

TTIP MUST WORK FOR THE PEOPLE, OR IT WON'T WORK AT ALL

We strongly encourage the United States and the European Union to approach the Trans-Atlantic Trade and Investment Partnership (TTIP) in a manner that puts shared prosperity and sustainable social and economic development at the center of the agreement. The TTIP should be negotiated in the public interest rather than in the interests of private investors. As with all other economic relationships, the rules of the TTIP will matter. Its rules will make the difference between a trans-Atlantic New Deal, which envisions an important role for democratic decision making, and a trans-Atlantic corporate hegemony that privatizes the gains of trade while socializing the losses. Increasing trade between the United States and the European Union only can help create quality job growth with shared prosperity on both sides of the Atlantic if the project is approached and concluded in an open, democratic and participatory fashion, and with these goals in mind.

The American Federation of Labor–Congress of Industrial Organizations (AFL-CIO) and the European Trade Union Confederation (ETUC) demand a commitment from the European Union and the United States to achieve a “gold standard” agreement that improves living and working conditions on both sides of the Atlantic and guards against any attempt to use the agreement to lower standards or impinge on democratic decision making. The risk of the current model of trade and economic integration agreements to democratic decision making cannot be overstated. The United States already has lost state-to-state challenges to its anti-smoking, meat labeling and tuna labeling policies and, even now, European multinationals are using the investor-to-state system to challenge decisions to phase out nuclear energy and raise minimum wages. Simply put, these policies are part of a government’s most basic responsibility to promote the general welfare of its people.

Trade and investment rules that not only allow but promote such challenges undermine support for trade even as

they reduce the ability of governments to be more responsive to their publics than they are to well-heeled global corporations. This is no accident. Global corporations long have wanted to “overcome regulatory sovereignty,”¹ and the current trade rules have made steps in that direction. This is why the TTIP rules are critical: Will they replace corporate hegemony with trade rules that promote human dignity and democratic ideals as they promote economic efficiency and inclusive economic growth? Or will they enshrine trade rules that have promoted a race to the bottom in wages, rights and regulatory protections?²

We envision a people- and planet-centered agreement that respects democracy, ensures state sovereignty, protects fundamental labor, economic, social and cultural rights, and addresses climate change and other environmental challenges. In the deliberation for each and every rule, the parties should ask themselves: How will this decision create jobs, promote decent work, enhance social protection, protect public health, raise wages, improve living standards, ensure good environmental stewardship and enshrine sustainable, inclusive growth? If negotiators are not pursuing these goals, the negotiations should be suspended.

Rules on the protection of workers should not in any way be regarded as trade barriers. The TTIP should not undermine provisions for the protection of workers set down

¹ See, e.g., “Trade on the Forefront: US Chamber President Chats with USTR,” *FreeEnterprise.com*, July 30, 2013, *available at* www.freeenterprise.com/international/trade-forefront-us-chamber-president-chats-ustr, and “NAFTA Origins: The Architects Of Free Trade Really Did Want A Corporate World Government,” Matt Stoller, *PopularResistance.org*, *available at* www.popular-resistance.org/nafta-origins-the-architects-of-free-trade-really-did-want-a-corporate-world-government/.

² For more on the devastating effects of corporate-driven trade rules, see the AFL-CIO report “NAFTA at 20,” *available at* www.aflcio.org/NAFTAat20.

in laws, regulations or collective agreements, nor such collective trade union rights as freedom of association, the right to collective bargaining and the right to take industrial action. The TTIP must ensure that all parties adopt, maintain and enforce the eight core conventions of the International Labour Organization for all workers, as well as the Decent Work Agenda, and that those minimum standards set a starting point for regular improvements that are built into the architecture of the agreement. In other words, the TTIP should not just raise standards for those whose standards currently do not measure up, it should create a system for continuous improvement.

This must include advancing democracy in the workplace. Only when workers are free to organize, associate, peacefully assemble, collectively bargain with their employers and strike when necessary can they provide a vital balance to the economic and political influence held by global corporations.

In addition, workers through their unions must have the right to full disclosure of information regarding the financial condition and assets of the company employing them. The United States and European Union should explore adopting transatlantic mechanisms in line with EU instruments to provide for information, consultation and participation of workers in transnational corporations; stronger protections for workplace safety and health; and requirements to ensure “temporary” workers (such as those employed by third-party staffing companies) receive equal treatment with regard to pay, overtime, breaks, rest periods, night work, holidays and the like. A trade agreement between the United States and Europe presents an opportunity to go beyond the “lowest common denominator” approach to labor rights and create truly people-centered trade rules. Without such counterweights, global corporations will continue the unsustainable practice of capturing the majority of gains from trade while sharing as little as possible with the workers whose labor produces the profits.

The TTIP must be aligned with—and never work at cross purposes to—international agreements to protect the environment, including commitments to slow catastrophic climate change. As part of its rules, the TTIP must advance a sustainable balance between human activity and the planet. Rules must not encroach or dilute national and subnational efforts to define and enforce environmental rules, measures and policies deemed necessary to fulfill obligations to citizens, the international community and future generations. Rules must respect the right of parties to prohibit corporations from capturing gains through predatory extraction, unsustainable resource utilization and “dumping” of pollutants and refuse.

The TTIP must have at its core state-to-state commitments and modes of conflict resolution; it must reject all provisions that allow corporations, banks, hedge funds and other private investors to circumvent normal legislative, regulatory and judicial processes, including investor-to-state dispute settlement (ISDS). State-to-state commitments and enforcement mechanisms reinforce the notion that the agreement is between sovereign nations for the benefit of their citizens. It also recognizes the right of different states to make different choices about how to best promote the general welfare. A holdover from the discredited era of market fundamentalism, ISDS is used by private actors to constrain the choices democratic societies can make about how best to protect the public interest. It gives the government’s duty to secure the general welfare the same status as private interest in profit—undermining public trust and placing governments in the position of having to pay a ransom to protect the public interest. Indeed, investors must assume responsibilities rather than simply assert rights. It is imperative that respect for instruments such as the OECD Guidelines for Multinational Enterprises be fully integrated in TTIP. We also ask that National Contact Points be adequately trained, staffed and funded to meet the highest standards and that they better coordinate their work.

The TTIP must include rules that preserve the place of domestic political, legal and judicial systems, including collective bargaining. The TTIP must not create private systems of justice that either replace or override national or European-wide decision making. The executive, legislative and judicial functions must be maintained and must not be subservient to any supranational regulatory councils that stand outside democratic control. As the TTIP expands markets and promotes access and competition in young and emerging industries, consumers and workers can benefit from increased investment and trade so long as the role of the state in nurturing innovation, economic development and technological transformation—*vis-à-vis* the private sector—is not undermined further. This means that the TTIP rules must promote regulations regarding privacy, consumer protections, environmental sustainability and anti-trust. National and local choices about the provision of public services must not be constrained or directed, nor the stability of the financial system jeopardized. This means that the TTIP must never enact a “freeze” on regulations that prevents governments from becoming laboratories of democracy, innovation and sustainable economic development; nor should the TTIP enhance the ability of global enterprises to thwart the implementation of reasonable choices about how to maintain sustainable public services or protect the environment. In addition, the TTIP should

respect existing international governance structures for international air transport, air traffic rights and related services by excluding such services from TTIP coverage.

The financial crisis and ensuing austerity policies have put the right to universal, affordable and quality health care for all European citizens at risk. The TTIP cannot become a tool that contributes further to a downward spiral of health standards. Opening up the health sector most likely will raise prices, further impoverishing those hardest hit by the crisis. Health must not be treated as a profit center for international investors. In addition, the ambition to create a transatlantic public procurement market could undermine fundamental pillars of societies, benefiting global corporations that disregard workers' rights and quality service provision at the expense of local service providers who are rooted in, and responsive to, local communities.

Governments must maintain the right to adopt procurement policies that aim to alleviate joblessness, promote environmental responsibility, address current and historical social injustices and otherwise meet the specific needs of their locality, region or nation. Just as the cheapest product is not necessarily the most responsible choice, procurement rules that prevent governments from addressing societal needs through purchasing decisions are not necessarily good policy.

Only when Americans and Europeans can participate meaningfully in the creation of the TTIP will they be confident it is being created for their benefit, rather than as a secret deal that will amplify the influence of global corporate actors and diminish the voice of the people. Secret trade deals may have been appropriate when they were limited to tariffs and quotas, but given the wide swath of issues covered under modern "trade" agreements—including health care, intellectual property, labor, environment, information technology, financial services, public services, agriculture, food safety, anti-trust, privacy, procurement and supply chains—secrecy no longer can be defended. The proper place to debate and reach agreement on these domestic policy issues is in the public forum—if an idea cannot stand the light of day, it must not be pursued.

In addition to creating and maintaining good, family-supporting jobs and eschewing austerity, to secure the support of the European and American labor movements, the TTIP must:

- **Deeply integrate legislatures and social partners in the negotiating and implementation process as well as in the monitoring process after the agreement is in place.** The monitoring process must focus on social and ecological impacts and the enforcement of rules laid down

in the sustainable development chapter, as well as other parts of the agreement; it also must incorporate a process to recommend compensatory action for those hurt by the trade agreement. Greater resources should be allocated to support workers subject to structural change.

- **Ensure sustainable development by requiring parties to protect fundamental labor rights and the environment and by including recourse to dispute settlement and trade sanctions if necessary.** Labor rights must be enshrined in the body of the agreement, be applicable to all levels of government, and be subject to dispute settlement and trade sanctions equivalent to other issues covered by the agreement. The parties should commit to the ratification and the full and effective implementation of the eight core conventions of the ILO and of core international environmental agreements. The provisions should envision labor and environmental standards that continue to rise, aiming in particular toward the implementation by all parties of all up-to-date ILO Conventions. Moreover, the dispute settlement mechanism must not undermine, weaken or create conflict with existing interpretations of ILO Conventions and Recommendations.
- **Preserve the right to legislate and regulate in the public interest, including the use of the Precautionary Principle,³ and exclude rules that would undermine domestic economic development, national security, environmental protection, workplace health and safety and social justice policies.** States need domestic policy space to meet important public policy objectives, including labor market policies, consumer and food safety policies, the provision of public goods (including health, education, transit, utilities and social security systems) as

³ The Precautionary Principle is defined as follows:

When human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm. Morally unacceptable harm refers to harm to humans or the environment that is:

- threatening to human life or health, or
- serious and effectively irreversible, or
- inequitable to present or future generations, or
- imposed without adequate consideration of the human rights of those affected.

Although the Precautionary Principle is enshrined in Article 191 of the Lisbon Treaty, it is threatened by the U.S. trade negotiating objective to require that all proposed regulations "be based on sound science, cost benefit analysis, risk assessment, or other objective evidence." (See "Bipartisan Congressional Trade Priorities Act of 2014" (S. 1900), *available at* <http://beta.congress.gov/bill/113th-congress/senate-bill/1900/text>.) These requirements for regulations in fact are not a basis for scientifically supported regulations, but are politically coded terms that are part of the deregulatory agenda.

well as the development of coherent industrial policies. Rules that provide private profit interests with enhanced opportunities to attack public interest policies (opportunities that do not exist in domestic law) reduce standards of living and undermine public support for trade policies. The right to legislate and regulate in a manner that guards against new but potentially grave risks is a prudent way to protect people and the planet, and prevents burdening future generations with the costs of imprudent decisions. The right to act prudently—even in the absence of 100% scientific certainty—must be jealously maintained.

- **Protect the privacy of personal communications and information.** The TTIP must not reduce or interfere with national attempts to secure citizens' privacy. If national privacy laws cannot be enforced for data located outside national borders, the TTIP must not include a requirement to liberalize data markets.

And the TTIP must not:

- **Include an investor-to-state dispute settlement mechanism.** ISDS is a special legal right only available to foreign investors to pursue claims of indirect expropriation and lack of “fair and equitable treatment” in private arbitration panels. Because systems of justice should be public, democratic and available to all in a society on an equal basis, the very existence of ISDS is anathema to democracy. Moreover, in recent years the system has become a “profit center” for global corporations to seek compensation in exchange for a nation's right to direct, for example, its energy, anti-smoking, patent, health care, education, environmental and minimum wage policies, as it chooses.
- **Impede or deter financial services laws or regulations or interfere with attempts to protect against systemic financial risk.** The TTIP must preserve the ability to react to economic crises. It must preclude holdouts from orderly bank resolution procedures from using investor-to-state dispute settlement to undermine such procedures.
- **Endanger the provision of critical public services.** The AFL-CIO and ETUC demand an exclusion of pub-

lic services from the negotiations. The negotiators must meet the demands to carve out public services, including education, health and social services, water supply, postal services and public transportation from the scope of the agreement. A positive list approach must be taken to avoid opening liberalization to services not explicitly listed.

- **Undermine access to affordable medicines, medical devices or surgical procedures in any way,** either through excessive patent protections or through so-called “transparency” provisions that give drug and device makers additional opportunities to appeal for higher prices.
- **Undermine the place of work principle that must be applied from the beginning to all posted workers.** While we strongly oppose the inclusion of specific visa commitments under Mode 4, TTIP should contain an explicit mention that national labor, social and collective agreement provisions will be upheld in the case of any and all temporary posting and placement of workers. The TTIP should ensure that cross-border application and implementation of administrative and criminal penalties in cases of labor law violation and social fraud are upheld.
- **Interfere with immigration reform efforts.** To the extent that the European Union and the United States want to increase immigration flows or facilitate existing flows, they should discuss this outside the trade context and instead in a context that ensures full rights and protections to all immigrants—documented or undocumented—and retains the right of national governments to adjust annual visa limits pursuant to fluctuating economic conditions. Trade commitments that treat the cross-border movement of people and goods as essentially equivalent are inconsistent with international norms ensuring human rights and labor rights.

An agreement that follows these tenets finally could be the people-centered agreement that working families beset by too few jobs, stagnant wages, broken promises and busted contracts are looking for. An agreement that replicates the corporate-privilege policies of the past will again fail to help workers and communities and surely face much greater opposition.