



**Friends of
the Earth
Europe**

TTIP Leaks: More power over EU laws for lobbies & US government

The leaked chapter on “Regulatory Cooperation” confirms fears that TTIP will lead to attacks on democracy and regulation in the public interest. It disproves claims by the European Commission that standards will not be lowered by the trade agreement. All approaches proposed by both the EU and the US – mutual recognition, harmonization or simplification of regulations – combined with mechanisms that result in a frightening institutionalization of business lobbying – will lead to weakening, scrapping or delaying of social and environmental standards.

Ever since the first leak of an EU position paper on regulatory cooperation in December 2013, it has been clear that the brunt of the “regulatory convergence” agenda within TTIP would be carried out in the longer term via a mechanism called “regulatory cooperation”, that is also part of the CETA agreement between the EU and Canada. The EU proposals show an inclination towards giving the US and corporate lobby groups a significant role at the earliest stage of legislation while undermining parliaments’ and member states’ role in regulatory process.

While parts of the leaked text carry nothing new, as the EU contribution is one-year old, it is the first time, the actual US positions are seen by the public. The text leaked by Greenpeace shows US negotiators play exactly the role critical voices have cautioned for. They are promoting extensive rights to corporate lobby groups, including delaying, amending or stopping new legislative proposals, promoting notice-and-comment, undermining the precautionary principle and providing for the roll-back of existing rules in the public interest.

US negotiators are asking the EU for:

CORPORATE PRIVILEGES

Obligation for governments to consider comments from business groups: Governments have to make publicly available any comments (from lobbyists) that they receive on future legislation plus their reactions to these comments (Article X.8: 6). Moreover, governments are obliged (‘shall’) to explain how the regulations relate to the evidence, data and information considered and provided by big business (Article X.14: 2). These obligations reflect the attempt to export the US regulatory system, which is very prone to delaying legislation in the public interest.

New petition tool for corporate influence: The US suggests a particular discipline to the EU proposals that is set to favor corporations: The right to nominate a piece of legislation or regulation to be amended, proposed or scrapped on various grounds, including that it is too burdensome (Article X.15 Petitions).

Businesses co-writing standards: Regulatory cooperation will also happen at the sectoral level. On technical barriers to trade for instance, the US and the EU are willing to give big business the possibility to submit proposals to both administrations for common EU-US standards (“Tactical State of Play of the TTIP Negotiations, page 10).

BUSINESS-BIASED BENCHMARKS

Prioritise trade effects over the public interest: The US wants to make it obligatory that new EU regulations are elaborated with a strong focus on their “trade effects” (Article X.9). This reduces the importance of other criteria such as environmental and consumer protection.

Promote one-sided impact assessment: The US is very aggressively pushing for an increasing role of impact assessment for existing and future legislation (Article X.8 and Article X.13; on existing regulation compare also Article X.16). It is particularly frightening that the US highlights the importance of a cost-benefit approach (Article X.13 3.1 c), more than the EU text does already. Cost-benefit analysis only looks at costs of laws for business whilst paying little attention to the benefits for society as a whole. Moreover, from the US experience we know it is a highly technical process that often relies on industry data.

DEREGULATION AGENDA

Attacks on the precautionary principle: The US position is a direct attack on the precautionary principle. This is revealed by the leaks on regulatory cooperation as well as of other chapters. In the former, article X.14 is about “Decision Making Based on Evidence”, which goes against a key trait of the precautionary principle: To act in the absence of clear, scientific proof. Other attacks include the need for government to base decisions and regulations on evidence and information that is reliable and of high quality, including seeking for scientific and economic information (X.14: 1). Also, it should be noted that in other chapters, notably the chapter on Sanitary and Phytosanitary measures, the US practically rules out the use of the precautionary principle (articles X.4 and X.5).

Further tools to weaken standards: A US-insertion on “international trade and investment obligations” is disconcerting, particularly in the light of the TTIP investment chapter (Article X.5 b). It is a sign that the threat of an ISDS/ICS case can be used discreetly to push the other party towards weakening new standards.

DISREGARD FOR DEMOCRACY

Mutual recognition: One of the aims of regulatory cooperation is for laws across the Atlantic to be recognized as equivalent. No matter the maximum level of pesticides allowed in the EU, a mutual recognition agreement with the USA would mean that food respecting the pesticides limits in the USA could be sold in the EU. Discussions on mutual recognition agreements have made “further progress” according to the leak (“Tactical State of Play of the TTIP Negotiations, page 7).

THE TWO SIDES ARE IN SYNC

Reference to EU-Deregulation agenda: There is a clear link to and support for the Better Regulation Agenda of the EU, which sets the EU on course to less regulation of business (Article X.5 Internal Coordination of Regulatory Development). It suggests to “maintain processes or mechanisms to facilitate international coordination, consultation, and review of regulations.” Including

such mechanisms in TTIP could cast the Better Regulation agenda of the European Commission in stone, as it would be prioritized above other EU regulations.

Permanent dialogue with business continues during the negotiations: In the State of Play Document, the close interaction with big corporations shines through. For instance, the EU representatives are seen in dialogue with and drawing on the work of the US chemicals lobby group American Chemistry Council (ACC), a staunch enemy of the EU chemical regulations. Same goes for OSHA, the main US agency charged with the enforcement of safety and health legislation, seen requesting advice from ACC (“Tactical State of Play of the TTIP Negotiations”, page 18).

The list above represents the demands of the US-negotiators, but they are not far apart from the EU position in TTIP. In the document “the state of play” leaked by Greenpeace, EU representatives conclude that “it is safe to say that provisions tabled by both the EU and the US are complementary in many respects” (“Tactical State of Play...”, page 10). Another sign that confirms this is EU-chief negotiator Bercero statement in a press conference on 2nd May that good progress has been made in the field of regulatory coherence. In a worst case scenario, the procedures tabled in the two proposals will all find their way into a final document.

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