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Yes to a sustainable trade policy – no to the TTIP

The EU-US free trade agreement: a threat to the Global South

Trade policy has long been a core topic in North-South dialogue. And with good reason: by flooding African markets with their exports of cheap chicken meat, European companies are putting Africa's farmers at risk. But the traffic tends to be one-way: African businesses' lack of access to markets in the northern hemisphere is obstructing development in the Global South. Since the United Nations Conference on Trade and Development (UNCTAD) was established in 1964, development organisations have therefore been monitoring and analysing the impacts of trade agreements on people's living conditions in the Global South. Bread for the World, together with many other non-governmental organisations, has long advocated for more justice in world trade. International trade should promote sustainable development in the African, Asian and Latin American countries, and should not widen the gap between rich and poor.

Since the mid 1990s, the debate about sustainable trade policy has focused particularly on the role of the World Trade Organization (WTO). Based in Geneva, the WTO exerts considerable influence on the governance of the globalised world economy. Although the WTO's main task is to coordinate its members' economic and trade policies

and lower trade barriers, its rules also intervene in policy areas that have little to do with economics. It is the only international organisation to have its own tribunal (the Appellate Body). It also has various sanction mechanisms at its disposal. Partly as a consequence of these arrangements, economic interests take precedence over politics in the WTO. The growing dominance of economic, as opposed to political, governance is currently evident in the negotiations on the Transatlantic Trade and Investment Partnership (TTIP) – in essence, a free trade agreement – between the EU and the US. However, this agreement is not being negotiated within the WTO but bilaterally between the EU and the US. It was partly the deadlocks in the WTO which prompted the US and the EU to work towards a bilateral free trade agreement outside the WTO framework.

This free trade agreement is currently the subject of broad public debate and is beset with controversy. Development and civil rights organisations, politicians from across the political spectrum, trade unionists and many private citizens are critical of the negotiating process, claiming that it is undemocratic. They also fear that the TTIP will erode consumer protection, dismantle environmental standards, and weaken social welfare

systems. Bread for the World shares many of these concerns. However, in this publication, we would like to focus primarily on the potential risks to the developing countries and emerging economies, which have received too little attention in this debate.

From the WTO to the TTIP

The EU and the US had high expectations of the World Trade Organization when it was established in 1995. Governments hoped that it would result in the comprehensive liberalisation of trade, not only in goods but also in services, intellectual property and investment. However, the round of trade negotiations launched in Doha in 2001, which was meant to be a “development round” for the benefit of the Global South, has still not reached a conclusion. This is mainly due to conflicts of interest between the industrialised countries, which are calling for liberalisation of services and investment – sectors in which they have competitive advantages – and the developing countries and emerging economies, which are keen to secure concessions, mainly in relation to agriculture. Protests from development organisations, environmental groups, trade unions and governments from the Global South have also put the brakes on the WTO’s free trade agenda.

European free trade policy

At the First WTO Ministerial Conference in Singapore in 1996, the European Union was already making its priorities clear: sweeping liberalisation and deregulation in sectors in which European companies are more productive and therefore more competitive. They include foreign investment, services, intellectual property and government procurement (known as the “Singapore issues”).

In order to assert its trade policy demands, Europe is lobbying at various levels:

1. multilaterally within the WTO framework,
2. bilaterally via trade, investment and partnership agreements, which it negotiates directly with individual countries or groups of countries,
3. plurilaterally through the formation of appropriate forums, as in the case of the Trade in Services Agreement (TISA).

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The Doha Development Round

The “Development Round” was officially launched at the WTO’s Fourth Ministerial Conference in Doha, Qatar, in 2001 and aimed to achieve reciprocal tariff reductions and liberalisation of the markets for agricultural and industrial products, a reduction in agricultural subsidies, market liberalisation for services, and implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The main reason for the failure to bring the Doha Round to a successful conclusion is that the EU and the US apply double standards. Despite pushing hard for liberalisation of investment and services, for example, they are keen to maintain subsidies on their own agricultural products and exports.

By contrast, the Ministerial Conference in Bali in 2013 ended in success. The 161 WTO members adopted the Bali Package, which includes provisions on trade facilitation and streamlining of customs procedures, and establishes limited exemptions for the developing countries’ food security programmes. Preferential rules for the least developed countries were also announced but were not established on a binding basis. However, the compromise package only relates to minor aspects of the Doha Round. The real lines of conflict still exist, and it is unclear at present whether the agreement will generate any fresh momentum in the Doha Round.

With the WTO negotiations stalled, the EU and US are now increasingly attempting to push through their liberalisation agenda via bilateral agreements. The EU has been negotiating a free trade agreement with Canada since 2011, for example, and in June 2013, Brussels and Washington began talks on the Transatlantic Trade and Investment Partnership (TTIP). If the talks are brought to a successful conclusion, this will create the world’s largest regional free trade area, accounting for 47 per cent of global GDP and 44 per cent of world trade flows.

What is the purpose of the TTIP?

The European Commission and the US Government hope that the free trade agreement will improve transatlantic trade relations – at least, according to their official statements – and hold out

the promise of higher economic growth and new jobs. Studies by various economic research institutes seem to back up these expectations. Some researchers predict that the agreement could add around 0.5 per cent to the EU's annual economic output and yield 70,000 additional jobs in Europe (Bertelsmann and Centre for Economic Policy Research 2013). However, these forecasts relate to a period of 10-14 years. In other words, the positive effects for individual countries are, in reality, likely to be modest in the extreme.

It seems unlikely that the prospect of additional annual growth of less than 0.1 per cent is the real reason why European and US heads of government are investing so much energy in these negotiations. In early 2014, the EU's Trade Commissioner Karel De Gucht explained the real purpose of the TTIP: "The next big battle in world trade is about norms, standards and subsidies, not about tariffs. We Europeans must set global standards, to make sure that nobody can impose standards on us."¹ The purpose of the transatlantic free trade area, then, is to create a new trade policy paradigm that safeguards the partners' competitive advantages in international trade.

The project is a reaction to the shifting weights and power relations in the global economy. Emerging economies such as China, India and Brazil are securing a growing share of world trade and global GDP, whereas the established industrialised nations' share is decreasing. With the TTIP, the EU and US aim, at least, to slow down this process. This long-term objective is the reason why the TTIP is attracting interest from development organisations as well.

Impacts on the Global South

Investment

Demands for liberalisation of investment, combined with more robust investment protection, have been right at the top of the EU's trade policy agenda for years. It also features prominently in the controversy over the TTIP.

According to the European Commission's draft of the mandate for the TTIP negotiations, the TTIP should contain investment liberalisation and protection provisions, on the basis of the highest levels of liberalisation and highest standards of protection, and should include the -

highly controversial - investor-to-state dispute settlement (ISDS) mechanism. A combination of the highest standards in these areas would result in even more sweeping investment provisions than those already contained in all the existing bilateral investment treaties (BITs). An issue of real concern for the developing countries and emerging economies is that the investment provisions contained in the TTIP will serve as the model for future agreements between these countries and the northern hemisphere's two most powerful economies. The U.S. Chamber of Commerce has already made it clear that it is important for the TTIP to conclude a full and ambitious investment promotion and protection chapter, "less out of concern for the current state of investment protection in either the United States or the EU, but as a symbol of our joint commitment to strong investment protections globally".²

Investor-to-State Dispute Settlement (ISDS)

Like many other bilateral investment and free trade agreements, the TTIP will give companies the right to bring a case directly against the country in which they have invested before an arbitration tribunal. According to drafts of the TTIP, this would mean that businesses would be able to sue governments if new environmental laws or other state measures reduced the returns on their investment. These tribunals operate outside the ordinary jurisdiction and conduct proceedings behind closed doors. There is no mechanism for appeal against the three arbitrators' decisions. Most of these cases are dealt with by the International Centre for Settlement of Investment Disputes (ICSID), which is based at the World Bank in Washington - the organisation whose task is to lend funds to the world's poorest countries.

From a development perspective, this plan gives cause for serious concern. The existing bilateral investment promotion and protection agreements (BIPAs) already intervene strongly in national sovereignty by allowing foreign investors to bring an action against signatory states before a tribunal. Argentina is the most frequent respondent, with 52 cases against it, followed by Venezu-

¹ Süddeutsche Zeitung, 17.01.2014

² Statement of the U.S. Chamber of Commerce, May 10, 2013: <https://www.uschamber.com/sites/default/files/documents/files/USTR-2013-0019TTIP-U.S.ChamberofCommerceSubmission.pdf>

ela (34), Ecuador (23) and Mexico (21). The compensation payments often run into hundreds of millions – and in some cases even billions – of euros. As a consequence, there is considerable opposition and resistance from developing countries and emerging economies. Bolivia, Ecuador and Venezuela have already withdrawn from the IC-SID, and South Africa, Bolivia and Ecuador have terminated several bilateral investment treaties (BITs). The members of the Bolivarian Alliance of the Americas (Alianza Bolivariana para los Pueblos de Nuestra América - ALBA) are planning to set up a mechanism to monitor international investor-state disputes and develop joint strategies for the provision of legal assistance to Latin American countries facing legal action.

The TTIP negotiations are crucially important for the further development of investment protection. In 2009, the EU's Lisbon Treaty transferred the Member States' investment policy competence to the European Commission. Since then, the Commission has not only been tasked with shaping the EU's investment policy in relation to

future agreements with third countries, but must also harmonise the investment policies of the EU's 28 Member States. In total, the EU Member States have concluded around 1,200 investment protection agreements, the majority with developing countries and emerging economies. The TTIP negotiations will therefore have considerable influence on the harmonisation process, as well as on future free trade agreements concluded by the EU and on treaties negotiated within the WTO framework.

Services

The main objective of the General Agreement on Trade in Services (GATS) and almost all the EU's bilateral trade agreements is to promote further liberalisation of all markets in services. The Europeans are pursuing the same goal in the services sector as with investment: they want the TTIP to formalise the highest level of liberalisation in order to achieve more open markets.

This could, for example, have an adverse effect on a plurilateral forum in which the liberalisation of services in favour of European and US interests is also being discussed, namely the Trade in Services Agreement (TISA). There is a fear that together, the EU and the US could utilise this forum in order to push through the new TTIP rules. The regulatory scope that is important, indeed vital, for developing countries would thus be significantly curtailed.

In a further step, the EU and the US could attempt to make trade preferences and other concessions depend on future treaty partners' accession to plurilateral agreements on services that operate in accordance with TTIP rules. In that case, Europe and the US would have successfully bypassed the stalled Doha Round.

Agricultural policy

If the sometimes substantial customs duties on farm products traded between the EU and the US are reduced within the TTIP framework, this is likely to impact on the exports of agricultural goods from the developing countries and emerging economies. This will particularly affect some of the least developed countries, whose agricultural products currently enjoy duty-free access to the EU market. There is a risk that these countries will forfeit their market share to agro-industrial

European investors vs. South Africa

In 2006, Italian investors in South Africa mounted an international arbitration procedure against the South African Government before the ICSID. These Italian investors held large investments in South Africa's mining industry via a Luxembourg-based holding company. Their claim challenged the Mineral and Petroleum Resources Development Act (MPRDA), which came into force in 2004 and established a new framework for the allocation of extraction licences. This new framework aims inter alia to implement key elements of the South African Government's Black Economic Empowerment policy and the constitutional goal of redressing historical, social and economic inequalities and therefore includes an obligation to increase the equity share of "Historically Disadvantaged" South Africans in mining companies to 26 per cent. The Italians argued that these amendments to the legislation amounted to expropriation. In early 2010, the parties reached an out-of-court settlement, with South Africa waiving its requirement for the Italians to sell 26 per cent of their shareholdings to South Africans. In order to avoid similar cases in future, South Africa terminated its bilateral investment treaties with Germany, Luxembourg, Spain and Belgium in 2013.

products, such as cotton, sugar, fruit, vegetables and fish, from the US. For that reason, even the Bertelsmann Foundation - normally an advocate of market liberalisation - is urging negotiators in Brussels and Washington to provide financial compensation for third countries which suffer revenue reductions as a result of the TTIP.

It is also likely that agricultural companies in the US and Europe will further expand their global market leadership. They already dominate the trade in cereals, meat and dairy products, and if their domestic markets expand, this will strengthen their international position as well. They will then exert even greater influence over the framing of uniform product and marketing standards, and smaller producers will have even less of a chance.

Towards a sustainable and equitable trade policy: what is needed?

Trade policy must be more democratic

A lack of transparency is one of the hallmarks of European trade policy - not only since the advent of the TTIP. Decisions are generally taken behind closed doors, with access reserved solely for specific interest groups - mainly business associations and representatives of major companies. Civil society organisations (CSOs), by contrast, are usually excluded from the negotiations. On the rare occasions when they are admitted to the proceedings, they are obliged to maintain strict confidentiality. In Germany, the lead Federal Ministry for Economic Affairs and Energy ensures that even institutions such as the Federal Environment Ministry and the German Federal Ministry for Economic Cooperation and Development are kept at arm's length.

This lack of transparency is one of the main reasons why civil society proposals on development and environmental policy and human rights aspects of the TTIP play such a negligible role. For that reason, it is essential for the EU to make public the full set of documents that form the basis of the negotiations. There should also be a broad consultation process to ensure that all the various tiers of government - federal, state (Land) and municipal - and ordinary citizens are able to contribute to the framing of a trade agreement.

The quality of trade policy must be enhanced

The yardstick currently used to assess international trade performance is its monetary value, not its social and environmental quality. Under WTO rules, countries are not generally permitted to make trade in goods and services conditional on product manufacturing criteria. As a result, a foodstuff produced using pesticides, or a genetically modified food, enjoys the same right of access to overseas markets as a product from an organic farm.

The TTIP follows this logic in that the two fundamental principles of European environmental law - namely the precautionary principle and the polluter-pays principle - are defined as barriers to trade. Accordingly, US lobby groups criticise what they see as Europe's excessively slow licensing procedures and the requirement for labelling of GM foods. They also object to the further development of the EU Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), the Euro standard on road vehicle emissions, and plans for a European Strategy on Plastic Waste in the Environment.

For trade to become a driver of social justice and sustainability, we need higher, not lower, social and environmental standards. Prohibitions, taxes and tariffs must be imposed on harmful manufacturing processes, and there must be scope to give targeted support to sustainable production methods.

The human rights dimension of trade policy must be strengthened

In the Treaty on European Union, the EU states its commitment to respect and promote universally applicable and indivisible human rights in its external policies as well. The UN Guiding Principles on Business and Human Rights reaffirm the state duty to protect against human rights abuse by business enterprises and the corporate responsibility to respect human rights. For European trade policy, this means that the EU must subject all its trade and investment agreements to independent human rights impact assessments on a regular basis. In light of the TTIP's potentially adverse impacts on developing countries and emerging economies, the EU has an obligation to include third countries in these human rights impact assessments as well.

All future international trade agreements should contain a human rights clause allowing the suspension or amendment of any treaty provisions that put human rights at risk. These agreements should also provide for the establishment of an independent and transparent complaint mechanism to deal with cases of investment-related human rights abuse in third countries.

Governments' scope for action must be expanded

Equitable and sustainable trade policies which promote universal welfare and prosperity need a political governance framework. This is essential in order, firstly, to ensure that companies comply with existing environmental and social standards, and secondly, to facilitate the adoption of new rules on resource efficiency, environmental protection, social justice and human rights.

If the negotiators get their way, however, the TTIP will strengthen the rights of foreign investors on a unilateral basis. Special tribunals would then have the power to hand down legally binding decisions on whether legislation is adversely affecting private profits. These special rights - reserved for investors alone - to bring legal action will unduly restrict governments' scope for action, allowing companies' expectations of profit to take precedence over public welfare. And because the special tribunals lack transparency and are not subject to any control by the national courts, they undermine the rule of law. Dispute settlement mechanisms for companies should therefore be excluded from the scope of the TTIP and all bilateral investment and trade agreements.

Agriculture must be sustainable and equitable

Sustainable agriculture based firmly around rural farming communities needs a fair and equitable system of trade which takes account of farmers' interests, respects countries' rights to pursue policies geared towards food sovereignty, and protects the climate, the environment and biodiversity. Instead of dismantling regulations or gearing them solely towards food safety and hygiene, in line with agro-industry's demands, it is essential to establish appropriate policy frameworks for a turnaround in agricultural policy which spells the end for the environmentally problematical industrial agriculture pursued on both sides of the Atlantic. Key elements are requirements linking live-

stock production to feedstock production on the same farm holding, restrictions on monocultures, and the conservation of diverse landscape structures. This would reduce demand for animal feed imports and promote the development of farming communities.

Implications for the TTIP negotiations

The planned US-EU free trade agreement conflicts with the fundamental requirements of a fair and sustainable trade policy. The negotiations are undemocratic and take place behind closed doors. Key elements of the agreement, such as the investor-to-state dispute settlement mechanism, threaten to undermine rule-of-law principles. The agreement primarily strengthens the rights of foreign investors. For the majority of developing countries and emerging economies, it is very likely to restrict their policy-making scope and curtail their opportunities for social and economic development.

The EU and the US should therefore suspend the current negotiations on a Transatlantic Trade and Investment Partnership and, instead, should henceforth focus their trade policy ambitions on ensuring that multilateral trade relations at all levels are sustainable and equitable.

Imprint

Publisher Brot für die Welt - Evangelischer Entwicklungsdienst, Evangelisches Werk für Diakonie und Entwicklung e.V.
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Responsible according to press law Thomas Sandner

Layout Reinhard Mang

Print RetschDruck, Nagold

Printed on recycled paper

June 2014

Donation

Brot für die Welt

Bank account 500 500 500

Bank für Kirche und Diakonie

BLZ 1006 1006

IBAN DE10 1006 1006 0500 5005 00

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