

TTIP – A Power Boost For Big Business

According to the European Commission, the Federal Government and business associations, the Transatlantic Trade and Investment Partnership (TTIP) leads to economic growth and prosperity; in short: more for everyone. But these stakeholders tend to neglect that their predictions are based on extremely shaky foundations. In reality, the outlook is far more pessimistic. The risks of TTIP in a broad range of policy areas such as consumer protection or social and environmental standards are systematically being played down. In addition, and even more concerning, power is likely to shift even further towards big business. The proposed agreement therefore needs to be rejected.

Big Promises, Big Risks

TTIP promises growth and economic prosperity for everybody. Jean-Claude Juncker, now head of the European Commission, reckons that it will boost per capita purchasing power by 545 euros a year. Martin Schulz from the Social Democrats estimates that every family will be about 600 euros better off.² The figures dominating the European discussion are seductively precise. In contrast, the German Federal Ministry for Economic Affairs, which also loves to see new jobs and economic prosperity, relies on another study from the IFO Institute and comes to a different conclusion. The researchers argue that there is little prospect of new jobs. Effects will rather be “modest but positive”. Professor Felbermayr, the IFO research director, substantiated his findings in an interview. Even assuming the best-case scenario, he said, the effects would be moderate.³ TTIP will result in at most 28 000 new jobs.⁴ Due to trade aversion, the main losers of TTIP will be the developing and emerging economies. Against the backdrop of these figures from the IFO institute, the European promises seem to be hugely exaggerated.

¹ Dr. Gerhard Schick is Member of the German Bundestag since 2005. A CV can be found on his website <http://www.gerhardschick.net/images/Schick-Vita-English.pdf>.

² Zeit Online, Bringt das Freihandelsabkommen jedem 600 Euro? [Will TTIP make everyone 600 euros better off?]: <http://www.zeit.de/politik/ausland/2014-05/factcheckeu-ttip-mehreinkommen>, downloaded 12 June 2014.

³ WDR, Freihandelsabkommen: Das Märchen vom Jobmotor [TTIP: the fairy tale of the boost for jobs]: <http://www1.wdr.de/daserste/monitor/videos/videofreihandelsabkommendasmaerchenvomjobmotor100.html>, downloaded 12 June 2014.

⁴ Ifo Institute project commissioned by the Federal Ministry for Economic Affairs: http://www.cesifo-group.de/ifoHome/research/Projects/Archive/Projects_AH/2013/proj_AH_freihandel_USA-GER.html; http://www.cesifo-group.de/portal/page/portal/DocBase_Service/studien/ifo_AH_2013_TAFTA_Endbericht.pdf, p. 100/p. 104ff.

What is more, the agreement comes with a number of important risks. What will happen to the high levels of consumer protection we enjoy in Germany and Europe? Will our employment safeguards and social protection standards be threatened? Will we be able to continue promoting and safeguarding our cultural heritage without restriction? While all these issues are worthwhile exploring, this article is rather spotlighting a structural problem: the current economic system keeps shifting power towards multinational big business, undermining fair competition and making it harder to enforce the democratically legitimate will of the people.

Global Corporatism

Big business actively manipulates and influences the markets to maximise profits, thus further concentrating its economic power worldwide. Large companies, mining groups and commodity producers, major banks, IT giants or agro-industrial corporations use their size and power to play states off against each other. They hamper free competition and lobby politics to make law work in their favour.

In the EU the five biggest banks have a market share of more than 50 per cent in 19 of the 27 Member States. Similarly, in the USA the figure is a little over 40 per cent.⁵ Even Josef Ackermann, the former boss of Deutsche Bank, described the banking sector in an interview as being an “oligopoly”.⁶ In addition, our user data have been in the hands of a small number of large enterprises for a long time. Google and Facebook know almost everything about the daily lives of millions of people. The agro-industrial multinational Monsanto is now an incalculably powerful group. It controls about 30% of the market in seeds, and the industry’s top 10 firms jointly control 74 per cent. Monsanto even obtained patents on actual crops.⁷ And there are many more such examples.

⁵ Schildbach, J. (2009): Global banking trends after the crisis, Deutsche Bank Research, http://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD000000000242788.pdf (1.10.2013).

⁶ Riecke, T., Maisch, M. & Benders, R. (2010): Die Macht der Banken im Visier [*Targeting the power of the banks*], in: Handelsblatt Online, 8.4., <http://www.handelsblatt.com/unternehmen/banken/oligopole-strukturen-die-macht-der-banken-im-visier/3407126.html> (1.10.2013).

⁷ Shand, H. (2012): The Big Six: A Profile of Corporate Power in Seeds, Agrochemicals & Biotech, in: The Heritage Farm Companion, Summer 2012, http://www.seedsavers.org/site/pdf/HeritageFarmCompanion_BigSix.pdf (1.10.2013). / RT (2013): Monsanto, DuPont bury the lawsuit hatchet, set to make more GMO, <http://rt.com/business/monstano-dupont-seed-battle-910> (1.10.2013).

A research group at ETH Zurich (the Swiss Federal Institute of Technology) published a comprehensive analysis of global concentrations of power in 2011. Studying the network of multinationals and their cross-ownership assets, they find that a small tightly-knit core of just 147 companies controls some 40% of the corporate capital of all multinationals via a complicated web of ownership relations. 40% in the hands of 0.3% – an unbelievably high concentration of power! It seems to be even more disconcerting that these 147 companies are not in competition with each other, but that they are mostly in mutual control.⁸

In theory, markets should be organised in a way that best serves the customer's interest - which is no longer the case at these extraordinary levels of market power concentration. In many instances the state is no longer able – or willing – to guarantee free access to markets and ensure that big business abides by the rules. All this poses a threat not just to markets themselves, but also to our societies.⁹

The Corporatist Economy and TTIP

How does this analysis relate to TTIP? This international free trade agreement will make the multinationals even more powerful for mainly two reasons: investment protection, and the direct and indirect influence of business on the legislative process.

Investment Protection Makes Big Business More Powerful

Protecting investments is nothing new. Back in 1995, multinationals were negotiating with OECD member states and developing countries on a proposed “Multilateral Agreement on Investment” (MAI). Governments sought to draft a treaty that would comprehensively strengthen the rights of international investors. After the secret negotiations were leaked in 1997, the draft agreement attracted criticism. The multinationals involved issued a public statement challenging the legitimacy of their civil society opponents. Nevertheless when France withdrew its support in 1998 the talks came to an end without any formal decision.

⁸ Vitali, S., Glattfelder, J. B., & Battiston, S. (2011): The network of global corporate control, PLoS one, 6(10), e25995, <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0025995> (1.10.2013).

⁹ Schick, G. (2014): Machtwirtschaft – nein danke! Für eine Wirtschaft, die uns allen dient [*Corporatist Economy – no thanks! For an economy that serves us all*].

But this was not the end of attempts to exert influence through investment protection. Governments have enshrined far reaching business rights in a large number of bilateral investment protection agreements. One of the most prominent features are private dispute resolution tribunals. Business can seek to enforce their rights against states, without having to go through the customary legal channels (investor-state dispute settlement, or ISDS).

Originally, this idea stems from a time when private institutions were intended to make up for countries with poorly developed legal systems and no independent judiciary. Foreign investors were supposed to have additional legal security, for example against expropriation. But current investment protection agreements and dispute resolution procedures have moved away from this concept. They are increasingly used as instruments for aggressively circumventing national rules on environmental and consumer protection regulations or pursuing compensation claims that amount to billions. To understand how investor protection has become one of the most powerful weapons used by big business in its battle for worldwide influence, we need to take a closer look at these dispute resolution procedures.

Investor-State Dispute Settlement

Back in 2012, the Swedish group Vattenfall brought a claim against the Federal Republic of Germany before the International Centre for Settlement of Investment Disputes (ICSID) in Washington claiming 3.5 billion euros. Why? Because the nuclear facilities at Brunsbüttel and Krümmel had to be decommissioned ahead of schedule following Germany's decision to renounce the use of nuclear power. Vattenfall considered this to be indirect expropriation.

The number of such pledges has risen sharply over the last few decades. Figures from the United Nations Conference on Trade and Development (UNCTAD) indicate that multinational firms initiated at least 57 such proceedings in 2013. A new record - for the second year in a row. By the end of 2013, big business brought at least 568 cases before international dispute resolution tribunals against more than 98 countries. And we are talking big money here. Philip Morris sued Australia and Uruguay over warnings on cigarette packaging, the Occidental Petroleum Corporation (Oxy) sued Ecuador, successfully, for 1.77 billion euros after it terminated an oil exploration contract, to just

name a few. The corporate giants won in about one third of all cases, while they settled their differences in a further 25% of the cases. A nice extra money for big business.¹⁰

Given the way dispute resolution tribunals and procedures are structured, it seems obvious that this dispute resolution mechanism is less and less an instrument to safeguard foreign investors against arbitrary state action. In contrast, we are increasingly dealing with a means for corporate interests to override properly framed state rules. Litigants chose the mediators from a small pool of lawyers. These lawyers work as judges in some case - only to switch sides and work as corporate lawyers in another case. Since it is always businesses suing states, and not the other way round, lawyers have every interest in securing judgments that are favourable to business. In the USA there are already law firms specialising exclusively in these investment protection procedures, and they actively approach companies, encouraging them to bring legal actions against states. Whenever they succeed, they pocket a share of the compensation claimed.

Imprecise Legal Terms and the Chilling Effect

Undefined legal terms are another problem. If proceedings can be initiated for (supposedly) braking vaguely defined crimes such as “fair and proper treatment” or “indirect expropriation” or “non-discrimination“, these loose terms leave the door wide open for arguing over interpretation. Indirect expropriation, for example, may include lost profits due to more stringent rules on waste water treatment. But if courts rule that simple changes to the law can be increasingly defined as expropriation, companies will be entitled to compensation which, in turn, puts pressure on governments and parliaments in their core area of sovereignty.

But big business' influence is not confined to active legal disputes. Often the mere threat of legal action is enough to deter a state from enacting certain laws at all, an effect also known as the “chilling effect”.

Given that both Europe and the USA have mature and established legal systems, relying on privately organised conflict litigation seems to be questionable- to say the least.

¹⁰ http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf, downloaded 13 June 2014.

Regulatory Cooperation

There is yet another aspect of the TTIP negotiations favouring big business tremendously. In October 2013, the then EU trade commissioner Karel de Gucht gave a speech to the Aspen Institute in Prague on regulatory issues under TTIP. He proposed to establish a “Regulatory Cooperation Council”, an institution that would put big business in an even stronger position than it is currently already holding.¹¹

The Cooperation Council will be a forum in which EU and US authorities jointly work with lobbyists to harmonise existing rules and to draft new ones. This group will not only improve upon existing laws and regulations, but will also address future ones that are still at the planning stage. US and European lobby groups will negotiate future legal rules before they are enacted so that “transatlantic cooperation becomes a natural reflex.” At first, the origin of this idea was a mystery. But the non-governmental organisation Corporate Europe Observatory (CEO) was able to show, from leaked documents, that the proposal was first aired in a paper dating from October 2012. Apparently it was BusinessEurope, one of the principal lobby groups for big business in Europe, and the US Chamber of Commerce who set out the idea of a “Regulatory Compatibility Analysis” procedure (RCA)¹². If this institution becomes reality, it allows interest groups to formally set the policy agenda, which is totally at odds with the regulatory concept of the state as prime legislator.

Stop TTIP

The TTIP negotiations are heading in the wrong direction and must be stopped to make way for a new negotiating mandate. Only successful projects that benefit employers and consumers over the long term will strengthen the transatlantic partnership between the USA and European Union-in contrast to a power shifting agreement that favours only a small number of multinationals. What matters most here is not investor protection and institutionalised lobbying but – in addition to the removal of technical barriers to trade – the development of a strong international legal framework which guarantees fair competition, even in those sectors where power is already far too concentrated.

¹¹ http://europa.eu/rapid/press-release_SPEECH-13-801_en.htm, downloaded 13 June 2014.

¹² US Chamber of Commerce/BusinessEurope 2012: Regulatory Cooperation in the EU-US Economic Agreement, October 2012, <http://corporateeurope.org/sites/default/files/businesseurope-uschamber-paper.pdf>, downloaded 16 June 2014.

The real demand for a TTIP becomes obvious when surveying medium sized enterprises. In a questionnaire, less than one sixth of the 4 025 companies with an annual turnover of at least 2.5 million euros expects that TTIP benefits their business.¹³ These are the employers who build economic success for Germany and Europe and they are the ones we should be supporting. Not the interests of a small group of multinationals.

¹³ <http://www.spiegel.de/wirtschaft/unternehmen/ttip-mittelstand-setzt-kaum-hoffnung-in-freihandelsabkommen-a-968383.html>, downloaded 16 June 2014.