



LIBERTÉ!



**A Joint Open Letter on the Transatlantic Trade and Investment Partnership to the European Parliament, the European Council, the European Commission and national parliaments of the EU member states**

5 May 2015

To:

President of the European Parliament Martin Schulz  
President of the European Council Donald Tusk  
President of the European Commission Jean-Claude Juncker  
National parliaments of the EU member states

cc. Commissioner for Trade Cecilia Malmström  
cc. Permanent representations of the member states to the European Union

The European Union and the United States of America are currently negotiating the Transatlantic Trade and Investment Partnership - a comprehensive free trade and investment treaty commonly known as TTIP. The main focus of negotiation has centered on cutting tariffs and reducing regulatory barriers to trade. Other areas include investor-state dispute settlement (ISDS), and achieving greater participation by small businesses in EU-US trade. In the EU, the treaty will have to be presented to the European Council and the European Parliament, both of which must agree on the outcome. It will then have to be ratified by the national parliaments of all 28 EU member states.

More international trade between developed nations brings unambiguous, tangible economic benefits to all sides involved. While the magnitude and distribution of benefits among the trading partners can be discussed, freer trade clearly brings more well-being, not less.

We must remember that among democracies it is not countries or governments that trade with each other. It is people – consumers and companies – whose inventions and products span national borders. It is people – consumers and entrepreneurs – who are the primary actors and benefactors of free trade. Therefore, the role of governments is not to restrict human action, but to facilitate it. The question governments should raise is not “How much free trade should we allow?” but “What can we do to facilitate more trade?”

TTIP is not the first time Europe is opening its borders to trade and investment. The creation of the common market has seen its member states limit their power to use taxpayer money to prop up failing businesses, as well as dismantling the tools of arbitrary

and capricious legislation - once used to protect failing industries with non-tariff barriers (e.g. regulations, technical standards, etc.). Renouncing these powers and tools did not mean that we began to live without rules or without consumer protection. The EU internal market shows that both more trade and benefits to consumers are clearly compatible.

Before the recent round of EU expansion some predicted a race to the bottom in terms of wages and standards, a dilution of the social contract, as well as many other pitfalls. None of them materialized. The same arguments were used in the United States when they negotiated the North American Free Trade Agreement (NAFTA), and they proved just as baseless.

Clear rules bring more democracy, not less. TTIP and Investor-to-State Dispute Settlement (ISDS) are not a threat to sovereignty or democratic governance. States' powers to regulate their respective economies would remain unaffected by ISDS. The current performance of arbitrators shows no bias towards investors. Its track record demonstrates the following outcomes of arbitration procedures: 50 percent of concluded arbitration cases against the EU member states were won by the member states concerned, and an additional 26 percent were settled.

The right of investors to seek an independent (non-national) arbiter should be seen in a positive light, remembering that such a possibility exists even without ISDS. After all, the right to a fair and impartial trial is a virtue espoused by democracies. It is not unheard of to predict that at least in some instances of a dispute between an investor and a national government, national courts can pass biased rulings, either from overt or covert pressure from the national government or even based on simple national feelings. Is this not the reason why international sporting events are refereed by non-national referees?

Finally, clear and *a priori* set rules are essential to the rule of law. The ISDS mechanism highlights possible legal costs of arbitrary actions by the state, thus adding to a better and more comprehensive impact assessment of government regulation. It is also a means to reduce regulatory risk and boost foreign investment. In the current conditions of ever-growing global competition, the EU should seize the opportunity to engage in a closer relationship with a country it shares its values with.

There are certain aspects regarding TTIP and ISDS that should be carefully addressed. Firstly, it is of utmost importance to secure the integrity of TTIP and ISDS, meaning that no policies or products should be excluded from them. Any compromise would open a Pandora's box of exemptions, special privileges, and favoritism that would be largely incompatible with free trade. Exemptions would lead to lobbying for more exemptions and thereby undermine the whole deal in principle.

Secondly, it is essential to prevent regulatory-creep. Most barriers to be removed are non-tariff barriers, so arguments will evolve around whose rules to adopt and to what extent. It should be kept in mind that "harmonization" of rules and regulations might lead not to simpler rules but to more rules. Adding EU regulations to US regulations and vice versa would just augment red tape. The point of regulatory coherence or harmonization (or mutual recognition) should be to streamline superfluous regulations and standards for the

purpose of eliminating unnecessary costs and passing the benefits on to consumers in the form of lower prices and better choices.

Finally, two leading trading blocks acting by one set of rules would create more order, not less.

We, the fourteen undersigned think tanks in eight Central and Eastern European Member States, all members of the 4Liberty network, urge the European Commission, the European Council, the European Parliament and national parliaments of the EU member states to ground their decisions in rigorous research-based economic evidence and to embrace TTIP and its elements, including ISDS.

Undersigned by:

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Centre for Liberal Studies, the Czech Republic  
Civil Development Forum (FOR), Poland  
F. A. Hayek Foundation, Slovakia  
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Lithuanian Free Market Institute, Lithuania  
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