

**T-TIP  
10 THINGS  
YOU SHOULD KNOW  
ABOUT THE EU-US  
TRADE AGREEMENT**



# **TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP**

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# Remarks and acknowledgements

This brief outlines Access' position on the Transatlantic Trade and Investment Partnership (TTIP) and related trade agreements, both on the process and the substance of the negotiations as of June 2015.

Access to negotiation texts is limited, so this position might be updated as more information becomes available.

By Estelle Masse, Access' Policy Analyst, with comments from colleagues within the organisation.

Design is by Anqi Li and Olivia Martin.

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**Access is an international organisation that defends and extends the digital rights of users at risk around the world. By combining innovative policy, user engagement, and direct technical support, we fight for open and secure communications for all.**

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For more information or assistance, contact our Brussels office at [brussels@accessnow.org](mailto:brussels@accessnow.org)



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# INTRODUCTION

**JUNE 2015 marks the two-year anniversary** of the launch of negotiations on the EU-US trade deal known as the Transatlantic Trade and Investment Partnership (TTIP). On 17 June 2013, EU Commission President José Manuel Barroso held a joint press conference with US President Barack Obama to announce the launch, declaring, "We intend to move forward fast. We can say that neither of us will give up content for the sake of speed, but we intend to make rapid progress."<sup>1</sup> With fast progress as the stated intention, both sides entered the negotiations, but were quickly faced with public outcry and waves of protests from citizens, non-government organisations (NGOs), consumer groups, trade unions, and public entities such as local and regional governments. Two years into the discussions, both the substance and process of these negotiations continue to stir debate.

The lack of transparency in the negotiation process is the major obstacle for participation by citizens and civil society. Before talks even began between the EU's chief negotiator and his US colleague, it was agreed that public access to documents and information would be limited.<sup>2</sup> European citizens protested the lack of transparency and public debate, and 250 NGOs, including Access, sent a letter to the EU Commissioner for Trade calling for more transparency and the release of negotiating texts.<sup>3 4</sup>

The outcome of these closed-door negotiations will severely impact the rights of internet users. For example, the negotiations might result in:

- new limits on access to content or websites via intellectual property provisions like those in the failed Anti-Counterfeiting Trade Agreement (ACTA);
- no prohibition on price discrimination schemes like zero rating, which can result in giving users discriminatory access to only selected sites or online services;<sup>5</sup> and
- weaker, watered-down rules for protecting users' identity and personal information online, to facilitate government or corporate access and collection of users' data.

## The lack of transparency in the negotiation process is the major obstacle for participation by citizens and civil society.

In short, TTIP could undermine our freedom of expression, right to data protection, privacy, and Net Neutrality.

Therefore, in line with the European Digital Rights (EDRi) publication *EDRi's Redlines on TTIP*, which Access helped develop, we assert the need to:<sup>6</sup>

- ensure transparency in the negotiations of trade agreements;
- include a Human Rights protection clause in trade agreements; and
- oppose any mechanism that would trump government's democratically accountable right to regulate, putting at risk the protection of human rights.

These recommendations are not limited to the TTIP but can be applied to the series of trade agreements currently being negotiated around the world. In this brief, we reflect on the state of play in the TTIP talks, identifying 10 things you should know about trade agreements and how they impact your rights.

1. *Statement by President Barroso on the EU-US trade agreement with US President Barack Obama, the President of the European Council Herman Van Rompuy and UK Prime Minister David Cameron.* June 17, 2013. Available online at [http://europa.eu/rapid/press-release\\_SPEECH-13-544\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-544_en.htm)

2. *Letter from Ignacio Garcia Berceo to Dan Mullaney "Arrangements on TTIP documents".* July 5, 2013. Available online at [http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151621.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151621.pdf)

3. *250 arrested in anti-TTIP protest at European Business Summit.* Euractiv, May 16, 2014. Available online at <http://www.euractiv.com/video/250-arrested-anti-ttip-protest-european-business-summit-307626>

4. *Civil society call for full transparency about the EU-US trade negotiations.* May 19, 2014. Available at [https://www.foeeurope.org/sites/default/files/foee\\_ttip-civil-society-transparency-call190514.pdf](https://www.foeeurope.org/sites/default/files/foee_ttip-civil-society-transparency-call190514.pdf)

5. *Access' policy brief on zero rating schemes.* May 2015. Available online at [https://s3.amazonaws.com/access.3cdn.net/d812d59f706c3e8a75\\_w0m6iipn5.pdf](https://s3.amazonaws.com/access.3cdn.net/d812d59f706c3e8a75_w0m6iipn5.pdf)

6. *EDRi's Redlines on TTIP.* January 2015. Available online at [https://edri.org/files/TTIP\\_redlines\\_20150112.pdf](https://edri.org/files/TTIP_redlines_20150112.pdf)

# 1. THE FREE TRADE AGREEMENT FAMILY — TTIP HAS SIBLINGS

Traditionally, the objective of trade agreements is to reduce the cost of exchanging goods and products between two countries or economic areas by lowering tariffs. However, over time trade agreements have become a forum for harmonising rules and standards between countries. Designed as a mechanism to save costs, this harmonisation process can lead to a “race to the bottom” at the expense of citizens, undermining human rights protections.

From agriculture to chemicals, the auto industry to medicines, trade negotiations have a far-reaching scope that now encompasses digital technology and internet businesses. International trade negotiations have therefore become a new platform for developing internet-related policies, and within negotiations on telecommunications, online services, regulatory cooperation, and e-commerce, there are often proposals that would limit users’ rights.

While ACTA did not survive public scrutiny, in recent years governments have come back full force with a long list of siblings — a new generation of “trade agreements 2.0”. Read on to learn about the whole “family”.

## “BRICS” & MINT

With the exception of Mexico, “BRICS” and MINT countries are being left out of trade agreements. EU and US trade negotiators have declared on many occasions that they want to promote the Western way of life through trade agreements.

“BRICS” are **Brazil, Russia, India, China, and South Africa**  
MINT are **Mexico, Indonesia, Nigeria, and Turkey**

**TTIP** Since launch in June 2013, negotiations for what could be the world’s biggest trade area have taken place behind closed doors in near-complete secrecy. Since negotiators promised chapters on telecommunications and e-commerce, it was clear from the very beginning that TTIP could have an impact on the digital sphere. If the agreement were to be finalised in its current state, it would have profound implications for the exercise of human rights in the EU, the US, and globally.

**CETA** The Comprehensive Economic and Trade Agreement (CETA) is a free trade agreement between the EU and Canada about which secret negotiations have recently concluded.

The two countries will initiate ratification of the treaty in the coming year, even though deep concerns remain as to the treatment of digital rights.<sup>7</sup> ACTA-like provisions, a vague and opaque Investor-State Dispute Settlement (ISDS) mechanism, and inadequate standards for protecting financial data are only few examples of the troubling aspects of this agreement.

**TPP** The Trans-Pacific Partnership (TPP) is a proposed regional trade agreement that has been in negotiations since 2005. As of 2015, 12 countries throughout the Asia Pacific region are taking part in negotiations: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam. Participating countries initially set the goal of wrapping up negotiations in 2012, but discussions about contentious issues such as intellectual property have resulted in delay. While governments expect to finalise TPP in the upcoming months, more than a dozen chapters have not been revealed to the public.

These negotiations are opaque, but they are nevertheless already affecting the development of legislation in the negotiating countries. For example, New Zealand was forced to change its recently adopted regulation outlawing software patents in order to remain part of the TPP agreement.<sup>8</sup>

**TiSA** The Trade in Services Agreement (TiSA) is a trade agreement currently being negotiated by 24 members of the World Trade Organisation (WTO), which represents 51 countries including 32 from Europe, seven from Asia, five from North America, five from South America, and two from Oceania. TiSA aims to further open and harmonise these markets for trade in services, such as e-commerce, cross-border data flows, and technology transfer.<sup>9</sup> Launched in 2013, the negotiations for this agreement, like the others in this brief, are taking place behind closed doors. Leaks of details from the negotiations have revealed that proposals made by several countries in the e-commerce chapter could severely undermine users’ right to privacy, protection against surveillance, and the principles of Net Neutrality.<sup>10 11</sup>

Now that we have introduced these trade agreements, we will explore how their ratification could impact our fundamental rights. Despite the public’s lack of access to official documents — leaving Access and other civil society groups with no other option but to examine leaked documents — we have been able to identify clear threats to digital rights. The following sections will give you insight to what is being discussed with regard to intellectual property, Net Neutrality, surveillance, and privacy.

7. *Acta’s worst clauses resurface in Canada-EU trade treaty, verbatim.* Wired.co.uk, July 10, 2012. Available online at <http://www.wired.co.uk/news/archive/2012-07/10/acta-resurfaces-in-ceta>

8. *Trade deal threatens New Zealand software patent ban.* ZDNet, December 30, 2013. Available online at <http://www.zdnet.com/article/trade-deal-threatens-new-zealand-software-patent-ban/>

9. *European Commission information page on the Trade in Services Agreement.* Available at <http://ec.europa.eu/trade/policy/in-focus/tisa/>

10. Wikileaks page on TiSA. Available at <https://wikileaks.org/tisa/>

11. *Leak: US pushing to undermine Net Neutrality and privacy in major trade agreements.* Access, December 18, 2014. Available online at <https://www.accessnow.org/blog/2014/12/18/leak-u.s.-pushing-to-undermine-net-neutrality-and-privacy-in-major-trade-ag>



## 2. TTIP COULD TRADE AWAY YOUR PRIVACY

Although EU member states have required to exclude the issues of privacy and data protection from the negotiations, these issues nevertheless arise in discussions about “data flows”. The EU and the US come to the table with radically different approaches to legal standards for data protection. On the EU side, data protection and privacy are fundamental rights recognised under the EU Charter of Fundamental Rights and protected by EU law, while the US still lacks comprehensive data protection legislation.<sup>12</sup> Worse, the US International Trade Commission considers data protection a “barrier to trade” and seeks to lower data protection standards as a way to increase revenue in the digital economy. According to the International Trade Commission’s study on digital trade in the US and global economies, the US has a “particular concern” with regard to EU data protection requirements, due to their “strictness and difficulty to comply with”, and therefore the commission highlights recommendations for “interoperability”.<sup>13 14</sup>

Since disagreements over legal standards for protecting personal data could derail the negotiations, the European Commission appears to be trying to convince the public that privacy will not be discussed. Despite this, a leaked e-commerce proposal that appears in TiSA and TTIP reveals that the US has advanced provisions that would undermine fundamental rights to privacy and data protection.<sup>15</sup> The US proposal would authorise the transfer of EU citizens’ personal data to any country, trumping the EU data protection framework ensuring that these data can only be transferred to countries offering a certain level of protection.

12. Charter of Fundamental Rights of the European Union. Available online at [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

13. Digital Trade in the US and Global Economies, Part 2. United States International Trade Commission, August 2014. Available online at <http://www.usitc.gov/publications/332/pub4485.pdf>

14. Digital Trade in the US and Global Economies, Part 1. United States International Trade Commission, July 2013. Available online at <http://www.usitc.gov/publications/332/pub4415.pdf>

15. Wikileaks page on TiSA. Available at <https://wikileaks.org/tisa/>

The TTIP/TiSA leaked text from 2014 introduces a carveout for national security that would enable any signatory country to “take any action which it considers necessary for the protection” of its security interest.<sup>16</sup> This means, essentially, that states could do anything in name of national security, putting security above government’s duty to protect fundamental rights. A measure to similar effect may also exist in the TPP.<sup>17</sup>

Sources from the European Commission have indicated that the EU is “not convinced” by this proposal and would not be able to accept it.<sup>18</sup> But the US trade negotiators have a special ally. Reports indicate the US National Security Agency (NSA) may have given shape to this national security clause.<sup>19</sup>

Surveillance is the elephant in the room in these negotiations. At the beginning of the TTIP negotiations, in an attempt to justify the lack of transparency in the talks, the US and the EU explained that a certain level of secrecy in the talks would be necessary, as negotiating a treaty is “like a card game”: you don’t want to show the other player your cards.<sup>20</sup> But not everyone is playing by the same rules and the US might have a technical advantage in this “game”. The Snowden disclosures revealed that the NSA has spied on several European Union offices and diplomats, gaining access to private discussions, emails, and internal documents.<sup>21</sup> Official documents published in journalist Glenn Greenwald’s *No Place to Hide* demonstrate how the NSA has been spying for the benefits of its so-called customers, including US Trade Representative and the US Department of Commerce.<sup>22</sup> The Obama Administration has since apologised for spying on allies across the ocean, but EU institutions still haven’t gotten assurances that these unlawful intrusions have stopped. Simply put, transatlantic trust remains in question, and citizens are not the only ones being kept in the dark in these negotiations.

## 3. TTIP MAY BE A BACKDOOR TO SURVEILLANCE

16. Leak: US pushing to undermine Net Neutrality and privacy in major trade agreements. Access, December 18, 2014. Available online at <https://www.accessnow.org/blog/2014/12/18/leak-u.s.-pushing-to-undermine-net-neutrality-and-privacy-in-major-trade-ag>

17. The World’s Next Major Trade Agreement Will Make NSA Spying Even Easier. Motherboard, July 16, 2014. Available online at <http://motherboard.vice.com/read/the-trans-pacific-partnership-will-make-nsa-spying-easier>

18. Trade agreements and the Net. Ralf Bendrath at Re:publica, May 2015. Slides available online at <https://re-publica.de/session/trade-agreements-and-net-faq-panel>

19. Trade agreements and the Net. Ralf Bendrath at Re:publica, May 2015. Slides available online at <https://re-publica.de/session/trade-agreements-and-net-faq-panel>

20. Keeping us in the dark. Le Monde Diplomatique, June 2014. Party available online at <http://mondediplo.com/2014/06/13ttip>

21. Attacks from America: NSA Spied on European Union Offices. Der Spiegel Online, June 29, 2013. Available online at <http://www.spiegel.de/international/europe/nsa-spied-on-european-union-offices-a-908590.html>

22. No place to Hide. Glenn Greenwald. Slides available at <http://leaksource.info/2014/07/31/glenn-greenwalds-no-place-to-hide-nsa-documents-excerpts/>

# 4. TTIP THREATENS A FREE AND OPEN INTERNET

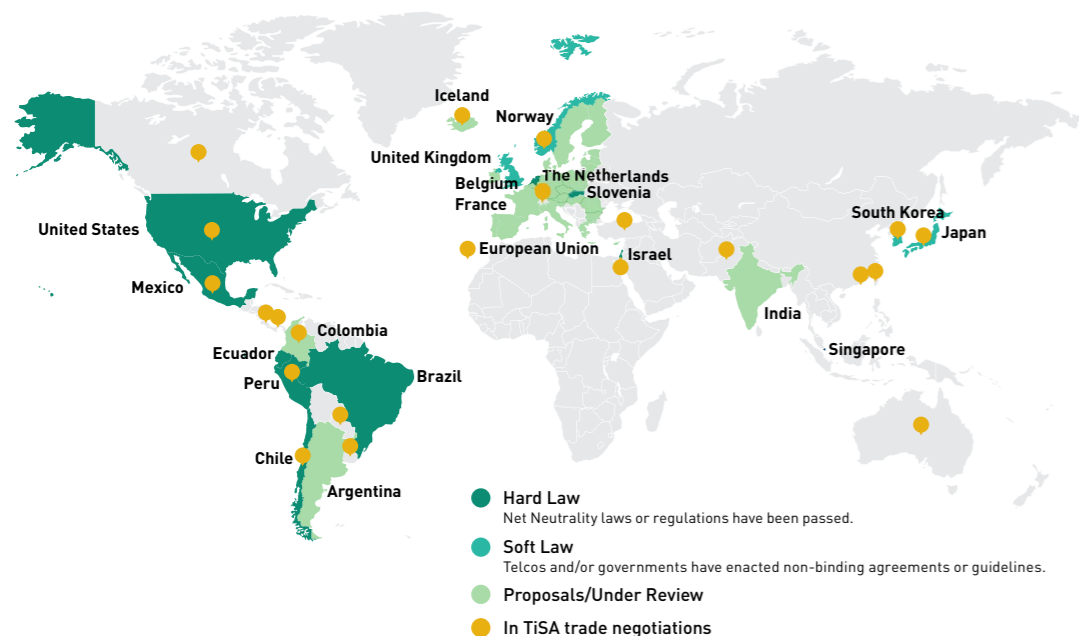
The broad, vague language in the provisions on internet access proposed by the US in the TTIP negotiations puts at risk unfettered access to the open internet.<sup>23</sup> Since the proposed text lacks clarity, it could allow internet service providers to prioritise specific services, or enable price discrimination schemes such as zero rating services.<sup>24</sup> These zero rating schemes limit users' access to the internet because they would favour particular services and applications, likely chosen by dominant tech and telecom companies. This prioritisation results in network discrimination, in which people get discriminatory access to a limited, pre-selected set of internet services — the very opposite of Net Neutrality.

The situation is even worse when it comes to the TiSA negotiations. The same text has been advanced, with the support of a dozen countries including Australia, the US, Canada, Chile, Colombia, Israel, and Japan.<sup>25</sup> The map below shows all the countries that have Net Neutrality protections. The red squares indicate which countries are taking part in the TiSA negotiations. If TiSA is adopted, 16 countries could see their legislation on Net Neutrality overturned, since international trade agreements prevail over national rules. Backdoor, undemocratic policy-making through this trade agreement would then leave Brazil, Ecuador, and Argentina the only countries in the world with protection for the open internet.

23. Leak: US pushing to undermine Net Neutrality and privacy in major trade agreements. Access, December 18, 2014. Available online at <https://www.accessnow.org/blog/2014/12/18/leak-u.s.-pushing-to-undermine-net-neutrality-and-privacy-in-major-trade-ag>

24. Access' policy brief on zero rating schemes. May 2015. Available online at [https://s3.amazonaws.com/access.3cdn.net/d812d59f706c3e8a75\\_w0m6iipn5.pdf](https://s3.amazonaws.com/access.3cdn.net/d812d59f706c3e8a75_w0m6iipn5.pdf)

25. Wikileaks page on TiSA. Available at <https://wikileaks.org/tisa/>



## WILL TRADE NULLIFY GLOBAL NET NEUTRALITY PROTECTIONS?

This map indicates the most up-to-date information regarding existing proposals, agreements, laws, and regulations on Net Neutrality based on our research. It is not a qualitative analysis of rules on the books or on the table.



The TTIP negotiations started just over a year after US citizens defeated the Stop Online Piracy Act (SOPA) and Protect IP Act (PIPA) bills and the European Parliament rejected ACTA.<sup>26 27</sup> Those proposals sought to prevent copyright infringement, but put the interests of rightsholders ahead of free expression, privacy, and other human rights.<sup>28</sup> For instance, the proposals would have allowed indiscriminate or widespread monitoring of users' behaviour and online communications, and would also have enabled online filtering and censorship. These threats are serious, and for that reason activist groups, including Access, joined forces before the launch of the TTIP negotiations to demand that intellectual property issues be excluded from the talks.<sup>29</sup>

Despite this, intellectual property is part of the trade negotiations in CETA, TTIP, and TPP. Reports have confirmed the fears of civil society groups: it appears that provisions from ACTA have essentially been copied and pasted into these agreements.<sup>30</sup> Indeed, leaked documents from the TPP negotiations, such as the May 2014 draft of the TPP intellectual property chapter, reveal that US negotiators are pushing for adoption of copyright measures far more restrictive than currently required by international treaties, going even further than what was proposed in ACTA.<sup>31</sup>

# 5. TTIP COULD THREATEN YOUR RIGHTS VIA INTELLECTUAL PROPERTY PROVISIONS

26. Human rights community speaks out on PROTECT IP Act. Access, January 16, 2012. Available online at <https://www.accessnow.org/blog/2012/01/16/human-rights-community-speaks-out-on-protect-ip-act>

27. Access statement on ACTA rejection. Access, July 4, 2012. Available online at <https://www.accessnow.org/blog/2012/07/04/access-statement-on-acta-rejection>

28. What makes ACTA so controversial. Access, EDRI, and TACD. Available online at <https://edri.org/files/acta-bklt-p2s.pdf>

29. Keeping IP out of TAFTA. Access, March 18, 2013. Available online at <https://www.accessnow.org/blog/2013/03/18/keeping-ip-out-of-tafta>

30. Acta's worst clauses resurface in Canada-EU trade treaty, verbatim. Wired.co.uk, July 10, 2012. Available online at <http://www.wired.co.uk/news/archive/2012-07/10/acta-resurfaces-in-ceta>

31. Leaked TPP Intellectual Property Chapter from May 2014. Available on EFF website at <https://www.eff.org/document/leaked-tpp-intellectual-property-chapter-may-2014>

# 6. TTIP COULD THREATEN NATIONAL SOVEREIGNTY BY ALLOWING COMPANIES TO SUE GOVERNMENTS

To achieve the objectives of low barriers to trade and high protection for investors and their investments, negotiators seek to include two types of mechanisms in trade agreements:

- Investor-State Dispute Settlement (ISDS), and
- regulatory cooperation.

## US\$ 2.3 BILLION

This is the amount of the highest fine ever awarded under ISDS, paid by Ecuador to the US oil company Occidental Petroleum.

ISDS is a dispute-resolution mechanism that originated in the 1950s, created to protect investors from the

consequences of arbitrary government decisions and weak court systems in developing countries. Over the years, however, the scope of the ISDS mechanism has expanded, and it has been introduced into several free trade agreements between countries with functioning judicial systems. ISDS now operates as an arbitration system with an increased scope, loose rules, and little accountability to the public. This “Trojan horse” mechanism lets companies sue governments and challenge legislation in arbitration processes outside of established national

courts.<sup>32</sup> This extrajudicial system could result in extended power for private companies to sue states in order to force them to change their legislation, and ultimately challenge the democratically accountable right of governments to regulate.

## ARGENTINA

World’s most sued country under ISDS.

Over the years, the number of disputes under ISDS has grown from fewer than 50 cases between the 1950s and 2000, to 514 known cases between 2000 and 2012, providing numerous examples of companies abusing the mechanism to increase profits.<sup>33</sup> In November 2012, Eli Lilly & Co., the fifth-largest US pharmaceutical corporation, initiated a

dispute under the North American Free Trade Agreement (NAFTA) to attack Canada’s standards for granting drug patents.<sup>34</sup> Eli Lilly claimed that the invalidation of a patent undermined the company’s “expected future profits,” and demanded compensation in the amount of \$500 million. While we don’t know yet how this dispute will be resolved, the Canadian government is already starting to rethink its patent legislation in order to avoid paying this amount.<sup>35</sup>

ISDS has been perhaps the most controversial issue in the TTIP debate in Europe so far. In an attempt to address criticism, the European Commission launched a public consultation on this mechanism, to which Access responded.<sup>36</sup> Despite more than 90% of respondents calling for the exclusion of such a mechanism from TTIP, the Commission recently presented a new window-dressed proposal for an ISDS.<sup>37</sup>

While there has been growing public pressure on the TTIP negotiations over the past 12 months in Europe, the final outcome of the CETA negotiations will also have a big impact on the EU-US trade deal.<sup>39 40</sup> Even if an ISDS mechanism is excluded from TTIP, the ISDS mechanism in CETA could provide a “backdoor” for US companies, enabling them to use their Canadian affiliates to file ISDS claims (see our map of US companies in Canada).



32. *ISDS: The trojan horse clause giving more power to companies*. Access, May 20, 2014. Available online at <https://www.accessnow.org/blog/2014/05/20/isds-the-trojan-horse-clause-giving-more-power-to-companies>

33. *Recent developments in Investor-State Dispute Settlement (ISDS)*. UNCTAD, May 2013. Available online at [http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf)

34. *Notice of intent to submit a claim to arbitration under NAFTA chapter eleven - Eli Lilly & Company vs The Government of Canada*. Available online at <http://www.italaw.com/sites/default/files/case-documents/italaw1172.pdf>

35. *Eli Lilly files \$500M NAFTA suit against Canada over drug patents*. CBC News, September 13, 2013. Available online at <http://www.cbc.ca/news/business/eli-lilly-files-500m-nafta-suit-against-canada-over-drug-patents-1.1829854>

36. *EU’s growing resistance to include ISDS in trade deals*. Access, August 5, 2014. Available online at <https://www.accessnow.org/blog/2014/08/05/eus-growing-resistance-to-include-isds-in-trade-deals>

37. *Access’ submission to the European Commission to the public consultation on ISDS*. Available online at [https://s3.amazonaws.com/access.3cdn.net/53e096f24938417137\\_bom6ibgyf.pdf](https://s3.amazonaws.com/access.3cdn.net/53e096f24938417137_bom6ibgyf.pdf)

38. *Malmström’s “new” ISDS: Same same but different*. Access, May 26, 2015. Available online at <https://www.accessnow.org/blog/2015/05/26/malmstroems-new-isds-same-same-but-different>

39. *From trade tariffs to trust – TTIP a year on*. EU Observer, July 28, 2014. Available online at <https://euobserver.com/economic/125070>

40. *Canada and EU trade talks: The backdoor to ISDS endorsement*. BEUC, May 8, 2014. Available online at <http://www.beuc.eu/blog/canada-and-eu-trade-talks-the-backdoor-to-isds-endorsement/>

# 7. TTIP GIVES FOREIGN GOVERNMENTS AND LOBBYISTS MORE POWER IN CRAFTING LAWS

New trade agreements, such as TTIP, TPP, or TiSA, seek to harmonise legislation between countries to remove so-called “legal barriers to trade”. Through proposed regulatory cooperation regimes, countries would notify trade counterparts via an opaque regulatory cooperation body when they plan to develop legislation that might have an impact on trade, including sharing draft legislation and making their legislative calendars available. Such regulatory cooperation between countries would apply to any legislation developed after an agreement is concluded and would apply retroactively to any legislation that might raise “unnecessary barriers to trade”. The scope of this regulatory cooperation would include sectors that are not covered under the TTIP agreement. Therefore, even if TTIP does not include provisions undermining the right to privacy or freedom of expression, these rights could still be threatened under regulatory cooperation. This threat is significant, considering that several countries, including the US and Japan, may see other countries’ measures to protect consumer and fundamental rights as barriers to trade.

How would this mechanism work in practical terms? Let’s imagine a situation where the EU Commission puts forward a proposal for reforming copyright. The Commission would have to inform its US counterpart at the drafting stage. At this point, the US would analyse the trade impact of this proposal, a process that can take several weeks or even months. The Commission would then take comments by the US into account before releasing the proposal to EU legislators and the public. In essence, only after US trade representatives had examined the text would civil society groups and EU elected representatives be informed and able to provide feedback. This does not even take into consideration the influence of companies lobbying trade representatives throughout the process.

In the recent years, pressure from lobbyists have been intensifying. In the EU, the ongoing reform of the data protection framework is subject to unprecedented level of lobbying from the industry. In February 2013,

the lobbyplag.eu website revealed that some members of Parliament were not only inspired to make amendments suggested by representatives of US firms, but actually directly copied and pasted proposals sent by the lobbyists.<sup>41</sup>

While ISDS would give companies more power over governments, regulatory cooperation would formalise closed-door lobbying. Lobbying is a billion-euro industry in the EU and the US, and several firms have invested in offices situated within a kilometre of political institutions, so they can stand ready to influence the development of crucial pieces of legislation.<sup>42</sup> Recent reports indicate that there are at least 30,000 lobbyists in Brussels, nearly matching the 31,000 staff employed by the European Commission and making Brussels second only to Washington in concentration of lobbyists.

In short, the regulatory cooperation process is providing a channel of information disclosure and lobbying input that is privileged over the normal national processes. Foreign governments and companies could use this process to water down or even kill proposed legislation that conflicts with their interests, before the legislation is even publicly introduced. Domestic groups, civil society, and even elected representatives themselves might end up having less time and less information for analysing or engaging on these issues than would industry lobbyists or foreign trade ministries/other country regulators.

**100,000** 

estimated number of lobbyists in Washington, DC<sup>41</sup>

**535** 

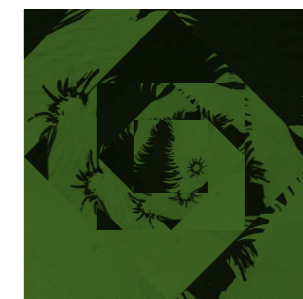
members of US Congress

**30,000** 

estimated number of lobbyists in Brussels<sup>42</sup>

**751** 

members of European Parliament



41. Lobbyplag.eu, amendments: <http://lobbyplag.eu/map>

42. 30,000 lobbyists and counting: is Brussels under corporate sway? The Guardian, May 8, 2014. Available online at <http://www.theguardian.com/world/2014/may/08/lobbyists-european-parliament-brussels-corporate>



# 8. MANY LAWMAKERS DISLIKE TTIP

43. EU Trade Commissioner Karel De Gucht Warns 'No TTIP Without ISDS'. International Business Times, October 16, 2014. Available online at <http://www.ibtimes.co.uk/eu-trade-commissioner-karel-de-gucht-warns-no-ttip-without-isds-1470373>

44. De Gucht rejects claims Commission misrepresented benefits of TTIP. Euractiv, September 09, 2014. Available online at <http://www.euractiv.com/sections/trade-industry/de-gucht-rejects-claims-commission-misrepresented-benefits-ttip-308292>

45. TTIP "fresh start" means more clarity, debate, and realism, Malmström tells MEPs. European Parliament Press Release, December 03, 2014. Available online at <http://www.europarl.europa.eu/news/en/news-room/content/20141201PR81714/html/TTIP-%E2%80%9Cfresh-start%E2%80%9D-means-more-clarity-debate-and-realism-Malmstr%C3%B6m-tells-MEPs>

46. TTIP: a peek into the negotiations. Access, February 9, 2015. Available at <http://www.euractiv.com/sections/trade-society/divided-eu-parliament-postpones-vote-ttip-315265> <https://www.accessnow.org/blog/2015/02/09/ttip-a-peek-into-the-negotiations>

47. Divided EU Parliament postpones vote on TTIP. Euractiv, June 10, 2014. Available online at <http://www.euractiv.com/sections/trade-society/divided-eu-parliament-postpones-vote-ttip-315265>

48. TTIP "dirty deal" falls apart as EU debate and vote cancelled. ArsTechnica, June 10, 2014. Available online at <http://arstechnica.co.uk/tech-policy/2015/06/ttip-dirty-deal-falls-apart-as-eu-debate-and-vote-cancelled/>

Along with civil society, the European Parliament and EU local authorities are being kept at a distance from the negotiations. Members of the EU Parliament have limited access to selected negotiating documents under very strict rules which prohibit them from taking notes when they consult documents in the so-called "reading rooms". Recent proposals in the US would also limit the power of the US Congress to provide meaningful input in the negotiations. Effectively, elected representatives are being shut out of negotiations even though they will be tasked with deciding whether to adopt TTIP once the negotiations are complete.

The EU Commissioner for Trade, Cecilia Malmström, has been tasked with defending TTIP since her nomination in November 2014. Since taking over the work of her predecessor, Commissioner Karel De Gucht, she has faced growing concerns among members of the European Parliament and EU member states — both with regard to the controversial scope of the agreement and the blatant lack of transparency in the negotiating process. While Karel de Gucht directly dismissed his opponents, Malmström has had to adopt a more conciliatory approach.<sup>43 44</sup> Notably, she presented a strategy for transparency to make a "fresh start" in the negotiations. This has resulted in minor improvements to a process that unfortunately remains closed to the public and civil society, and therefore still fails to provide legitimacy and accountability.<sup>45 46</sup>

While public pressure against TTIP is growing, the two largest political groups in the European Parliament are blocking debate or a vote on the issue. On June 9th, the President of the European Parliament, Martin Schulz, cancelled a major vote on TTIP scheduled for the very next day.<sup>47</sup> For months, the European Parliament had worked to craft a resolution reflecting its opinion on TTIP. While the socialists made a backdoor deal with the conservatives to keep ISDS in the text, an amendment that called on the European Parliament to oppose including ISDS in TTIP had gained support, upsetting the backdoor deal.<sup>48</sup> This significant disagreement between political groups is what prompted Schulz to postpone the vote and avoid the public embarrassment of having the resolution struck down.

Debate on this trade agreement was also cancelled, through an exceptional vote organised at 8.00 in the morning. Most members of the European Parliament were not informed that the vote was going to take place, and therefore 350 of them did not show up. It's not likely to be a coincidence that only the MEPs from groups opposing TTIP were missing. Commissioner Malmström seemed to be amused by the situation. But panic, secret deals, and undemocratic procedures do not bode well for the future of TTIP.<sup>49 50</sup>

Many EU member states have demonstrated that they have reservations about TTIP, in particular about the ISDS mechanism:

- France initially took a strong stance against ISDS. The French Parliament unanimously approved a text in February 2015 asking for the removal of ISDS from TTIP.<sup>51</sup> A couple of days later, officials from the government sent a letter to French members of the EU Parliament, stating that in a number of cases, ISDS would in fact be better suited for handling a dispute than national courts, thus ignoring the decision of the national parliament.<sup>52</sup> But if France's position is unclear, other countries have been more radical in their opposition to TTIP, and in particular to the inclusion of ISDS.
- Germany told EU officials that it will oppose TTIP if it includes an ISDS mechanism, arguing that US investors already have sufficient legal protection in the national courts of the Union.<sup>53</sup>
- Austria went even further in contesting ISDS mechanisms, asking to renegotiate CETA given the wide concerns about the ISDS provision.<sup>54</sup>
- In Greece, the new Syriza-led Greek parliament declared that it will never ratify TTIP in its current form.<sup>55</sup>

49. Cecilia Malmström's tweet: <https://twitter.com/MalmstromEU/status/608517335708758016>

50. TTIP vote postponed as European Parliament descends into panic over trade deal. The Independent, June 10, 2015. Available online at <http://www.independent.co.uk/news/business/news/ttip-vote-postponed-as-european-parliament-descends-into-panic-over-trade-deal-10310965.html>

51. French Senate tells TTIP negotiators to 'abolish' ISDS. Euractiv, February 04, 2015. Available online at <http://www.euractiv.com/sections/trade-society/french-senate-tells-ttip-negotiators-abolish-isds-311823>

52. France makes U-turn on TTIP arbitration. Euractiv, February 27, 2015. Available online at <http://www.euractiv.com/sections/trade-society/france-makes-u-turn-ttip-arbitration-312459>

53. Germany plans to block ISDS clause in transatlantic trade deal. Out-Law.com, March 18, 2014. Available online at <http://www.out-law.com/en/articles/2014/march/germany-plans-to-block-isds-clause-in-transatlantic-trade-deal/>

54. Austrian chancellor calls for ISDS to be removed from CETA. Canadian Council, May 15, 2015. Available at <http://canadians.org/blog/austrian-chancellor-calls-isds-be-removed-ceta>

55. Syriza-led Greek parliament 'will never ratify TTIP'. Euractiv, February 09, 2015. Available online at <http://www.euractiv.com/sections/trade-society/syriza-led-greek-parliament-will-never-ratify-ttip-311719>

# 9. IN THE US, ALL EYES ARE ON THE TRANS-PACIFIC PARTNERSHIP WHILE TTIP IS GROWING

56. Citizens Trade campaign on TPA: <http://www.citizenstrade.org/ctc/trade-policies/fast-tracktrade-promotion-authority-tpa/>

57. *The Trans-Pacific Partnership clause everyone should oppose.* The Washington Post, February 25, 2015. Available online at [http://www.washingtonpost.com/opinions/kill-the-dispute-settlement-language-in-the-trans-pacific-partnership/2015/02/25/ec7705a2-bd1e-11e4-b274-e5209a3bc9a9\\_story.html](http://www.washingtonpost.com/opinions/kill-the-dispute-settlement-language-in-the-trans-pacific-partnership/2015/02/25/ec7705a2-bd1e-11e4-b274-e5209a3bc9a9_story.html)

58. *Obama Fires Back At Elizabeth Warren And Trade Critics, Escalating Democratic Feud.* The Huffington Post, April 24, 2015. Available at [http://www.huffingtonpost.com/2015/04/24/obama-tears-into-elizabet\\_n\\_7137854.html](http://www.huffingtonpost.com/2015/04/24/obama-tears-into-elizabet_n_7137854.html)

While controversy over TTIP keeps on growing in the EU, in the US debate remains focused on its little brother, the TPP, as negotiators are entering the final stage of the negotiations.

Until recently, public debate focused primarily on the infamous intellectual property chapter of the TPP. But introduction of the highly controversial Trade Promotion Authority (TPA) bill brought the issue of the ISDS to the fore.<sup>56</sup> During the debate on the TPA, several US senators voiced concerns about the ISDS. President Obama was forced to defend the TPA bill and the ISDS mechanism as a way to protect US investors abroad, and he dismissed its opponents, highlighting the fact that until now, the US has never lost a case.<sup>57 58</sup>

The recent adoption of the TPA, so-called “fast track negotiating authority”, gives the US President the power to negotiate international trade agreements that Congress would be able to approve or disapprove but not amend or filibuster. The US Congress went back and forth for several weeks before approving the authority. Conscious of the ever-growing opposition to TPP, the Obama administration has made this bill one of its top priorities, since it could allow the trade agreement to be ratified quickly, thus avoiding another embarrassing setback for Obama on trade policy.

# 10. WE NEED TO FIGHT FOR TRANSPARENCY, PROTECTION FOR HUMAN RIGHTS, AND DEMOCRATICALLY ACCOUNTABLE LEGISLATIVE PROCESSES

Access asserts the need to ensure transparency in the negotiations of trade agreements, including:

- providing access to the draft agreement and permitting civil society to provide comments,
- conducting public consultation on text proposed in the negotiations and,
- including civil society in the negotiations talks and sectoral dialogues.

As a condition for trade agreements to be concluded, Access urges negotiators to include a Human Rights clause based on the UN Guiding Principles on Business and Human Rights, which was unanimously approved by the UN Human Rights Council in 2011.<sup>59</sup>

Other rules or measures on human rights should be excluded from trade agreements. In particular, we oppose any provisions impacting the right to privacy, data protection, and freedom of expression.

In line with *EDRi's Redlines on TTIP*, Access opposes any mechanism that would trump governments' democratically accountable right to regulate, putting at risk the protection of human rights.<sup>60</sup>

59. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.* United Nations General Assembly, March 2011. Available online at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.31\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.31_en.pdf)

60. *EDRi's Redlines on TTIP.* January 2015. Available online at [https://edri.org/files/TTIP\\_redlines\\_20150112.pdf](https://edri.org/files/TTIP_redlines_20150112.pdf)

## CONCLUSION

With TTIP and TiSA being negotiated at the same time, and negotiations for CETA and TPP coming to a conclusion, threats to digital rights are multiplying and arriving through several different legislative vehicles. However, we believe that by working together, we can fend off these threats.

If you are from a country taking part in any of these negotiations, you can speak out against the lack of transparency in trade negotiations and provisions that put your rights at risk. When the time comes, your elected representatives will have to vote on whether to adopt these agreements. Seize the opportunity to express your views and call on your representatives to uphold your fundamental rights.

## GLOSSARY

<b>ACTA</b>	Anti-Counterfeiting Trade Agreement
<b>CETA</b>	Comprehensive and Economic Trade Agreement
<b>BRICS</b>	Brazil, Russia, India, China, and South Africa
<b>EDRI</b>	European Digital Rights
<b>EU</b>	European Union
<b>FTA</b>	Free Trade Agreement
<b>GATS</b>	General Agreement on Trade in Services
<b>IP</b>	Intellectual Property
<b>ISDS</b>	Investor to State Dispute Settlement
<b>MEPs</b>	Members of the European Parliament
<b>MINT</b>	Mexico, Indonesia, Nigeria, and Turkey
<b>NAFTA</b>	North-American Free Trade Agreement
<b>PIPA</b>	Protect IP Act
<b>SOPA</b>	Stop Online Piracy Act
<b>TiSA</b>	Trade in Services Agreement
<b>TTIP</b>	Trade and Investment Partnership
<b>TPA</b>	Trade Promotion Authority
<b>TPP</b>	Trans-Pacific Partnership
<b>US</b>	United States



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