

**T**ransatlantic  
**T**rade  
&  
**T**elecommunications  
**P**rotection

**AND DIGITAL RIGHTS**

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European Digital Rights (EDRi) is a network of 33 civil and human rights organisations from 19 European countries. Our goal is to promote, protect and uphold fundamental human rights and freedoms in the digital environment.

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# WHAT IS TTIP?

The Transatlantic Trade and Investment Partnership (TTIP – pronounced “tee-tip”) is a draft trade agreement being negotiated between the United States (US) and the European Union (EU). President Barack Obama announced TTIP at his State of the Union address to Congress in February 2013. Representatives from the European Commission and the US Government held their first meeting to discuss TTIP in June 2013 and they have met roughly every three months since then.

TTIP’s proponents argue that it will increase trade and investment by reducing trade barriers between two of the largest economic blocs in the world. The European Commission says that it will inter alia help large and small businesses by increasing their access to US markets, reducing the amount of red tape they have to go through and making it easier to develop new rules to make international trade.<sup>1</sup>

Despite the assurances given by the European Commission and the US Government, European and US citizens have serious concerns about TTIP, the way it is being negotiated without adequate levels of transparency, and its potentially negative impacts, including on fundamental rights and freedoms.

This booklet presents the concerns that EDRI and its members have regarding TTIP, such as the lack of transparency in

the negotiations, respect for the rule of law and democracy, data protection, privacy, “intellectual property”, net neutrality, and ISDS, which would give rights to foreign companies to claim compensation from governments, undermining democracy and the right to legislate.

## EDRI’s RED LINES on TTIP

1. Ensuring real **transparency** and accountability
2. Protection of the **right to regulate** and a guarantee of respect for **rule of law**
3. **Data protection and privacy** not included
4. End of **mass surveillance** and no lock-in of **encryption** standards
5. “**Intellectual Property**” not included
6. No provisions on **net neutrality**
7. **Exclusion of any form of ISDS**
8. Inclusion of a binding and enforceable **Human Rights clause**

<sup>1</sup> European Commission Trade Policy In focus: Transatlantic Trade and Investment Partnership (TTIP) - About TTIP <http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/>

# 1. INSUFFICIENT TRANSPARENCY AND DEMOCRATIC DEFICIT: NOT A GOOD STARTING POINT

Transparency, democracy and accountability are core principles that any trade negotiation should respect. However, both the US' and the EU's trade policies fail to even set these as possible goals. The lack of real transparency and the democratic deficit of the negotiations are two of the key criticisms surrounding TTIP and other free trade agreements.

Before the TTIP negotiations even started, many civil society organisations had asked the European Union and the United States to “release, in timely and ongoing fashion, any and all negotiating or pre-negotiation texts.”<sup>2</sup> However, citizens' demands have not been adequately addressed.

Thanks to pressure from the public opinion and certain policy- and decision-makers, the European Commission has taken small steps to change its transparency policy in TTIP,<sup>3</sup> fearing a repeat of ACTA<sup>4</sup>'s failure.<sup>5</sup> According to official documents<sup>6</sup>, the Council of the European Union (which represents Member States) and the Commission want to do so by reinforcing<sup>7</sup> their public relations activities, “explain[ing] the basics of the negotiations and [addressing] criticism”.<sup>8</sup>

However, transparency is not achieved by telling people that they know what they don't know.

Due to the serious concerns raised, the European Ombudsman, the EU authority dealing with maladministration in EU bodies and institutions, launched a public consultation on transparency in the TTIP negotiations.<sup>9</sup> On 6 January 2015, she adopted a decision on the matter.<sup>10</sup> The Ombudsman challenged the anti-openness position that she caricatured as saying that “greater transparency could lead to confusion and misunderstandings among citizens.” She said that “such arguments are profoundly misguided. The only effective way to avoid public confusion and misunderstanding is more transparency and a greater effort proactively to inform public debate.” As of 19 May 2015, the European Ombudsman's view was that she still did not see enough efforts regarding transparency, especially from the US side.<sup>11</sup>

**Transparency is achieved by opening the negotiations to the public. Otherwise, the result is lack of accountability and public scrutiny and a democratic deficit.**

2 <http://www.citizen.org/IP-out-of-TAFTA>

3 <https://edri.org/endoritorial-transparency-ttip/>

4 <https://edri.org/acta-archive/>

5 <https://edri.org/ttip-european-ombudsman-warns-european-institutions-learn-acta-negotiations/>

6 <http://data.consilium.europa.eu/doc/document/ST-14713-2014-INIT/en/pdf>

7 In November 2013, the Commission had already foreseen a PR strategy to overcome criticism: <http://corporateeurope.org/trade/2013/11/leaked-european-commission-pr-strategy-communicating-ttip>

8 <http://corporateeurope.org/international-trade/2014/11/miscommunicating-ttip>

9 You can read EDRI's response to the consultation here: [https://edri.org/files/ttip\\_consultation.pdf](https://edri.org/files/ttip_consultation.pdf)

10 <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/58668/html.bookmark>

11 <http://www.ombudsman.europa.eu/cases/correspondence.faces/en/59898/html.bookmark>

## 2. REGULATORY COOPERATION: ADDING BUREAUCRATIC HURDLES AS A WAY OF REMOVING BUREAUCRATIC HURDLES

With the stated purpose of cutting costs and bureaucratic red-tape for European companies, the European Commission is negotiating Regulatory Cooperation provisions within TTIP. But it is not possible to surmise what Regulatory Cooperation actually means when reading the Commission's proposal of 4 May 2015.<sup>12</sup> Apart from being characterised by the same vague wording as the first proposal,<sup>13</sup> the text does not actually include any definition of Regulatory Cooperation. What is clear is that the Commission's proposed text contains legal obligations for EU and US regulators to consult each other before developing new regulations or reviewing existing ones, with the purpose of aligning their standards.

These legal obligations could range from information sharing and exchange of best practices, to regulatory exchanges on planned acts – which “may take place at any stage” of the legislative process and which would “continue until the adoption of the regulatory act”<sup>14</sup> – and joint evaluation of possible regulatory compatibility.<sup>15</sup> Such provisions would deeply influence the development of potential regulations, producing a “chilling effect” on legislators – both from EU and Member States, since the

Regulatory Cooperation chapter would apply also at national level.<sup>16</sup>

As to the implementation of these rules, the Commission's position again is not clear. An unspecified “bilateral cooperation mechanism” would be responsible for the “information and regulatory exchanges,” but the Commission also proposed the establishment of a “Regulatory Cooperation Body.”<sup>17</sup> This body, composed of “senior representatives of regulators and competent authorities, as well [as by] representatives responsible for regulatory cooperation activities and international trade matters at the central level,”<sup>18</sup> would “monitor and facilitate the implementation of the provisions<sup>19</sup> on Regulatory Cooperation” in different ways, such as drafting an “Annual Regulatory Co-operation Programme”<sup>20</sup> and considering “new initiatives for regulatory co-operation”<sup>21</sup>. It is not clear how this body would be organised, how it would be held accountable and, even more importantly, which value and effects its acts would have. What is clear is that, ironically, it is a proposal to invent new bureaucracy as a means of generating less bureaucracy.

Having the Regulatory Cooperation chapter

<sup>12</sup> European Commission textual proposal on Regulatory Cooperation in TTIP, 4 May 2015, <http://trade.ec.europa.eu/doclib/html/153403.htm>. This proposal was preceded by leaks and other official versions.

<sup>13</sup> TACD Resolution on Regulatory Cooperation in TTIP <http://tacd.org/wp-content/uploads/2015/02/TACD-TTIP-Resolution-on-Regulatory-Cooperation.pdf>

<sup>14</sup> Article 12 of the textual proposal on Regulatory Cooperation

<sup>15</sup> Article 9 and 11 of the textual proposal on Regulatory Cooperation

<sup>16</sup> Art 3, p 2 of the textual proposal on Regulatory Cooperation

<sup>17</sup> Art 8 of the textual proposal on Regulatory Cooperation

<sup>18</sup> Art16, p 1 of the textual proposal on Regulatory Cooperation

<sup>19</sup> Art 14, p 1 of the textual proposal on Regulatory Cooperation

<sup>20</sup> Art 14, p 2, lett a) of the textual proposal on Regulatory Cooperation


<sup>21</sup> Art 14, p 2, lett d) of the textual proposal on Regulatory Cooperation

in force would mean that every time the Commission will propose new rules – or reviews existing ones – they will be firstly addressed as trade issues in an additional impact assessment process<sup>22</sup> and debated in non accountable bodies, even before submitting them to EU legislators or regulators. This would affect European Commission’s power of initiative and would undermine the European Parliament and Council’s powers and role in the legislative procedure.

The broad application of these provisions is even more worrisome. The Regulatory Cooperation chapter would apply to regulatory acts which “determine requirements or related procedures for the supply or use of a service” or “determine requirements or related procedures applying to goods”<sup>23</sup> “[...] in areas not excluded from the scope of TTIP provisions [...] that have or are likely to have a significant impact on trade or investment between the Parties.”<sup>24</sup> This is particularly dangerous because it opens the application of these rules outside of TTIP’s scope and to every sector not explicitly excluded in the text. Additionally, they could apply to standards of protection which do not have the same legal basis in the EU and in the US. The right to the protection of personal data, for example, is considered a fundamental right in the EU but only a consumer right in the US. Regulatory Cooperation would allow the US to influence future EU rules in this field.<sup>25</sup>

The Commission has repeatedly stated that EU standards will not be watered down by TTIP. Even if this turns out to be true for measures that are in the final draft of TTIP,

regulatory cooperation provisions are likely to have this effect in the future, prejudicing the possibility to adopt new regulations.



**If Regulatory Cooperation is adopted, strong and enforceable safeguards shall be put in place so that the right to regulate is not undermined.**

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<sup>22</sup> Art 7 of the textual proposal on Regulatory Cooperation

<sup>23</sup> Art 3, par 1, of the textual proposal on Regulatory Cooperation

<sup>24</sup> Art 3, para 2, of the textual proposal on Regulatory Cooperation

<sup>25</sup> EDRI’s red lines on TTIP: [https://edri.org/ttip\\_redlines/](https://edri.org/ttip_redlines/)

## 3. TTIP & DATA PROTECTION: SECRETS AND LIES


With the intended chapter on e-commerce, it was clear from the very beginning of the trade negotiations that TTIP would have an impact on the digital sphere. While privacy has been excluded from the EU negotiating mandate, the discussion on “data flows” within the e-commerce chapter necessarily draws privacy and data protection into the discussion.<sup>26</sup>

In December 2014, a leaked e-commerce proposal from the US that was tabled in both TiSA and TTIP revealed provisions that would undermine the protections developed in the EU to guarantee the rights to privacy and data protection, as recognised by the EU Charter of Fundamental Rights.<sup>27</sup> For instance, the US proposal would authorise the transfer of EU citizens’ personal data to any country, trumping the EU data protection framework, which ensures that this data can only be transferred in clearly defined circumstances.<sup>28</sup>

For years, the US has been trying to bypass the default requirement for storage of personal data in the EU. It is therefore not surprising to see such a proposal being tabled in the context of the trade negotiations. While the US has been accusing the EU of “data protectionism” through the establishment of data localisation rules, it is important to

remind that data *can* be transferred from the EU by developing rules ensuring adequate standards for the protection of data that is being processed.<sup>29</sup> In an attempt to weaken the EU framework on data protection, the US is confusing two different principles - local data protection storage measures and mandatory data localisation practices. While local data protection storage allows transfer of data under clearly defined conditions, mandatory data localisation practices impede the movement of data and can put the fundamental openness of the internet at risk.

In line with EDRI’s redlines on TTIP, we restate our view that trade negotiations are not an appropriate forum to discuss measures for the protection of privacy nor a place where to establish new standards.<sup>30</sup>



**No provisions on data protection should be included in this deal and any lock-in of existing data transfer agreements should be prevented.**

<sup>26</sup> TTIP negotiating mandate from the EU: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>

<sup>27</sup> US proposal in TiSA on e-commerce: <https://data.awp.is/filtrala/2014/12/17/19.html>

<sup>28</sup> See European Commission page on adequacy mechanism: [http://ec.europa.eu/justice/data-protection/document/international-transfers/adequacy/index\\_en.htm](http://ec.europa.eu/justice/data-protection/document/international-transfers/adequacy/index_en.htm)

<sup>29</sup> Obama Calls out European Data Protection as Plain Protectionism, Marketing Research Association, 18 February 2015: <http://www.marketingresearch.org/article/obama-calls-out-european-data-protection-plain-protectionism>

<sup>30</sup> EDRI’s Redlines on TTIP: [https://edri.org/ttip\\_redlines/](https://edri.org/ttip_redlines/)



## 4. SURVEILLANCE AND ENCRYPTION: NO TO ENTANGLED ALLIANCES

### Surveillance

Since the Snowden revelations, it is clear that the NSA spies on EU diplomats (and everybody else in Europe).<sup>31</sup> Spying on EU diplomats prevents the necessary level playing field for the negotiators and this – as well as the mass-surveillance on EU citizens – undermines the trust necessary to reach a balanced agreement on TTIP.<sup>32</sup>

The European Parliament has been very clear in condemning US mass surveillance. The Resolution of the European Parliament on the NSA surveillance programme states that “as long as the blanket mass surveillance activities and the interception of communications in EU institutions and diplomatic representations are not completely abandoned and an adequate solution is found for the data privacy rights of EU citizens, including administrative and judicial redress, the consent of the European Parliament to the TTIP agreement could be withheld.”<sup>33</sup> The Council of Europe adopted a resolution with similar language.<sup>34</sup>

31 <http://www.spiegel.de/international/europe/nsa-spied-on-european-union-offices-a-908590.html>

32 <https://www.eff.org/deeplinks/2013/07/new-revelations-nsa-surveillance-european-allies>

33 Cf. Paragraph 74 of the European Parliament’s Resolution of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens’ fundamental rights and on transatlantic cooperation in Justice and Home Affairs: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0139+0+DOC+XML+V0/EN>

This was reiterated by the Parliamentary Committee on Civil Liberties, Justice and Home Affairs (LIBE) in its opinion on TTIP, 7 April 2015, point 1(b): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-546.558%2b02%2bDOC%2bPDF%2bV0%2f%2fEN>

34 <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21583&lang=en>

Put simply, if these conditions are not met, there should not be an agreement on TTIP.

### Encryption

There are also negotiations on encryption in TTIP.<sup>35</sup> Both for our security and our privacy, it is vital to create and use the best level of encryption possible and to keep improving this level. There is an increasing demand to lower encryption standards and/or have “damaged by default” encryption with backdoors for state authorities.<sup>36</sup> Weak and damaged encryption undermine our security. Negotiating standards on encryption in TTIP could lead to creating weak security or a lack of flexibility<sup>37</sup>, as these standards might be, due to the inflexible nature of trade agreements, very difficult to improve.

**The (digital) security of European and American citizens should not be negotiated upon in a trade agreement. Any form of standardisation of encryption or interoperability of encryption standards leading to a possible lock-in of standards, should be discussed in other fora than a trade agreement.**

35 [http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc\\_152666.pdf](http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152666.pdf)

36 <http://www.theguardian.com/us-news/2015/feb/23/nsa-director-defends-backdoors-into-technology-companies>

37 <http://www.brookings.edu/~media/research/files/papers/2013/09/19-cybersecurity-and-trade-global-local-friedman/brookingscybersecuritynew.pdf>

## 5. COPYRIGHT AND OTHER IP RIGHTS IN TTIP: INTERFERENCE WITH THE EU'S DEMOCRATIC PROCESS

EDRi is of the opinion that so-called intellectual property rights (IPR) are fundamentally intertwined with freedom of expression, the right to participate in cultural life and to share in scientific advancement and its benefits,<sup>38</sup> both in substantive legislation as well as in relation to enforcement. For these reasons alone, IPR legislation requires a full and transparent democratic process and should not be negotiated as part of international agreements.<sup>39</sup> It is therefore fundamentally objectionable for IPR reform to be included in TTIP.

From the TTIP negotiation mandate, we do know that so-called intellectual property rights are on the agenda for TTIP. What is also public is the Commission's position paper on the TTIP IPR chapter<sup>40</sup>, the US Trade Representative publicly stated goals<sup>41</sup> as well as the Trans-Atlantic Business Council's position paper,<sup>42</sup> which reads like a wish list for anyone that would like to return to a pre-digital age, in which gatekeepers of culture would go unchallenged by modern technology. Examples of these wishes are:

- more direct enforcement;
- more indirect enforcement imposed

by liability of intermediaries (such as internet service providers);

- enforcing trade secrets as IPR;
- 'global leadership to combat IPR erosion', which translates as resistance to any attempt to reintroduce balance in currently unbalanced IPR regimes.

After the failure of ACTA, demanding ACTA 2.0 hardly seems like a productive lobbying position.

The Commission's ambitions are more modest and largely focused on geographic indicators, but also include the export of uniquely European problematic aspects of IPR rules, such as levies on broadcast content (with all the accompanying problems of the governance of collecting societies) and the idea that the resale of certain types of artistic works should incur a payment to the original artist (the so-called *droit de suite*). However, it can be expected that there will be pressure on the European Commission to broaden the scope and depth of its ambitions, both from industry and from the USA. A proof of such intentions are emails revealed in the SonyHack leak.<sup>43</sup>

In the European Commission's "factsheet" on IPR and Geographical indicators, we can read that "[i]n TTIP [they] want to raise awareness of the role of IPR in encouraging innovation and creativity". A trade agreement is not a mechanism for raising "awareness" of anything and the idea that TTIP could or should be used to raise awareness of IPR in

38 <http://www.un.org/en/documents/udhr/>

39 See also this civil society statement: <http://www.citizen.org/IP-out-of-TAFTA>

40 [http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc\\_153331.7%20IPR%20EU%20position%20paper%2020%20March%202015.pdf](http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc_153331.7%20IPR%20EU%20position%20paper%2020%20March%202015.pdf)


41 <https://ustr.gov/trade-agreements/free-trade-agreements/transatlantic-trade-and-investment-partnership-t-tip/t-tip-10>

42 <https://ustr.gov/trade-agreements/free-trade-agreements/transatlantic-trade-and-investment-partnership-t-tip/t-tip-10>

43 <https://wikileaks.org/sony/press/>

the USA is laughable. The factual basis for this “encouragement” is also rather difficult to ascertain.<sup>44</sup>

In the Commission’s public consultation on copyright reform<sup>45</sup>, the vast majority of respondents called for a moratorium on additional enforcement legislation and a focus on readjusting copyright to make it fit for the digital age. It is clear, therefore, that any inclusion of copyright and trade secrets in TTIP would pre-empt the ongoing democratic process in the European institutions and therefore aggravate the already fundamental problem of negotiating IPR as part of a trade agreement.



**“Intellectual Property Rights”,  
including copyright, patents and  
trademarks, should be excluded  
from TTIP.**

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<sup>44</sup> [http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc\\_153020.7%20IPR,%20GIs%202.pdf](http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153020.7%20IPR,%20GIs%202.pdf)

<sup>45</sup> [http://ec.europa.eu/internal\\_market/consultations/2013/copyright-rules/docs/contributions/consultation-report\\_en.pdf](http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/docs/contributions/consultation-report_en.pdf)

## 6. TTIP & NET NEUTRALITY: IS THIS THE END OF INTERNET AS WE KNOW IT?

Rules on access to the internet and access to online services are being proposed in the TTIP and the TiSA negotiations.<sup>46</sup>

Net neutrality lies at the very core of the internet's potential for development and the exercise of rights online. According to this principle, all traffic on the internet is treated on an equal basis, no matter the origin, type of content or means of communication. Any deviation from this principle, for instance for traffic management purposes, must be proportionate, temporary, targeted, transparent, and in accordance with relevant laws, including with the letter and spirit of international law. If these criteria are not respected, individuals and businesses face restrictions on their freedoms to receive and impart information. Historically, this type of interference has been imposed by direct intervention in the network through blocking or throttling and, as seen most recently, by agreements between internet access providers and online platforms in the form of paid prioritisation, price discrimination or zero-rating schemes.<sup>47</sup> These new types of restrictions limit user access to a narrow range of services and applications. Users are then delivered access to some, but not all, of the internet — the very opposite of net neutrality. Such practices also limit the market for new online services, reducing incentives to innovate, damaging the internet ecosystem and the economy.

The broad and vague language put forward in the provisions on internet access proposed by the US in the e-commerce chapter would not successfully limit such restrictions, thereby putting at risk the openness that is at the heart of the social and economic benefits of the internet. In the absence of any real possibility of including text that would ensure networks stay open, competitive and innovative, the addition of net neutrality provisions carries possible costs but no possible benefits.

**Net neutrality principles and rules on access to the internet should not be discussed within the context of the TTIP negotiations or any other trade or investment agreements.**

<sup>46</sup> US proposal in TiSA on e-commerce: <https://data.awp.is/filtrala/2014/12/17/19.html>

<sup>47</sup> Access' policy brief on zero rating: <https://accessnow.org/page/-/Access-Position-Zero-Rating.pdf>

## 7. ISDS: INCOMPATIBLE WITH DEMOCRATIC RULE OF LAW

TTIP could include an investment protection chapter, which would provide foreign investors with special rights. That chapter would include provisions for a dispute settlement mechanism between foreign investors and a state. That mechanism is the so-called “ISDS”, which stands for Investor-to-state dispute settlement.

ISDS would give foreign investors - and only foreign investors - the right to bypass local courts and challenge governments’ decisions before supranational investment tribunals. The essence of ISDS is to implement a structural and explicit discrimination against local investors, governments and citizens in order to “solve” a problem that does not exist in countries with developed legal systems (like the EU and USA) – an inability to protect foreign investors from incidental discrimination.<sup>48</sup>

ISDS lacks institutional safeguards for independence, such as tenure, fixed salary, neutral appointment of adjudicators, and prohibition of outside remuneration. Only foreign investors can start cases; arbitrators have an incentive to favour foreign investors, as this will attract new cases. In addition, ISDS offers procedural advantages to the USA. For example, in all (currently 73) annulment procedures (the only form of appeal possible), the president of the World Bank appointed all three the arbitrators. The president of the World Bank has always been the candidate of the US.<sup>49</sup>

Democratic states can change laws if courts use unacceptable interpretations. In contrast, to change a treaty, all parties have to agree. ISDS in agreements with Canada and the US would lock the EU into a mechanism that is systemically biased towards investors and the US, as it is practically impossible to withdraw from trade agreements. ISDS poses specific problems for digital rights, as ISDS tribunals rule on intellectual property rights cases and may decide cases on data flows and privacy issues.

Most importantly, ISDS is not essential. Major international investments are almost always accompanied by contracts negotiated between governments and the investor, often including their own dispute settlement mechanisms that are tailored to the situation. Investors also have the option to take out political risk insurance and, overall, local courts and state-to-state arbitration adequately complement the above-mentioned negotiated contracts.



**No form of ISDS should be accepted.**

<sup>48</sup> [http://www.washingtonpost.com/r/2010-2019/WashingtonPost/2015/04/30/Editorial-Opinion/Graphics/oppose\\_ISDS\\_Letter.pdf](http://www.washingtonpost.com/r/2010-2019/WashingtonPost/2015/04/30/Editorial-Opinion/Graphics/oppose_ISDS_Letter.pdf)

<sup>49</sup> <https://blog.ffii.org/white-house-defends-isds/>

## 8. A HUMAN RIGHTS CLAUSE MUST BE MEANINGFUL

The European Commission started discussing the necessity of a standard Human Rights clause in trade agreements in the late 1970s and 1980s<sup>50</sup> and these have been included since the 1990s.<sup>51</sup> However, they usually lack of enforcement measures or binding effects. For instance, the EU-Canada Comprehensive Economic and Trade Agreement (CETA) consolidated text published on September 2014<sup>52</sup> refers only to the importance of Human Rights in the preamble and occasionally refers to them, with no apparent real applicability by any of the Parties to the agreement.

TTIP and all trade agreements need a human rights clause, but not *any* Human Rights clause, as no trade agreement should obstruct states in their respect and enforcement of human rights. Instead, any trade agreement should contain a binding, enforceable and suspensive Human Rights clause to promote and ensure their respect. But what does this mean? In short, and in accordance with EDRI's red lines<sup>53</sup>, we believe TTIP should contain a Human Rights clause, including:

- confirmation of state obligations under the Universal Declaration of Human Rights and other relevant Human Rights instruments;

- assurance that no obligation arising from TTIP would in any way alter the Parties' obligations to respect and protect fundamental rights and freedoms;
- an exception for the Parties to the agreement, permitting them to suspend their obligations arising from TTIP if evidence shows fundamental rights have been breached;
- a mechanism establishing a periodic human rights impacts assessment, to be conducted jointly by the US Congress and the European Parliament;
- a mechanism for bringing complaints before national courts;
- assurance that citizens will have, as an absolute minimum, equality with businesses before the law;
- non-discrimination on the basis of citizenship in any matter related to public order, national security, crime or other public interest grounds;
- an accessible mechanism to impose sanctions when fundamental rights and standards are abused, after dialogue or mediation have been exhausted.

<sup>50</sup> Bartels, L., *A Model Human Rights Clause for the EU's International Trade Agreements*, German Institute for Human Rights and Misereor, 2014, available at <http://ssrn.com/abstract=2405852>

<sup>51</sup> The first one was in the 1990 EC-Argentina cooperation agreement. Cf. *Ibid.*

<sup>52</sup> [http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc\\_152806.pdf](http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf)

<sup>53</sup> EDRI's red lines on TTIP: [https://edri.org/ttip\\_redlines/](https://edri.org/ttip_redlines/)

**All trade-related agreements need a binding, available, enforceable and suspensive Human Rights clause.**

# CONCLUSION: TTIP AND DIGITAL RIGHTS

Throughout this booklet, we demonstrated the dangers of including certain provisions in trade and/or investment agreements that may lead to undesired outcomes - to the detriment of EU and US citizens. Ultimately, there is one important question negotiators, policy makers and the public opinion should ask themselves: how can digital rights be respected?

## ✓ What is needed in TTIP

- Negotiations open to the public and subject to accountability
- Rule of law and the right to regulate
- Exclusion of rules on data protection or privacy
- Exclusion of lock-in of encryption standards; end of mass surveillance programmes
- Exclusion of IPR
- Exclusion of net neutrality
- Exclusion of ISDS out of all trade and investment agreements; thereby respecting the 97% negative responses to the European Commission's public consultation
- Binding and enforceable human rights clause



**TTIP would set a precedent in the digital rights sphere**

## ✗ What is NOT needed in TTIP

- Secrecy, lack of accountability or democratic scrutiny
- Chilling effects on decision-making and public policies
- Restrictions to the fundamental rights to privacy and data protection; lock-in of existing data transfer agreements
- Restrictions to the fundamental right to privacy
- ACTA/SOPA/PIPA II
- Breaches to net neutrality, discriminating traffic on the basis of origin, destination or type of data
- Failed efforts to fix the fundamentally flawed and unnecessary mechanism of ISDS
- Mere references to human rights which would not be enforceable



**The conclusion of the agreement may be jeopardised and we will fight!**

**What outcome do the EU and the US want in TTIP?**



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