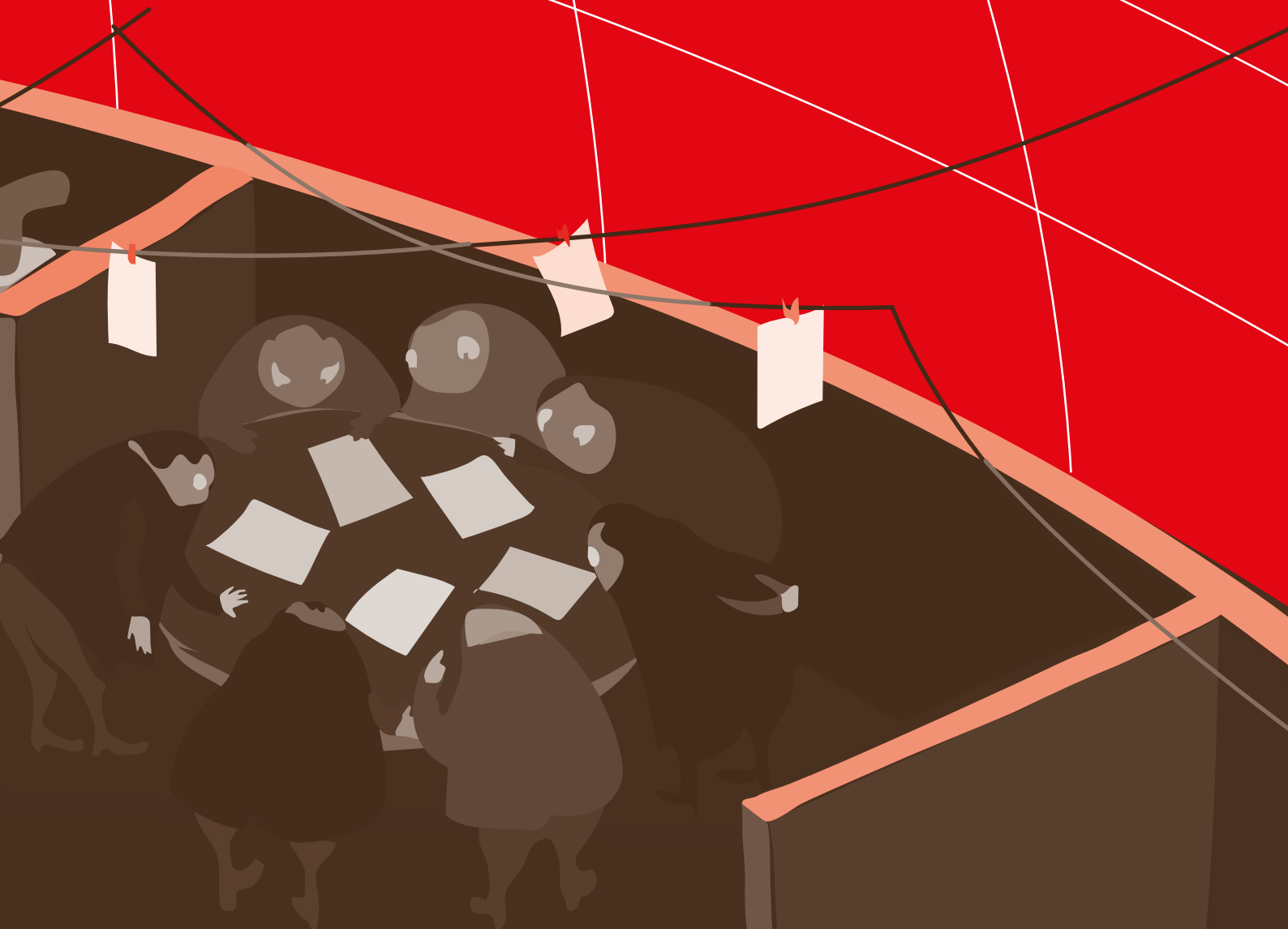
ROSA LUXEMBURG STIFTUNG BRUSSELS OFFICE

UNPACKING TRADE & INVESTMENT

4 OUTDOING THE WTO? THE NEW RULES OF TRADE IN THE MAKING



4 Outdoing the WTO? The New Rules of Trade in the making

Shalini Bhutani

Global trade means the buying and selling of goods and services across borders. The World Trade Organisation (WTO), established in 1995, is the world's largest intergovernmental organisation and where countries decide the rules for trade. The WTO's many agreements form the basic set of rules for global commerce for its 164 member countries (as of July 2016). But outside of the WTO, several new agreements are in the making between various countries. These are being negotiated either at the bilateral (one-on-one, between two countries) or at the plurilateral level (between many countries – more than two, but less than the number in the multilateral WTO).

When the trade ministers of WTO countries met for the Tenth Ministerial Conference in Nairobi, Kenya in December 2015,[1] there were no concrete decisions to carry the development agenda forward, that developing countries have expected. On the contrary, developed countries were pushing 'new issues'. The lack of consensus has slowed the pace of work within the WTO, and, in turn, big business interests are seeking other venues where the 'free' trade agenda can be taken further.

This leaflet lists the six key emerging trade agreements and the concerns from the perspective of the people and the planet. The texts of most of these agreements are not publicly available, yet given the issues they cover they warrant wider public discussion. It is important for the public to know about them and their implications. Whether these trade deals will see the light of day shall depend on the mobilisation of public opinion. What needs to be looked at more closely are both the process and the politics around this new generation of agreements.

GLOSSARY OF ACRONYMS

1. BILATERAL

CETA
Comprehensive Economic and Trade Agreement
EU & Canada

TTIP
Transatlantic Trade and Investment Partnership
EU & US

2. MEGA-REGIONAL

TPP
Trans-Pacific Partnership
12 Countries

RCEP
Regional Comprehensive Economic Partnership
16 Countries

3. PLURILATERAL

EGA
Environmental Goods Agreement
EU plus 16 (44 Countries)

TiSA
Trade in Services Agreement
EU plus 22 (50 Countries)

1 Tenth WTO Ministerial Conference **https://www.wto.org/english/thewto_e/minist_e/mc10_e/mc10_e.htm**

THE BIG BILATERALS

CETA TTIP

COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT

The CETA[2] story began in 2007 at the EU-Canada Summit in Berlin, Germany, where both sides agreed to explore deeper economic partnership. A joint study, 'Assessing the Costs and Benefits of a Closer EU-Canada Economic Partnership'[3] was released in October 2008. Eventually, the CETA text was signed in September 2014; it was approved by the 28 EU Member States in 2016. In principle CETA must pass the European Parliament to enter into force. If ratified, most of the agreement will be 'provisionally implemented' while some parts need ratification by national legislation.

As the opening of the text states, it is intended to *create an expanded and secure market for (their) goods and services through the reduction or elimination of barriers to trade and investment*.[3] It will eliminate custom duties for all industrial products (including processed agricultural products, or 'PAPs'). This means that the EU can export more, with less import taxes imposed on its shipments arriving in Canadian ports.

60% of Canada's GDP is driven by trade. Therefore, the government gives great importance to agreements like CETA. While the agreement is just as important for European governments that want to expand trade with Canada for similar reasons, there does not seem to be any popular backing for it.[4]

TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

TTIP is being negotiated between the European Union and the United States of America. The 13th and 14th rounds of talks were held in New York City in April and in Brussels in July 2016 respectively. This is also referred to as *Transatlantic Free Trade Agreement* (TAFTA), as it is a reminder of the North American Free Trade Agreement (NAFTA in operation between USA, Canada & Mexico, since 1 January 1994). In the words of US President Obama, the USA is not interested in a 'TTIP-light'![5]

One of the important elements in TTIP is the so-called *regulatory cooperation*, which entails the convergence of standards across the Atlantic so environmental and food safety requirements are the same. The USA are trying to get past the 'no' to GM foods by the EU, which they did not achieve through WTO rules. Through TTIP, the USA sought an unrestricted market environment to sell meats that have either pesticide residues or growth hormones. Likewise, UK banks are seeking less stringent banking regulations from the USA, and the EU would like higher common standards for financial services in general. The removal of barriers to big businesses (in, for example, essential services such as public health, water and education) to be opened up for US companies has direct effects on ordinary citizens. Another issue is getting around the 'Buy American' requirement, in order to open up the largest public contracts markets to each other's companies.

A pet demand from the EU is geographic indications (GIs), which require the trading partner to not allow the sale of any imitation of wines, meats and cheeses with a protected regional name. For example, the interdiction of branding and selling ham as Parma unless it's Italian, as the name conveys that the meat comes from a designated place in Italy, giving it particular characteristics.

2 **https://en.wikipedia.org/wiki/Comprehensive_Economic_and_Trade_Agreement**

3 Final negotiating results **http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf**

4 Fighting toxic CETA on the streets of London **http://www.waronwant.org/media/fighting-toxic-ceta-streets-london**

5 The EU and USA have done a joint assessment of how far the talks have gone since the fifteen rounds from July 2013 to October 2016, before any progress can be made under the new administration in USA. U.S.-EU Joint Report on TTIP Progress to Date 19 January 2017 **http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155242.pdf**

A problematic area is the investor-state dispute settlement (ISDS) that the USA wants, with private, hand-picked arbitrators to sue governments in case of violation or perceived loss of profit to investors. The EU's counter-proposal is an investor court system (ICS) with 15 independent judges. Within Europe, and particularly in Germany, there is resistance to both the ICS & ISDS in the belief that national courts are good enough to resolve disputes. There also continues to be popular opposition across Europe to the very idea of TTIP. The Dutch people attempted to invoke the national Advisory Referendum Act (ARA), 2015 to express their voice against the agreement.

THE 'MEGA-REGIONALS'

TPP RCEP

TRANS-PACIFIC PARTNERSHIP

This partnership was agreed to in October 2015 after seven years of talks, and its texts were signed in February 2016. But it is yet to come into force in the 12 countries in the Asia Pacific region, including the USA. The fate of the TPP will largely be decided by the US election's outcome. It is very much a US-led initiative to retain its presence in the pacific zone and sell its products with more ease in the other 11 countries. In fact, the USTR proclaims it a 'Made in America' agreement. Yet, the two big political parties in the US (Democratic and Republican) both have been sceptical of the TPP. Their presidential candidates did not want to be seen outsourcing jobs that could result from this trade deal. Since November 2016 when the TPP negotiations were abandoned by USA, there is speculation of a new protectionism that may lead to a pullout of the TPP.

The key purpose of the TPP is to slash tariffs, or reduce import taxes between the member countries. Countries other than USA, such as New Zealand are hoping to break into an otherwise protected US market, particularly to be able to sell more agricultural products. The TPP text covers a range of subjects in over 30 chapters. The TPP is a classic example of how sovereign policy space is taken over by the idea of 'regulatory coherence'. This requires the government of a TPP member to first check with 'interested persons' before taking any policy decisions. It also requires regulatory impact assessment to justify regulation.

The 12 TPP members are also part of the existing Asia-Pacific Economic Co-operation (APEC), which has been toying with the idea of a Free Trade Area of the Asia-Pacific (FTAAP) since 2006.

REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP

The negotiations for this Asia-Pacific economic partnership began in 2012. It is between ASEAN countries and Australia, China, India, Japan, Korea and New Zealand. It is essentially a deal between ASEAN and its FTA partners, notably without the EU, US or Russia. Though this is seen as an Asian answer to the TPP, it is not very different in what it aims to achieve, particularly in the area of elimination of tariffs for the export of goods and in services liberalisation.

Some of the more advanced economies in the group, such as Australia, Japan and Korea, are making 'WTO-plus' demands. This is particularly seen in the area of intellectual property. The WTO IP agreement (called TRIPS in short), allows for countries to exclude seeds from patents if they pass plant variety protection laws granting exclusive economic rights to corporate breeders. But the RCEP text under

discussion requires all members to also join the UPOV 1991, which restricts farmers' seed-saving and also curtails researchers from using IP-protected varieties without paying royalties and seeking the breeder's permission. This goes against the seed sovereignty that peasants across the Southern world are struggling for. Likewise, in the area of medicines, relatively less strong countries like Cambodia, Indonesia, Myanmar and Thailand are being asked to provide patent protection and data exclusivity, far more than what is required by the WTO IP rules. This will make medicines more expensive, while limiting the supply of cheaper generic versions.

What is striking is the lack of Asian solidarity in these talks, with no real friendship amongst even the ASEAN members. Malaysia and Singapore lead the pack in ASEAN, while India and China compete with each other. Several negotiating rounds of RCEP are to be held throughout 2017.

THE PLURILATERALS

TiSA

EGA

TRADE IN SERVICES AGREEMENT

This is a trade treaty intended to liberalise services such as transport, banking, health, etc. The agreement is between 50 countries: the 28 countries of EU, USA and Australia (these three being in the lead) and Canada, Chile, Taiwan (Chinese Taipei), Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland and Turkey participating in the consensus-based decision-making.

The starting point of TiSA is the WTO's existing General Agreement on Trade in Services (GATS). Yet it attempts to discuss a new set of rules of engagement for the global services economy. One striking example is the 'ratchet clause': if a country has once committed to liberalise a particular service, it cannot reintroduce any protective or regulatory measures. The TiSA is a roundabout route for expanding the WTO GATS. If more WTO members join the agreement, it will be included in the WTO. The emerging economies and most of the developing countries kept out now, may be pressurised to join later. Despite a cancelled ministerial conference to conclude the TiSA in November 2016, governments in the talks are aiming for a wrap in early 2017.

ENVIRONMENTAL GOODS AGREEMENT

The official negotiations for the EGA were launched on 8 July 2014 by 14 WTO members, including China, Japan, USA & EU.[6] The main purpose of this agreement is to remove tariffs on a list of environmental goods. The implementation of this is based on a list of goods (currently 54), on which tariffs will be reduced over time, in this case to 5% or less by 2050.

This may actually look good to someone unfamiliar with trade politics. For it may appear that with the removal of import-export duties, it will be cheaper to buy and sell environment-friendly goods. Governments are constantly under pressure, both under climate change commitments and Sustainable Development Goals, to turn to greener technologies. But the countries that are behind this are typically the technology-exporting countries. Thus, this is about increasing their trade. The EGA itself does not currently guarantee technology transfer.

6 Joint Statement regarding the launch of the EGA negotiations
http://eeas.europa.eu/delegations/wto/documents/press_corner/final_joint_statement_green_goods_8_july_2014.pdf

COMMON CONCERNS ACROSS ALL THE FTAS:

GEO-POLITICS

Even though these agreements are about trade, the choice of both trade topics and partners is a strategic one. Often, a trade deal is motivated not only for new relationships with trading partners, but also for the effect on non-partners.

`WTO-PLUS'

The 'extra-WTO' negotiations either go beyond what WTO rules prescribe for its members or bring in new issues currently not covered by WTO rules. They thus expand the WTO, outside of it.

MULTIPLE TALKS

There are only some countries that are present in several trade talks at the same time, and can afford to be. For example, the USA is an active member of the WTO, while also negotiating the mega-regional TPP and simultaneously negotiating the bilateral TTIP with the EU. For a national government to follow through each and every negotiation requires a large negotiating team, with the capacity and resources for continued participation. Even maintaining a presence in Geneva for WTO talks is costly, particularly for developing countries and LDCs.

NON-TRANS PARENCY

Typically, the texts of all these agreements are not open to the general public. The lack of transparency is a major concern. What little is out in the open is either through `leaked' documents or the use of Right to Information legislation.

UNSOLICITED UNILATERALISM

If people do not know the contents of these trade treaties, they are unable to verify if their governments are actually going beyond what is asked of them in the treaties.

SELECTIVE CONSULTATION

The stakeholder consultations that governments organise once in a while are often with either businesses or selected NGOs. The format for official talks and the joint working committees formed between government officials is not parliamentary ratification.

DISPUTE SETTLEMENT

When countries do not follow trade rules, the WTO has a dispute settlement body to deal with violations of its trade rules and insist on compliance. The new FTAs/BITs have teeth, with the investor-state dispute settlement (ISDS) mechanism.

SUSTAINABLE DEVELOPMENT

More trade implies more use of natural resources, production processes and increased transportation. This has both social and ecological effects.

This leaflet presents the state of play for various trade negotiations as of April 2016, with updates from January 2017. It has been prepared by **Shalini Bhutani**, Legal Researcher & Policy Analyst based in Delhi, India. Comments may be sent to **emailsbhutani@gmail.com**.

Rosa-Luxemburg-Stiftung,
Brussels Office
Avenue Michel-Ange 11
1000 Brussels, Belgium
www.rosalux.eu

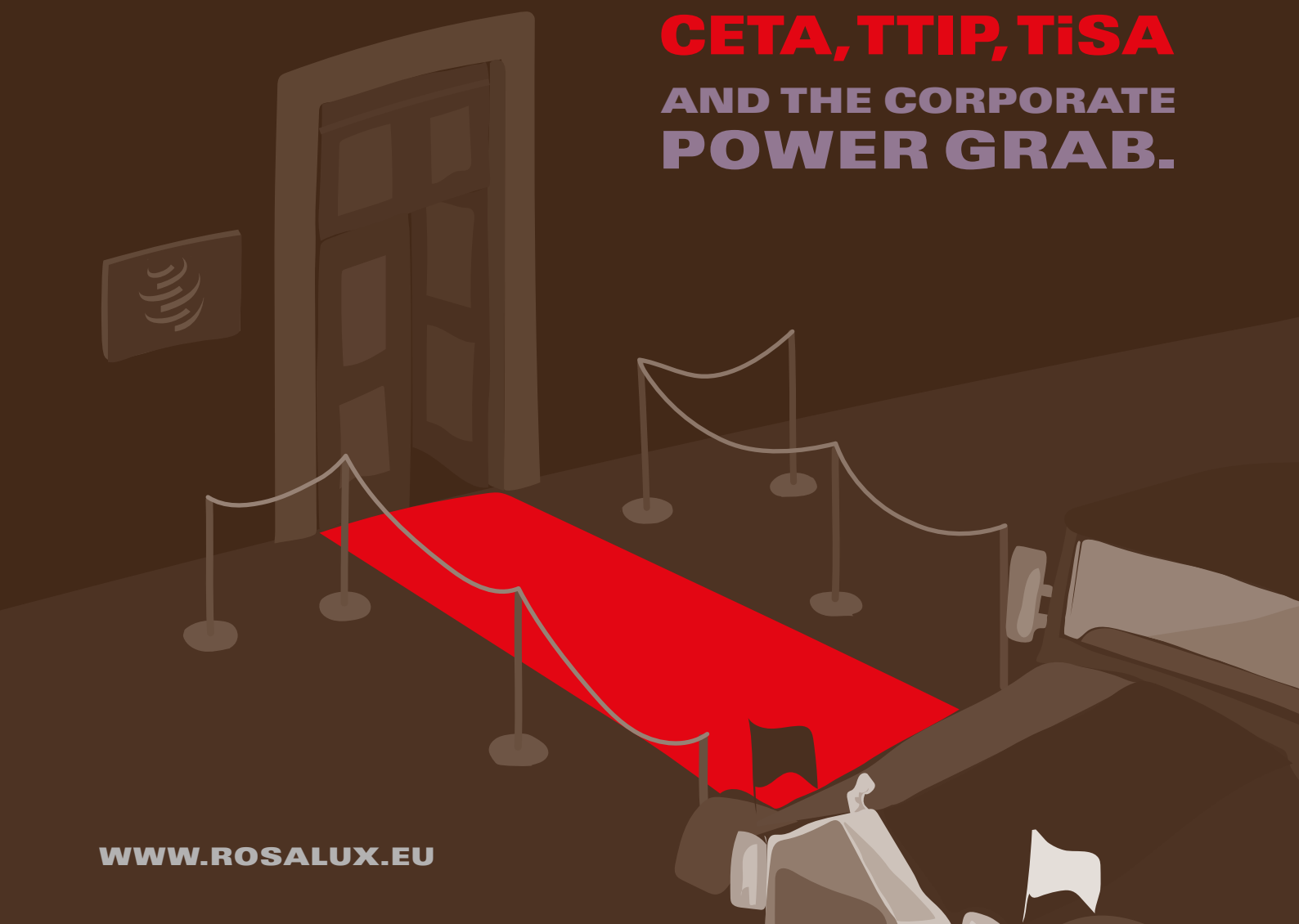
AUTHOR Shalini Bhutani
DESIGN Ricardo Santos
PRODUCTION HDMH sprl

Brussels, January 2017
Funded by the German Federal ministry for economic Cooperation and Development.

ROSA LUXEMBURG STIFTUNG
BRUSSELS OFFICE

UNPACKING TRADE & INVESTMENT

A SERIES OF 11 FACT BOOKLETS ABOUT THE WTO DOHA ROUND, FTAs, BITs, ISDS, CETA, TTIP, TiSA AND THE CORPORATE POWER GRAB.



WWW.ROSALUX.EU