

**German Trade Union
Confederation (DGB)
Executive Board**

DGB Position

Suspend the negotiations for a free trade agreement with the USA – no agreement at the expense of workers, consumers or the environment

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Currently the European Union (EU) and the United States of America (USA) are negotiating a transatlantic trade agreement (Transatlantic Trade and Investment Partnership, TTIP). The two largest economic areas in the world, which jointly produce almost half the world's goods and services, intend to further reduce the low level of tariff rates payable to each other and facilitate trade through standardising/harmonising and reducing regulations. Double authorization procedures for products and processes are to be avoided, so as to decrease costs for businesses. The negotiations also include an investment protection agreement partly aimed at safeguarding foreign investors from expropriation without compensation. As no such investment protection agreement between Germany and the US existed previously, this constitutes an extension of the protective rights enjoyed by US investors in Germany and by German investors in the USA.

From the point of view of the DGB and its member unions, trade talks between the EU and the USA could be advantageous, if they were used to help drive a trade policy realignment, which would set global standards for a fairer globalisation. The object has to be to provide greater prosperity for a broader segment of the population, improve economic, social and environmental standards, and create structures for fair competition and good working conditions.

In this respect, the current EU-US free trade agreement negotiations are still heading in the wrong direction. Confidentiality rules and a lack of transparency prevent appropriate public debate. Some individual plans, together with the risks they entail, have become public knowledge, causing major worries and popular criticism. The main reason for concern is over the different levels of protection for consumers, the environment and the workforce.

- For example, six of the eight fundamental rights of the ILO Core Labour Standards have not been ratified by the USA, among them conventions of vital importance for trade unions, concerning the freedom of assembly and the right to collective bargaining. Reports about the obstruction of union activities in the USA are common. Some US federal states seem to regard anti-union legislation as a locational advantage. In Chattanooga, Tennessee, for example, massive political influence was used to prevent the establishment of a works council in the local VW plant. Such political action prevents fair competition. Under certain circumstances, a trade agreement which further liberalises markets, thus increasing competition intensity, might even put pressure on standards in Germany and in Europe, or undermine co-determination and union rights.
- In the fields of environmental protection and consumer protection, banking and financial market regulation, some rules are vastly different on the two sides of the Atlantic, with unions considering standards in some areas to be more progressive in the USA and in other areas more

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progressive in Europe. The TTIP aims to create harmonisation and mutual recognition of regulatory and approval procedures which may be dangerous by allowing lower protection levels (with correspondingly lower costs and prices) to become the standard. This would result from either agreeing to this “weaker” standard, or from market mechanisms crowding out products with “higher” standards (and higher costs and prices) in favour of others with “weaker” standards. There are even concerns that the European precautionary principle could be circumvented. This would curb restrictions on approving products or procedures without absolute proof regarding possible harmful or dangerous effects.

- The liberalisation of the service markets desired by the TTIP might put public services under privatisation pressure. Special protection in other service areas as well which the trade unions consider necessary, might be removed.
- There are reports of plans to use the TTIP to install a transatlantic “regulatory cooperation council” (RCC) which would control and evaluate new rules and laws once the agreement had come into force. This might pave the way for lobbyists’ influence and restrict the ability of governments and parliaments to pass sensible laws in the interests of the public. An investment protection agreement might have the same effect: should the TTIP introduce rules, which allow a broad interpretation of terms such as “indirect expropriation” or “fair and equitable treatment”, foreign investors might define new environmental legislation or enhanced workers’ rights as an infringement of their investor rights. Using special rights to redress (Investor to State Dispute Settlement, ISDS), private investors could fight such laws before opaque arbitration tribunals. This legislation would mean governments could find themselves confronted with high court costs and demands for damages. Similar ISDS rights are already being used to claim multi billion Euro compensation for Germany’s nuclear phase-out. There are also reports of attempts by French companies to use ISDS to fight measures including raising the minimum wage in Egypt. It is not acceptable to subordinate the protection of workers’ rights, environmental rights or other government measures for the public good to the interests of foreign investors.
- The European Commission has decided a moratorium on negotiations concerning the TTIP chapter on investment protection and has initiated a three months public consultation on the matter, starting in March 2014. The published contract details are taken from the investment protection chapter of the Canada-EU-Free Trade Agreement (CETA), which is currently being negotiated. The results of the consultation process regarding investment protection in CETA are

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to be taken into account, in order to exclude the possibility of bypassing actions brought by US investors against the EU on the basis of investment protection foreseen in CETA.

- Current TTIP negotiations need to be suspended because of these concerns and new objectives need to be established. This suspension should be used to redefine a transparent EU negotiating mandate, in order to establish a fundamentally new approach in global trade politics, centring on the creation of fair trade relations, i.e. a more equitable political and regulatory framework for globalisation in the interests of workforce and consumers, rather than just increasing competitive pressures through market liberalisation and deregulation.

The following principles should also be observed when shaping trade relations between the USA and Europe:

- We need complete transparency, together with genuine and in-depth participation by both the social partners and civil society. This also means that negotiation documents and objectives must be disclosed. There must be no time pressure, which would put paid to any serious analysis of potential problems and opportunities. A comprehensive study is required on the possible social, ecological and human rights impact of such a trade agreement on the EU, the US and other countries. The study should be established in cooperation with civil society representatives.
- On no account must protection levels for the environment, the workforce or consumers be reduced, either directly or indirectly. There must be no mutual recognition of standards, which are non-equivalent concerning function or regulatory effect. The aim should be a harmonisation of environmental, worker and consumer standards at the highest available level, which would exclude competition based on dumping. Both contractual partners need to commit to ratify and implement international conventions and standards on the environment, labour and consumer protection as soon as possible. This would include the ratification of the ILO Core Labour Standards, further labour standards the ILO considers “relevant” and the OECD guidelines for multinational enterprises. Any binding agreement to eliminate trade barriers between the USA and the EU needs to include a timetable with concrete details on ratifying and implementing the objectives of international labour and social standards. Binding and enforceable rules must be defined, ensuring that their set targets are achieved, with their mandatory character extending to sub-national level in the EU and the USA. Compliance with labour and social standards has to be ensured in cases of conflict just as effectively as compliance with other rules of the agreement.

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- Endangering, weakening or bypassing the democratic right to make rules intended to protect matters of common benefit should be excluded. Parliaments and governments have the authority to pass laws and regulations for the good of their citizens and according to their wishes. This must not be made more difficult by creating a “governing council” in the context of regulatory cooperation.
- Investment protection regulations are not necessary in an agreement between the USA and the EU and must not be introduced through the TTIP. Investor/state arbitration and ill-defined definitions of legal terms such as “fair and equitable treatment” or “indirect expropriation” must be rejected in any kind of agreement.
- There should be no “negative list approach” when ruling on liberalisation in the service sector (where all areas not otherwise specifically listed, are to be liberalised). The “positive list” defining areas open to liberalisation is to be drawn up and discussed in detail and for every sector with the cooperation of all concerned, including the trade unions. Contract clauses should be rejected if they help to set the highest level of liberalisation achieved in stone and prevent re-regulation, as this would constitute a unilateral move towards increasingly broad-based liberalisation. Services performed by posted workers or employees must be guaranteed as being in conformity with national labour law, and there should be no restriction of national collective bargaining standards. In any event, the host country principle for compliance with rules governing labour law, social and collective bargaining regulations needs to be formalised, and if more advantageous for them, it is to be applied to all posted workers from the outset.
- The range and quality of services of public interest in the EU should be fully maintained. Public services need to be completely excluded from the negotiations with the USA. Services such as education, health care, social and labour market related services, as well as audiovisual and cultural services, water supply, postal services or public municipal transport, must not be topics for negotiation, even if one or both of the contractual parties have liberalised them already. Local or regional public authorities need to be guaranteed a permanent and comprehensive area of operations for designing services of general economic interest. Local self-government needs to be strengthened, as do its social and rule-of-law foundations. Regional authorities should retain their full decision-making powers for the organisation of basic public services. Moreover, EU member states must be entitled to maintain full public support for cultural and media promotion.

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- Given the ongoing financial crisis and recent negative experiences with financial sector deregulation, no further steps should be taken towards greater liberalisation of this sector and in the movement of capital. Liberalisation always goes hand in hand with the dismantling of national regulations, i.e. with deregulation, which may lead to instability and vulnerability in case of crisis. Financial sector supervisory structures certainly need improving so that its stability and functions can be restored. Trade talks should therefore be used to achieve common comprehensive standards in financial market regulation in order to harmonise the optimum level of protection.
- The negotiations with the USA should be used to reinforce the principle of socially and ecologically responsible public procurement, in other words, coupling the award of contracts with collective bargaining agreement compliance, minimum wage payments and similar conditions. Under no circumstances must liberalising procurement markets in the context of the TTIP lead to a situation where existing rules no longer apply when awarding public contracts. Local and regional value creation structures must remain valid and explicit preferential criteria in public procurement procedures. The agreement must not lead to compulsory broadening or liberalising public tendering and award procedures at sub-national or local level.
- Any agreement must contain a review clause, which makes it possible to correct undesirable and erroneous developments.