



Weltverträgen  
Bis April 2016 müssen  
setzen. Die Richtlinie  
Fairer Handel auf. All  
tarbeitsstandards nicht  
o ganz von der deutsch  
gestaltungsspielraum ge  
märken. TTIP soll die Be  
atlantiks für EU- bzw.  
ndem die Unternehmen  
werden wie inländische  
werden. Mit TTIP streb  
einem Staat an, der we  
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Abschaffung  
gründe

# WHY TTIP DOES NOT CONTRIBUTE TO A FAIRER WORLD TRADE

STATEMENT

**ff** FORUM  
FAIRER  
HANDEL



**FORUM FAIRER HANDEL** Forum Fairer Handel is the federal network of Fair Trade in Germany. Its objective is to sharpen the profile of Fair Trade, accomplish demands against politics and commerce, and to achieve a wider dissemination of Fair Trade. The Forum understands itself as the political voice of the German Fair Trade movement and advocates just rules for trade and agriculture worldwide.

**FORUM FAIRER HANDEL** works in public relations, awareness-raising as well as campaigning and advocacy. Once a year, the Forum Fairer Handel is one of the parties which organise the Faire Woche, the biggest activity week of Fair Trade in Germany.

The members of **FORUM FAIRER HANDEL** are organisations which exclusively work in Fair Trade and actors which promote Fair Trade as one of their core issues: Weltladen Dachverband e.V., and the following fair trade importers: GEPA – The Fair Trade Company, EL PUENTE, dwp eG Fair-Handels-Genossenschaft (fair trade cooperative), Banafair e.V. and GLOBO – Fair Trade Partner as well as Naturland – Verband für ökologischen Landbau e.V. (association for ecological agriculture) and Fair-Band e.V.. A wide network of partner organisations works in the working group of Forum Fairer Handel.

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# 1. INTRODUCTION

## WHY DOES FORUM FAIRER HANDEL TAKE A STANCE ON TTIP?

Forum Fairer Handel is the network of Fair Trade in Germany. It promotes a form of trade which places people at centre-stage and that is ecologically sustainable. For more than 40 years fair-trade-organisations operate alternative trade which enables all participants in the value-added chain to enjoy their universal human rights and the right for a viable environment. Fair Trade achieves this, inter alia, by promoting small-scale farmers and ecological farming.

Currently, the European Union (EU) negotiates several trade agreements which, according to the present state of knowledge, will hamper human and environmentally friendly trade. The most important are these three agreements:

- CETA (Comprehensive Economic and Trade Agreement) between the EU and Canada,
- TTIP (Transatlantic Trade and Investment Partnership) between the EU and USA,
- TiSA (Trade in Services Agreement) which is negotiated by 50 states amongst which all EU-Member States.

The present position paper employs the example of TTIP to show how these trade agreements would undermine fairer conditions for world trade and worsen these conditions for so-called “developing countries”.

## WHAT IS TTIP?

Since 2013 the Transatlantic Trade and Investment Partnership (TTIP) is negotiated between the EU and the USA. According to the EU directives for the negotiation, TTIP “shall provide for the reciprocal liberalisation of trade in goods and services as well as rules on trade-related issues”. But what precisely does this mean? With TTIP we are no longer talking, as in previous trade agreements, first and foremost about customs. These have already been extensively lowered between the EU and the US.

At the forefront are regulation systems and standardisation in almost all industry branches one could imagine as well as protection mechanisms for investors’ rights. Rules about production and distribution belong to the category of “technical barriers to trade” whose lowering is the real focus of TTIP. The expression “technical barriers to trade” is widely construed: it also includes labour law provisions for employees and environmental standards for products.

## HOW MUCH CAN WE KNOW?

When German politicians are asked which stance they take on TTIP, many avoid responding and argue: with the negotiation text on TTIP not yet being final, we are supposedly unable to debate the consequences of TTIP.

At first sight, they are correct because the negotiations on TTIP take place in secret and are estimated to be terminated earliest in 2017. But at second sight it is clear: many fundamental aspects on TTIP can already be ascertained now. With the North American Free Trade Agreement, NAFTA, there is already a similar agreement which has been in force for 21 years and whose impacts have been scientifically analysed. Moreover, the negotiations on CETA were finished on 25 September 2014. CETA is a trade agreement which is very similar to TTIP and whose content is already fully available.

### SUMMARY

#### WHY TTIP DOES NOT CONTRIBUTE TO A FAIRER WORLD TRADE

Forum Fairer Handel rejects TTIP in its currently intended version as it undermines aspirations for a fairer world trade<sup>1</sup>:

- TTIP is a preferential agreement to the disadvantage of developing countries and emerging nations: trade currents will be diverted to the US and the EU
- TTIP envisages new legal provisions which would hamper fair procurement: TTIP creates a legal space in which states could be sued by multinational companies for potential losses due to social and ecological legislation
- TTIP promotes opaque world trade politics in which a minority negotiates in secret instead of using and strengthening multilateral fora



## 2. NEGATIVE CONSEQUENCES OF TTIP

There are already many analyses about the potential consequences of TTIP on citizens in the EU and the US. Our focus as Fair Trade network, in contrast, lies on the consequences of TTIP on developing countries and emerging nations, and on aspirations to a fairer world trade system. This topic has received comparatively little attention in publications.

Forum Fairer Handel perceives, amongst many others, three main problems regarding the consequences of TTIP:

- Developing countries will be made losers by trade diversions,
- Fair procurement will be rendered difficult,
- Opaque negotiations among a selected few undermine multilateral world trade politics.

### PROBLEM 1: WITH TTIP DEVELOPING COUNTRIES WILL LOSE

With TTIP it will become more attractive for companies in the EU and the US to engage in more commerce with each other and in less trade with other countries. The EU and the US will prefer each other as trade partners over all other potential states. The economist Jagdish Bhagwati coined the term “preferential agreement”<sup>2</sup> for this kind of trade agreement. From the perspective of states which would lose trade with the US and the EU due to TTIP, TTIP is an excluding agreement.

That these trade diversions will take place is consensus among opponents and proponents of TTIP. What varies is the prognosis about the extent and severity of the consequences. For example, a study by the pro-market Bertelsmann Stiftung calculated a 2-5 percent reduction of the real per capita income for many African countries.<sup>3</sup> Many emerging nations like Brazil would also be affected: for instance, juice from the US into the EU has currently a 18 percent tariff. If the tariff would fall, the import of Brazilian juice would be negatively affected.

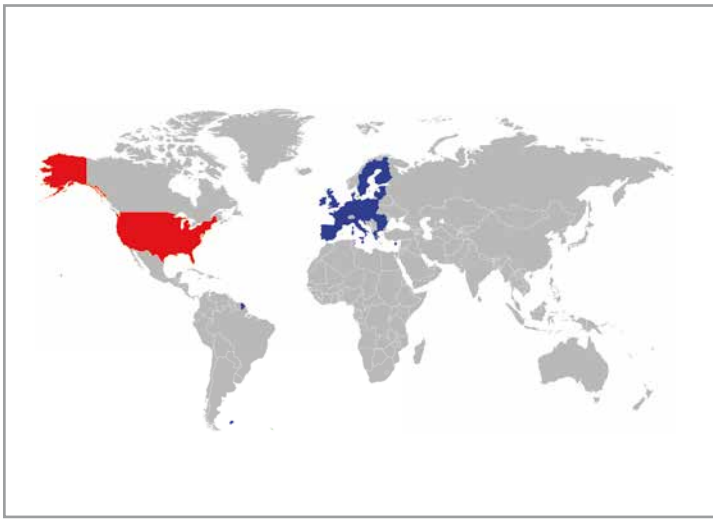
### AFFECTED BY STANDARDS WHICH THEY CANNOT INFLUENCE

Moreover, both negotiation parties want to mutually recognise or harmonise many of their industry standards in the TTIP text.

Until now, the consequences of standard setting between the EU and the US on third countries are unknown: if the EU accepts a specific product from a third country, does trade under TTIP mean that the US also accepts the import of this product? Or does TTIP create new standards which would mean additional costs for developing countries and emerging nations? Because these countries would need to adapt to the standards in order to be allowed to continue trading with both partners. They are, thus, affected by standards on whose creation they had no influence at all because they are not included in the TTIP negotiations.

Studies supporting TTIP like the publication by the ifo Institut in 2015<sup>4</sup> argue that the losses made by developing countries and emerging nations would be balanced by the economic growth caused by TTIP in the EU and the US. This would generate more income for the population which in turn would be spent on more consumption – for instance on textiles from Bangladesh or pineapples from Costa Rica. This reasoning implies that everyone would benefit from the growth generated by TTIP. But as much as economic growth does not equal income growth among all members of a community, it is not certain that TTIP-winners in the US and the EU are going to spend their money on textiles and pineapples from third countries. Studies on NAFTA show: Mexico, the most economically vulnerable state, had to bear the highest adjustment costs and its population as a whole benefitted least from the trade agreement.<sup>5</sup>





## PROBLEM 2: TTIP HAMPERS FAIR PROCUREMENT

TTIP would also impact public procurement. Public procurement is the term used for the purchases made by state actors like ministries, agencies, cities and municipalities. As public authorities, they buy, for instance, uniforms for firefighters and toilet paper for their administrations. Each year public authorities in Germany spend an estimated amount of 480 billion Euros for services and products. With this huge amount of money global value chains could be changed in the long run towards consistently respecting human rights and environmental standards.

The extent of public calls for tenders in the EU is estimated to be more than two trillion Euros - in theory a great opportunity for Fair Trade. In practice EU law was shaped to promote competition as comprehensively as possible. Therefore, when public authorities made purchases, only a narrow and strictly product-related catalogue of criteria has been allowed until very recently. This has enabled companies to sue against the consideration of fair trade criteria. For instance, the coffee corporation Douwe Egberts filed a complaint with the European Commission in 2009 when the Dutch Province Noord-Holland wanted to exclusively buy fair trade coffee: this would discriminate against other bidders and would prevent the selection of the product with the best price-performance ratio. In 2010, therefore, the EU Commission sued the Netherlands for distortion of competition. The decision stated that the province had indeed violated EU law when it insisted on accepting only specific labels and declared social and environmental soundness to be quality criteria.

As of 2014, there is a new legal framework with an EU Directive on public procurement which allows for considering social and environmental criteria when conducting public purchases. Until April 2016, EU Member States must implement this Directive. The Directive enhances the status of the ILO core labour standards and Fair Trade. However, considering minimum labour standards is not prescribed in a legally binding manner. Hence, it is fully dependant on the German legislation as to the extent to which the new leverage will be used to strengthen fair procurement.

TTIP is supposed to open the markets for public procurement on both sides of the Atlantic for EU and US-American companies respectively by treating companies of the trade partner in the same manner as home country companies. By simplifying procedures with TTIP, the EU aspires a trade partnership with a nation far behind the ILO core labour standards which the EU recognises: the US have only ratified the conventions on the abolition of forced labour and against the worst forms of child labour.

As a matter of principle, in the case of public procurement there will also be trade diversions to the disadvantage of countries from the Global South: due to the more intensive trade with the US, suppliers from there will be selected instead of suppliers from developing countries.

### POSITIVE DEVELOPMENTS ARE THWARTED

Currently, fair procurement in Germany is in its infancy and has yet to use all of its potential. It receives a lot of support. Public authorities need a lot of counselling in order to be able to make their purchases more sustainable. Using fair coffee in the city hall, fair food in the municipal canteen as well as fair and sustainably produced uniforms is not yet standard in internal policies.

With TTIP, efforts to include sustainability factors in quality criteria of public procurement would be thwarted: an adjustment of standards in the TTIP-agreement could lead to a lowering of social and environmental norms in the value chain of products and services purchased by public authorities because legal uncertainty would rise. For instance, paying a minimum wage to sewers of firefighter uniforms or demanding that coffee producers may unionise could both be regarded as illegal distortion of competition. Instead of further enlarging their sales opportunities within the EU, Fair Trade producers in developing countries and emerging nations would lose an important future market.

All German calls for tenders by public authorities whose volume is higher than a specific threshold value are directly impacted by TTIP (currently it is 207,000 Euro for supply and service orders) so that the calls for tenders may not only be advertised in Germany, but must be in the EU, too. For years this rule has narrowed down possibilities by cities and municipalities to select local and charitable organisations for orders.

### THE DISPUTE SETTLEMENT MECHANISM ISDS

Also, the dispute settlement mechanism in TTIP would severely hamper the way towards a more sustainable society. The Investor-state dispute settlement, ISDS, allows companies to sue states if due to legal provisions – even those only envisaged – their expected profits are impaired. ISDS gives investors only rights, but no duties. Moreover, ISDS is an instrument which only big corporations with a budget for commercial lawyers can afford. ISDS as part of TTIP could have a significant chilling effect on fair procurement: for instance when cities want to strengthen consideration of labour laws and environmental standards with their fair purchases even though this procedure is more complicated and leads to higher production costs. If, in the future, they risked to be sued for damages, their willingness to undertake fair procurement would decrease.

For this reason it is to no great surprise that the Independent Expert on the Promotion of a Democratic and Equitable International Order at the UN, Alfred-Maurice de Zayas, called on the community of states to abandon ISDS in August 2015: states ought to abolish ISDS, avoid entering new trade agreements with clauses containing ISDS and employ official courts instead of private arbitration panels for legal conflicts. In the meantime, de Zayas recommends creating a fund for states which are sued.

### PROBLEM 3: OPAQUE NEGOTIATIONS AMONG A SELECTED FEW UNDERMINE MULTILATERAL FORA

The present paper concentrates on TTIP. In addition to this agreement, there is a confusing variety of currently planned multilateral, regional and bilateral trade agreements. The most important are:

- already in September 2014, the negotiations to the TTIP-predecessor CETA between Canada and the EU were terminated; CETA could soon be ratified and enter into force;
- in the next two years the Trans-Pacific Partnership (TPP) negotiated between the US, Canada, Mexico and a series of Asian states shall enter into force – while NAFTA continues to apply;
- among 50 states including all EU-Member States, the US, Canada and Mexico, the liberalisation of services is secretly negotiated in the Trade in Services Agreement (TiSA) – about which the public continues to know even less than about TTIP.

Preferential agreements like TTIP erode the multilateral world trade system due to their excluding impact. The multitude of agreements renders it more difficult for states with few resources to have an overview and effectively represent their interests. Even though the system and the political orientation of the World Trade Organisation (WTO) have rightly been criticised, the WTO was – compared to the current secret negotiations on TTIP – a more transparent forum for developing countries and emerging nations to gather information and to participate in negotiations.

With TTIP the most powerful Western states render themselves independent of the WTO. The EU and the US make a special effort to create new leverage for their trade politics since developing countries and emerging nations have begun organising themselves in the framework of the WTO and articulating their interests towards industrial nations.

### “DIVIDE AND RULE”-POLITICS OF INDUSTRIAL NATIONS

As an explanation of the bilateral negotiations outside of the WTO, TTIP-proponents regularly point out that it would be easier to negotiate international standards this way. Even if the US and the EU had the best social and environmental standards worldwide – which is not the case – and could derive a certain legitimation for setting globally applying rules from this: the fact remains that the absent inclusion of other states is politically problematic and unsuitable if the objective is indeed to convince third countries of observing these standards.

The preferential agreement TTIP and the connected claim to create globally applicable rules are no requirement by world trade politics from the viewpoint of the Forum Fairer Handel but an instrument of deliberate “divide and rule”-politics of industrial countries.

To confront this, multilateral spaces must be strengthened. The excessive liberalisation and market opening agenda, especially by the EU and the US, are rejected by the majority of developing countries and emerging nations. This is the reason for the deadlock at the WTO. This agenda needs to be, therefore, reformed. Also, other multilateral spaces like the UN-trade organisation UNCTAD must be reinforced.

### 3. FUTURE PROSPECTS

Due to the aspects explained above it is necessary to prevent TTIP in its currently envisaged version.

As ten UN Special Rapporteurs declared in a joint statement in June 2015 – among them the Rapporteurs on the right to food, on economic, social and culture human rights and on the rights of indigenous peoples – Forum Fairer Handel demands a new kind of trade agreements for socially and ecologically sustainable commerce. In a new era of world trade politics, citizens of the signed states should have the right to vote on all trade agreements with a public referendum. For this right, we have to fight today and must stop TTIP as well as CETA.

This is possible as the successful protests against the ISDS-predecessor, the Multilateral Agreement on Investment (MAI) show: after great pressure from the internationally organised civil society, the consensus among negotiating parties broke in 1998.

In June 2014, at the UN Human Rights Council, a petition for a Treaty on Business and Human Rights stipulating human rights obligations for multinational enterprises was submitted at the initiative of Ecuador. More than 500 international non-governmental organisations, among them Forum Fairer

Handel, have supported this initiative since then. The EU and the US have shown a lot of resistance against the petition. Nevertheless, Human Rights Council Resolution 26/9 was accepted and led to the creation of a working group which is now starting the negotiation process on this treaty.

We regard this negotiation process at the UN Human Rights Council as more constructive than a further attempt at a biased, company-orientated approach like the one currently debated for a modified ISDS. A future UN Convention ought to regulate the rights and obligations of multinational companies and take a balanced attitude towards human rights, environmental and other agreements. And, for all intents and purposes, this convention ought to envisage a permanent court in which investors can claim their rights against states – but also in which states and citizens can sue for their rights against investors.

For a fair world trade respecting and promoting human rights must become an integral part of trade agreements.

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<sup>1</sup> What ought to be done for a fairer world trade system the Forum Fairer Handel showed 2014 in its paper "Forderung des Fairen Handels an die Welthandelspolitik" (demands of Fair Trade on world trade politics, only available in German). Therefore, we focus in the present paper on the critical appraisal of TTIP.

<sup>2</sup> Bhagwati, Jagdish: *Termites in the Trading System. How Preferential Agreements Undermine Free Trade*; Oxford 2008.

<sup>3</sup> Bertelsmann Stiftung (Hrsg.): *Die Transatlantische Handels- und Investitionspartnerschaft (THIP). Wem nutzt ein transatlantisches Freihandelsabkommen?*; Gütersloh 2013.

<sup>4</sup> Felbermayr, Gabriel; Kohler, Wilhelm; Aichele, Rahel; Klee, Günther; Yalcin, Erdal: *Mögliche Auswirkungen der Transatlantischen Handels- und Investitionspartnerschaft (TTIP) auf Entwicklungs- und Schwellenländer*; Studie des ifo Instituts gemeinsam mit dem IAW Tübingen im Auftrag des Bundesministeriums für wirtschaftliche Zusammenarbeit und Entwicklung; München 2015.

<sup>5</sup> Blecker, Robert A.: *The North American Economies After NAFTA. A Critical Appraisal*; *International Journal of Political Economy* 33:3; 2003.

