreements. In October the Canada-EU free trade agreement (CETA), a blueprint for TTIP, was signed by Commission President Barroso and Canadian PM Harper. So far, nobody except the signatories has the text. Nobody can look into it, no parliamentarian, no journalist, not you and not me. In four years of negotiations, we have neither been informed nor consulted. Next year, the European and Canadian Parliaments will be asked to approve it, not only the EP but also the 28 member states. They had no influence over its content, no influence over the negotiation mandates, they cannot alter it. They can only say yes, or no. In the past, Parliaments have willingly accepted to be side-lined and marginalized. They always said yes. Yes to ISDS, yes to rules undermining our sovereignty and yes to delegating away accountability. When it comes to trade agreements, usually they have behaved like the Supreme Soviet: they say yes to everything, no is not an option. Some Canadian provincial parliaments have made a mockery of parliamentary democracy by dutifully approving CETA before they even knew the text.

The only exceptions was ACTA last year, the shipwrecked agreement aiming at creating new intellectual property provisions, and ten years ago the aborted "Multilateral Agreement on Investment" (MAI), a kind of global ISDS agreement. ACTA was a similarly secretive agreement whose negotiations were a mystery to the parliaments that ultimately would have to ratify it - and the wave of public outrage caused the EP to approve a resolution saying it would not ratify it. However, the new intellectual property provisions of ACTA that corporate interests have long demanded are set to come back via TTIP. We will see which parliament will be the first to opt out of TTIP - and it may well be that this will be the US Congress which has always been much more independent of the government than European parliaments.

What happens if one of the 30 parliaments that need to ratify TTIP says no? We are talking about the US Congress, the European Parliament and the 28 parliaments of the EU member states. Let's ignore for a moment that in the US the agreement is likely to touch the rights of the US states. In the EU, TTIP is projected as a so-called mixed agreement since it is about issues that are both the responsibility of the Union and of the member states. Now

what would happen if, let's say for a moment, the Lithuanian parliament would say no? Or the second chamber of the German Parliament, the above-mentioned Bundesrat?

Basically, nothing. It would not matter. The ratification process starts in the European Council and the EP. Then the European Council (the governments of the EU) can decide to implement TTIP provisionally. The EP has to approve this decision, and then the agreement is "provisionally" in force until the ratification process in the EU, usually taking a few years, is completed. But what happens if this ratification fails? The Scientific Services of Germany's Bundestag was asked last year what would happen then, and in their response they said: this is unclear. The Lisbon treaty has only introduced the instrument of "provisional implementation" to speed up the implementation of such treaties, but there is no clause saying what would happen if the ratification process fails. A fact that is quite revealing about the self-perception of Europe's parliaments - they don't even think of such a possibility that they could reject agreements over which they had no say anyway.

The Bundestag's Scientific Service assumed that in such a case - a member state fails to ratify - the "provisory implementation" would have to be repealed. How would that happen? There is no clause, so the Scientific Service assumed the government of the country whose parliament failed to ratify would have to ask the Council to repeal the provisional implementation. However, it probably would not be obliged to do so. But what if the Council does not approve such a motion? Then the treaty would be "provisionally" in force for an unlimited time. It remains unclear how that could be in line with constitutions that clearly stipulate that international agreements need parliamentary ratification. It is revealing that hardly any parliamentarian, be it in the EP or in the member states, is aware of this constitutional problem, and you wonder whether MPs have ever read the Lisbon treaty before they approved it.

That is the legal reality. Whether the political reality is the same, remains to be seen. It is definitely high time that we end the completely unacceptable situation that trade policy is a democracy-free zone in which administrations can secretly write far-reaching international treaties, in collusion with corporate lobbyists, and neither parliaments nor civil society can exercise their normal democratic rights, and finally parliament's rubber-stamp the treaties like the Supreme Soviet used to do. When it comes to trade policy, it seems like MPs all over Europe are on strike, refusing to be the constitutional checks and balances for the administration they were



elected and are paid for. So the debate about TTIP is a debate about its contents as well as a debate about the state of democratic participation and government accountability.

### Sideshows: What TTIP is not

One more thing. In the debate about TTIP, there are many sideshows and smokescreens. Many in the Western foreign policy community, since the end of the Cold War constantly searching for new issues and sometimes new enemies to deal with, believe TTIP is about creating something like a “trade NATO”, about “economic self-defence” of the democratic West against the emerging BRICS powers, particularly China. This “the West against the rest” mentality is in itself deeply reactionary- maintaining white supremacy over the world is not only impossible, but also an entirely backward- looking impetus.

Apart from that, countries like Brazil, South Africa or India are democracies that share at least as many values with Europe as the US does. When it comes to Social Democrats or Socialists, this constant adjuration of “common values” with the US looks even more strange – Social Democrats or Socialists are ruling in Brazil and South Africa but don’t even exist in the US. Trade unions can operate freely in Brazil, South Africa and India and are stronger there than in most European countries – but in the US they have been fighting for their survival since Reagan took power in 1981. Europe has a lot of common values with many countries – and more common values with quite a number of countries than with the US. Consequently, democratic South Africa for instance is now terminating the bilateral investment treaties it has with many rich world countries because ISDS is not compatible with the rule of law.

But the “transatlantic values” are not the only smoke-screen. Likewise, “regulatory harmonization” between the EU and US will not create a “transatlantic economic fortress” that can set standards in an arrogant, imperialist manner for the world. Regulatory harmonization would not only benefit US and EU corporations, it clearly would also benefit Chinese exporters at least as much as any other transnational company doing business on both sides of the Atlantic.

A similar smokescreen is the mantra, we cannot negotiate with the US as long as they are eavesdropping on our communications, spying in EU embassies and listening to Chancellor Merkel’s cell phone. Of course we can – the negotiation mandate was known to the NSA at the very minute it was agreed in the EU, and I am sure the EU knows the US mandates as well. This whole sur-

veillance scandal has been a transatlantic intelligence service scandal from the very outset. It’s not the US spying on “us” - it is a transatlantic intelligence-security complex out of control spying on everything. The NSA and its first-class ally, Britain’s GCHQ and its third-class allies from Germany, France etc. have been colluding against democratic values, constitutions and civil societies jointly all the time. Since an agreement like TTIP is in the interests of European business, the Commission won’t stop negotiating if the other side is spying. TTIP and its deregulation agenda is in the interest of powerful corporate interests on both sides of the Atlantic. These corporations, their shareholders and their lobbyists are no longer really affiliated to a country – they hop from one jurisdiction to the next as it suits their interests. The corporations standing to benefit most from TTIP have essentially seceded from any nation state. Nothing illustrates this more than the revelation that companies like Google or Amazon don’t pay taxes anywhere – they have used laws made in their favour so efficiently that they are not obliged to pay relevant taxes in any country.

Let us not get distracted by such sideshows. The struggle over TTIP is not a struggle between Europe and America. It is a struggle between corporate power and democratic decision-making. TTIP is not about a new foundation for an increasingly fractured transatlantic alliance. It is not about “the West vs. China”. It is not about a “free economic stimulus”. And it has nothing to do with the NSA scandal. TTIP is the next wave of a neoliberal deregulation drive, serving powerful corporate interests and undermining democracy and parliamentary government. It is in the public interest to stop this mad deregulation drive, this subordination of democratic institutions to corporate interests.

We must not allow our parliamentarians to abrogate another big chunk of OUR sovereignty to transnational corporate interests, like they have done many times before. This agreement would bind the hands of future parliaments and make necessary environmental and many other regulations almost impossible. Let us stop it like we stopped ACTA and the old MAI, and let me point out that we stopped these agreements not by saying we want nicer and greener agreements, but by saying – we don’t want it at all. We have a good chance to stop TTIP. TTIP is a big deregulation drive, much more ambitious than the WTO ever tried. And this ambition also means, chances are good that it can fail because it will have such a widespread impact.

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