

Race to the bottom

Regulatory cooperation in TTIP: A blueprint for corporate domination?

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October 2015

The campaign against the Transatlantic Trade and Investment Partnership (TTIP) is gaining ground across both Europe and the USA. Over three million people have signed the European Citizens' Initiative to stop this dangerous EU-US trade and investment deal.

So far, most of the opposition to TTIP has concentrated on the controversial Investor-State Dispute Settlement (ISDS) clause which will allow US corporations to sue EU governments for any decision that could harm their profits. But there is far more to TTIP than just secret corporate courts. This briefing explains the dangers posed by the innocuously named regulatory cooperation chapter of TTIP (also commonly referred to as regulatory coherence) which could lead to a race to the bottom on key regulations in areas such as food safety and environmental protection.

What is regulatory cooperation

Regulatory cooperation sounds pretty meaningless. In fact, it sounds downright boring. But don't be fooled. Many of the major corporate interests pushing for TTIP actually think this, not ISDS, is the aspect of the deal that is most important to them. Some supporters of TTIP have

even gone as far as to advocate sacrificing ISDS to protect regulatory cooperation.¹

This is for a good reason. Corporate lobbyists have expressed the hope that regulatory cooperation will make them so powerful that it will allow them to effectively 'co-write' regulation with policymakers.²



Activists protest the prospect of TTIP leading to chlorine-washed chicken in the EU.

Photo: Global Justice Now



Campaigners fear that TTIP could weaken EU rules against harmful materials like asbestos, which is still used in the USA.

It could also lead to a race to the bottom on regulation that would enable corporations to indulge their most terrible instincts. In the worst case scenario, critics claim this could lead to the EU caving in to corporate demands to allow chlorine-washed chicken³, hormone treated meat⁴, or more GM food.⁵ There are even fears that it could herald a return to the use of asbestos in certain building materials.⁶ At the very least, it will slow down the adoption of new safety standards and regulations, delays that could cost lives, and introduce dangerous or environmentally damaging products into Europe by the back door.

What's most dangerous about regulatory cooperation is that it will make TTIP a so-called 'living agreement'. This means that negotiators will continue to dismantle regulation behind closed doors for years after TTIP is no longer the focus of media attention. Put simply, it is a way for EU and US officials to remove the most contentious aspects of TTIP from the main agreement, leaving them to be discussed out of the public eye when the controversy has died down.

This aspect could also have repercussions for public services. Many politicians in the UK are trying to reassure us that public services like the NHS would be exempt from TTIP. But the living agreement nature of this part of the deal could mean that areas like pharmaceutical regulation and the approval of new drugs could be more open to corporate influence, affecting public services like the NHS, even if they were to be theoretically exempt from TTIP.

Regulatory cooperation boils down to two functions:

(1) Working towards common regulatory standards between the US and EU (2) Giving corporations maximum opportunity to influence any new regulation before it sees the light of day. Both functions are to be overseen by an enforcing body called the Regulatory Cooperation Body and a Joint Ministerial Body made up of US and EU officials. These dialogues will occur both 'horizontally' (across all sectors) and in separate processes about particular sectors of the economy (e.g. the financial sector).

The race to the bottom: harmonisation and mutual recognition

To most people, regulations such as air pollution limits and food safety standards are common sense protections against dangerous threats. However, to many big businesses, these rules are just red tape or non-tariff barriers to trade (NTBs) which inhibit profits and are identified as such during trade negotiations. In fact, proponents of TTIP say that 80% of the supposed benefits of the deal will come from getting rid of these NTBs.⁷

TTIP's clauses on harmonisation and mutual recognition of regulation between the US and EU provides a unique opportunity for corporate interests on both sides of the Atlantic to lobby for standards to be brought down to the lowest common denominator.

Lead lipstick: scaremongering or real threat?

After pressure from campaigners, the EU Commission is now saying that it is no longer pursuing harmonisation or mutual recognition of cosmetics standards.⁸ But there has been no such undertaking from the US side, so it is perfectly possible that cosmetics regulation could be ceded to the US side in exchange for something else during the negotiation process. The threat of serious deregulation of cosmetic ingredients in the EU still very much exists. Even if some of the most frightening possibilities do not form part of the TTIP agreement, the 'living' aspect of the agreement means that they could be introduced in future.

There are three main levels of policy coordination that are being considered: harmonisation, mutual recognition of standards and elimination of double testing requirements.

Harmonisation would involve US and EU regulators agreeing common trans-Atlantic regulations and standards. In practice, critics warn that this could mean reducing regulation down to the lowest common denominator, or at best splitting the difference meaning that the side with most regulation has to slash safeguards to keep the corporations happy.

This could be disastrous. Take the cosmetics sector. The EU currently bans the use of 1,377 harmful substances for use in cosmetic products. The US bans just 11.⁹ Even a split the difference type agreement on cosmetics could lead to hundreds of dangerous substances being approved for use in the EU. This could mean acceptance of lead in lipstick (legal in the US) or even a return to the limited use of asbestos (also legal in certain products in the US).

Mutual recognition is presented as a more modest alternative to full blown harmonisation, but it could be just as dangerous. Instead of working to



TTIP could undermine food safety standards and lead to the approval of potentially dangerous food additives.

set common EU-US standards, mutual recognition would mean that any company complying with US standards would be allowed to trade in the EU and vice versa, even if they violate the local rules. This is effectively a way of saying 'we'll accept your standards if you accept ours'. So, while producing lipstick that contains lead would still be illegal in the EU, in theory, US companies may still be able to export it to the EU as long as it passes US safety tests.

This could be even worse than harmonisation because while the possibility exists for harmonisation (however unlikely given corporate influence) to lead to an improvement in regulatory standards, mutual recognition automatically brings regulation down to the lowest common denominator as companies move to wherever standards are lowest. So, for example, as financial regulation tends to be more lax in the UK than in the US, there will be a stronger economic incentive for US finance sector firms to move to the UK. This also eventually leads to harmonisation, as companies will lobby (as they are already doing)¹⁰ for the US to drop hard won regulations such as the Dodd-Frank Act to put them on a level playing field with companies from the EU. And vice versa where EU regulation is stronger, such as in the cosmetics sector.

Elimination of double testing requirements is the lowest level of regulatory harmonisation. This is about agreeing to a common test procedure across both continents. So if a product passes both EU and US standards, it will only have to

What's wrong with letting regulators talk?

Regulatory cooperation is a masterful example of the power of language to make something terrible sound benign.

Proponents of TTIP argue that there are lots of regulations that are very similar in the US and EU, but that create expensive bureaucracy for businesses trying to export. TTIP, they argue, will allow regulators to make common sense changes that would simplify the rules without any major compromises on either side – for instance having standardised rules on seatbelts or car indicators.

But if these 'easy' changes exist, what's to stop regulators talking anyway? You don't need TTIP and what amounts to a corporate bill of rights to do this. In fact, this is already happening through a multitude of mechanisms and networks. The reality is that regulatory cooperation isn't about small tweaks to regulation; it's about making it much more difficult to pass new rules on either side of the Atlantic without the approval of big business.



Over three million people have signed a petition against TTIP across the EU, of which over 500,000 were from in the UK.

How TTIP has already undermined standards

The EU has already started toning down its standards before TTIP has even been signed.

US officials successfully used the prospect of TTIP to bully the EU into abandoning plans to ban 31 dangerous pesticides with ingredients that have been shown to cause cancer and infertility.¹¹

A similar fate befell regulations around the treatment of beef with lactic acid. This was banned in Europe because of fears that the procedure was being used to conceal unhygienic practices. The ban was repealed by MEPs in the European Parliamentary Environment Public Health and Food Safety Committee after EU Commission officials openly suggested TTIP negotiations would be threatened if the ban wasn't lifted.¹²

On climate change, the European Fuel Quality Directive which would effectively ban Canadian tar sands oil has foundered in the face of strong US-Canadian lobbying around both TTIP and the EU-Canada CETA deal.¹³

More generally, the EU's Better Regulation programme¹⁴ has also been linked to TTIP.¹⁵ Better Regulation explicitly seeks to reduce the regulatory 'burden', delaying the implementation of new rules on things like safe levels of chemicals. Trade unions say that Better Regulation has already been responsible for 100,000 deaths from cancer.¹⁶

The fact that all of this is happening before any deal has been signed exposes the emptiness of the EU Commission's claims that regulatory cooperation in TTIP won't lead to a race to the bottom on standards.

If the mere prospect of TTIP is enough to convince EU officials to allow carcinogenic pesticides and tar sands oil, what awaits us after TTIP comes into force can only be imagined.

be tested once. This also covers changes like introducing common application forms across the US and EU. This form of regulatory cooperation is less dangerous, as it allows both the EU and US to retain their own standards, but it is not devoid of risk. It is possible that this process will make testing regimes less stringent, which will make enforcement of the rules more difficult.

The recent Volkswagen 'cheat device' scandal in the US and Europe is a good illustration of how important differences in testing regimes can be. Ultimately, it wasn't the level of regulation that was crucial but the effectiveness of the test. You can have the most stringent rules in the world, but these are useless if the test doesn't catch companies flouting the rules. If we had TTIP, the US authorities may never have caught Volkswagen if the cars had passed a less stringent test in the EU.

The right to lobby and 'early warning' for corporations

TTIP's regulatory cooperation chapter isn't just about watering down existing regulation to a lowest common denominator. It's also about stopping any new regulation which conflicts with the interests of big business from seeing the light of day. A European Commission proposal uncovered by WikiLeaks, lays out plans for a permanent body with sweeping powers to shape or block regulation.

The so-called Regulatory Cooperation Body enshrines a right to lobby into the EU legislative

process. This starts with an early warning system, whereby all proposed legislation is screened for impact on business. A list of legislation that is considered to have 'significant impact' on trans-Atlantic trade, will be published and reported to 'stakeholders' (which usually means big business in both Brussels and Washington) which will be given a guaranteed opportunity to 'provide input' (i.e. lobby).

While this sounds innocuous (who could be against information?) it means that corporations will be involved at a much earlier stage in the process. A golden rule of lobbying is that the earlier you are involved in the process, the more influence you have. Alerting vested interests about new laws before they have even been proposed gives big business a huge advantage. The general public, civil society organisations and even parliamentarians will not have the same capacity to follow all the technical developments at an early stage.

If anyone is still unhappy after this extensive consultation process (i.e. lobbying) there will be a regulatory exchange.

Regulatory exchanges are a formal process in which US and EU regulators work together to overcome disagreements on any existing or future regulation. The draft TTIP agreement currently obliges officials to respond individually to every point put forward by their counterparts across the Atlantic and 'take into account' any input from business. It also obliges them to make all relevant



Photo: European External Action Service

information available to the other party. This is likely to be a very time consuming and laborious process which could, at best, delay and in many cases dissuade decision-makers from adopting new rules.

What we must do

Campaigners on both sides of the Atlantic need to fight to protect hard won standards and regulations to keep us and our environment safe.

Excluding the NHS or any other public service isn't enough, as the regulatory race to the bottom will affect us all regardless. TTIP should be opposed in its entirety, not just the ISDS provisions that have gained most public attention so far.



Protestors at the day of action against ttip

- 1 <http://www.cato.org/publications/free-trade-bulletin/compromise-advance-trade-agenda-purge-negotiations-investor-state>
- 2 <http://corporateeurope.org/sites/default/files/businesseurope-uschamber-paper.pdf> p4
- 3 <http://www.nationalchickencouncil.org/us-chicken-producers-trade-agreements-provide-access-enforcement/>
- 4 <http://www.nppc.org/wp-content/uploads/P-National-Pork-Producers-Council-USTR-2013-0019-TTIP-5-10-13.pdf>
- 5 <http://corporateeurope.org/food-and-agriculture/2015/07/ttip-released-emails-show-biotech-seeds-trade-talks-table>
- 6 <https://www.foe.co.uk/blog/asbestos-anyone-defence-precautionary-principle>
- 7 http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf
- 8 <http://www.euractiv.com/sections/health-consumers/commission-changes-ttip-position-cosmetics-313967>
- 9 <http://www.beuc.eu/blog/325/>
- 10 <http://www.bloomberg.com/politics/articles/2015-05-05/warren-says-dodd-frank-will-be-casualty-of-fast-track-trade-bill>
- 11 <http://www.theguardian.com/environment/2015/may/22/eu-dropped-pesticide-laws-due-to-us-pressure-over-ttip-documents-reveal>
- 12 <http://www.zeit.de/wirtschaft/2015-05/ttip-ceta-costs/komplettansicht>
- 13 https://www.foeeurope.org/sites/default/files/publications/foee-fqd-trade-ttip-170714_0.pdf
- 14 Officially known as the Regulatory Fitness and Performance Programme (REFIT)
- 15 <http://www.etui.org/content/download/18881/144030/file/Policy+Brief+2015.01+Ponce.pdf>
- 16 <http://www.euractiv.com/sections/health-consumers/european-commissions-better-regulation-has-killed-150000-says-etuc-314030>

Take action

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