Transatlantic Trade & Investment Partnership: Fast-track to Deregulation

Aida Maria Ponce Del Castillo
Working conditions, Health & Safety Unit
European Trade Union Institute
CONTENT

1. Summary of ETUC’s position
2. TTIP: deregulation in disguise
3. In practice: TTIP and the chemical industry
4. In practice: TTIP and ISDS (investor-state dispute settlement)
5. Conclusions
1. Summary of ETUC’s position
On 12 March 2013, the European Commission adopted a draft negotiating mandate for a Transatlantic Trade and Investment Partnership with the USA.
The ETUC expressed concerns at the lack of opportunity given for public scrutiny of the EU’s draft negotiating mandate by MEPs, trade unions or civil society.
The economic scale of such agreement means there will undoubtedly be significant consequences (potentially positive and/or negative) not only for jobs and their quality in Europe, but also for the global regulatory framework.
The ETUC identified several important challenges

Labour rights

Environmental protection

Aida Ponce Del Castillo © etui 2014
Must be excluded

Investor-state dispute settlement
Public services
Audio-visual and cultural goods/services
Agriculture
Further liberalization in financial services
2. TTIP: Deregulation in disguise
The EC-US want to **eliminate, reduce or prevent unnecessary regulations.**

The objective is to go for policies which include “regulatory coherence”, by making regulatory systems more compatible, minimizing differences and reducing costs.
This also means building a more integrated transatlantic marketplace that respects each side's right to regulate the protection of **health**, **safety** and the environment at a level it considers appropriate.
This will be achieved through the following mechanisms:

• Cooperation in areas that will bring efficiencies and cost savings to regulators and industry.
• Greater compatibility between US & EU regulation.
• Promotion of transparency in the development and implementation of regulations.
• Elimination of remaining tariffs.
• Reduction of costs of unnecessary regulatory differences.
• Establishment of mechanisms for future progress.
• Continuation of regulatory cooperation initiatives where appropriate.
3. In practice: TTIP and the chemical industry
The EU and US are keen to “enhance regulatory compatibility” in various sectors: medical devices, cosmetics, pharmaceuticals, pesticides, information and communication technologies (ICT), automobiles and chemicals.
Chemicals in Europe are regulated by **REACH**, in the US by **TSCA** (*Toxic Substances Control Act, 1976*).
TSCA (Toxic Substances Control Act, 1976)

- TSCA allows chemicals to be put on the market without proof that they are safe;
- TSCA is totally outdated (not updated);
- It applies to 84,000 industrial chemicals but allows 60,000 of them (those which existed in 1976) to be used, under a presumption of safety;
• Proving that a chemical is dangerous is the responsibility of EPA but numerous obstacles make that excessively difficult;
• By 2010, only 1% of chemicals found on the US market had been tested.
REACH (2007)

- REACH requires chemical producers and importers to register new and existing chemicals.
- « No data, no market »
- Information is compiled in a registration dossier that needs to be updated on a regular basis.
- Substances of Very High Concern are banned by default.
- Risk assessments are mandatory.
Question:

How will TTIP deal with such a conflicting set of laws?

Will there be a way to bring together the two regulatory regimes?
4. In practice: TTIP and ISDS (investor-state dispute settlement)
Investor-state dispute settlement (ISDS) is an instrument of public international law that grants a foreign investor or company the right to initiate dispute settlement proceedings against a foreign government.
If ISDS is adopted under TTIP, companies may sue EU member states that adopt rules which protect the health and safety of workers.

Thus, ISDS could hamper the EU and Member States in their efforts to establish regulations seeking to protect their human health or the environment.
Ethyl Corp. v. Canada
For public safety reasons, the Canadian Parliament banned the import of MMT, a toxic gasoline additive produced by US company Ethyl.
Ethyl reacted by suing the Canadian government under NAFTA, arguing that the ban violated NAFTA provisions and asking for $251 million to cover its alleged losses.
The investment chapter of NAFTA gives corporations “private legal standing” in international courts.
This “investor-to-state” mechanism diverges from other dispute resolution systems in two ways:

1. Under other agreements, only national governments can sue other governments.

2. National governments cannot sue for compensation.
The dangers are obvious:

- A government may have to compensate investors when it wishes to regulate.
- The threat of suits can be used to intimidate lawmakers.
- Domestic courts can be bypassed for international courts.
- Private companies can drain state treasuries.
5. Conclusions
1. **Deregulation** is on the agenda: TTIP is a deregulation initiative, as is REFIT (Regulatory Fitness and Performance Programme). Protection levels may go down in several areas, in particular health and safety.
2. There are still areas that are not yet regulated by the EU: nanomaterials, endocrine disrupters, MSDs, shale gas, etc. If these are subject to negotiations under the TTIP, we may eventually have a very unsatisfactory and low regulatory level.
3. EU Health and safety regulations are being evaluated under REFIT. How could TTIP ensure enough protection if it entails easing regulations? Further regulatory initiatives may be seen as inhibiting profits and avoid any democratic debate.
4. Regulatory cooperation should focus on information exchange and commitment to international agreements **without any regulatory commitments.**
Thank you