SOMO

TTIP Undermines Financial Regulation and Leaves Citizens Unprotected

WHAT ARE WE TALKING ABOUT? SOME CLARIFICATIONS

- ✓ **TTIP** = Transatlantic Trade and Investment Partnership
- ✓ “**Trade in financial services**” not only refers to services offered or consumed across borders (e.g. a citizen in one country can open an online savings account with a bank in another country). It also includes the cross-border movement of a foreign financial service provider via investment or commercial presence (e.g. the opening of a physical bank branch in another country). In other words, this is very much about opening up the financial sector to foreign direct investors.
- ✓ “**Financial services**” and **financial sector investors** covered by the TTIP trade rules include: all savings and other bank services and insurance services, trading in stocks and derivatives (including the secretive and risky ‘over the counter’ or OTC derivatives), pension fund management, trust services and tax advisory services (i.e. helping clients avoid or evade taxes), financial data transfer and processing services, retail banks, investment banks, hedge funds, private equity funds, (stock and commodity) exchanges, and all kinds of financial advisory consultancies including the much-criticised credit rating agencies.

ATTACKING PARLIAMENTS’ RIGHT TO REGULATE

The negotiators from the European Commission (EC) have clearly stated that TTIP is about **“disciplining” regulation** to ensure that they do not form barriers to trade. This has nothing to do with ensuring that citizens are adequately protected against the considerable risks taken by the financial sector at the expense of tax payers and workers. The TTIP disciplines will in effect restrict, and even forbid, what parliaments and financial regulators can do:

- **Deregulation**: The TTIP rules on ‘market access’ will prohibit parliaments from introducing important financial regulation e.g. aimed at setting a limit on the total value of a financial institution’s operations. This would prevent regulation that tackles too much excessive speculation.
- **Attacking the powers of financial regulators**: The proposed TTIP rules would require domestic regulation in financial services to be ‘objective’, to make it easier for a financial product or provider to obtain a license. TTIP would allow for prudential regulations to be made in the interest of clients and of financial stability. However, this so-called ‘prudential carve-out’ clause stipulates that prudential measures should “not be more burdensome than necessary”. In practice, this would rule out measures that are meant to prevent another financial crisis from occurring.
- **Circumventing parliaments:** The EC proposal for a regulatory cooperation framework would require that EU-US consultations be held behind closed doors *before* any piece of financial regulation is proposed to parliament. The cooperation framework is to focus on the joint development and implementation of standards in international standard-setting bodies where parliamentarians and citizens have no say but where the financial lobby has significant influence.
- **The financial industry can thwart financial regulation**: The EC also wants the investor-to-state dispute settlement system to be applied to financial regulation. This would allow foreign financial institutions to thwart financial reforms, which is already happening in US courts.

UNDERMINING FINANCIAL REFORMS AND CRISIS PREVENTION

- **More risky behaviour**: The further liberalisation of trade and investment in financial services would exacerbate the competition among US and EU financial institutions and therefore also the risks taken by them, which were the root cause of the recent financial crisis. Moreover, the financial reforms being undertaken in the EU and US are far from complete or sufficient, which means that liberalisation would take place within an unstable and precarious regulatory framework.

- **Negating ongoing financial reforms**: TTIP would liberalise some existing and even new financial services, which would run counter to existing or proposed EU financial reforms that aim to restrict those services (e.g. over-the-counter derivatives, investment funds, limits on borrowing by banks).
- **Supporting too-big-to-fail banks**: In order to avoid taxpayers having to pay for big banks that fail, some governments are proposing splitting banks or separating basic and speculative bank services. This would, however, be contrary to the TTIP market access rules that prohibit size limitations, or requirements for a financial service provider to adopt a particular legal form.
- **No difference between EU and US financial regulations**: The regulatory cooperation proposed by the EU would ultimately lead to financial regulations that are identical but not the same (in legal wording). US laws would then apply to US financial providers in the EU and vice versa. This could easily result in standards dropping to the lowest common denominator.
- **Massive and unstable capital flows**: The free flow of capital is one of the objectives of the TTIP, but is also an important factor behind the very rapid spread of financial risks and financial crises across the Atlantic. Even the IMF now admits that restricting capital flows could have reduced the severity of the recent financial crises in Spain and Greece.

SERVING THE INTERESTS OF THE FINANCIAL INDUSTRY

- **Financial industry's right to lobby guaranteed**: Draft TTIP rules on 'transparency' provide that consultations must be held with stakeholders for all financial regulations proposed in the US and the EU. In practice, this gives the financial lobby a strong say in shaping the regulations while citizens are unaware of the regulatory proposals. Parliamentarians would receive the proposed legislation only after the financial sector's interests have already been included.
- **More profit-making as a goal:** The EC negotiators' position reflect the demands of the EU financial sector lobby, including the investor-to-state dispute settlement that would allow investors to claim millions of dollars in compensation while not allowing citizens to take companies or governments to non-national courts. Financial services exports are a very lucrative industry for the EU, especially the City of London with its sophisticated lobbying close to the UK government and to the head of the EC's directorate which is responsible for financial regulation (DG Internal Market).
- **Subverting efforts to improve regulation and consumer protection**: The TTIP regulatory cooperation proposed by the EC will result in the compatibility/equivalence of regulation, whereby EU and US financial firms operating abroad can apply the rules of their home country. While this is convenient for the financial institutions, it leaves consumers in a weak position to claim for better services or to redress damaging rules or practices. Ultimately, the financial industry will only have to apply international standards, which are decided by groups such as the G-20 and the Basel Committee on Banking Supervision that take little account of citizens' inputs and needs.
- **Unaccountable regulatory process**: Those participating in the EU-US regulatory cooperation framework to harmonise financial regulation would not be held accountable by parliamentarians but instead be heavily influenced by the financial lobby. The EC proposals and internal documents give no indication that EC negotiators have the interests or needs of citizens and consumers in mind.

IMPOSING FINANCIAL STANDARDS ON THE REST OF THE WORLD

The real intention of the EC's proposal on regulatory cooperation is to ensure that financial regulations decided by the EU and the US are applied in the rest of the world. If the EU works closely with the US in international standard setting bodies to develop international standards that are then applied in these two large economic blocs, other countries have no choice but to follow their lead. This would prevent other countries where EU and US financial firms operate standards developing other standards.

For more information, see for instance: http://somo.nl/themes-en/trade-investment and http://somo.nl/news-en/ttip-regulatory-cooperation-in-the-financial-sector-the-ec-proposal-of-2-october-2013/at_download/file

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