

All the Conspiracy Theories About TTIP

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Since July 2013, the US and the European Union have negotiated a bilateral agreement with the aim of removing trade barriers in a wide range of economic fields, so as to facilitate the purchase and sale of goods and services between the respective regions: i.e. the Transatlantic Trade and Investment Partnership, commonly known as TTIP.

Generally, peace, well-being and prosperity of human beings are, to a large extent, proportional to their freedom to move themselves and their business, to create, exchange and even sell ideas, goods and services, and, ultimately, to interact with each other free from unwarranted interference. That being so, TTIP, at least conceptually, can only be welcomed, as it can potentially create the largest free-trade area on the planet.

However, this probably isn't the most important consideration today. Any assessment of the merits of TTIP requires first of all a different approach in the evaluation of the criticism advanced by its detractors, precisely because of the great importance of the agreement.

In actual fact, negotiations on TTIP have raised little interest in most places, particularly when compared to the deal's potential impact. However, a sample of the critical assessments of TTIP's impact yields an image of the prospective agreement that can only be characterised as stereotyped and tendentious. This image emerges from a number of basic charges, which we shall attempt to characterize and assess in the following pages, with the intent of "extinguishing the fire" of conspiracy-tinged allegations and bringing rationality back into the debate on TTIP.

Allegation no. 1: the negotiations on TTIP are carried out in secret and in an undemocratic manner.

The charge of secrecy in TTIP negotiations hasn't been only advanced by sources that can be legitimately said to make the peddling of conspiracy theories their raison d'être, but by ostensibly unimpeachable sources as well, such as the two most¹ important² Italian dailies or what is currently the third-largest Italian party.³

1 <http://www.corriere.it/inchieste/reportage/economia/trattato-segreto-che-ci-cambiera-vita/0883150a-5565-11e4-af0d-1d33fddfa710.shtml>.

2 <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2014/07/21/il-patto-tra-usa-e-ue-sul-libero-scambio-una-rivoluzione-con-troppi-segreti1512.html>.

3 http://www.beppegrillo.it/movimento/parlamentoeuropeo/materiali/TTIP_depliant_5stelleeuropa.pdf.

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Not least because of these endorsements (and of the ominous mood which any conspiracy needs to have traction), this allegation is perhaps the most widespread on the subject. But what—at a closer glance—is this criticism based on? What differentiates the way negotiations on TTIP are carried out from the non-disclosure standards held in any other trade negotiation all over the world, especially in politics?

The above-mentioned sources, and many others, rely on the little interest that TTIP arouses in the domestic political debate, even among legislators. However, this quite dogmatic explanation does not consider an apparently trivial but decisive fact: since the creation of the European Union, in fact, the Member States have transferred to EU institutions their respective authority on a number of issues. Despite their voting process being somewhat dubious, these institutions are nonetheless compliant with the basic principles of representative democracy and allow all Italian citizens to vote their members, just as happens in the case of national political bodies.

Indeed, the legal competence of Member States in the field of foreign trade was exclusively devolved to the European Union: members of national institutions have no power—if not on an informal basis—in this regard. Negotiations with the US, therefore, are led by a delegation of the Commission. The results of such negotiations will be eventually included in the proposal the Commission will make in front of the European Parliament and the European Council, which—representing EU citizens directly—will have the last word on TTIP. And that should not be seen as a mere formality: in 2012, the European Parliament rejected the ratification of a multilateral trade agreement known as ACTA (Anti-Counterfeiting Trade Agreement), which had been negotiated since 2007.

Discussing the “democratic deficit” and the gap between citizens and EU institutions is not only permissible, but certainly also desirable: in the specific case, however, it looks like a rather specious observation. On the official website of the European Commission, in fact, are available plenty of documents on the issue of transparency in the negotiations,⁴ on the negotiating mandate of the Commission,⁵ on the impact of TTIP on public services,⁶ financial services,⁷ on the economic benefits expected from the TTIP⁸ (also investigated in the *paper* on the subject by the Centre for Economic Policy Research⁹), as well as of its benefits for culture,¹⁰ chemical, cosmetics, motor vehicles, pharmaceutical and textiles goods and services.¹¹ Also available are EU *position papers* about the rules regarding food and agriculture,¹² the infamous ISDS clause,¹³ the composition of the EU Commission delegation team¹⁴ and many others.¹⁵

4 http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152276.pdf.

5 <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>.

6 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1115>.

7 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1018>.

8 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=968>, http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152266.pdf

9 http://europa.eu/rapid/press-release_MEMO-13-211_en.htm.

10 http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152670.pdf.

11 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1076>.

12 http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151625.pdf.

13 http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152290.pdf.

14 http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151668.pdf.

15 http://ec.europa.eu/trade/policy/in-focus/ttip/resources/index_en.htm#_documents.

In addition, the Commission has carried out consultations on some essential issues of the agreement, such as the ISDS clause¹⁶—which will be discussed later and whose results were also publicized¹⁷—to which European citizens could participate, expressing their opinion.

What about the text of the agreement itself? Well, quite simply, there is no final text, yet, and thus there is nothing that can be published. The purported “secret draft,” including those published by Wikileaks¹⁸ on intellectual property, is entirely consistent with the intentions contained in the official documents released by the Commission. Their “declassified” content is absolutely in line with the stated intentions of the parties (summarised in a study of the European Parliament¹⁹) and their existence should not surprise anyone who has even a vague idea of how bargaining (and more so political bargaining) works—even in the formation of laws—in any democratic country in the world.

Allegation no. 2: TTIP will “privatize” public services.

Newspapers like *The Independent*²⁰ and *L'Espresso*,²¹ among many others, have claimed that TTIP could open the door to the privatisation of public services, such as healthcare. Nevertheless, the European Commissioner for trade recently reiterated²² that TTIP does not contain any binding provision on public services (and nothing that might even remotely imply their alleged “privatisation,” as charged, among many others, by politicians²³ and mainstream news organisations²⁴), whose management remains firmly in the hands of national governments.

In fact, as specified by the Commission itself,²⁵ the EU and its Member States are required to ensure that, in any trade agreement concluded by the Union with non-European countries (including TTIP), as well as in any national or EU law, each country is endowed with the greatest latitude in the management and operation of public services within its borders, even granting a monopoly or using at their exclusive discretion a particular definition of public services, by granting licenses to the providers of any service or even by defining quality standards that operating companies are required to meet. The only constraint on the latitude assured to Member States is that governments must grant the same treatment to companies that are already authorised to operate in its territory and other European ones.

The same rules apply for any agreement entered into by the EU. In some agreements, governments specify the services that can be licensed to non-European suppliers as well (i.e. “positive list”); in others, they do the opposite, implicitly declaring that non-specified services could be carried out by anyone (i.e. “negative list”).

16 http://trade.ec.europa.eu/consultations/index.cfm?consul_id=179.

17 http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152693.pdf.

18 <https://wikileaks.org/TTIP/>.

19 [http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140760/LDM_BRI\(2014\)140760_REVI_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140760/LDM_BRI(2014)140760_REVI_EN.pdf).

20 <http://www.independent.co.uk/voices/comment/what-is-ttip-and-six-reasons-why-the-answer-should-scare-you-9779688.html>.

21 <http://www.brunoleoni.it/nextpage.aspx?codice=15587>.

22 <http://www.ibtimes.co.uk/eu-trade-commissioner-elect-malmstrm-clarifies-public-services-exemption-trade-negotiations-1467749>.

23 <http://www.listatsipras.eu/partecipa/materiali/volantini/48-volantino-ttip/file.html>.

24 <http://temi.repubblica.it/micromega-online/ttip-il-pianeta-al-servizio-delle-multinazionali/>.

25 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1115>.

The adoption of this second approach could certainly lead to a freer interpretation of what “public services” are, but—having full power on the subject—national governments can change at all times, and at their sole discretion, the list of subjects thereby excluded. This applies to any other agreement signed by the EU.

Allegation no. 3: TTIP will lower food and environmental safety in the EU.

As made clear by the Deputy minister of Economic development in charge of foreign trade in a letter to investigative journalist Milena Gabanelli²⁶ following the broadcast of an episode of the TV show “Report”²⁷ on TTIP, the negotiating mandate²⁸—which does not represent a mere statement of principles and is fully binding—states that TTIP must recognise the right of the parties to assess and manage the risk (concerning sanitary and phytosanitary measures) in accordance with the level of safety that they consider appropriate, particularly when the relevant scientific consensus is insufficient.

That provision is an expression of the more general “precautionary principle,” as understood by the EU, according to which the burden of proof that a product is not harmful for the public or the environment falls on those who want to market it. A principle—it’s worth pointing out—that is not questioned by TTIP, so that any food deemed unsafe by one of the two jurisdictions (like hormone-treated beef or chlorine-treated chicken, Report says) will remain excluded from the deal. It is therefore unlikely, as the *New York Times*²⁹ claims, that the harmonisation of regulatory systems will lead to a lowering of European standards.

This issue, however, is entirely unrelated to the duties on agricultural products, which today can amount to up to 25% for US products imported into the EU (and which led Ambassador Gardner, in the same episode of Report, to state that an agricultural chapter ought to be included in the negotiations). We must consider, in this regard, that the costs caused by red tape raise the prices of goods traded between the EU and the US up to 20%. The elimination of those costs will enable Italian and European producers to increase their sales to Americans, and consumers to choose among more and cheaper products. By no means, however, would this only benefit multinational corporations, as often alleged: just consider that, whereas multinationals can easily outsource production, making the impact of duties on prices substantially ineffective, small and medium enterprises must face more hurdles to export outside the EU, due to tariffs and the costs of red tape. Finally, to avoid any misunderstanding, rules on GMOs or for the protection of life, human health and animal safety, as well as on environmental or consumers’ interests, are not part of the negotiations, despite allegations of Formiche.net,³⁰ Pagina99³¹ and Linkiesta,³²

Allegation no. 4: disputes concerning TTIP will be settled by “private” arbitrators and not by national courts.

This charge stems from the inclusion of the so-called “ISDS clause” in the agreement, and

²⁶ <http://www.sviluppoeconomico.gov.it/images/stories/documenti/lettera-report-2014.pdf>.

²⁷ <http://www.report.rai.it/dl/Report/puntata/ContentItem-9ed45d77-878a-4e7b-a531-df8fa39695bc.html>.

²⁸ <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>.

²⁹ http://opinionator.blogs.nytimes.com/2014/03/15/on-the-wrong-side-of-globalization/?_r=0.

³⁰ <http://www.formiche.net/2014/05/01/ttip-ecco-gli-effetti-del-trattato-commerciale-usa-ue/>.

³¹ <http://www.pagina99.it/news/economia/7486/Perche-il-TTIP-non-e-un.html>.

³² <http://www.linkiesta.it/ttip-trattato-transatlantico-usa-europa>.

has been asserted by the (recidivist) *Independent*,³³ Linkiesta³⁴ and Pagina99.³⁵ Given that, as previously mentioned, whether to include such a clause has been the subject of a specific consultation launched by the European Commission,³⁶ to which nearly 150.000 European citizens and institutions expressed their opinion, and whose results were published as well,³⁷ the nature and effects of that clause should be briefly clarified.

ISDS stands for Investor-State Dispute Settlement, i.e. an instrument of international law that guarantees to a foreign investor the right to open a process of dispute resolution against public bodies (and even governments) to a court of arbitration, in the case that new local laws or administrative measures might “threaten” its investments (which were legally protected under the previous regulation).

Using such clauses in international treaties relating to investments is an established and very frequent custom: bilateral investment agreements containing such a clause are the vast majority, and no less than 1,400 such agreements are in force in EU Member states. So why—despite the thousands of agreements containing such a clause concluded by European governments—should its inclusion in TTIP surprise or shock?

Probably, the reason depends on the history of ISDS. This clause, in fact, was born in the geopolitical context of the 1960s when, after decolonization, many developing countries expropriated and nationalized foreign companies, which, as a result, clamoured for the creation of international law’s instruments to safeguard their investments.

Indeed, committing the disputes between foreign companies and States to their national courts could easily foster suspicions of their “politicization,” due to the direct or indirect pressure that national governments and publics might place on their national courts.

As a consequence, it became common practice among western countries to include an ISDS clause into bilateral treaties on investments. Subsequently, disputes between companies and public bodies began to be judged by ostensibly “*super partes*” arbitrators. The ensuing decades saw a net increase in the number and size of investments, as well as a marked decline of the number of expropriations (from more than 400 in the 1970s to 17 during the 1980s).

The effectiveness of ISDS clause in investments’ protection had been such that its inclusion in bilateral treaties became a practice even in trade relationships between countries that were deemed as politically stable, such as in the NAFTA treaty between Canada, USA and Mexico. And there’s no doubt that including it in the TTIP would be perfectly consistent with the routine of international law in the last decades. With the understanding that, of course, this does not make it exempt from criticisms.

It is questionable, for instance, that the judicial systems of the EU and the USA cannot provide adequate guarantees of predictability, efficiency and impartiality. This contention can certainly be debated, as it indeed happened, not least thanks to the consultation launched by the European Commission, not to mention parliamentary points of order³⁸ regulatory

33 <http://www.independent.co.uk/news/business/news/us-firms-could-make-billions-from-uk-via-secret-tribunals-9785924.html>.

34 <http://www.linkiesta.it/ttip-trattato-transatlantico-usa-europa>.

35 <http://www.pagina99.it/news/economia/7486/Perche-il-TTIP-non-e-un.html>.

36 http://trade.ec.europa.eu/consultations/index.cfm?consul_id=179.

37 http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152693.pdf.

38 <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-006524&language=IT>.

proposals³⁹ and explanations⁴⁰ that enabled the Commission to manifest its (questionable, but certainly transparent) position in this regard.

Any discussion, however, needs to take account of certain facts. First, ISDS clauses do not preclude the right of governments to adopt laws and regulations, but simply require them to reward companies harmed by changes in legislation or regulation that impacted their investments made in accordance with those governments. Similarly, the ISDS clause can shed light on the hidden costs of public policies and strategies, belying the overly sanguine terms with which they are routinely presented to the public. Furthermore, the inclusion of ISDS clauses in bilateral treaties coincided with the largest global GDP growth in human history. On these arguments, the European Policy Information Center has published an interesting, in-depth paper⁴¹

The ISDS clause refers, in any case, only to the TTIP section regarding investments, with no prejudice—as clearly stated by the negotiating mandate,— to the EU and Member States' right to “adopt and enforce, in accordance with their respective competences, measures necessary to pursue legitimate public policy objectives such as social, environmental, security, stability of the financial system, public health and safety in a non-discriminatory manner.”

Lastly, preventing the inclusion of this clause in TTIP, even for discriminatory cases, would make politically untenable its inclusion in any trade agreement with China, whereas the intertwining connections between government and businesses in the Asiatic country would seem to strongly recommend it. It is easy to see the geopolitical and economic consequences that this would entail.

Allegation no. 5: TTIP will endanger environmental sustainability throughout the planet.

In an informal document revealed by the Huffington Post,⁴² the European Union has outlined the basic principles to be followed in the negotiations with the US in relation to the energy sector: these are the goal of more freedom of trade, the abolition of trade restrictions and an increase of investments from both sides.

The leaked document has increased concerns that TTIP would adversely affect policies for fighting climate change and especially EU policies to safeguard the environment.⁴³

The energy issue is claimed to have been brought to the centre of the debate on TTIP due to the geopolitical situation that has affected EU-Russian relations, persuading the latter to diversify its supply sources, thus decreasing the dependence on Russian gas. As detractors would see it, the EU is very focused on this issue, thus threatening to increase the extraction and export of oil and natural gas from the US to Europe, with the further aggravating factor of limiting energy policies of the Member States (and consequently the development of programs to promote renewable energy sources).

As for oil, it does not seem that TTIP could actually lead to big consequences: as aptly

39 [http://www.parlamento.it/web/docuorc2004.nsf/4d9255edaa0d94f8c12576ab0041c-f0a/00210840d90b4e09c1257a25004858f7/\\$FILE/9635_13IT.pdf](http://www.parlamento.it/web/docuorc2004.nsf/4d9255edaa0d94f8c12576ab0041c-f0a/00210840d90b4e09c1257a25004858f7/$FILE/9635_13IT.pdf).

40 http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151916.pdf.

41 <http://www.epicenternetwork.eu/wp-content/uploads/2014/11/EPICENTER-Briefing-ISDS-20th-November-2014.pdf>.

42 <http://big.assets.huffingtonpost.com/TTIPNonPaper.pdf>.

43 <http://www.energypost.eu/pursuit-free-energy-trade-trans-atlantic-trade-investment-partnership-ttip-endangering-action-climate-change/>.

grasped by Morris Adelman, as oil is a commodity, global markets cannot be manipulated in the long term by any treaty, policy, cartel or restriction. The only likely effect, actually,⁴⁴ could be a change in the “geography” of oil production, without any other significant qualitative or quantitative difference and, therefore, a real environmental impact.

Even taking into account a more diversified market, an increased trade of natural gas does not seem to be conducive to meaningful adverse environmental outcomes, both because of the relatively small size of its volume of trade, and due to the progressive convergence to the conditions to which the oil market is subject, as we have seen.

Conversely, the impact of TTIP on climate could be far from negative. In fact, cutting red tape would have the effect of lowering the price of natural gas imported from the US, making it more competitive (even compared to other sources of energy, particularly coal, a greater source of carbon and pollutants). Moreover, TTIP isn't likely to have an impact on demand for renewable energy, whose market share is guaranteed throughout Europe by subsidies, targets for CO₂ reduction and regulatory mandates.

44 <http://www.energypost.eu/defence-ttip-good-economy-climate/>.

IBL Focus

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Cosa Vogliamo

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