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THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

A CHARTER FOR DEREGULATION, AN ATTACK ON JOBS, AN END TO DEMOCRACY

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Executive summary

The Transatlantic Trade and Investment Partnership (TTIP) is a comprehensive free trade and investment treaty currently being negotiated – in secret – between the European Union and the USA. The intention to launch TTIP negotiations was first announced by President Barack Obama in his State of the Union address in February 2013, and the first round of negotiations took place between European Commission and US officials in July of the same year. The aim is to rush through the talks as swiftly as possible with no details entering the public domain, in the hope that they can be concluded before the peoples of Europe and the USA find out the true scale of the TTIP threat.

As officials from both sides acknowledge, the primary aim of TTIP is not to stimulate trade through removing tariffs between the EU and USA, as these are already at minimal levels. The main goal of TTIP is, by their own admission, to remove regulatory 'barriers' which restrict the potential profits to be made by transnational corporations on both sides of the Atlantic. Yet these 'barriers' are in reality some of our most prized social standards and environmental regulations, such as labour rights, food safety rules (including restrictions on GMOs), regulations on the use of toxic chemicals, digital privacy laws and even new banking safeguards introduced to prevent a repeat of the 2008 financial crisis. The stakes, in other words, could not be higher.

In addition to this deregulation agenda, TTIP also seeks to create new markets by opening up public services and government procurement contracts to competition from transnational corporations, threatening to introduce a further wave of privatizations in key sectors, such as health and education. Most worrying of all, TTIP seeks to grant foreign investors a new right to sue sovereign governments in front of *ad hoc* arbitration tribunals for loss of profits resulting from public policy decisions. This 'investor-State dispute settlement' mechanism effectively elevates transnational capital to a status equivalent to the nation-state itself, and threatens to undermine the most basic principles of democracy in the EU and USA alike.

TTIP is therefore correctly understood not as a negotiation between two competing trading partners, but as an attempt by transnational corporations to prise open and deregulate markets on both sides of the Atlantic. There is a growing body of concern among EU and US citizens at the threats posed by TTIP, and civil society groups are now joining forces with academics, parliamentarians and others to prevent pro-business government officials from signing away the key social and environmental standards listed above. All people are encouraged to join this resistance by getting in touch with their local campaigns – or starting their own.

TTIP is correctly understood not as a negotiation between two competing trading partners, but as an assault on European and US societies by transnational corporations seeking to remove regulatory barriers to their activities on both sides of the Atlantic.

1. What is TTIP?

Business groups on both sides of the Atlantic have long harboured the dream of a pro-corporate trade and investment agreement between the EU and USA. The TransAtlantic Business Dialogue, an invitation-only group of chief executives from the most powerful US and European companies, was set up in 1995 to lobby for the removal of regulations affecting transnational corporations operating in the EU and USA, and has consistently advocated a far-reaching agreement to realise that goal.[1] The creation of the Transatlantic Economic Council in 2007 provided a new opportunity for the TransAtlantic Business Dialogue to press for a free trade area based on the deregulation of markets in both the EU and USA.

Responding to this pressure, European Commission and US officials announced in November 2011 that they would be setting up a high-level working group to "identify and assess options for strengthening the US-EU trade and investment relationship". Shortly afterwards, the European Commission embarked upon a series of over 100 closed meetings with individual companies and business lobbyists in order to develop their negotiating position – meetings that were kept secret until the Commission was forced to reveal their existence under a freedom of information challenge.[2] The TransAtlantic Business Dialogue joined with the US Business Roundtable and European Round Table of Industrialists to call for an ambitious trade and investment partnership between the EU and USA.[3]

US President Barack Obama duly announced the launch of negotiations towards a comprehensive Transatlantic Trade and Investment Partnership (TTIP) in his State of the Union address of February 2013. The first round of talks was held in July 2013, with the stated hope on both sides

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1. Mark A. Pollack, *The Political Economy of the Transatlantic Partnership*, Fiesole: European University Institute, June 2003.
2. 'European Commission preparing for EU-US trade talks: 119 meetings with industry lobbyists', Brussels: Corporate Europe Observatory, 4 September 2013.
3. 'Forging a Transatlantic Partnership for the 21st Century', Joint Statement by US Business Roundtable, the TransAtlantic Business Dialogue and the European Round Table of Industrialists, 18 April 2012.

that the negotiations might be rushed through within two years (thus avoiding the start of campaigning towards the next US presidential elections, which will begin in earnest during 2015). Given the election of a new European Parliament and the formation of a new European Commission in 2014, the intention to complete such a complex and controversial set of negotiations on 'one tank of gas' (as US negotiators have put it) is extremely reckless.

TTIP is not a traditional trade agreement designed primarily to reduce tariffs on imports between trading partners, as tariffs between the EU and USA are already at minimal levels. Officials from both sides acknowledge that the main aim of TTIP is instead to remove regulatory 'barriers' which restrict the potential profits to be made by transnational corporations in US and EU markets. This includes the removal or downgrading of key social standards and environmental regulations, such as labour rights, food safety rules (including restrictions on GMOs), regulations on the use of toxic chemicals, data protection laws and new banking safeguards introduced to prevent a repeat of the 2008 financial crisis. The European Commission's negotiating mandate (classified as confidential under EU rules, and thus only available as a leaked document) identifies the elimination of regulatory obstacles as one of its top priorities for TTIP, thus belying the European Commission's subsequent claims that deregulation is not on the agenda. [4] The US government has also identified key EU regulations and standards for removal in the negotiations, as detailed in the rest of this briefing.

TTIP also seeks to create new markets by opening up public services and government procurement contracts to competition from transnational corporations, threatening to introduce a further wave of privatisations in key sectors such as health and education. UK government officials have confirmed that one of their top three goals for TTIP is to "complete the single market" within the EU itself, particularly by opening up public service and procurement contracts to private companies

4. 'Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America', Brussels: Council of the European Union, 17 June 2013; a call to make the mandate a public document was rejected by the European Council of Ministers at its 18 October 2013 meeting in Luxembourg.

in other EU member states.[5] Most worrying of all, TTIP seeks to grant foreign investors a new right to sue sovereign governments before *ad hoc* arbitration tribunals for loss of profits resulting from public policy decisions (see below). This 'investor-state dispute settlement' mechanism effectively elevates transnational capital to a status equivalent to the nation-state itself, and threatens to undermine the most basic principles of democracy in the EU and USA alike.

TTIP is correctly understood not as a negotiation between two competing trading partners, but as an assault on European and US societies by transnational corporations seeking to remove regulatory barriers to their activities on both sides of the Atlantic. In an internal paper leaked and published in December 2013, the European Commission confirmed that the types of regulation at risk from TTIP would include primary EU legislation (both regulations and directives), implementing measures, delegated acts and also regulations introduced by EU member States; and, on the US side, bills passed by Congress, federal rules and also regulations adopted by individual US states.[6] EU Trade Commissioner Karel De Gucht has confirmed that the purpose of TTIP is to remove regulations on both sides of the Atlantic so that business has a free hand to operate: "Regulatory barriers are more complicated to remove than traditional trade barriers... It will not be easy but it will be worth it."[7]

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5. For more details of the UK government's goal to 'complete' the single market within the EU, see 'The economic consequences for the UK and the EU of completing the Single Market', London: Department for Business, Innovation and Skills, February 2011.

6. 'TTIP: Cross-cutting disciplines and Institutional provisions; Position paper – Chapter on Regulatory Coherence', Brussels: European Commission, 2 December 2013.

7. 'Transatlantic Trade and Investment Partnership (TTIP) – Solving the Regulatory Puzzle', speech by European Trade Commissioner Karel De Gucht at the Aspen Institute, Prague, 10 October 2013.

2. **Untransparent,** anti-democratic

In a public relations briefing published in September 2013, the European Commission claimed that TTIP poses no threat to regulations on health, safety, environment or financial security because the "negotiations will be transparent".[8] In reality, nothing could be farther from the truth. In a letter to his US counterpart just two months earlier, chief EU negotiator Ignacio Garcia Bercero confirmed that the European Commission will block public access to all documents related to the negotiation or development of TTIP, and that those documents will remain closed to the public for up to 30 years.[9] EU Trade Commissioner Karel De Gucht told the European Parliament that the Commission would approach TTIP with the same level of secrecy as for previous trade agreements, and called on MEPs to support "confidentiality" in the negotiations.[10]

While the entire TTIP negotiations are shrouded in secrecy, the European Commission is reserving its tightest restrictions for the most significant documents, namely the deregulation demands being made of European countries by US negotiators. Under the Commission's protocols, even government officials from EU member States will be denied access to those documents, except in designated reading rooms from which they may not be removed or copied. More critically still, elected parliamentarians from EU member States will not be allowed any sight of the demands being made on their countries by the USA, despite the potential impact on the lives of their constituents. In a move reminiscent of Cold War espionage, the European Commission has even tagged offi-

8. *Transatlantic Trade and Investment Partnership: The Regulatory Part*, Brussels: European Commission, September 2013.
9. 'Arrangements on TTIP negotiating documents', letter from Ignacio Garcia Bercero, Chief EU Negotiator for TTIP, to L. Daniel Mullaney, Chief US Negotiator for TTIP; Brussels: European Commission, 5 July 2013.
10. Transcript of debate on 'EU trade and investment agreement negotiations with the US' held at the European Parliament in Strasbourg, 22 May 2013.

cial TTIP documents with secret markings in order to be able to trace any leaks back to their source.[11]

As a further indication of how closely access to information is being managed, the European Commission called representatives of EU member States to a meeting in November 2013 in order to instruct them how to control and coordinate future communications around TTIP. An internal European Commission paper that had been prepared for the meeting (subsequently leaked and published by the Danish magazine *Notat*) called on EU member States to work together so as to combat growing public concern that TTIP would "undermine regulation and existing levels of protection in areas like health, safety and the environment". The European Commission even suggested that the launch of its new Twitter account dedicated to the TTIP negotiations could be spun as a sign of transparency, despite its clear function before and since as a propaganda channel for the EU's TTIP negotiating team.[12]

In the USA, by the same token, members of Congress will be denied sight of the demands being made on their states by the EU. Draft negotiating positions will, however, be shared with corporate advisers to the US government, who will then be free to share them in turn with their European business counterparts. Growing recognition among the US public of the threat that TTIP poses to their livelihoods has raised concern that Congress might prove a serious stumbling block to the negotiations – particularly over the EU's stated intention to eliminate the popular Buy America provisions used to support local jobs and businesses in many US states (see below). In a bid to counter this threat, UK deputy Prime Minister Nick Clegg was despatched to the USA in September 2013 with a specially prepared booklet designed to convince each of the 50 US states of the potential gains that TTIP might bring to them.[13]

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11. Staffan Dahllöf, 'Elected politicians excluded from EU-US negotiations', *Notat*, 19 December 2013.

12. 'Communicating on TTIP – Areas for cooperation between the Commission services and Member States', Brussels: European Commission, 7 November 2013; the Twitter handle for the EU's negotiating team is @EU_TTIP_team.

13. *TTIP and the Fifty States: Jobs and Growth from Coast to Coast*, Washington DC: Atlantic Council, Bertelsmann Foundation and British Embassy in Washington, September 2013.

While the negotiations are conducted under terms of the strictest secrecy, TTIP aims to introduce its own version of 'transparency' that will enable transnational corporations to challenge the introduction of future regulations that might restrict their profits. The US government has publicly called for business to be granted a greater role in setting regulatory standards on both sides of the Atlantic, and the European Commission has responded with the proposed establishment of a Regulatory Cooperation Council which would not only police the implementation of existing deregulation commitments, but would also give business the power to identify further regulations for removal once the TTIP negotiations are over, as well as receiving early notification of any proposed new regulations so as to be able to remove unwanted restrictions on corporate activities before they might be introduced.[14] This new power for business to control regulatory standards came a step closer in November 2013, when EU and US negotiators agreed to set up such a body as part of the TTIP agreement.[15]

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14. 'The United States, the European Union, and the Transatlantic Trade and Investment Partnership', speech by US Trade Representative Michael Froman at the German Marshall Fund, Brussels, 30 September 2013; 'Transatlantic Trade and Investment Partnership (TTIP) – Solving the Regulatory Puzzle', speech by European Trade Commissioner Karel De Gucht at the Aspen Institute, Prague, 10 October 2013.

15. 'US, EU Agree in Principle to Seek Long-Term Regulatory Mechanism', *Inside US Trade*, 22 November 2013.

3. ‘Prolonged and substantial’ threat to jobs

There have been many claims made for the economic outcomes of TTIP. The most commonly cited figure comes from an impact assessment commissioned from the Centre for Economic Policy Research by the European Commission, whose most optimistic hypothesis claims that the EU’s economic output could rise by 0.5% by the year 2027 as a result of an EU-US deal.[16] Yet that claim has been exposed as “misleading” by independent researchers who have drawn attention to the study’s false premises, while the actual gains that can realistically be expected from TTIP have been dismissed as “trivial” by the expert responsible for developing EU free trade assessments over a period of 10 years.[17]

As for the job losses which typically result from free trade deals, the European Commission has confirmed that TTIP is likely to bring “prolonged and substantial” dislocation to European workers, as companies will be encouraged to source goods and services from US states where labour standards are lower and trade union rights are non-existent (see below).[18] At a time when unemployment rates in Europe already stand at record levels, with youth unemployment at over 50% in some EU member States, the European Commission recognizes that there are

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16. ‘Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment’, London: Centre for Economic Policy Research, March 2013; other studies suggest a range of different scenarios – see ‘Study on “EU-US High Level Working Group”: Final report’, Rotterdam: Ecorys, October 2012; ‘Transatlantic Trade: Whither Partnership, Which Economic Consequences?’, Paris: CEPII, September 2013; *Transatlantic Trade and Investment Partnership (TTIP): Who benefits from a free trade deal? Part 1: Macroeconomic Effects*, Gütersloh: Bertelsmann Stiftung, 2013.

17. ‘EU-US trade deal claims “vastly overblown”’, University of Manchester press release, 19 November 2013; Clive George, ‘What’s really driving the EU-US trade deal?’, *Open Democracy*, 8 July 2013.

18. ‘Impact Assessment Report on the future of EU-US trade relations’, Strasbourg: European Commission, 12 March 2013, section 5.9.2.

"legitimate concerns" that those workers who lose their jobs as a result of TTIP will not be able to find other employment. In order to assist the large number of additional unemployed expected, the Commission has advised EU member States to draw on structural support funds such as the European Globalisation Fund and the European Social Fund, which has been assigned €70 billion to distribute over seven years, 2014-20.[19]

US workers are already familiar with such job losses from their experience with the North American Free Trade Agreement (NAFTA) between the USA, Canada and Mexico, which came into force in 1994. Just as with TTIP, US trade unions had been fed "false promises" of hundreds of thousands of extra jobs in order to persuade them to support NAFTA. In reality, according to the Economic Policy Institute's study of the first 12 years of the agreement, NAFTA caused the net loss of over one million US jobs and a significant decline in the value of wages for millions more workers.[20] The impact assessment on TTIP commissioned by the US government has been kept secret, but the European Commission's assessment suggests that TTIP will also bring substantial dislocation for US workers, adding further to the 12 million people already officially registered as unemployed in the USA.

There are also concerns that TTIP could lead to a downgrading of any labour standards identified as 'barriers' to trade, such as collective labour agreements which could be challenged as representing restrictions on the business model of competitors – just one example cited in a report for the European Commission on measures that represent an "impediment" to EU-US trade.[21] The USA has famously refused to ratify ILO Conventions on core labour standards such as collective bargaining, freedom of association and the right to organize. Moreover, around half of all US states have now adopted anti-trade union legislation under the so-called 'right to work' framework that undermines trade union finances

19. 'Refocusing EU Cohesion Policy for Maximum Impact on Growth and Jobs: The Reform in 10 Points', Brussels: European Commission, 19 November 2013.

20. Robert E. Scott, Carlos Salas and Bruce Campbell, 'Revisiting NAFTA: Still not working for North America's workers', Washington DC: Economic Policy Institute, September 2006; Ben Beachy, 'NAFTA at 20', Washington DC: Public Citizen, January 2014.

21. 'Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis', Rotterdam: Ecorys, December 2009, p. 111.

and allows businesses to undercut workers' pay, health insurance and pensions.[22] Business sees TTIP as an opportunity to relocate production to where wages and workers' rights are lowest, creating its own 'race to the bottom' in order to reduce labour costs and increase corporate profits. The European Commission is already known to be supportive of the demands made by European business groups for wages and labour rights to be suppressed across the EU.[23]

In addition, under TTIP's proposed provisions on investor protection (see below), any future improvements in the terms and conditions of employment may lead to claims of compensation by EU and US corporations. The French company Veolia has brought just such a claim against Egypt in relation to its 15-year contract for waste disposal in Alexandria – a contract abandoned by the company in October 2011. Veolia is now seeking damages from the Egyptian State on the grounds that, among other things, its profit margins were adversely affected by the National Wage Council's efforts to keep private and public sector salaries in line with inflation.[24] Fear of facing similar cases under TTIP could have the 'chilling effect' of dissuading countries from introducing increases in employment benefits in the future.

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22. Elise Gould and Heidi Shierholz, 'The Compensation Penalty of "Right-to-Work" Laws', Washington DC: Economic Policy Institute, February 2011.

23. 'BusinessEurope and the European Commission: in league against labor rights?', Brussels: Corporate Europe Observatory, 11 March 2013.

24. Veolia Propreté v Arab Republic of Egypt (ICSID Case No ARB/12/15); Fanny Rey, 'Veolia assigne l'Égypte en justice', *Jeune Afrique*, 11 July 2012.

4. **Food safety** deregulation

European regulations on food safety – including restrictions on genetically modified organisms (GMOs), pesticides, hormone-treated beef and growth promoters – are among the principal targets that business groups have identified for removal in the TTIP negotiations. US food producers do not have to meet the same environmental or animal welfare standards as their European counterparts, and have long sought to eliminate EU controls restricting the sale of their products in European markets. From the outset, the US government has explicitly stated that it will use the TTIP negotiations to target EU regulations that block US food exports, in particular the food safety regulations that European citizens have fought to defend over decades.[25]

At the centre of the dispute is the EU's use of the 'precautionary principle' to set standards on food safety. Under this principle, it is possible to withdraw a product from the market if there is a risk that it may pose a danger to human health, even if there is insufficient scientific data on which to base a full evaluation of that risk.[26] Critically, also, the precautionary principle transfers the burden of proof to any company seeking to market a potentially dangerous product: instead of there being a public requirement to prove that the product is dangerous, the company is required to prove that it is safe. The US government does not employ the precautionary principle, and corporate interests have prevailed in setting US food safety standards at levels far lower than in Europe. Yet as the 'regulatory convergence' agenda of TTIP seeks to

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25. See, for example, in the US President's official notification to Congress of the launch of TTIP negotiations, the commitment to secure increased market access for US exports by eliminating EU sanitary and phytosanitary restrictions: letter of Acting US Trade Representative Demetrios Marantis to John Boehner, Speaker of the US House of Representatives, 20 March 2013.

26. For a comprehensive analysis, see *Late lessons from early warnings: science, precaution, innovation*, Copenhagen: European Environment Agency, January 2013.

bring EU standards closer to those of the USA, the following examples indicate what is at risk:

- Around 70% of all processed foods sold in US supermarkets now contain genetically modified ingredients. By contrast, as a result of strong popular resistance, virtually no GM food is on sale in European supermarkets, and any food that does include GM ingredients must be clearly labelled as such. US biotechnology companies are using TTIP to launch an assault on the EU's regulations, and the US government is seeking to challenge the EU's mandatory labelling policy. The European biotech industry is working closely with its US counterparts to use TTIP as a means to increase the spread of GMOs into Europe.[27]
- US food producers have identified the EU's system of controls on the use of pesticides as one of the prime set of standards to be downgraded under TTIP.[28] The 2009 regulations enshrine the precautionary principle at the heart of the EU's system of pesticides control in order to protect human health and the environment. Yet these same regulations have already made their way onto the TTIP agenda, according to the lead negotiators, with the intention of pushing even further than World Trade Organisation (WTO) rules and making them the least burdensome necessary on business.[29]
- EU controls on endocrine disruptors (chemicals known to interfere with the human hormone system) set maximum levels of contamination at a level that would block 40% of all US food exports to Europe. US industry groups are seeking to use TTIP to remove these controls.[30]
- Over 90% of US beef is produced with the use of bovine growth hormones that have been linked to cancers in humans, and EU restric-

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27. See, for example, the joint submission by BIO and EuropaBio to the 2012 EU-US solicitation on regulatory issues.

28. Directive 2009/128/EC establishing a framework for Community action to achieve the sustainable use of pesticides, and Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market, both 21 October 2009.

29. 'Second round of Transatlantic Trade and Investment Partnership: Report of stakeholder briefing', Brussels: European Commission 15 November 2013; 'Chief Negotiators, Dan Mullaney and Ignacio Garcia Bercero Hold a Press Conference Following the Third Round of Transatlantic Trade and Investment Partnership (TTIP) Talks', Washington DC: Office of the US Trade Representative, 20 December 2013.

30. 'US Agricultural Exports Threatened by EU Pesticide Regulation', CropLife America, 21 November 2013.

tions on the import of such beef have been in place since 1988. The US government has already challenged these restrictions at the WTO, and business groups are calling for their removal in the TTIP agreement as 'unnecessary' barriers to trade.

- US producers of chicken and turkey regularly treat bird carcasses with chlorine before selling them on to consumers – a process that has been banned in the EU since 1997. Once again, the US government has challenged the ban through the WTO, and US companies are now calling for TTIP negotiations to put an end to it. The European Commission has tried to have the ban lifted in the past, but was prevented from doing so by resistance from veterinary experts and MEPs.

The European Commission has held many secret meetings with representatives of the food industry keen to water down EU regulations on food safety, and cannot be trusted to defend the health interests of consumers. In an internal position paper shared with the US government prior to the first round of TTIP negotiations, the European Commission has agreed to review European food safety measures "with the aim to remove unnecessary barriers".[31] By way of a sweetener to indicate its willingness to meet US demands, the Commission has already ended the Europe-wide ban on imports of live US pigs and beef sprayed with lactic acid, despite the objection of a number of EU member States.[32]

31. 'Transatlantic Trade and Investment Partnership (TTIP): Note for the attention of the Trade Policy Committee', Brussels: European Commission, 20 June 2013.

32. 'In move towards trade talks, EU to lift ban on some US meats', EurActiv, 5 February 2013; 'Member States resist lactic acid cleaning for carcasses', *EU Food Law*, 12 October 2012.

5. **Environmental** deregulation

The European Commission has openly acknowledged that TTIP will further intensify pressure on the environment, as "every scenario" for future EU-US trade under TTIP will increase the production, consumption and international transfer of goods. The Commission's own impact assessment goes on to note that this increase in production will in turn create "dangers for both natural resources and the preservation of biodiversity".[33] In respect of greenhouse gas emissions, the Commission states that its preferred outcome from TTIP will add an extra 11 million metric tons of CO_2 to the atmosphere, challenging the EU's own emission reduction commitments under the Kyoto Protocol.[34] Yet none of these observations has caused the Commission to rethink its support for TTIP.

Most immediately, TTIP threatens to undermine key environmental regulations within the EU, which are known to guarantee far higher safety levels than in the USA. Foremost among these are the EU's REACH regulations on chemicals, introduced in 2007 in order to protect human health and the environment from hazardous substances used by companies in manufacturing or other processes.[35] REACH is based on the precautionary principle outlined in the previous section, and requires industry to prove that a chemical is safe before it can be certified for commercial use. By contrast, the USA's 1976 Toxic Substances Control Act (TSCA) requires the public regulator to prove that a chemical is unsafe before its use can be restricted, and further limits any restriction to the 'least burdensome' measure possible. Under the TSCA, the US Environmental Protection Agency has succeeded in introducing controls on just six of the 84,000 chemicals that have been in commercial use in the USA

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33. 'Impact Assessment Report on the future of EU-US trade relations', Strasbourg: European Commission, 12 March 2013, section 5.8.2.

34. *Ibid*, section 5.8.1.

35. EU Regulation No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), 18 December 2006.

since 1976.[36] Such a lax regime has immediate consequences for public exposure to health risks: while the EU bans 1,200 substances from use in cosmetics, for example, the US prohibits just a dozen.[37]

Environmental and public interest groups in the USA have long campaigned for the TSCA to be replaced with new regulations along the lines of REACH.[38] Business lobby groups, on the other hand, have vigorously opposed the EU's safety requirements and are seeking to use the deregulatory framework of TTIP to 'harmonize' REACH with the weaker US regulations. The European Commission recognizes the fundamental incompatibility between the EU and US approaches, but is still seeking possible "regulatory convergence and recognition in the chemicals sector" on behalf of its industry partners.[39] European companies are happy to join forces in using TTIP to remove environmental regulations that put them, as they claim, at an unfair disadvantage in relation to their global competitors.

A number of other important environmental regulations are under threat from TTIP's deregulation programme. Sustainability requirements under the EU's Renewable Energy Directive have been targeted by US agrofuel producers keen to 'harmonize' the EU regulations with the lower standards of the USA. The US government is also using TTIP to undermine the EU's Fuel Quality Directive so as to make it easier for US refineries to export oil to Europe that has been extracted from the Canadian

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36. 'Submission of Centre for International Environmental Law (CIEL) before US Senate Committee on Finance hearing on the Transatlantic Trade and Investment Partnership', Washington DC: CIEL, 30 October 2013; see also 'Chemical Regulation: Comparison of US and Recently Enacted European Union Approaches to Protect against the Risks of Toxic Chemicals', Washington DC: Government Accountability Office, August 2007.

37. Kim Egan, 'Is Europe the New America?', Saltbox Consulting, 24 September 2013.

38. The new Chemical Safety Improvement Act currently under debate in Congress fails to challenge the TSCA's 'risk-based' approach; see, for example, Karuna Jaggar, 'The Chemical Safety Improvement Act Falls Short: Open Letter to Congress', *Huffington Post*, 12 November 2013.

39. 'Transatlantic Trade and Investment Partnership (TTIP): Note for the attention of the Trade Policy Committee', Brussels: European Commission, 20 June 2013; Annex II: 'Chemicals in TTIP'.

tar sands, with devastating environmental consequences.[40] In addition, TTIP would open the door to the mass export of US shale gas to Europe, leading to an expansion of hydraulic fracturing (fracking) in the USA as well as allowing US companies to challenge bans on fracking in Europe – just as the US energy company Lone Pine Resources is now using NAFTA rules to sue the government of Canada over the moratorium on fracking in Québec.[41]

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40. Kate Sheppard, 'Michael Froman, Top US Trade Official, Sides With Tar Sands Advocates In EU Negotiations', *Huffington Post*, 24 September 2013.

41. 'Lone Pine Resources files outrageous NAFTA lawsuit against fracking ban', joint press release of Sierra Club and Council of Canadians, 2 October 2013.

6. Public services under attack

TTIP aims not only to relax regulations on the environment and food safety, but also to secure the liberalization of services markets, including the opening of public services such as health, education and water to private firms. US companies are particularly keen to gain access to the public health systems of Europe, which they see as vast markets still waiting to be tapped. The US government has confirmed that it will use TTIP to prise open the service markets of Europe for the benefit of US capital, and specifically that it will "address the operation of any designated monopolies" in the area of public utilities.[42] MPs in Britain have raised the alarm that TTIP could "destroy" the National Health Service as US companies gain the right to bid for clinical contracts.[43]

The European Commission has claimed that public services will be kept out of TTIP by virtue of an exclusion of services "supplied in the exercise of governmental authority", as defined in the WTO's General Agreement on Trade in Services (GATS).[44] Yet the Commission has long admitted that this clause offers no protection to public services, given its narrow definition of what would qualify for exclusion; as a result, the EU was forced to enter an additional limitation in its original 1995 schedule of services commitments so as to exempt its public services from GATS rules. Since then, however, the Commission has moved to abandon this 'public utilities' exemption on the grounds that it actively wishes to see public services **included** within EU trade agreements, excluding only security-related services such as the judiciary, border policing or air traffic control.[45]

42. Letter of Acting US Trade Representative Demetrios Marantis to John Boehner, Speaker of the US House of Representatives, 20 March 2013.
43. 'Privatisation agenda drives Tory policy on NHS, says Burnham', *Independent*, 10 January 2014.
44. 'Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America', Brussels: Council of the European Union, 17 June 2013, section 20.
45. 'Commission Proposal for the Modernisation of the Treatment of Public Services in EU Trade Agreements', Brussels: European Commission, 26 October 2011.

In addition to the prospect of handing over public services to profit-making companies, one of the most insidious effects of free trade agreements such as TTIP is that it becomes effectively impossible for countries to restore public services if they have already been privatized. This 'lock-in' effect will apply even more widely if TTIP adopts the 'negative list' approach seen in the EU's new free trade agreement with Canada, whereby all service sectors are surrendered to liberalization unless they are specifically marked out as exemptions (the 'list it or lose it' model). This is a dramatic shift away from the 'positive list' approach traditionally employed by the EU, where only those sectors actively put forward for inclusion are opened up to competition from foreign firms. European business groups have joined with their US counterparts in calling for the negative list approach to be used in TTIP in order to maximize the number of service sectors included for liberalization.[46]

Similarly, foreign investors will be able to sue host countries for loss of profits caused by reversing earlier privatisations if investor protection measures are included in TTIP (see below). When the people of Slovakia voted in a leftist government in 2006 as a response to the unpopular privatization of health care, one of its first moves was to restrict the powers of private insurance firms to extract profits from the public health system. In retaliation, a number of health insurance companies sued the Slovak government for damages, with Dutch firm Achmea eventually seizing €29.5 million in public assets by way of 'compensation'. In a groundbreaking case filed in 2013, Achmea is now attempting to use the same powers to block the Slovak government from setting up a public insurance scheme that would provide health cover to all the country's citizens.[47]

Concern has been raised within the European Commission itself at the threat posed by TTIP to health services. The head of the Commission's

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46. 'Regulatory Cooperation Component in the services sectors to an EU-US Economic Agreement', joint statement of the European Services Forum and Coalition of Service Industries, 12 November 2012; 'EUROCHAMBRES views and priorities for the negotiations with the United States for a Transatlantic Trade and Investment Partnership (TTIP)', EUROCHAMBRES position paper, 6 December 2013.

47. Laurence Franc-Menget, 'ACHMEA II – Seizing Arbitral Tribunals to Prevent Likely Future Expropriations: Is it an Option?', Kluwer Arbitration Blog, 28 March 2013.

health systems unit, Bernie Merkel, has cautioned that the EU will have to fight to defend its public health provisions against US demands for new market access in TTIP. Speaking before the European Health Forum in October 2013, Merkel warned people not to harbour any illusions that TTIP might offer an opportunity to raise standards in health care or access to medicines: "You have to remember that America works well for those with money, but not so well for those without."[48]

At the same time, however, it is the European Commission that is seeking to use TTIP to undermine important financial regulations introduced in the wake of the crisis of 2008. Despite unanimous recognition that 'light touch' regulation was one of the prime causes of the 2008 crash, the Commission is now attempting to achieve even further deregulation by demanding that the issue be included in the TTIP talks. That agenda is being actively driven by the UK government on behalf of its powerful financial services lobby in the City of London, as well as by the German government on behalf of its banking sector – and by the largest US banks, themselves keen to use TTIP to weaken the new regulations introduced in the Obama administration's Dodd-Frank Act.[49] The US government has already agreed to negotiate a relaxation of rules governing access to financial services markets, including the removal of capital controls.[50]

In addition to opening up public services, the European Commission and US government are both intent on using TTIP to open up public procurement contracts to the private sector. This means that several local government procurement policies in support of important social and environmental goals will no longer be allowed. The EU has given notice of its intention to eliminate the popular Buy America provisions used to support local jobs and businesses in many US states.[51] The US government has indicated its intention to target EU procurement schemes such

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48. 'TTIP: Health sector braced for "damage control"', EurActiv, 7 October 2013.

49. James Politi and Alex Barker, 'White House set for Wall Street clash over trade talks', *Financial Times*, 7 July 2013.

50. Myriam Vander Stichele, 'TTIP Negotiations and Financial Services: Issues and Problems for Financial Services Regulation', Amsterdam: SOMO, 16 October 2013.

51. James Politi, 'Buy America laws raise hurdles in European talks', *Financial Times*, 26 June 2013; the Buy America provisions are explicitly listed as a target in section 24 of the European Commission's negotiating mandate approved in June 2013.

as the local food programmes promoted in schools and other public bodies.[52] Once again, the only winners will be the transnational corporations that force out local suppliers and take over their contracts.

None of these inclusions is inevitable. By means of the 'cultural exception' through which it has traditionally protected its domestic film industry from external competition, the French government announced in June 2013 that it had managed to exclude audio-visual services from the European Commission's TTIP mandate, despite opposition from the UK, Germany and the Commission itself. In a heated debate at the European Foreign Affairs Council, France had threatened to veto the launch of TTIP negotiations if the cultural exception was not respected. The US government has confirmed, however, that it will "advocate aggressively" on behalf of its film and television industry to include audio-visual services in the negotiations.[53] Stung by its failure to obtain a full mandate for all sectors, the European Commission insists that there is "no carve-out" for audio-visual services in TTIP, and may still try to reintroduce them to the negotiations at a later stage.[54]

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52. 'EU-US trade deal: A bumper crop for "big food"?', Friends of the Earth Europe and Institute for Agriculture and Trade Policy, October 2013.

53. Written responses from US Trade Representative Michael Froman to the Congressional Ways and Means Committee on the President's Trade Policy Agenda, 18 July 2013.

54. 'Member States endorse EU-US trade and investment negotiations', Brussels: European Commission, 14 June 2013; 'M. Barroso, vous n'êtes ni loyal ni respectueux!', *Le Monde*, 18 June 2013.

7. Personal privacy at risk

While TTIP is primarily aimed at deregulation in favour of business, it also seeks to boost corporate profits by restricting people's access to information. The intellectual property rights chapter of TTIP is set to contain provisions on copyright, patents and trademarks with a view to strengthening corporate control over knowledge at the expense of public access in the EU and USA. Important exceptions to copyright for schools, libraries, disabled people and distance education could be lost. At the same time, the pharmaceutical industry is seeking to use TTIP to restrict public access to data from clinical trials, a move that will undermine transparency and raise costs for national health systems in the future.[55]

A leaked document from the European Commission has also raised fears that TTIP could reintroduce central elements of the Anti-Counterfeiting Trade Agreement (ACTA) already rejected by the European Parliament in 2012.[56] That legislation was widely condemned across Europe as an assault on civil liberties, as it would have required internet service providers to monitor online activity and inform on anyone suspected of infringing copyright provisions. MEPs voted down ACTA by the massive margin of 478 to 39 – the first time that the European Parliament had used its new powers under the Lisbon Treaty to reject an international trade agreement. David Martin, the Scottish MEP who acted as rapporteur on ACTA, advised his colleagues that it would be unthinkable to accept an agreement which had been negotiated in secret and presented to the European Parliament as a *fait accompli*.

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55. Jim Murray, 'New fronts in the struggle for transparency', BMJ Blogs, 13 December 2013.

56. 'Transatlantic Trade and Investment Partnership negotiations (TTIP): The Information and Communication Technology (ICT) sector', Brussels: European Commission, 2013.

TTIP will also undermine data privacy laws by making it easier for companies to gain access to individuals' personal details for commercial purposes. The European Commission has already watered down EU rules on data privacy in order to pave the way for regulatory coherence under TTIP, removing a key safeguard against US intelligence agencies' spying on European citizens.[57] The ultimate irony, revealed in documents obtained by the whistleblower Edward Snowden, is that the US government has bugged EU offices in New York, Washington and Brussels and infiltrated their computer network so as to gain access to internal EU emails and documents. Responding to calls from MEPs that the TTIP talks should be discontinued in light of this scandal, EU Justice Commissioner Viviane Reding agreed: "We cannot negotiate over a big trans-Atlantic market if there is the slightest doubt that our partners are carrying out spying activities on the offices of our negotiators."[58]

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57. James Fontanella-Khan, 'Washington pushed EU to dilute data protection', *Financial Times*, 12 June 2013.

58. Claus Hecking and Stefan Schultz, 'Spying "Out of Control": EU Official Questions Trade Negotiations', *Der Spiegel*, 30 June 2013; Laura Poitras, Marcel Rosenbach, Fidelius Schmid and Holger Stark, 'Attacks from America: NSA Spied on European Union Offices', *Der Spiegel*, 29 June 2013.

8. ISDS: a threat to democracy

Perhaps the greatest threat posed by TTIP is that it seeks to grant transnational corporations the power to sue individual countries directly for losses suffered in their jurisdictions as a result of public policy decisions. This provision for 'investor-State dispute settlement' (ISDS) is unparalleled in its implications, in that it elevates transnational capital to a legal status equivalent to that of the nation State. Under TTIP, US and EU corporations would thus be granted the power to challenge democratic decisions made by sovereign States, and to claim compensation where those decisions have an adverse impact on their profits.

The USA has insisted on including ISDS in almost all its bilateral investment treaties to date, with only Australia managing to secure an exception to the rule. Under ISDS, companies are able to bring claims for damages against the host country even if they have no contract with its government. In addition, investors are permitted to bypass domestic courts and take their claims direct to international arbitration tribunals, breaching the traditional requirement that local remedies must be exhausted before having recourse to international forums. In some cases, domestic companies have reinvented themselves as 'foreign' investors simply in order to take advantage of ISDS privileges and sue their own government.[59]

The arbitration tribunals themselves are little more than kangaroo courts. Arbitrators are not tenured judges with public authority, as in domestic judicial systems, but a small clique of corporate lawyers who are appointed on an *ad hoc* basis and have a vested interest in ruling in favour of business.[60] The tribunals sit in secret, and the arbitrators have

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59. Gus Van Harten, *Investment Treaty Arbitration and Public Law*, Oxford: Oxford University Press, 2007.

60. Pia Eberhardt and Cecilia Olivet, *Profiting from Injustice: How Law Firms, Arbitrators and Financiers are Fuelling an Investment Arbitration Boom*, Amsterdam: Corporate Europe Observatory and Transnational Institute, 2012.

been found guilty of so many misapplications of the law that even those who support the idea of international arbitration admit they have lost any credibility. A public statement from over 50 law professors and other academics has called for the system to be abolished and the right to adjudicate returned to domestic courts.[61]

Where ISDS has been included in bilateral investment treaties or other free trade agreements, it has already caused considerable damage to public policy and democracy.[62] A few of the most notable examples include:

- The Swedish energy company Vattenfall is suing the German government for €3.7 billion over the country's decision to phase out nuclear power in the wake of the Fukushima nuclear disaster. Vattenfall has already been successful in a previous challenge to the city of Hamburg's environmental regulations, which were watered down in the face of the company's attack.
- In the first of many ISDS cases brought against the country under NAFTA rules, Canada was forced to revoke its ban on the fuel additive MMT under a challenge from US company Ethyl. In a later case over water and timber rights, Canada had to pay out $122 million to the Canadian paper company AbitibiBowater, which was using NAFTA rules to sue its own government from out of its office in the USA.
- US tobacco giant Philip Morris is suing the Australian government for billions of dollars over its public health policy that all cigarettes must now be sold in plain packaging. Philip Morris is also suing Uruguay over measures to combat smoking in that country, where graphic health warnings are now required to cover 80% of all cigarette packaging.
- No State has been harder hit by ISDS cases than Argentina, many of them related to the country's decision to unpeg its currency from the US dollar in 2002. After many years of fighting the cases, the Argentinian government was forced to pay over $500 million to settle five companies' claims in October 2013.

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61. 'Public Statement on the Investment Regime', 31 August 2010, available in various languages at www.osgoode.yorku.ca/public_statement.

62. For more examples, see John Hilary, *The Poverty of Capitalism: Economic Meltdown and the Struggle for What Comes Next*, London: Pluto Press, 2013, chapter 3.

- In the largest ISDS award yet made, Ecuador has been ordered to pay Occidental Petroleum $1.77 billion in damages for terminating the oil giant's contract when the company broke Ecuadorian law. A separate tribunal threw out the claim by Ecuador for $19 billion in damages against Chevron for its contamination of the Amazonian rainforest over a period of two decades.

The use of ISDS by transnational corporations is now reaching epidemic proportions. Over 500 known cases have now been filed against at least 95 countries, of which over 400 have come in the last 10 years alone.[63] Many more are likely to have been initiated without ever coming to public knowledge, due to the secrecy that surrounds the proceedings.

Government officials throughout Europe are now questioning the advisability of including ISDS in TTIP at all. The London School of Economics was commissioned to undertake an impact assessment for the UK government on the costs and benefits of including investment protection in an EU-US agreement. The assessment concluded that such a move would expose the UK to an even greater number of disputes and costs than Canada has suffered under NAFTA, while being "highly unlikely" to bring in any additional investment (no bilateral agreement with any industrialized nation has ever resulted in increased US investment). The authors of the assessment suggested that the government should rethink the wisdom of including investor protection within TTIP.[64]

The European Commission has already identified the type of ISDS system that it wishes to see included in TTIP.[65] Its position has, however, been subjected to mounting criticism from civil society groups – including the joint letter submitted by 200 European, US and international organizations in December 2013 – and from the governments of a number

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63. 'Recent Developments in Investor-State Dispute Settlement (ISDS)', Geneva: United Nations Conference on Trade and Development, May 2013.
64. Lauge N. Skovgaard Poulsen, Jonathan Bonnitcha and Jason Webb Yackee, 'Costs and Benefits of an EU-USA Investment Protection Treaty', London: London School of Economics, April 2013.
65. 'TTIP negotiations: Modified EU draft proposals on trade in services, investment and electronic commerce', Brussels: European Commission, 2 July 2013.

of EU member States themselves.[66] In response to this criticism, the European Commission announced in January 2014 that it would be suspending the ISDS negotiations within TTIP for a period of three months in order to undertake a 'consultation' with the European public.[67] Subsequent comments made by EU Trade Commissioner Karel De Gucht revealed that this exercise was designed to convince a sceptical public of the merits of ISDS rather than to engage in any revision of the Commission's intentions.[68]

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66. Civil society letter on TTIP to US Trade Representative Michael Froman and EU Trade Commissioner Karel De Gucht, 16 December 2013.

67. 'Commission to consult European public on provisions in EU-US trade deal on investment and investor-state dispute settlement', Brussels: European Commission, 21 January 2014.

68. 'The Transatlantic Trade and Investment Partnership: Where do we stand on the hottest topics in the current debate?', speech by European Trade Commissioner Karel De Gucht at Atlantikbrücke, Düsseldorf, 22 January 2014.

9. Growing resistance

There is a growing movement against TTIP on both sides of the Atlantic, as people become aware of the threat posed by the negotiations to so many aspects of their lives. Public health, environmental and social justice campaigners are joining forces with trade unions and consumer groups in both the EU and USA to oppose TTIP's deregulation agenda. Parliamentarians across Europe have voiced their concerns at the threat posed by TTIP: senators from all political parties attacked the French government's support for the agreement in a heated debate in January 2014, while MPs from across the political spectrum have submitted critical motions against TTIP in Germany, the UK and the Netherlands.[69] In a series of letters indicating their growing discontent at the direction of US trade policy, 178 members of Congress – who have the ultimate power to approve or veto TTIP – have written to President Obama rejecting the possibility of granting him 'fast track' authority to negotiate future trade agreements on their behalf.[70]

Other trading nations from around the world are also concerned at the potential impact of TTIP on their interests. The drive to deepen EU-US relations through TTIP is widely seen as an attempt to sideline emerging economies such as China, Brazil and India that are now challenging the hegemony of the core capitalist powers. The European Commission has stated that TTIP will not only set standards for the EU and USA but will also create its own normative expectations for other trading partners to adopt the same standards or find themselves marginalised in the global

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69. 'French senators strongly attack EU-US trade deal', EurActiv, 13 January 2014; 'Oppositionsfraktionen fordern verschiedene Änderungen für TTIP-Verhandlungen', Deutscher Bundestag, 14 June 2013; 'Transatlantic Trade and Investment Partnership', Early Day Motion 793, House of Commons 2013-14 session, UK; 'Motion of Bram Van Ojik on the inclusion of ISDS in the EU-US trade agreement', submitted on 28 November 2013 and subsequently carried by the Second Chamber of the Dutch Parliament.

70. 'Camp-Baucus Bill Would Revive Controversial 2002 Fast Track Mechanism', Washington DC: Public Citizen, January 2014.

economy.[71] At the same time, a lowering of tariff and non-tariff barriers between the EU and USA is likely to displace trade and reduce exports from emerging and low-income economies alike.[72]

Ultimately, TTIP is an agreement designed to benefit transnational corporations from the EU and USA seeking to expand their market access and to engineer the removal of regulations that restrict their profits. Suggestions by some commentators that the agreement could be turned into a positive force for raising standards on both sides of the Atlantic fail to recognize its genesis, its content or the deregulatory agenda at its heart. For this reason, the call from civil society in response to the negotiations is to stop TTIP and replace it with an alternative trade mandate that puts people and the planet before corporate profit.[73] All progressive forces in Europe, the USA and elsewhere are encouraged to join this call.

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71. 'The Transatlantic Trade and Investment Partnership: Global Impacts', speech by European Trade Commissioner Karel De Gucht at the Institute for International and European Affairs, Dublin, 19 April 2013.

72. 'The Transatlantic Trade and Investment Partnership: A New Engine for Global Development?', Washington DC: Sandler Trade LLC, June 2013; 'Potential Effects of the Proposed Transatlantic Trade and Investment Partnership on Selected Developing Countries', Brighton: CARIS, September 2013.

73. For more detail on the positive alternative to TTIP and other such agreements, see the Alternative Trade Mandate 'Trade: Time for a New Vision' (November 2013) at alternativetrademandate.org.

10. Further information

The following websites include sections dedicated to campaigns, news and critical studies on TTIP:

- bilaterals.org – includes all the latest TTIP news
- s2bnetwork.org – the Seattle to Brussels Network (EU)
- citizen.org – Public Citizen (US)
- sierraclub.org – Sierra Club (US)

In addition to the many sources mentioned in the notes to this briefing, good general studies of TTIP include:

- 'A Brave New Transatlantic Partnership: The proposed EU-US Transatlantic Trade and Investment Partnership and its socio-economic & environmental consequences' (Seattle to Brussels Network, October 2013)
- 'The Transatlantic Free Trade Agreement: What's at Stake for Communities and the Environment' (Sierra Club, June 2013)
- 'A Transatlantic Corporate Bill of Rights: Investor privileges in EU-US trade deal threaten public interest and democracy' (Corporate Europe Observatory, Seattle to Brussels Network and Transnational Institute, October 2013)
- 'EU-US trade deal: A bumper crop for "big food"?' (Friends of the Earth Europe and Institute for Agriculture and Trade Policy, October 2013)
- 'The Transatlantic Colossus: Global Contributions to Broaden the Debate on the EU-US Free Trade Agreement' (Berlin Forum on Global Politics, January 2014)

Official documentation on TTIP is available from the websites of:

- the European Commission: ec.europa.eu/trade/policy/in-focus/ttip
- the US Trade Representative: www.ustr.gov/ttip

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TTIP is correctly understood not as a negotiation between two competing trading partners, but as an assault on European and US societies by transnational corporations seeking to remove regulatory barriers to their activities on both sides of the Atlantic.

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