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How TTIP undermines food safety and animal welfare

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Introduction

The European Union (EU) published proposals for the Transatlantic Trade and Investment Partnership (TTIP) chapter on food safety and animal welfare in January 2015. The draft, which is under first discussion by negotiators in the first week of February 2015, provides a clear indication of EU trade officials' intentions for the final agreement.¹ Our analysis suggests that the proposed text will undermine existing health and safety regulations in both the EU and the United States (US).

Analysis of the draft published by the EU raises a number of concerns about the impact on food safety and animal welfare. These include: the priority given to maximizing trade, the shift of power from national governments to a new trade committee, the threat to the ability of local authorities to set higher standards, the risk of minimal health and safety checks for novel foods (including GMOs, cloned animals, and nano materials), non-binding provisions for animal welfare, and the required adoption of international food standards established through the World Trade Organisation (WTO).

"This trade agreement is a Trojan Horse that will threaten our food safety and environment. Trade officials whose primary objective is to increase trade and boost corporate profits will have first say over future food safety rules. A trade agreement is not the place to decide about our food safety."

Adrian Bebb,
Food and agriculture
campaigner with Friends
of the Earth Europe

¹http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153026.pdf

These concerns relate to the negotiating text released by the EU. Because no text has been made available by the US, it is impossible to assess the likely impacts of its agenda. Based on the available text, however, we fear that TTIP is likely to restrict efforts to build healthier, fairer and more sustainable food systems on both sides of the Atlantic.

Maximizing trade

The over-riding objective of the TTIP agreement is to facilitate trade “to the greatest extent possible”. The proposed chapter on food safety, plant and animal health and welfare, (collectively known as SPS measures) recognises governments’ rights to “protect human, animal or plant life and health” in their territories (Article 2.1). It is however unclear whether regulatory authorities will be able to realize this right, considering the emphasis on increasing trade between the EU and the US, and especially given food safety resource constraints.

Key issues:

- The agreement is not intended as a tool to protect human, plant or animal health. Under trade agreements, each and every regulation must be justified as “least trade restrictive”. Countries’ rights to inspect food and agricultural imports at the port of entry – a key measure which has been used to safeguard public health– will be limited to “exceptional cases,” e.g. to check for “regulated pests (Article 13). In nearly all cases, those checks will be carried out by the exporting country, with import re-inspections banned as “redundant” (Article 8).
- While the draft requires countries to “avail themselves of the resources necessary to implement the chapter” (Article 3), there is no requirement to ensure the more extensive resources needed to protect human, animal or plant life and health. Trade appears to have more of a priority than safety.

“People in many states are rebuilding their food systems from the ground up. The proposals in the SPS chapter could create new obstacles to cut that process short.”

**Karen Hansen-Kuhn,
Director of Internal
Strategies at the Institute for
Agriculture and Trade Policy**

- The rules on food safety, plant and animal health and welfare cannot be challenged by members of the public – they can only be challenged by investors and by governments, and these are unlikely to challenge failure to protect human, animal or plant life and health.

Shifting power from governments to trade experts

The EU is proposing a new joint EU–US management committee, made up of trade and regulatory experts, with responsibility for food health and safety (Article 18).

There are key concerns about this new body:

- The committee will be a new body to filter all new food safety rules, with the power to identify, prioritise and manage food safety issues, transferring power from national authorities to a committee of experts, potentially including industry representatives.
- This transfer of power will mean that the initial decisions will be in the hands of trade officials, not food safety officials at the national level.
- The proposal appears to match the demands put forward by the US biotech lobby organisation, BIO, to US trade representatives in May 2013.²
- Trade experts tend to see safety rules as technical trade barriers rather than as reflecting the needs and demands of society.
- This would mean, for example, that any review of safety procedures for genetically modified plants in the EU would be considered by the trade committee first, before undergoing an impact assessment, and comprehensive consultations with national governments in the European Union.

²[http://www.bio.org/sites/default/files/BIO%20TTIP%20submissio
n%20May%202013%20final%205%2017%2013.pdf](http://www.bio.org/sites/default/files/BIO%20TTIP%20submissio%20May%202013%20final%205%2017%2013.pdf)

- Trade experts are likely to see measures to introduce or extend moratoria on products as barriers to trade. This would put at risk existing protection measures, such as the moratorium on several growth hormones, scheduled for review.

Local standards will be over-ruled:

There are concerns that the Commission's proposal will undermine measures introduced at the local, US state, or EU member state level intended to raise standards – measures which have historically led to standards being increased across the board.

Key issues:

- Any new rules set at the EU or federal level in the US, would apply throughout the territory (Article 6), with the exception of zones with known plant or animal diseases. In many cases, progress on higher standards starts at the local level and builds upwards.
- This would mean that exporting countries could insist on acceptance of the lower EU-wide or US federal standards, creating pressure to allow imports that do not comply with locally-imposed standards.
- Article 6 could undermine rules designed to raise standards – such as measures to ban small cages for battery hens in California or to reduce antibiotic use in the farming sectors in France and Denmark. These are just two examples of the kinds of innovations at the local level that could be overridden by the new trade rules.
- This could also make it more difficult to restrict imports should conditions or enforcement standards change in the future.

Novel foods:

The EU's proposals will affect regulations on "novel" foods or food ingredients, such as foods derived from cloning, genetic modification or synthetic biology (syn-bio). The purpose of the draft proposal is to ensure that regulations should be applied so as to minimize negative effects on trade "while ensuring the fulfilment of the importing Party's requirements" (Article 7.1).

Key issues:

- New products being brought to market ("new trade"), which are not covered by existing rules, could escape regulation as any new regulation could be seen as a barrier to trade (Article 7.12a). Nanomaterials, which are increasingly being used for food-related products, or foods derived from new techniques for genetic modification in plants or animals, could be traded without in the absence of regulation specific to those technologies.
- Additionally, novel foods imported into the EU from the US would face minimal safety checks, as the US lacks regulations for novel food. The US does not regulate the new kinds of genetic engineering of plants, animals and microbes being introduced through synthetic biology (unless plant pests are involved).
- New regulations could be interpreted by investors as a barrier to trade, providing an opportunity for legal action under the proposed Investment Settlement Dispute Mechanism. The American Chemistry Council has already urged the US Trade Representative's Office to indicate that it would challenge at the WTO and EU requirement to label nanomaterials as a barrier to trade.³

"This would undermine all existing efforts at regulating new technologies like nanotechnology, synthetic biology, animal cloning and genetically engineered animals. These technologies need careful and precautionary reviews before they are used in our food, not a free trade pass to avoid review."

Jaydee Hanson,
Senior Policy Analyst for
Emerging Technologies at
the Center for Food Safety

³ "U.S., EU differ on Product Safety for Nanomaterials, Trade Fight Looms," Inside U.S. Trade, October 9, 2009.

- The EU is already watering down regulations for novel foods in advance of TTIP, allowing offspring from cloned animals (including live animals, embryos or semen) to be imported. This is of particular concern as the long-term consequences of cloning are as yet unknown; it is however known that animals bred to maximise production can have serious health problems.⁴
- Cloned animals, while restricted in the EU, are not tracked in the US, so it is possible that they could enter the food supply.
- A clear example of TTIP's chilling effect on future legislation is evident in the Commission's refusal to extend the proposed ban on cloned animals to descendants of clones because it would hinder the negotiation process.

Animal Welfare:

There are also concerns that the wording in the EU's proposals, which recognises that animals are sentient beings, thus are able to suffer and feel pain and fear (Art. 17.1), is so weak that it may put animal welfare standards at risk. Article 17.2 proposes an alignment of regulatory standards between the two regions which is next to impossible given the differences in existing legislation. While the US has no federal animal welfare legislation except rules on the slaughter of livestock, the EU has a series of regulations and directives covering different species at all stages of the farming process.

Key issues:

- The wording on "collaboration to further develop good animal welfare practices" (Article 17) is non-binding.
- There is nothing in the text to suggest that products from animals raised under significantly lower welfare standards (e.g. eggs from battery hens) will be barred from import.

"References to an alignment of regulatory standards in the proposed SPS chapter have reinforced claims that TTIP will be detrimental for animal welfare and will lead to further intensification in the sector."

Olga Kikou, European Affairs Manager at Compassion in World Farming

⁴ http://www.centerforfoodsafety.org/files/final_formattedprime-time_20278.pdf

- Competition from farmers operating to lower standards may force European farmers to demand lower welfare standards in the EU.
- There are no requirements that either party comply with animal welfare laws of the partner with the highest levels of protection as a condition for trade.
- There is nothing in the draft to suggest that the EU might be able to positively influence and advance animal welfare standards TTIP – as has been claimed. It is unlikely that US investors would agree to introduce new rules in order to align the US system with higher EU standards.
- The proposal includes plans for a “working group” on animal welfare, but the provisions mentioned in the text are unenforceable. It is more likely that increasing pressure from agribusiness will result in further intensification of animal farming.

Enforcing flawed WTO international standards

The EU draft re-emphasises that the TTIP agreement comply with the World Trade Organisation agreement on food safety, and agricultural plant and animal health (WTO SPS), which recognizes as authoritative standards set by the international Codex Alimentarius Commission. Under TTIP, new rules agreed by Codex must be adopted in EU and US regulation within 12 months (Article 7.7), unless either the US or EU registers “reservations” to the specific threshold decided at the Codex meeting. This imposition of international standards raises a number of concerns.

Key issues:

- Under TTIP, the EU would be required to accept the Codex standard, unless a “reservation” had been formally registered.
- It is not clear that “reservations” raised by the EU about existing Codex rulings, due to concerns about the evidence used to set the standards, will continue to apply.

- There are concerns that this could limit the right to regulate for EU institutions and national governments. Once the EU or U.S. has adopted a Codex standard, it must maintain that standard, even if new scientific evidence shows the Codex standard inadequate to protect human health. Codex is slow to request international risk assessments based on new science, and it cannot develop a new standard without such risk assessments. The EU Commission suggests that once a Codex standard for a food has been fixed, the EU and US would lose their right to opt for stricter thresholds, even if new evidence of risks becomes available.
- Similarly it is not clear whether restrictions introduced by some Codex member governments would remain in place under the new agreement.
- Once Codex standards have been adopted, it is difficult to strengthen them, even if new evidence relevant to a particular standard comes to light. The EU could be bound by internationally agreed standards (Article 7.7), even where clear evidence suggests a threat to public health. There is no WTO time limit for adopting Codex standards.

Conclusion:

Our analysis of the proposed text raises numerous important concerns about the ways in which TTIP could restrict efforts to build healthier, fairer and more sustainable food systems on both sides of the Atlantic. In addition, whilst we welcome the publication of the draft proposal, we note that many elements remain to be resolved, many of which are described in annexes to this text which have not been published. We urge the US to follow the EU's example in publishing its negotiating text, so there is a more complete picture of the potential impacts of TTIP on our respective food systems.

“There is nothing in here that will advance the interests of consumers, small farmers or public health.”

Renée Vellvé, GRAIN

This trade agreement is a Trojan Horse that will threaten our food safety and environment. Trade officials whose primary objective is to increase trade and boost corporate profits will have first say over future food safety rules. A trade agreement is not the place to decide about our food safety.

For more information please contact:

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