Dear colleague,

This letter action is meant to intervene, on the basis of international human rights law, in the current negotiations on trade agreements between the US and the EU (TTIP) and various Pacific Rim countries (TPP). Whether you have been involved in struggles around these issues already for a long time, or whether you are new to these issues, the background paper at hand wants to support you, your CSO or social movement with a human rights analysis of the TTIP and TPP. Much of this analysis applies also to other trade and investment agreements that are in conflict with fundamental human rights.

Given the haste with which the trade negotiations proceed, urgent action is needed. We therefore ask you to quickly circulate the letter and this covering letter within CSO networks and beyond - and to take action and/or include the arguments presented here into your analysis and communications. Organizations and persons are asked to send the proposed letter – or a modified version - to the authorities mentioned in the head of the letter.

If you want to send this letter as an individual, please do so. The letter head emphasizes a few countries - but all other countries are also threatened. If you live in an EU member state, an additional letter should be sent to the presidents of the EU Commission and the European Parliament.

Please feel free to address additional persons in governments or parliaments and to modify the proposed letter according to your needs.

For further information you are invited to contact kuennemann@fian.org.

Introduction

The following paragraphs give some background to the letter with some specifics on the TTIP and the right to food and human rights conclusions.

Negotiations for the Transatlantic Trade and Investment Partnership (TTIP) between the U.S. and the EU were initiated in July 2013. The trade agreement pretends to boost economic growth and create new jobs by removing trade and investment barriers on both sides. Since conventional trade barriers in terms of tariffs are already low, the focus of the negotiations is on the “harmonization” – or downgrading – of health and safety standards and their adaptation to corporate needs. Parallel to the TTIP negotiations, the US has been engaging in negotiations for another far-reaching trade deal with 11 other Pacific Rim countries, including Japan, New Zealand and Chile – the so called Trans-Pacific Partnership (TPP).

The magnitude of trade covered by the TTIP and the TPP implies that any trade rules negotiated between the participating countries will ultimately have a strong influence over global trade rules and impact on peoples’ lives in other countries. The negotiating parties therefore have an

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2 The other countries are Brunei, Singapore, Australia, Canada, Malaysia, Mexico, Peru, and Vietnam. South Korea has also expressed its interest in joining the negotiations.
obligation to assess the human rights impact of the treaties not only in the participating countries but also in third countries.3

Negotiations for TTIP and TPP have been highly secretive and exclusive. Negotiation texts have not been made available to the public, giving civil society and their representatives no opportunity to scrutinize and provide input to negotiations which, once concluded, will have significant impact over their daily lives. Not even parliamentarians have been granted full access to the negotiating documents, stripping them of their democratic oversight function in trade matters.4 Moreover, the US administration is requesting “fast track” authority to be granted, which would reduce the role of the US Congress to voting on an already negotiated package without being able to make any modifications.5

While parliament and civil society are effectively excluded from the negotiations, the corporate sector – which has no legitimate role to play in policy making – has played a prominent role in advising and providing direct input to the negotiations. Corporate interests – profit and long term dominance of markets – are given priority over social and environmental concerns, which are not even listened to. US trade advisory committees in the field of agriculture, a formal mechanism through which industry associations and corporations can assert political influence over US policy making, are dominated by large agribusiness and food corporations.6 In addition to sitting on advisory boards, industry associations and corporations in both the EU and US have been invited to make formal submissions to the respective trade representatives – and they have readily presented their wish lists.7

Adapting food safety standards and regulations to corporate interests

In their letters submitted to the US Trade Representative (USTR) and the EU Commission, the food and agro-industry bluntly ask for the watering down of food and safety standards and regulations – which from their point of view are no more than trade barriers. Moreover, they want to be more involved in policy making or even regulate themselves.8

Within the TTIP negotiations, US biotech and agribusiness companies are pushing for the EU to accelerate authorisation of (and lower safety requirements for) genetically modified seeds and products, and eliminate mandatory labelling.9 Their demands have been fully endorsed by the

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4 The regulatory power of the US Congress in trade matters is, for example, enshrined in article 1, section 8 of the US Constitution.
6 For a list of members, see http://www.fas.usda.gov/itp/apac-atacs/advisorycommittees.asp
8 This position is backed by U.S. Trade Representative Michael Froman, see remarks from 30 September 2013, available at http://www.ustr.gov/about-us/press-office/speeches/transcripts/2013/september/froman-us-eu-ttip
USTR and feature strongly in the negotiations.10 Equally under attack by food corporations are public initiatives in the US and EU to source food locally.11 Outlawing such efforts under the TTIP would severely compromise the ability of governments to facilitate their citizens’ access to fresh, nutritious, and culturally adequate food and stimulate sustainable agricultural production and local food chains.

As for the TPP, US food and agribusiness companies have dedicated significant attention to Japan, one of the largest markets in the region. In addition to demanding reductions in tariffs and extension of quotas, in particular in relation to dairy products and rice, food companies would like to see regulatory measures removed - such as the testing for maximum chemical residue levels and GM traits in rice and restrictions related to BSE.12 The food processing industry, on the other hand, has called for eliminating restrictions on ingredients, additives and processing aids, which in the Grocery Manufacturers Association’s (GMA) opinion are “overly influenced by activist views”.13 The National Confectioners Association (NCA) and the Corn Refiners Association (CRA) moreover would like to see tariffs on confectionary and starch-based sweeteners removed.14

All of the above demands – which provide only a glimpse of the industry and company demands put forward – will have significant impact on the ability of governments to protect and fulfil people’s access to safe, nutritious and culturally adequate food, as well as people’s capacities to make informed choices about what they eat.

**Undermining States’ regulatory capacity**

Another major threat to States’ ability to regulate in the public interest is the proposed inclusion of an investor-to-state dispute settlement (ISDS) mechanism in both trade agreements – working essentially behind closed doors. Such a mechanism empowers corporations to bypass domestic laws and court systems and sue governments for alleged losses in profit resulting from changes in public policies and regulations, including food safety standards. Several trade agreements already include ISDS provisions, and there are numerous examples where companies have legally challenged public health and safety standards which threatened their profits.15

In U.S. trade agreements alone, corporate claims against public interest policies amount to 14bn US$ in “compensation”, paid out of tax payers’ pockets.16 The average cost of litigating a case before an ISDS tribunal is 8 million US$, significantly deterring States from meeting their human

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The common argument for ISDS is the “need to increase investor confidence” in cases where domestic court systems and property rights are perceived to be weak. This argument obviously does not hold in relation to the U.S. and the EU. Their already high levels of mutual investment equally speak a different language. What then is the real purpose of this agreement? TTIP-TPP would provide corporate investors with tools against human rights-based regulation and against policies aimed at restructuring the corporate sector.

ISDS systems are not compatible with States’ obligations under international human rights law, as they effectively limit States’ ability to enact policy and legal measures required to protect and fulfil human rights, including the right to adequate food.

**The agreements conflict with States’ human rights obligations under international treaty law.**

All member States of the EU are States Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR). The same holds for New Zealand, Chile, Australia, Japan, Canada, Mexico, Peru, and Vietnam.

In delegating competences to the EU, States have to ensure that the organisation acts in accordance with their international obligations under the ICESCR, including their obligation to respect, protect and fulfil the right to adequate food within their national boarders and extraterritorially. The latter imposes on States a duty to create an enabling environment for the realisation of human rights and to ensure that any trade agreements entered into do not interfere with the enjoyment of human rights in their own country and in other countries.

The downgrading of food safety standards and regulations envisaged by both the TTIP and the TPP, for example, is regressive and hence contrary to member States’ obligations under the ICESCR. The treaties moreover place effective restrictions on States’ overall capacity to meet their human rights obligations, including ensuring people’s access to safe, nutritious, and culturally adequate food.

Although the US belongs to a handful of countries which have not yet ratified the ICESCR, it has signed the treaty and hence must refrain from any act that would defeat its object and purpose.

**The agreements conflict with the UN Charter and must not be applied.**

As member States to the UN, the negotiating States are obliged to “take joint and separate action” to pursue the purposes of the organisation, which includes the promotion of human rights. The agreements at hand are not promoting human rights but, on the contrary, penalize States that take measures aimed at meeting their obligations under the UN Charter. In situations where a State obligation under an international agreement conflicts with an obligation under the

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18 Maastricht Principle No. 15; UN Committee on Economic, Social and Cultural Rights, 2000, ‘General Comment No. 14: The Right to the Highest Attainable Standard of Health’

19 Maastricht Principle No. 29

20 UN Committee on Economic, Social and Cultural Rights, General Comments No. 12 and 14.

21 Vienna Law of Treaties, art. 18.

22 UN Charter, art. 55,56
UN Charter, the latter prevails. The conflicting norm must not be applied to the extent of its inconsistency.

*The agreements conflict with peremptory norms of international law and are therefore void.*

The obligations to respect, protect and fulfil fundamental human rights are not at the disposal of States. The part of law that is indeed at the disposal of and generated by States is called *jus dispositivum*. The other part of law is so essential to the notion of law, that all States are bound by it, if they want or not. For this matter it is called *jus cogens* (lat.: "compelling law"). The terms "jus cogens" and "peremptory norms of law" are used synonymously. Fundamental human rights and the related obligations are jus cogens – peremptory norms of international law. No State under the rule of law can reject them, without being considered outside the law. At the disposal of States is only how to protect and fulfil fundamental human rights, and how monitoring and remedy mechanisms are designed. The suggested agreements do not only directly challenge specific human rights but create mechanisms (ISDS) which would sanction States for taking steps to meet their overall human rights obligations. They are therefore void. This has been made explicit in the Vienna Convention on the Law of Treaties, art 53: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law."

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23 UN Charter art. 103.
24 According to the Vienna Convention on the Law of Treaties, a “peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character” (art. 53) The preservation of basic human rights is recognized to be a jus cogens norm.