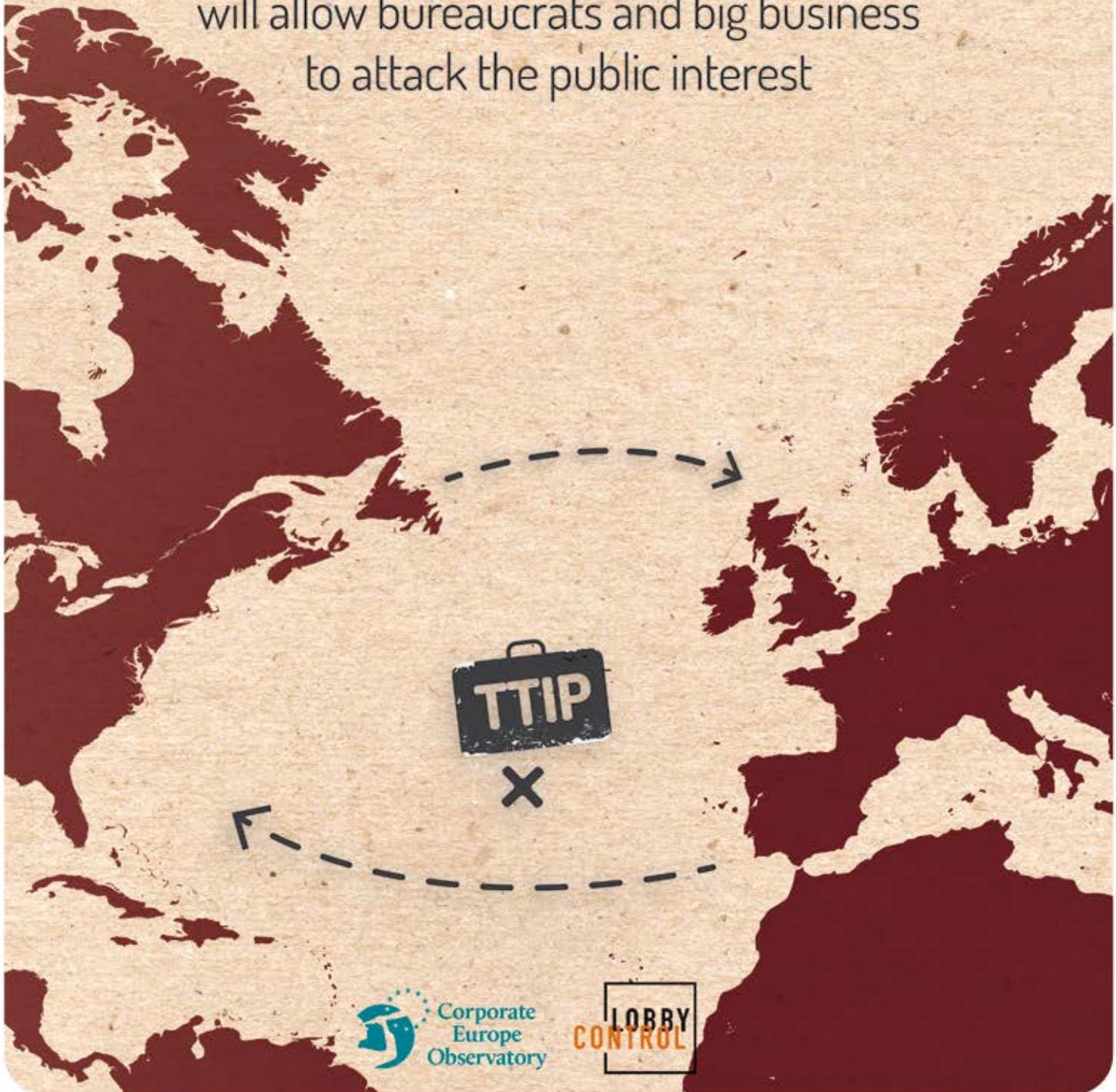

DANGEROUS REGULATORY DUET

How transatlantic regulatory cooperation under TTIP
will allow bureaucrats and big business
to attack the public interest



TTIP

X

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Contents

Executive Summary	5
01. Introduction: Transatlantic regulatory cooperation – a business-driven lobby project	7
02. What is regulatory cooperation? What is the background of regulatory cooperation? What conflicts do the two sides try to address via close cooperation?	8
03. The first steps towards regulatory cooperation How transatlantic regulatory cooperation – a joint effort since 1995 – has developed so far, and how it led to the TTIP negotiations.	11
04. How corporate lobbyists were allowed to run the show How regulatory cooperation was developed in tandem with civil servants, governments and the Commission. About ‘corporate capture’, and the unfounded claim that all ‘stakeholders’ will enjoy equal access.	14
05. How embedded lobbyists and officials made use of regulatory cooperation A look at the results of regulatory cooperation: a cumulative series of attacks on the public interest over the past two decades.	20
06. TTIP as the next stage of regulatory cooperation	27
07. Conclusion	31
Notes	32

EXECUTIVE SUMMARY

“Regulatory cooperation” is set to be at the heart of the Transatlantic Trade and Investment Partnership (TTIP), which is currently under negotiation between the EU and the US. As it poses a threat to democratic principles and our right to regulate in the public interest, it is an increasingly controversial issue in public debates about the negotiations.

This report looks at cases of regulatory cooperation between the US and the EU that have had a negative impact on regulations in the public interest. It illustrates that TTIP was born out of a dialogue between big business and trade officials, and as a result clearly reflects the enthusiasm of transnational corporations for regulatory issues.

From the very beginning of transatlantic regulatory cooperation in 1995, the EU and the US have been hell-bent on including big business in decision making. For that reason, the European Commission and the US Department of Commerce helped to set up the Transatlantic Business Dialogue (TABD), a club of CEOs from some of the biggest companies on both sides of the Atlantic.

The TABD would become very influential over the years, and top EU and US officials made it a habit to consult thoroughly with this business lobby group in order to frame the official agenda to suit industry needs. Key official decisions were strongly influenced by the TABD and the priorities of the big business community. Eventually, the relationship between officials and the TABD became so close that it was difficult to legitimize. For that reason, the Commission began nurturing three other ‘dialogues’ with civil society groups: the Transatlantic Labour Dialogue, the Transatlantic Environmental Dialogue, and the Transatlantic Consumer Dialogue. The former two groups disappeared quickly, as the official process never provided them with any real influence. The TACD continues to exist, but has repeatedly complained that its advice is ignored.

Past regulatory cooperation tells the story

In 1998, when regulatory cooperation took off for real, both sides stated that the lowering of standards and protection levels would not happen. Despite these solemn promises, there are plenty of examples of how regulatory cooperation has already led to downward pressure in standards.

- › Recently, the European Court of Justice struck down the so-called Safe Harbour agreement, which was concocted under regulatory cooperation. The Court argued that the agreement did not safeguard citizens' rights to data privacy.
- › In 2004, big US financial institutions managed to secure an agreement that would allow them to operate in the EU while being monitored by US supervisory authorities. As a consequence, when the financial crisis reached its peak in 2008, it was revealed that neither US nor EU financial authorities had any idea what assets the US insurance giant AIG had on its books. The collapse of this corporation marked a key drama in the crisis, and led to a bailout of 186 billion dollars.
- › A proposal on 'electroscrap' chemical waste was watered down in 2002. It can be argued that the precautionary principle was sidelined in this case, as the final version made it impossible for member states to adopt a ban even when a substance is deemed dangerous.
- › A proposal to move faster on ozone-depleting substances was struck down in 2000. Furthermore, the EU's ban on testing cosmetics on animals, ready to adopt in 1993, was delayed for 15 years thanks to regulatory cooperation.
- › EU climate policy has also been targeted. The EU's 2013 proposal that airlines should pay for emissions was immediately attacked and effectively stopped by the US. Although the idea of 'pricing carbon' in this way was never a promising solution, the affair shows that regulatory cooperation can also be dangerous for climate policies.

Regulatory cooperation rolls back democracy

As the idea behind regulatory cooperation is to first and foremost take the interests of exporting companies on both sides into account, corporate pressure is intrinsic to the rule making process. Experience shows that this has serious implications for decisions and how they are taken:

- › Ambitious proposals may not even be tabled by the Commission if they go against the interests of US corporations.
- › Certain Commissioners and their civil servants have more clout, especially those working on trade and industrial policy. Conversely, those parts of the Commission entrusted with for example environmental matters are weakened.
- › The European Parliament is disempowered, will have a harder time being heard by the Commission, and will have less influence over the implementation phase of rulemaking. The power of bureaucrats in the EU institutions is boosted, and they are allowed to make crucial decisions on existing and future regulation.
- › Last but by no means least, regulatory cooperation can lead to decisions that sidestep cornerstones of existing EU legislative acts, and even the Treaty on European Union.

01. Introduction

Transatlantic regulatory cooperation – a business-driven lobby project

The Transatlantic Trade and Investment Partnership (TTIP) is a trade deal currently under negotiation between the EU and the US. One of its stated claims is to make rules of all sorts converge in order to remove impediments to trade. That has sparked fears on both sides of the Atlantic that governments and trade negotiators will roll back achievements in environmental policies, consumer rights, regulations for work safety, and welfare policies.

Such fears do not come from nowhere. Over the past decades, a series of trade disputes between the two parties have revealed significant differences in many crucial areas. It has been shown that trade negotiations tend to resolve these problems by seeking the lowest common denominator – in other words, by lowering standards.

But negotiators have routinely asserted that citizens have no reason for concern: TTIP will not result in lower standards, and regulatory cooperation will not give corporate lobby groups a greater say. These claims will be investigated in this report in the light of existing proposals and key past experiences.

Thus far, regulatory cooperation and the preparatory phase of the TTIP talks provide clear evidence of the influential coalition between big business and trade bureaucrats. Fears about the TTIP becoming a tool for a coalition of big business and trade bureaucrats to drive down standards are thus well founded. By rewriting the rules, big business can end up in the driver's seat.

In the words of the US Chamber of Commerce, regulatory cooperation is “a gift that keeps on giving”! We would clarify that corporations are the recipients of these gifts. For society at large, the consequences could be dire.

02. What is regulatory cooperation?

One of the key objectives of the proposed Transatlantic Trade and Investment Agreement (TTIP) is to make all sorts of rules on both sides of the Atlantic converge, so as to remove impediments to trade. The decision to move swiftly towards 'regulatory coherence' through a comprehensive trade and investment agreement is controversial in many quarters. Over the past two decades, there have been regular clashes over 'incoherent' EU and US rules, and in the big business community there is a strong desire to do away with any rule or regulation that could represent an obstacle to trade.

These 'trade irritants', as they are often called, arise from many issues: highly technical standards that involve for example the size of machinery parts; food safety standards; what goods should be allowed in the marketplace; what substances can be used in production; the certification of the quality of services; and so forth.

What, then, does regulatory cooperation entail?

The straightforward way to deal with divergence in rules would be to agree on common standards (harmonization), or to simply accept the other sides' standards or approaches as equivalent (mutual recognition). But differences run deep in the case of the EU and the US, and not everything can be settled during the negotiations. Instead regulatory cooperation, which is a set of procedures that allows the two parties to work out their differences over the long term, is becoming the preferred option.

The transatlantic divide

Looking at the disputes between the two sides, it is no wonder the negotiators are in need of a long-term solution. Over the past decade, the US, in tandem with corporations, has attacked the EU's food safety standards (for example in the infamous hormone beef case²), its GMO policies³, its stand on the antimicrobial rinsing of meat⁴, and its rules on chemicals and other products including cosmetics and pharmaceuticals. All of these topics are manifestly present in the TTIP negotiations, and although the US side has occasionally demanded immediate changes in the EU approach, this does not seem to be a realistic scenario.

The disputes go to the heart of some fundamental differences between regulatory regimes in the EU and the US. To mention but three:

- › In the United States, federal regulators must rely on 'backend' approaches for protecting the environment and public health. These include for example risk assessments, which seek to address the dangers posed by toxic substances and pollutants only after they have been released into the environment or onto the market.⁵ The EU, on the other hand, is mandated to conduct assessments on the basis of the 'precautionary principle'. In the case of scientific uncertainty, this 'better safe than sorry' approach results in a ban.
 - › In the US, the standard approach is a cost-benefit analysis. This process generally translates the costs and benefits of a proposed regulation into monetary terms – no matter how implausible the assigning of dollar values may be – and then weighs them against each other. If the calculated benefits don't outweigh the calculated costs, regulators typically weaken or scuttle the rule⁶. In principle, impact assessments are fundamentally different in the EU, due to the precautionary principle as well as to the fact that impact assessments must include a proper investigation into the social and environmental effects of a proposal. There are procedural differences as well.
 - › The US federal system has procedures that allow corporate lobby groups to apply delaying tactics, and this often leads to new rules being dropped entirely.⁷ The EU has its own consultation processes, although they do not necessarily imply less interaction with business lobby groups. For instance, the so-called Expert Groups of the Commission often provide a platform for business to give input on draft legislation well before it has been tabled by the Commission. However, applying delaying tactics is more difficult in the European setting.
- › An early warning mechanism to ensure that the other side can become involved in the preliminary stage of decision making: typically in the drafting phase, before elected politicians have become involved.
 - › Reform of 'impact assessments', including special attention to the effects of a proposal on trade.
 - › Dialogue at any point in the decision-making process, if the interests of the other side are at stake.
 - › A common institutional structure to elaborate long-term strategies for regulatory coherence. This would include a body to oversee the entire process, and in-depth cooperation between 'regulatory agencies' (in the EU this would mean the Commission, and in the US it would include bodies such as the Environmental Protection Agency).
 - › The establishment of working groups to elaborate detailed strategies on particular topics (eg certification or impact assessments) or for sectors (eg chemicals).
 - › The involvement of 'stakeholders' in the elaboration of regulation.

legislation, and these issues are rooted in decision-making procedures. During negotiations, the solution that is kicked around is 'regulatory cooperation'. The objective is to develop shared procedures that will allow the parties to both discourage and prevent new legislation that would lead to trade disputes, and also to promote rules that would bring the two legislative systems closer together and force the reform of existing rules. Consequently, previous and ongoing disputes would be diffused.

While the US proposals are not in the public domain (beyond some indications that the US would like to see the EU adopt its approach, including so-called 'notice and comment', which allows for extensive industry participation), the EU proposals were leaked on several occasions and have now been made public. These proposals show that the EU intends to develop 'regulatory cooperation' in many ways, including:

Regulatory cooperation as the solution?

In short, the two sides have been at loggerheads over specific

Crucial questions

The combined effect of all of these procedures is quite significant, and constitutes no less than a new way of making decisions. However, an exact prediction of the outcome is simply not possible, with so many unknown future parameters.

It is important to keep in mind that regulatory cooperation is not a new phenomenon, and that what is currently under negotiation is the next stage in a joint project that was initiated 20 years ago. Looking at past experiences gives at least partial answers to several crucial questions: What is the purpose of cooperation? Who will be involved in the cooperation? Could regulatory cooperation lead to lower standards? Might it lead to corporate lobby groups having a greater say?

The experiences gathered over the last two decades give us some clear answers: the transatlantic agenda has been developed through close 'cooperation' between civil servants and corporate lobbyists, and this situation can pose serious obstacles to regulation in the public interest.



03. The first steps towards regulatory cooperation

There is nothing new about regulatory cooperation between the EU and the US. What is new is the level of ambition. When asked about the difficulties faced by TTIP trade negotiators, Marc Vanheukelen, advisor to the Trade Commissioner, said at a debate in Brussels in April 2014: “Mind you, especially with regard to regulatory cooperation, this is something that has never been tried before... We are in uncharted territory.”⁸

Vanheukelen’s reference to “uncharted territory” implies that TTIP regulatory cooperation will raise the existing framework to new heights. Darci Vetter from the Office of the US Trade Representative (USTR), the body responsible for trade negotiations, echoed his sentiments: “On the regulatory coherence side, we’re doing something very new. ... We’re treading on new ground in regulatory coherence.”

The first steps

Since 1990, the US and the EU have reached a series of agreements to enhance economic integration, and regulatory cooperation has been at the heart of these efforts from the very beginning.

In 1990, the Transatlantic Declaration initiated the era of a more structured relationship, with bilateral summits featuring both security and economic issues on the agenda. This was followed in 1995 by the New Transatlantic Agenda, which included an action plan for dialogues between governments and between businesses on both sides of the Atlantic (see chapter 4).

The action plan included steps on security issues, on coordinating efforts to liberalize global trade via the WTO, and on developing “closer economic relations”⁹. This would happen “by progressively reducing or eliminating barriers that hinder the flow of goods, services and capital between us”¹⁰ in order to form a New Transatlantic Marketplace. The action plan¹¹ was not very concrete on the specifics of regulatory cooperation, mainly stressing that the two sides should work together in “the international standard setting process” and must “devote special attention” to vehicle safety requirements and reduction of air and noise emissions. Regulatory agencies were encouraged to “give a high priority” to cooperation with their respective counterparts in search of greater compatibility of standards.

Consolidating the framework

Three years later, in May 1998, both parties were prepared for the next phase. Mutual recognition agreements were concluded in six areas. The Transatlantic Economic Partnership (TEP) was announced in 1998, and featured more concrete steps and clearer deadlines than its predecessors.

The TEP catalyzed the build-up of an substantial institutional structure for transatlantic cooperation in general, and for regulatory cooperation in particular. A high-level steering group was formed to follow up on commitments, and a large number of sectoral dialogues and thematic working groups were launched or consolidated.

However, it was not until 2002 that formal procedures were agreed on in detail. The new Guidelines on Regulatory Cooperation and Transparency introduced disciplines in all of the main fields of regulatory cooperation. The other party

was to be alerted well before new rules were adopted (early warning); ‘stakeholders’ were to be given opportunities to influence proposals; and the EU and the US were to draw up strategies for aligning regulation. In other words, ‘regulatory cooperation’ already included all of the key components and was set for take off.

The Guidelines quickly ran into obstacles, however. The French Government filed suit in the European Court of Justice against the Commission, fearing that the new procedures would impinge on its “independence” and could “give rise to consequences for the Community’s entire legislative process”. However, as the Guidelines were voluntary, the European Court of Justice sided with the Commission¹².

Institutions for impetus

The Guidelines were followed by two roadmaps. The first, in 2004, mandated work on six specific areas¹³ and launched four broad-based dialogues between the US Food and Drug Administration and its EU counterparts. The second, in 2005, initiated a deeper dialogue on methodology and regulatory approaches, including impact assessments, between the US Office of Management and Budget and the Secretariat-General of the Commission President.

The experts in this exchange organized dialogues on new topics and decided on next steps for the programmes that had popped up over time – raising the number of priority areas to fifteen¹⁴. Later that year, a so-called High Level Regulatory Cooperation Forum (HLRCF) with representatives from both governments, regulatory agencies, the Commission, and business was set up to support the process.

Key elements of the 2002 Guidelines on Regulatory Cooperation

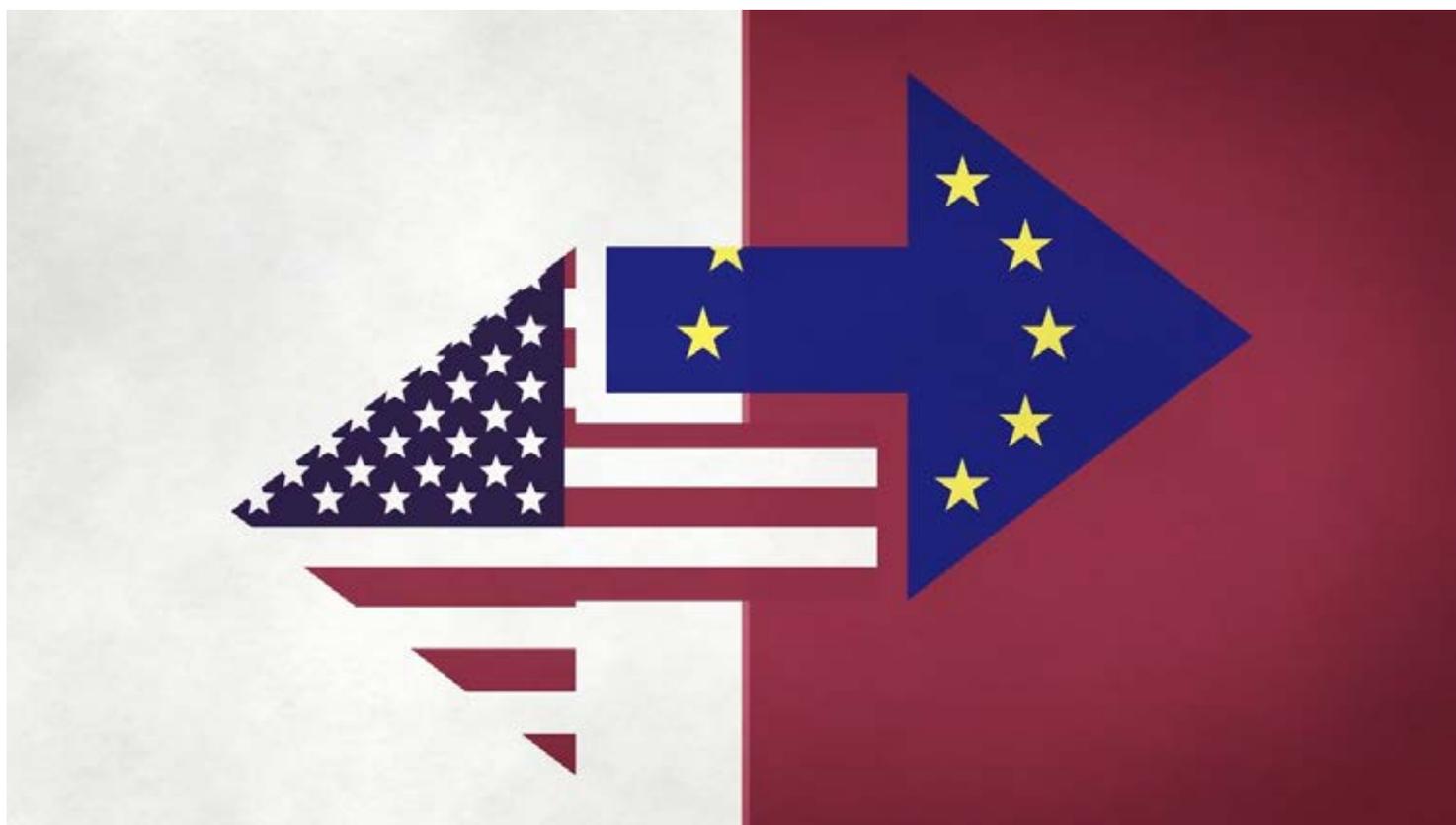
- › Regulators should “consult with their counterparts and exchange as much information as possible”, with dialogues potentially taking place “throughout the regulations development process”.
- › The option of using the same assumptions and methodology was to be investigated.
- › Exchange of annual work plans was encouraged.
- › Comparisons “of the potential cost-effectiveness” of regulatory proposals (ie impact assessments) would be produced.
- › Regulators were asked to see if harmonization, mutual recognition or other approaches could be used to “minimize unnecessary divergences”.
- › Transparency was encouraged at all stages, including an obligation to respond to contributions from stakeholders.

Another summit in 2007 added a new top layer to the myriad of bodies undertaking transatlantic regulatory cooperation: the Transatlantic Economic Council (TEC). In the following years, the TEC was to be headed by Commissioner Günter Verheugen and Allan Hubbard from the cabinet of US President Bush.¹⁵

Next step TTIP

In the following years, the main institutions for transatlantic regulatory cooperation – the TEC and the HLRCF – were deeply involved in investigations, consultations and discussions on some of the thornier issues, including risk assessment, precaution and impact assessment.

The next rung of the ladder was the TTIP. Regulatory cooperation had been declared a cornerstone from the beginning of the process that culminated in the launch of negotiations in July 2013. In 2011, a EU-US Summit formed a High Level Working Group on Jobs and Growth.¹⁶ This body had the mandate to identify options for strengthening the EU-US economic relationship¹⁷ through the removal of “behind the border” barriers, either through “enhanced regulatory cooperation or the conclusion of a trade agreement”.¹⁸ In the end, both options prevailed in the proposal for a trade agreement that would include a strong emphasis on regulatory cooperation.¹⁹



04. How corporate lobbyists were allowed to run the show

'Stakeholders' is a word frequently used in European Commission proposals on regulatory cooperation in the TTIP negotiations. Clearly, input will be sought from outside sources at key moments, assuming that regulatory cooperation makes it into the final text. And if you ask any Commission official or EU negotiator about the matter, you will be assured that the term refers not only to business groups, but also to environmental groups, consumer rights organizations, and trade unions. The Commission is bound by an article in the EU Treaty that says that institutions "shall maintain an open, transparent and regular dialogue with representative associations and civil society":²⁰ in other words, not just with business. What goes on in real life, however, is often different, and trade policies have traditionally been one of the areas subject to corporate dominance. The same goes for transatlantic trade negotiations in general, and regulatory cooperation in particular.

Getting big business organized

From the start, the business community was not merely hanging around at the fringes of official meetings. Corporations were invited to be actively involved well before the key decisions on transatlantic economic cooperation were taken in 1995: they were explicitly setting the agenda. Before the adoption of the New Transatlantic Agenda, key actors on both sides created the Transatlantic Business Dialogue to facilitate business discourse on issues of common interest. In April of 1995, Commissioner Martin Bangemann (Industrial Affairs), Commissioner Sir Leon Brittan (Trade), and the US Secretary of Commerce Ron Brown sent a letter to approximately 1,800 US and European industry leaders welcoming them to the process. To move the cooperation forward, a US-EU Steering Committee was formed, comprising the US Government, Commission officials, and four business representatives: Paul Allaire (Xerox Corporation), Alex Trotman (Ford), Jürgen Strube (BASF) and Peter Sutherland (Goldman Sachs).

Influence from day one

The group recruited a large number of CEOs to attend the first conference of the TABD, which took place in November 1995 in Seville, Spain. This was considered a “productive” meeting, which resulted in the adoption of no less than 70 recommendations derived from five overarching priorities: growth of a “transatlantic marketplace”; free flow of trade, capital, investment and technology; development of a “secure framework for investment”; liberalization of trade; and the removal of “all obstacles and public policy impediments so that business can operate on either side of the ocean without any unfair constraint or discrimination.”²¹

One month later – according to one assessment – about 60 per cent of the corporate recommendations were incorporated into the official New Transatlantic Agenda.²² The TABD was even granted a special official status in the official conclusions of the EU-US Summit: “We will not be able to achieve these ambitious goals without the backing of our respective business communities. We will support, and encourage the development of the transatlantic business relationship, as an integral part of our wider efforts to strengthen our bilateral dialogue. The successful conference of EU and US business leaders which took place in Seville on 10/11 November 1995 was an important step in this direction. A number of its recommendations have already been incorporated into our Action Plan and we will consider concrete follow-up to others.”²³

The content of the NTA that was adopted in December 1995 was good news for the TABD and the business community it represented. And the fundamentals of the process were soon to be influenced by the new grouping. At the June 1996 EU Summit, a report from the coordinating Senior Level Group read that “... following the call from the Transatlantic Business Dialogue (TABD), we have placed greater emphasis on addressing non-tariff barriers and on enhancing regulatory cooperation.”²⁴ The fact that the TABD had set the agenda was announced quite openly: “In line with the TABD’s aim to facilitate closer economic relations between the US and the EU and to contribute to the progressive reduction or elimination of barriers to transatlantic trade and investment, the report includes a wide range of proposals and possibilities for further action. The TABD’s report has already provided new momentum to our ongoing efforts. We will work to implement as many of these recommendations as possible.”²⁵

The next important TABD meeting took place in Chicago in late 1996. This time it had a slightly different nature, as the strong presence of EU officials and US government representatives made it more of a four-party meeting than a transatlantic business encounter.²⁶ This formula was to prove productive.

‘Approved once, approved everywhere’

From its inception, one of the slogans of the TABD on regulatory policies was ‘approved once, approved everywhere’: in other words ‘mutual recognition’. At the Chicago meeting, parties reportedly decided to move ahead with a mutual recognition agreement.²⁷ Officials acknowledged that the TABD had played a decisive role,²⁸ as one USTR official put it, “the Mutual Recognition Agreement would not have happened without the TABD.”²⁹ This same congratulatory message made it into official statements: “The EU and US recall the imaginative and practical approach of EU and US business in the Transatlantic Business Dialogue, which has contributed directly to many of the NTA’s successes, such as the Mutual Recognition Agreement. We urge the TABD to continue and extend its valuable contribution to the process of removing barriers to trade and investment.”³⁰

In return for continued contribution from the TABD, the two sides promised “effective access to the regulatory procedures of public authorities by private interests”, and “meaningful participation of the public and of all other interested parties, notably the TABD.”³¹ In other words, the TABD had acquired a special, official status with privileged access to decision makers in the field.

Guidelines from the TABD

In the following phase, with officials struggling to find methods to spur regulatory cooperation, the TABD proved once again to be a powerful and important associate of governments. The Guidelines on Regulatory Cooperation had been discussed since 1998, but in late 2001 the TABD stepped in with its own proposals. In an attempt to strengthen the significance of an “early warning mechanism”, among other things, the TABD outlined principles “that would ensure timely public notice and open consultation in developing regulatory proposals, by both the European Commission and the US Government”.³² The intervention from big business was a catalyst. Eric Stewart from the US Department of Commerce told the US Congress: “TABD is credited with breaking the impasse in negotiations on the US-EC Guidelines on Regulatory Cooperation and Transparency over language on transparency. TABD recommended text on transparency that allowed us to conclude the Guidelines. Since that time, the US and EC have launched a number of regulatory cooperation projects based on the Guidelines, specifically in the areas of auto safety, cosmetics, food additives, nutritional labelling, and metrology.”³³

Although the TABD was clearly successful, some still felt that it was not successful enough. Grant Aldonas, the US Under Secretary of Commerce, remarked in 2002 that the TABD was “a unique forum where business provides suggestions to government”. Still, he felt that government could do a better job. “We have a 60 per cent success rate in accomplishing items you all have put on the table,” he said to the TABD, stressing that he felt that this just wasn’t good enough.³⁴

Officials boost TABD

Despite the seemingly abundant harvest from their involvement in forging closer economic ties across the Atlantic, the interest of US and European CEOs in the TABD faded somewhat between 2001 and 2003. One reason was their disappointment in the Mutual Recognition Agreement, as only three of the six agreements had been fully implemented. In response, officials from both sides agreed to give the TABD a boost during a 2003 meeting between then Secretary of Commerce Ron Evans and EU Commissioner Erkki Liikanen.

“The business community is the driving force of transatlantic economic integration,” said Commissioner Liikanen. “Its vigilance is needed to bring trade barriers and frictions to the attention of governments and to make them find solutions to these problems. TABD has contributed positively to the improvement of transatlantic economic relations through innovative ideas that have advanced trade liberalization. The new Transatlantic Business Dialogue will be a lean and focused business-driven process developing policy recommendations for administrations. The EU and the US have joined in commitment to review and implement recommendations coming from the TABD.”³⁵

The sparks for this new model for the TABD were a “focus on no more than two or three issues at a time,” and a composition “made up of a small group of top level CEOs”.³⁶ The idea ignited swiftly and a number of companies immediately confirmed their support, including the Coca-Cola company, Unilever, The Estée Lauder Companies, UPS, FedEx, Ernst & Young, Merck, Arcelor, BASF, Deutsche Bank, Ericsson, Lafarge, Renault, Repsol, SEB and Shell.³⁷

Pushing for governance

In the following years, the TABD upped the stakes in two ways. It started arguing for a “barrier-free transatlantic market”, and also asked for a higher-level commitment to the regulatory convergence agenda. In the run-up to the 2005 EU-US Summit, the TABD’s key recommendation was the formation of a transatlantic regulatory cooperation forum – citing clashes between the EU on accounting standards (Sarbanes-Oxley) and chemicals regulation (REACH) as examples of the weak enforcement of previous agreements.³⁸ The Summit followed this advice, and formed a High Level Regulatory Cooperation Forum comprising senior EU Commission officials and US regulators.³⁹

In 2007, concerned about the lack of implementation of key measures, the TABD decided that new momentum was needed to advance transatlantic integration. Concerning the all-important issue of regulatory cooperation, for example, the organization stressed the need to “set the institutional structure for more results-oriented regulatory cooperation on both horizontal and sectoral levels”. To this end, the TABD was encouraged by the plans of the German Government, led by Chancellor Angela Merkel, to reignite cooperation through a New Transatlantic Economic Partnership. “Such high-level political will is a prerequisite to deepening transatlantic economic ties through initiation of negotiations for a framework agreement.” The following Summit, in April 2007, led to a new statement on economic integration – the Framework for Advancing Transatlantic Economic Integration⁴⁰ – and the formation of new high-level body to oversee the process, the Transatlantic Economic Council (TEC). The TEC is chaired by a US representative from the President’s cabinet and a Commissioner in close cooperation with the EU Presidency.

Pushing for TTIP

Back in 2004, the TABD had started pushing for a broader trade deal – a barrier-free transatlantic market – as its key objective. It seems to have pursued several avenues towards this goal, including deepening the existing framework for regulatory cooperation. In the run-up to a November 2011 EU-US Summit,

the TABD urged the parties “to launch a fast track reflection for an ambitious Transatlantic Economic and Trade Pact”.⁴¹ The Summit followed the recommendation, setting up a High Level Working Group on Jobs and Growth, headed by then EU Trade Commissioner Karel De Gucht and his counterpart Deputy National Security Advisor for Economic Affairs Michael Froman, to explore whether negotiations on a comprehensive trade agreement should be initiated. “We will be exploring options ranging from ‘TEC plus’ to a potential FTA with an open mind toward seeing what is feasible and what would have the greatest impact on our economic relationship,” Froman reported after the meeting.⁴²

The Transatlantic Business Dialogue immediately called on US leaders to “seize this moment” in a post-meeting press release.⁴³ As for the TABD itself, it stepped up its work with other business groups, issuing recommendations and comprehensive proposals together with the US Business Roundtable and the European Roundtable of Industrialists.⁴⁴ It is not clear whether the TABD had privileged access to the High Level Working Group on Jobs and Growth.

How the ‘other voices’ were sidelined

In 1998, after three years of close cooperation between decision makers and the business community within the TABD, three other dialogues were launched and integrated into the process of developing the New Transatlantic Agenda. At the time, the trade agenda of the two powers faced stiff opposition not only internationally, but internally as well. In mid-1998, a coalition

of social movements and NGOs had successfully defeated the Multilateral Agreement on Investment (MAI), and a serious crisis of legitimacy was emerging. Also, the TEP – adopted in May 1998 – was under fire from various quarters.

Other dialogues – the Transatlantic Labour Dialogue (TALD), the Transatlantic Environmental Dialogue (TAED) and the Transatlantic Consumer Dialogue (TACD) – were “brought into the NTA process to legitimise the TEP”, writes Becky Steffenson, an academic observer.⁴⁵ At a 1998 EU-US Summit, the two sides solemnly promised to work together with all dialogues, and not allow business to monopolize access to the official process.⁴⁶

However, these promises eventually turned out to be hollow. The three dialogues would never reach the same status as the TABD. And of the three, only the consumers dialogue (TACD) proved sustainable, albeit on very different terms than the business lobby united in the TABD.

Short-lived labour and environmental dialogues

Both the US government and the Commission had expressed interest in having a body of organised labour to follow the official process: US Secretary of Labor Robert Reich and EU Employment & Social Affairs Commissioner Pádraig Flynn supported a joint initiative of the AFL-CIO and the European Trade Union Confederation (ETUC) in 1996. However, it was not until the two organizations held a conference in April 1998 that the Transatlantic Labour Dialogue became a fact.

Steps for business and government interactions

In June 2004, the Commission published a report that provided CEOs with input on the strengths and weaknesses of the TABD, and recommended strategies and tools to make them even more influential. The report authors also included a dense list of the main points of interaction between business group and officials. The list reveals a deeper and closer relationship than anything revealed in public:

Steps for working together:

1. TABD-CEO recommendations are officially submitted at the EU-US Summit. TABD defines two or three practical recommendations and launches a work plan.
2. The US Secretary of Commerce and the EU Commissioners for Enterprise and Trade review the TABD recommendations and provide written replies with a view to support and follow-up on appropriate recommendations, then make commitments to carry out appropriate recommendations. They are recorded in response papers that outline related actions.
3. Progress is reviewed by the TABD as well as EU and US Government decision-makers at a half-day annual TABD meeting.
4. TABD policy committees and, where appropriate, Expert-level working groups operate continuously through the year and meet to discuss sector specific issues, as defined by the CEO group.

TABD gives birth to TABC

Starting in 2008, business associations started to assert themselves in the transatlantic process. From the outset, the TABD was a body run by CEOs from big companies, to some extent selected by officials, and for many years political decision makers preferred to keep it that way. But by 2008, the presence of associations was on the increase. Semi-official meetings were held on the fringes of the official summits, organized by the US Chamber of Commerce when in the US, and by BusinessEurope when in the European Union.

This expansion finally led to a merger between the TABD and another transatlantic business lobby group, the European American Business Council. The two formally fused in January 2013 to form the Transatlantic Business Council (TABC).

The TABC would soon become one of the most active lobby groups on TTIP. In Corporate Europe Observatory statistics on the number of external meetings held by DG Trade, the TABC ranks second in the period between January 2012 and February 2014. The TABD, thanks to all of the official help it received over the years, helped to build a powerful lobby group.

The standing of the labour dialogue was by no means comparable to that of the TABD. The greatest achievement of the TALD seems to have been a series of decisions made at a November 1998 Summit where the US and EU governments agreed to “exchange views” regarding the implementation of workers’ rights; to “further the dialogue” between workers and employers on corporate codes of conduct; and other equally non-binding measures⁴⁷. The imbalance between the TABD and labour was stressed on various occasions, even by the presidents of the two confederations: “The Transatlantic Dialogues established in the 1990s have been unequally active and unequally involved in the EU-US cooperation structures, especially the EU-US Summits, which had a unilateral focus on TABD.”⁴⁸ Calls for a broader agenda to include social issues were never addressed by officials, and the TALD became passive.

The most short-lived dialogue, however, was the Transatlantic Environmental Dialogue (TAED). According to one analysis, it was set up after the US Environmental Protection Agency alerted NGOs in early 1998 that the TABD’s plan for mutual recognition could affect environmental policies and damage the environment.⁴⁹ Later that year, official funding was offered to set up the TAED, including a 150,000 euro grant from the European Commission. In September, a first preparatory meeting took place, but it was not until May 1999 that the new forum had its first real meeting.

From the outset, environmental organizations⁵⁰ were worried that the initiative would be used by governments or the Commission to bolster the public image of the official process.⁵¹ This fear was manifest in the discussions.⁵² And little if anything was achieved, if measured by impact on the official agenda, and particularly when measured against the success rate of the TABD (which the TABD itself estimated to be about 50 per cent).⁵³

The TAED would exist for only two years. In the summer of 2000, an intervention by Congressman Jesse Helms led to the refusal of the State Department to fund the body. The Commission would not provide funding without US financial support, and as a result the TAED vanished.⁵⁴

A cold shoulder to consumers

The Transatlantic Consumer Dialogue (TACD) has a different origin than the other two dialogues. The initiative came from two consumer groups – Consumers International and the European Consumer Organisation (BEUC) – as a response to the role of the TABD in the official process. The groups wanted a dialogue of their own, and demanded recognition and access to decision makers.

Excerpt from an interview with a US State Department official about monsters and insects:

“I personally find it difficult to have a constructive discussion with NGO representatives that are yelling, referring to Frankenstein food, dressing up as monsters or insects, or mixing apples and oranges in their arguments – in a discussion on food safety, [they] start talking about runoff from pig farms; in a discussion on dioxin, [they] talk about biotechnology.”⁵⁵

By mid-1997, the Commission was won over and provided both political and financial support for the idea.

The first meeting in September 1998, in which fifty organizations participated, led to the formation of three working groups (on food, on electronic commerce, and on trade). The December 1998 EU-US Summit adopted a special statement on “the dialogues”, which sounded as if a door to influence had been opened. “We will work with all of the transatlantic dialogues to ensure that lines of communication to government are balanced and open.”⁵⁶

Although the TACD was up and running, it would soon run into obstacles. The first main decision to be taken at the official level after the initiation of the TACD was the 2002 Guidelines on Regulatory Cooperation and Transparency, skilfully engineered by the TABD. On that occasion, the TACD disagreed categorically with the drafts and tabled alternative proposals.⁵⁷ All suggestions were rejected, and neither of the two parties bothered consulting with the TACD on the Guidelines again.⁵⁸

The second main decision was on the Roadmap for EU-US Regulatory Cooperation, adopted in June 2005. The TACD

issued four recommendations: the initiation of a joint effort to “effectively tackle the problem of diet-related disease”; a common framework on “consumer privacy and security in the digital environment”; the addressing of the effect of strong patents on access to medicine; and cooperation on chemicals regulation using a precautionary approach.⁵⁹ None of these recommendations were included on the Summit’s agenda. This pattern would be repeated with other major decisions on regulatory cooperation, for example the work initiated on impact assessments.⁶⁰

Never a level playing field

Transatlantic regulatory cooperation was never a ‘level playing field’ between different actors. Big business had a privileged position from the outset, and was even asked to play a key role in defining the official agenda. The other voices – representing consumers, workers and environmental interests – were marginalized from the very beginning. This, of course, had significant implications for the outcomes.



Excerpt from an interview with an EU Commission official working on trade and environment about listening to NGOs versus Coca-Cola:

“Well I think there are too many areas where it’s not been successful – one is on our side because of, I don’t know, quite honestly. ... Some policy officials believe that what they do is right and NGOs, particularly in trade, they’re not our classic allies. So if Coca-Cola Schweppes came in saying ‘x’ is a good idea, your average trade policy official’s probably more inclined to listen than if the World Wildlife Fund came in with a brainwave.”⁶¹

05. How embedded lobbyists and officials made use of regulatory cooperation

Regulatory cooperation is not about finding ways to boost consumer rights; it does not aspire to increase labour protection; and it is not a means to strengthen environmental protection. It is about making regulation more coherent, especially for transnational corporations, through liberalization or deregulation. And that, in turn, poses a series of threats to protective rules.

But whenever trade negotiators or governments are confronted with the imminent dangers of regulatory cooperation, their standard line is to claim that there is no contradiction between regulatory coherence and regulation in the public interest. The development of transatlantic regulatory cooperation is no exception. From the outset, the official line has been to stress that standards will not be threatened, and that they might possibly even be strengthened.

In the official declaration on the Transatlantic Economic Partnership, the two sides vowed to “maintain high standards of safety and protection for health, consumers and the environment,” and to “enhance our regulatory cooperation while facilitating consumer protection”. Elimination of barriers would happen “while further pursuing our commitment to high health, safety and environmental standards.”⁶²

But the proof of the pudding is in the eating. To date there have been a large number of disputes between the parties, which in many if not most cases have impinged upon protection levels. In fact, it is no wonder that reality has proven very different from what was pompously promised. This can be attributed to the substantial privileges that were awarded to a well-organized business community by a supportive official process. Big business played the cards dealt to them skilfully, and the US Administration and the Commission – at least parts of it – have happily obliged. Since the late 1990s, numerous cases have proven that transatlantic regulatory cooperation does indeed encroach upon protection levels, despite the fact that the rules on regulatory cooperation are largely non-binding. The following six examples illustrate this disturbing dynamic.

1. Dangerous electronics: regulatory cooperation versus the precautionary principle

Waste from electrical and electronic equipment, or e-waste, is not a negligible phenomenon. In 2009, e-waste in the EU alone amounted to between 8.3 and 9.1 million tons per year⁶³, up from 6 million tons in 1997. E-waste often contains hazardous substances, such as lead, mercury, cadmium and halogenated flame retardants. Scientists have identified electronic waste as “an emerging risk for society,” and have urged politicians to take action.

The EU started to consider regulatory action to address the problem in the early 1990s. In parallel, the technology industry, and in particular the dominant US sector, set a large lobby apparatus into motion to prevent new e-waste regulation.⁶⁴ In the end, the process only resulted in two directives: transatlantic regulatory cooperation had played its part in scaling down ambitions.

The key moment occurred even before politicians got involved, and without public scrutiny. Strong discussions took place between DG Environment on one side, and the US and business lobby groups on the other. When the latter received support from DG Market and DG Enterprise, the scale tipped to their advantage.

The deep involvement of US business groups and authorities was linked to regulatory cooperation. The process started in 1998, when the Commission wrote a draft directive on e-waste that covered recycling, design and substance bans. Shortly beforehand, in December 1997, the two sides had decided to consult with each other at an early stage of drafting, and in May 1998, this had been formalized with the Transatlantic Economic Partnership. It had also been agreed that “interested parties” should participate, “notably the TABD”.⁶⁵

The first proposal was based on Article 175 of the Treaty, which gives member states the option to take stronger precautionary measures than those adopted by the European Union as a whole. The European technology industry, notably Orgalime, was quick to respond by entirely rejecting the fundamentals of the proposal. A second draft did next to nothing to appease industry, and foreign players started popping up. The US industry, headed by the American Electronics Association, complained that the proposal was at odds with WTO rules, that substance bans among others were not necessary, and that less trade restrictive options had to be found. These arguments quickly won the support of the US government.

The TABD discussed the matter soon afterwards, and took an equally hostile position to the full proposal. Its negative opinion was received very positively by two Directorates-General inside the Commission, DG Enterprise and DG Markt. From this point on, these two would team up with business groups against DG Environment, which had authored the proposal.

The United States Trade Representative (USTR) also took up the matter with the Commission. From then on, the matter was dealt with as a case of regulatory cooperation, and discussed several times in high-level working groups within the architecture of the Transatlantic Economic Partnership. The US position was remarkably close to that of the TABD. As Oliver Ziegler wrote in his dissertation on transatlantic regulatory cooperation: “Throughout the whole EU legislative process, the US government used the newly established transatlantic channels to lobby against the planned substance ban, which it considered ‘trade-restrictive’ and ‘inconsistent with WTO rules’. It thereby fully adopted the position of the transatlantic industry community. Even the wording of the USTR’s annual National Trade Estimate Reports on Foreign Trade Barriers strongly resembled the one of the annual TABD statements.”⁶⁶

What followed was a two-year battle over the structure and contents of the proposal. The key alliance against the proposal included Commissioner Erkki Liikanen and the TABD. The TABD classified the issue as an “early warning candidate”⁶⁷ to avoid a trade dispute in the WTO at a October 1999 meeting in Berlin.

In a surprise move the following May, DG Enterprise launched its own proposal that broadly met the TABD’s demands. “We are pleased that DG Enterprise has actively solicited industry input,”⁶⁸ the TABD remarked. On substance restrictions, DG Enterprise and DG Markt joined forces to concoct separate directive that would allow bans only in case a substance could be proven hazardous on “scientific grounds.”⁶⁹

The final proposal from the Commission – after no less than four drafts – was split in two separate parts: one on waste and one on hazardous substances in electronic products. Contrary to the original DG Environment proposal, the proposed directive on substance bans (Restriction on Hazardous Substances, or RoHS), was based on Article 95 of the Treaty, leaving member states with hardly any room for adopting national restrictions on substances not banned at the EU level. The Commission surprisingly highlighted that further restrictions would only be adopted based on actual occurrences. This goes against the precautionary principle⁷⁰, which holds that potential damage to humans and the environment should be avoided before it occurs.

More specifically, the directive avoided banning a number of brominated flame retardants, including deca-BDE. This came much to the dismay of the Swedish Department of Environment and the Danish Government, as both countries were set to introduce unilateral bans.⁷¹ Unlike the earlier drafts, this directive on hazardous substances was not based on Article 175, and thus prevented the Swedes and the Danes from banning these endocrine-disrupting substances that they suspected were detrimental to the healthy development of human fetuses.

The split into two directives continued to be hotly contested. Both the European Parliament and the Council of Environmental Ministers decided in favour of merging the two dossiers. Yet, in the end the two-part approach prevailed, and the EU was left with rules on hazardous substances in electronic products far below the standard envisaged by the initial proposal. In other words, regulatory cooperation had proved its potency: the alliance between business, the USTR and parts of the Commission trumped the Environmental Ministers, the European Parliament, the Environment Commissioner and DG Environment.

When the two directives were finally adopted in 2002, the waste directive (Waste of Electrical and Electronic Equipment, or WEEE) had by and large survived industry and US pressure (see box). The hazardous substances proposal, on the other hand, had been significantly weakened; crucially, the Commission was empowered to administer bans and restrictions on substances with restraint. In the following years, the inaction of the Commission escalated to a conflict with the European Parliament and the Danish Governments, both of which wanted to see a ban on deca-BDE. This prompted the Danish Government to open a case against the Commission at the European Court of Justice; three years later the Danes and the European Parliament finally saw victory.⁷² In other words, it took a multi-year court case to settle a matter that should have been dealt with quickly within a framework like the one originally proposed.

While the hazardous substances proposal is still officially based on the precautionary principle, it is counterproductive in that it prevents member states from applying precaution and deciding on stricter national measures. Moreover, the listing of new substances has been very slow: four new substances were finally added to the list of restricted substances in May 2015.⁷³

Whereas it may be questioned whether or not the directive on Restriction of Hazardous Substances formally sidelined the precautionary principle – a case in which the European Court of Justice sided with the Commission – the directive certainly prevents member states from applying precaution. This development does not bode well for bans that are not supported by the Commission.

How to set standards: going it alone

The WEEE directive on waste recycling and the RoHS on hazardous substances were meant to set global standards. As the EU is a major market, the two directives have had major influence on the design of products by big technology corporations. Additionally, both directives have essentially been adopted by the US electronics industry. Tom Rainone, president of Contract Manufacturing Services, has stated that Cisco, IBM and Hewlett-Packard “simply don’t want the headaches of having one of their products singled out for containing an unwanted substance”.

In addition, the e-waste recycling programme turned out to be contagious, and led to 25 US states adopting similar programmes. At the federal level, however, there has been little action. Strikingly, industry, which used all available means (including regulatory cooperation) to prevent the EU initiative, has now started calling for federal regulation.

2. Safe Harbour: regulatory cooperation helps companies sidestep data privacy legislation

How do you feel about US companies selling personal information about your life to whoever will pay? This happens very often, and the transactions are often in complete violation of EU data privacy rules that require your explicit consent.⁷⁴ And even more pertinent: what if US companies routinely hand over massive amounts of information about EU citizens to US intelligence agencies?

Why are US companies not simply held accountable to EU law? This is because in 2000 the transatlantic parties concluded the so-called Safe Harbour agreement that enabled US companies to escape accountability. From the moment the EU adopted its data privacy directive in 1995,⁷⁵ it was obvious that this was a thorn in the side of many US corporations. They were accustomed to the more relaxed, self-regulated atmosphere in the US, and were not happy with the EU’s demand that consent be secured from individuals before valuable personal information was gathered. At the time, as there was no formal ‘early warning mechanism’ in place, business was not in a position to start a huge debate with the Commission or the Council. Lobbyists did work against the directive in Brussels, but they lacked an obvious point of contact inside the administration on international privacy regulation issues.⁷⁶ Attempts, also via the TABD, to have the EU water down the directive had little effect.

But there were other means available inside the framework of ‘regulatory cooperation’. Regulatory cooperation was not just to be about discussing drafts of proposals, but more generally about making rules less trade restrictive. Several tools were available in

the 1998 Transatlantic Economic Partnership Action Plan, one of which was ‘mutual recognition’ – that one side accepts that the other side has taken steps that broadly meet the requirements. This was the avenue that the US sought with data privacy.

Confronted with the inevitable adoption of the EU rules, the TABD pushed for the EU and the US to find a solution via negotiations on the issue. However as there was no consensus in the business community, the TABD’s input was limited to some utterances about the ability of business to self-regulate following the US model. In parallel, though, individual companies lobbied governments extensively and successfully for a Safe Harbour agreement that would not inhibit their business models.⁷⁷

In March 2000, the Safe Harbour agreement was concluded. According to the agreement, US companies would have to sign a pledge that they would abide by seven core data privacy principles, including “clear and conspicuous” notice when making use of individuals’ information, and an obligation to be transparent about the onward transfer of information. The European authorities, however, would not have the means at their disposal to call into question decisions made by the US authorities to demand information about EU citizens from US companies.

At the time, this ‘self-regulation model’ was deemed insufficient and untrustworthy by many key players. On the European side, political support was practically non-existent beyond governments. The European Parliament adopted a report with a negative assessment of the substance of the agreement⁷⁸, but was ignored by the Commission with the argument that the Parliament did not have the power to demand substantive changes.

The TACD (the consumers dialogue), which had been adamantly opposed to the negotiations, urged “the European Commission and the Ministers of the European Council to reject the Safe Harbour proposal. The proposal will undermine the purpose of the EU Data Directive and compromise the privacy interests of European citizens.”⁷⁹ However, all of this critique was brushed off by the Commission and the Council, and the agreement took effect in November 2000.

Events would prove the critics right. Signatory US companies did not respect the principles after all, and in 2013 the Commission flatly admitted in an evaluation report, that it had “identified a number of weaknesses in the scheme. As a result of a lack of transparency and of enforcement, some self-certified Safe Harbour members do not, in practice, comply with its principles.”⁸⁰

In response to the report, Monique Goyens from The European Consumer Organisation (BEUC) said: “This agreement claims to reassure EU and US consumers when their personal data is exchanged for commercial purposes, but it has now been shown to retain only a fig leaf of credibility. In practice, many signatories lack even a privacy policy. Recent events have highlighted the obvious imprudence of poorly designed data exchange agreements.”⁸¹

Goyens’ position was supported by Jeff Chester from the Center for Digital Democracy: “Until the US enacts privacy protection for consumers in line with the EU approach, there should be no Safe Harbour regime in place. Given the strong opposition of the data collection lobby (Google, Facebook, etc), it is unlikely there will be any legislation soon, leaving both US and EU citizens unprotected.”⁸²

In the end, the Safe Harbour Agreement would prove to be yet another example of how regulatory cooperation can work in favour of big business groups and their pet issues, leaving both civil society groups and even the European Parliament on the sidelines.

But the death blow to the scheme came from another source. In October 2015, the European Court of Justice decided in favour of an Austrian citizen who complained about Facebook being required to hand over information about his private life to the US National Security Agency if so requested, with no questions asked and with no regard to EU rules on data privacy. Specifically, the court repealed the so-called Safe Harbour Agreement⁸³, which bars European authorities from interfering in data flows covered by the agreement. The Court concluded that such decisions lead to “compromising the essence of the fundamental right” to respect for private life and the rule of law.⁸⁴

3. Animal testing: how regulatory cooperation delayed and denied protection

There are many examples of how regulatory cooperation can inflict serious delays on legislative initiatives. This case has to do with the protection of animals, specifically those used by the cosmetics industry for testing. In 1993, the European Union adopted an amendment to its Cosmetics Directive that would impose a ban on the marketing of cosmetics tested on animals by 1998.⁸⁵ However, starting in 1996, US authorities started putting pressure on the European Commission to annul this ban. In 1997, the Commission responded by postponing the ban, and the following year proposed to swap the marketing ban with a ban on animal testing on EU soil. This would enable US companies to market products in the EU that had been tested on animals in the US, and would allow European companies to test their products outside the European Union and still be able to market them at home.

The US government put the marketing ban on its list of trade barriers, and threatened the EU with a complaint to the WTO. This resonated with the European Commission, not only out of fear of a WTO case, but also out of consideration for the competitiveness of the European cosmetics industry. The TABD, for its part, formed a cosmetics group to follow the issue, and at two major TABD events, the “marketing ban” was announced as an “early warning item”: in other words a matter to be dealt with in depth during dialogues between the two parties. The TABD’s position was that a ban would have to be delayed, and that bans should only be an option if alternative testing methods were available to industry.⁸⁶

“If this ban goes into effect on that date it will not only dramatically discriminate against the EU industry but will also seriously impact trade between the US and the EU and could give rise to a potential trade complaint,” the TABD’s cosmetics group stated in October 1999.⁸⁷

Due to a surprisingly unified European Parliament, a ban was finally adopted in 2002. Parliamentarians firmly rejected what they deemed inappropriate interference in EU politics by the US,⁸⁸ and were not convinced that WTO rules would rule out a marketing ban. However, concessions were made on the timeline. The marketing ban would only come into force in 2009,⁸⁹ and the last three testing methods would only be banned in 2013. In other words, the marketing ban was implemented two decades after a first decision was made, and fifteen years later than initially envisioned.

The ban has also had a visible effect on US industry, which is now calling for non-animal testing methods to be approved by the US Food and Drug Administration. This is yet another example of an EU proposal that industry would have liked to have seen buried entirely, but managed only a seriously delay through regulatory cooperation. In the end, the ban became *comme-il-faut* in the US.

4. Ozone layer: how regulatory cooperation was used to delay environmental action

Sometimes the cards are massively stacked against an industry group, and the struggle of the refrigeration industry against tough measures for ozone depleting substances is a case in point. The biggest industrial powers, including the US, moved swiftly and agreed on effective international rules to remedy the problem, leaving the parts of industry that relied on the dangerous substances with a difficult challenge.

However in the spring of 1997, the EU and the US drifted slightly apart when Environment Commissioner Ritt Bjerregaard announced that she would move deadlines forward for bans on two substances, HCFC and methyl bromide. This accelerated the total phaseout so that it would take place well before the internationally-agreed deadline under the Montreal Protocol.⁹⁰ Shortly afterwards however, two industry groupings, the Air-Conditioning and Refrigeration Institute (ARI) in the US and the European Chemical Industry Council (CEFIC), teamed up to fight the Commission on the new tempo.

One of the ARI's first moves was to bring up the issue in the TABD. This move would show how regulatory cooperation provided new opportunities for businesses with a grudge against draft proposals. Addressing the TABD opened doors for the organization: "We had credibility just by virtually being in the TABD. So if I called up the people in the Commerce Department and [said] I am part of the refrigerants group within the TABD – I could really express our concerns and they would say: 'No problem, what time would you like to come?' Had we not had that entry way through the TABD I think it would have been more difficult to connect even with our own government representative."⁹¹

This open door to the Commerce Department seemingly paid off. Soon afterwards, the US approached the Commission and sent numerous letters to avoid tougher EU rules.⁹² These tactics were to some extent successful, as the draft was still in process at the Commission. As explained by a Commission official: "When the US started complaining, the industry in the EU jumped on the bandwagon... So we decided to push the ban back two years because the benefits to the ozone would have been minimal."⁹³ This strategy was acknowledged in the US State Department's 2000 survey of trade barriers: "The US government actively opposed early drafts, which included phase-outs of some hydrochlorofluorocarbons (HCFCs) by 2000 or 2001, and would have disadvantaged US producers without yielding appreciable environmental benefits."⁹⁴

In the following years, the TABD would continue its attempts to stop the EU proposal through its working group on refrigerants. The US and some companies on both sides continued to pressure

the Commission, the Council and the European Parliament to avert more ambitious deadlines on the two substances. And although no further concessions were made on the European side, the European Parliament did not succeed in rolling back the concession already given. In the words of the US State Department, "the European Parliament failed to muster enough support behind an attempt to accelerate the date."⁹⁵

5. Aviation emissions: how airlines and the US disappeared a timid climate solution into thin air

The cornerstone of EU climate change policy – emissions trading and carbon pricing – has been questioned by EU trading partners, including the United States. This strategy was never a success in the first place, as it has failed to reduce carbon emissions and has never met its intended aim of setting a price on carbon that stimulates polluters to clean up their acts.⁹⁶ Yet intervention by trading partners has only made matters worse.

In 2013, the European Union decided to demand that all airlines pay for their carbon emissions for flights into and out of EU airports. But following what almost became a trade war with key EU business partners, including China and the United States⁹⁷, the measure was frozen. In the US, President Obama sided with airlines and signed a law that would shield them from having to pay carbon fees.⁹⁸ Bowing to pressure in 2012, Climate Commissioner Connie Hedegaard agreed "to stop the clock" in order to create a positive atmosphere for international talks on an alternative global plan to tackle airline emissions.⁹⁹ The EU effectively agreed to start a regulatory dialogue at the international level with its major business partners and the US, following one of the key principles of transatlantic regulatory cooperation: working together to forge international standards.

But the International Civil Aviation Organization (ICAO), the de facto global aviation regulator, will not agree on a global deal to create a market-based scheme to reduce carbon dioxide (CO₂) emissions before 2016¹⁰⁰. In the event that ICAO fails to implement a market system by 2020, the EU proposal appears to envision the possibility that the EU carbon market will cover carbon emissions for all airlines arriving in and departing from EU airspace.¹⁰¹

In short, an unambitious and ineffective regulation on aviation carbon emissions has been challenged by the US and has undergone a regulatory dialogue. This dialogue led to a delay of minimum four and maximum eight years. All of that trouble has been for an EU regulation that cannot even be regarded an ambitious measure, as it was not strong enough to avoid temperatures rising above two degrees.

6. Trade rules and financial meltdowns: how regulatory cooperation helped financial conglomerate AIG escape scrutiny

In 2002, the EU adopted new rules on financial conglomerates. The issue was that financial corporations that worked across borders and in different sections of financial markets were escaping capital adequacy rules.¹⁰² For the US, the consequences were that big companies in the sector would have to be supervised by an institution on the European side and abide by European rules on capital requirements. This idea sent shivers down the spines of Wall Street CEOs, as they feared that capital requirements in the EU and local supervision could be costly. They pushed the issue with the US financial authorities.

Under regulatory cooperation, dialogues were launched on many topics. Consequently, the Financial Conglomerates Directive (FCD) was one of the top issues in the emerging regulatory dialogue on finance.¹⁰³ In 2002, the same year the FCD was adopted, a Financial Markets Regulatory Dialogue – the forum for regulatory cooperation on finance – was also created. This dialogue was to facilitate a solution to the supervision issue. At the time, the role of regulatory cooperation in the settlement was hailed by US regulators,¹⁰⁴ the US administration,¹⁰⁵ and the financial industry. The outcome was reflected in the US with the 2004 Consolidated Supervised Entity (CSE) programme. This programme would put US companies under the supervision of the US financial authorities under very similar terms – or so it was claimed – to those on the EU side. Soon after, the CSE programme was recognized as essentially equivalent by the EU Banking Advisory Committee.¹⁰⁶ After that, US financial corporations were able to operate in the EU without significant monitoring by European authorities, pending approval on a company-by-company basis by a European coordinating supervisor. In other words, ‘mutual recognition’.

Were US authorities able to carry out their supervisory responsibilities? Did they take the European operations of US financial companies seriously? When the financial crisis broke, it quickly became clear that US supervisors actually knew very little about the European side of the books of US financial corporations. This was certainly true in the cases of the investment bank Lehman Brothers and the insurance giant AIG. Supervision was in effect very scant and weak. This lapse in responsibility would affect how US authorities were able to deal with the emerging crisis, most clearly in the case of AIG.

AIG is a giant in the insurance business, and its demise in September 2008 was a key moment in the financial crisis. In the preceding years, trade in risky financial products had risen steeply in for example mortgage securities, and AIG was a major

trader in hedging/insurance products called Credit Default Swaps (CDS). AIG’s inability to honour its obligations to CDS holders was decisive in its downfall. As one observer from the insurance business noted: “The AIG crisis was heavily influenced by its CDS portfolio, sold by a non-insurance entity, AIG Financial Products.”¹⁰⁷ And AIG Financial Products was based in London.

The institution that was to supervise AIG in Europe, the Office of Thrift Supervision (OTS), also knew very little about the London-based AIG Financial Products. The OTS director at the time would later admit to investigators that he did not know what his institution’s responsibilities were vis-à-vis the AIG branch in London.¹⁰⁸

The agreement with the EU on the supervision of AIG, among others, would have a major impact in 2008. US authorities were unaware of the real state of AIG’s books, and AIG management was in denial until it was much too late. In the end, AIG was bailed out by the US government to the tune of 182 billion dollars,¹⁰⁹ not to mention the contribution of the AIG demise to an overall financial crisis that proved disastrous to millions of people.

Regulatory cooperation at the heart of the matter

These cases relate to regulatory cooperation in different ways. The basic problem with some developments, such as hazardous chemicals in electronics, the rules on animal testing, and the proposal on ozone-depleting substances, concerns the nature of the discussion with the US Administration before a proposal is even presented to elected assemblies (‘early warning’). The Safe Harbour and AIG examples, on the other hand, concern dialogues between the Commission and the US Administration on special treatment for US companies after an act has already been adopted. Furthermore, the case of AIG is an example of how an institutional structure, for example a ‘sectoral working group’, can engineer decisions that seriously undermine the original act. Finally, the airline emissions example points to the role of international standards and bodies in regulatory cooperation. To be more precise, this example shows how a proposal can be struck down by passing it on to international bodies that fail to act.

The most disturbing fact is that all of these scenarios unfolded during a period in which regulatory cooperation was based on voluntary rules, and not particularly comprehensive ones at that, within a weak institutional structure. Under TTIP, all of that is set to change.

06. TTIP as the next stage of regulatory cooperation

Regulatory cooperation has clearly represented a serious obstacle to legislation in the public interest. But this does not mean that business has been happy with the design; the standard assessment of regulatory cooperation by corporate lobby groups is one of disappointment. In fact, lobby groups have worked for many years towards negotiations on a comprehensive trade deal enabling them to up the stakes. And well before the negotiations on TTIP took off in July 2013, corporate lobby groups were campaigning to put an upgraded version of regulatory cooperation at the heart of the agreement.

One remarkable example is when two key business lobby groups, BusinessEurope and the US Chamber of Commerce, approached the Commission in late 2012 with very specific ideas for a new and upgraded model, one that would allow them to “co-write regulation”.¹⁰ Ambitions are clearly high on the corporate side.

But what perspectives are on the negotiating table?

Co-writing regulation?

One illustration of the close cooperation between business lobbyists and trade officials is the dialogue on regulatory cooperation between the EU Commission and two important Brussels-based lobby groups, BusinessEurope and the US Chamber of Commerce. Whereas EU member states did not highlight the importance of regulatory cooperation in discussions about the negotiation mandate, the Commission had already had debates on the specifics with business lobby groups, most prominently with these two.

The minutes from a November 2012 meeting between BusinessEurope and three different departments of the Commission are quite illuminating.¹¹¹ They show how openly the Commission reacted to proposals from both lobby groups about how to further develop regulatory cooperation within TTIP. This is further substantiated by internal Commission discussions on a proposal on the issue by the two lobby groups.¹¹² Ultimately, the Commission's first negotiating proposals on regulatory cooperation very much reflected the demands of an October 2012 proposal by the lobby groups, first and foremost the idea of being closely involved in future regulation on both sides of the Atlantic.¹¹³

The US position

Little is known about the US position. The key word for the Americans is 'transparency' in the decision-making process, which by and large means more possibilities for the Administration and US corporations to intervene and comment. On its website, the USTR writes: "With respect to regulatory coherence and transparency, TTIP offers an opportunity to develop cross-cutting disciplines on regulatory practices that have long been known to support economic growth, market integration, and removal of 'behind the border' trade barriers. This includes the promotion of greater transparency, participation and accountability in the development of regulations. It also includes evidence-based analysis and decision-making, and a whole-of-government approach to regulatory management."

The US side clearly sees the expansion of its own model of regulation – with 'scientific risk assessment' and deep industry involvement (eg. via 'notice-and-comment') – as key to the cooperation process.

As for how the US Administration intends to cooperate with business in the longer term if regulatory cooperation is boosted, the answer lies in Executive Order 13609. With this decision, the US President gave US companies the privilege of helping to identify the kind of regulations in other countries that the Administration should address.¹¹⁴ Details on the US position are have still not been made public.

The EU position

However, thanks to a series of leaks, and the positions on horizontal matters¹¹⁵ (ie how regulatory cooperation will work across sectors) and sectoral matters, the EU position is comparatively well known, which makes it possible to assess the implications.

Bearing in mind how transatlantic regulatory cooperation has worked so far, the future scenario that emerges is one of ambitious, deeper and broader 'cooperation' to the advantage of big business, with industry lobby groups quite often effectively co-writing the proposals.

Based on these proposals, we have identified nine different reasons why we should view regulatory cooperation under TTIP as a qualitatively new phase, set to influence decision making in a more profound way than ever before.

1. Regulatory cooperation will become mandatory, and hence more dangerous. Regulatory cooperation as defined in TTIP drafts is more binding than in previous agreements, which were by and large loose 'gentlemen's agreements' that could be, and were at times, ignored. A prominent example is the EU regulation on chemicals (REACH), which was a highly contentious matter. The Commissioner in charge, Swedish Environment Commissioner Margot Wallström, made few if any attempts to involve the US at the drafting stage. On the US side, the Administration sided with the chemicals industry in an attempt to stop REACH altogether.¹¹⁶ Some concessions were made to the US and to industry, but regulatory cooperation was ruled out.¹¹⁷

In the future, such escapes will hardly be possible. Strong involvement of the US and of business will be firmly built into the joint procedures.

2. Regulatory cooperation will cover a very large area, including many new fields.

There doesn't seem to be any limit to the kind of 'regulatory measure' that should be considered within the scope of regulatory cooperation. It applies to services including "authorization, licensing or qualification". It also covers requirements and procedures applying to goods, including "their characteristics or related production methods, their presentation or their use".¹¹⁸ The proposal further stresses that regulatory cooperation is not merely about secondary law (implementing or delegated acts), but also about primary legislation. In other words, anything you can make money on falls within the scope of the proposal. This sets it apart from previous models, which focused on traditional regulatory issues. It would, for instance, even include directives on social and labour market issues.

3. Early warning allows businesses and the US government to intervene early on and exert significant influence on EU policy.

Due to its broad scope, regulatory cooperation will change the rhythm of decision making procedures in the EU across the board. This will kick in at a very early stage due to the 'early warning' procedure (now dubbed 'early information', presumably because it is a less dramatic term).

In the EU version, the two sides must make lists of 'planned regulatory acts' publicly available once a year. Furthermore, regulatory acts must be made available for input through a consultation process at the time when they are undergoing 'impact assessment', that is before the proposal is adopted by the Commission and presented to elected politicians. Also, contributions to consultations must be "taken into account".¹¹⁹

The 'early information' mechanism is much more powerful than what we have seen in the past. For a start, the former rules were voluntary, and 'early warning items' were at times selected with care.¹²⁰ Now early information is mandatory, and includes a much broader range of legislative measures. As we have seen above, this early warning mechanism provides opportunities for businesses and the US government to intervene at a very early stage, and to exert significant influence on EU policy. The result may be that an entire proposal is scrapped, or fundamentally changed (as with regulation of hazardous chemicals in electronic equipment), or seriously delayed (as with the proposals on ozone-depleting substances and animal testing).

4. Impact assessments will threaten the precautionary principle.

When assessing the impact of a regulatory measure, both sides are to make the implications for trade very clear at an early stage, as well as how the measure relates to the rules in force (if relevant) on the other side. In other words, the effect a new rule will have on companies on the other side is to be made explicit, and the other sides' 'regulatory approaches' have to be taken into account.¹²¹ In the process, data and evidence must be exchanged, which will

allow the other side to contest how information is dealt with and to challenge the findings. Such challenges are very likely to occur with regularity. The US government fought the chemicals regulation REACH by making use of impact assessments, and recently, impact assessments were the main tool for the US to avert the regulation of endocrine disruptors (see below).

Impact assessments are based on principles. The contradictions between 'scientific risk assessment', preferred by the US, and the EU's 'precautionary principle' is no small matter in this context. As pointed out in a legal analysis, this omission gives the US approach the upper hand, and poses a threat to protection levels.¹²² It is hardly a coincidence that the precautionary principle is not mentioned in the text. This makes impact assessments in the future a political battleground. Whereas impact assessments were previously discussed thoroughly by the two sides (by the Commission and the US Office of Information on Regulatory Affairs), with the proposed model, there will be more opportunities to contest the results of impact assessments done by the other side.

5. Regulatory exchanges allow political pressure at any time, also at the member state level.

The proposed 'regulatory exchanges' are among the most potent tools to influence the rules of the other side.¹²³ A regulatory exchange can be considered a formal 'crisis meeting' in which the Commission and US representatives discuss either a planned or existing regulatory measure. What's more, it seems that the two sides can call for a 'regulatory exchange' at any point in the decision making-process.¹²⁴

An outcome of a regulatory exchange would typically be a 'joint examination' to identify ways of preventing one side from adopting a rule that would harm the others' interests. Three approaches are identified: harmonization, mutual recognition, and 'simplification'. Simplification is not used under international law, but rather is derived from the Better Regulation Agenda, and is intended to 'lighten' the regulatory burden on companies. Regulatory exchanges cover member state legislation as well. The implication is that if an EU member state were to consider more ambitious regulation of chemicals, such as endocrine disruptors for example, it would be called to order at a meeting with the Commission and the US. The member state would then most likely fold under pressure.

There is no parallel to these regulatory exchanges in previous arrangements.

6. Regulatory cooperation will be institutionalized, with civil servants in the key role.

Regulatory cooperation will be overseen by a powerful body, in an earlier version called the Regulatory Cooperation Council, and now dubbed the Regulatory Cooperation Body (RCB). The RCB can be seen as a continuation of a process that started a decade

ago with the High Level Regulatory Cooperation Forum of 2002. Over the years, increasingly powerful bodies have been put in charge of regulatory cooperation in order to make the process more effective.

The RCB will be an influential body. It will report to a yet-to-be specified Joint Ministerial Body, but its own competences are considerable. After receiving input from stakeholders, it is to elaborate a common strategy to make the two rulebooks converge via an 'Annual Regulatory Cooperation Programme'. It can also establish working groups to flesh out sectoral strategies. The institution is to be led by 'regulators', which on the European side means the Commission, and on the US side the Office of Information on Regulatory Affairs (OIRA).¹²⁵

As a permanent structure with formal competences, the RCB is a further strengthening of the institutional structure around transatlantic regulatory cooperation.

7. The implications for decision making at the member state level is unclear.

At the time of writing, it was not clear to what extent the member state level will be incorporated in decision making; in other words, how regulatory cooperation under TTIP will affect the legislative process in member states. According to an earlier draft,¹²⁶ the Commission would like to see 'early warning' and 'regulatory exchanges' apply at the member state level as well. The current proposal has played this aspect down, proposing merely to "encourage regulatory exchanges".¹²⁷

The door seems to be open to giant steps in that direction, depending on how the negotiations proceed.

8. Sectoral working groups will have clout and business presence.

The plan is to build a whole infrastructure with working groups, either on particular topics or on different sectors. These working groups are to elaborate strategic plans to guide the two sides towards regulatory coherence. These powerful groups are set to be very open to lobby groups. This part of the architecture introduces the US approach to regulation,¹²⁸ as business groups have the right to follow developments, to comment, and to receive responses: "Any concrete suggestion received from stakeholders by one Party shall be referred to the other Party and shall be given careful consideration by the relevant sectoral working group that shall present recommendations to the RCB."¹²⁹ Also, it is worth noting that at a meeting with BusinessEurope and the US Chamber of Commerce in November 2012, the Commission flagged the option to give business lobby groups privileged access to the sectoral working groups.¹³⁰

Although working groups already existed in the previous setting, their work plans were less ambitious and more of a technical nature.

9. There will be special procedures for sectors and issues.

Already at this initial stage, the Commission envisions a series of sector-by-sector proposals for regulatory cooperation. These proposals will introduce special procedures and define clear priorities from the outset. Quite a few such proposals have already been tabled by the Commission: for example on chemicals, cars, cosmetics, pharmaceuticals and financial regulation. In some if not all cases, the Commission has worked closely with industry or has simply adopted industry proposals. Examples include the proposals on chemicals (which builds on suggestions from chemical lobby groups CEFIC in Europe and the American Chemistry Council in the US);¹³¹ cars (building on proposals from ACEA and AAPC, automotive industry lobby groups respectively from the EU and the US);¹³² and financial regulation (from financial lobby groups in the EU, notably TheCityUK).¹³³

The "surreal institutionalization of lobbying"

There is a close link between the work of the RCB and the inputs from 'stakeholders'. And while the Commission will certainly ensure that consumer groups, trade unions and business groups alike have access to an advisory body of the RCB, there is no doubt when considering the history of regulatory cooperation that the access provided to 'stakeholders' is a major gift to business, and of limited value to public interest groups.

Summing up the effect of the proposals of the EU on regulatory cooperation, Monique Goyens, Director of the European Consumer Association (BEUC), stated that it amounts to a "surreal institutionalization of lobbying".¹³⁴ Altogether, the entry points for business contributions under regulatory cooperation in TTIP promise to be numerous. Business lobby groups will have opportunities to intervene at any time in the decision-making process, even well before politicians have had a chance to look proposals. This is particularly the case if lobby groups are able to forge alliances with the US government, which appears easy enough given experiences to date with regulatory cooperation.

The Commission's proposal opens the floodgates to the very problems associated with the US approach. The right to comment and send proposals for 'careful consideration' by the relevant sectoral working group that will in turn present recommendations to the RCB is a privilege that can easily be abused. Business lobby groups will be given ample opportunity to influence the work of the RCB. They will be able to co-develop plans, often per sector, for 'regulatory convergence' in the long term. In effect, it amounts to what the US Chamber of Commerce dubs "the gift that keeps on giving".¹³⁵

07. Conclusion

Regulatory cooperation is poised to become the cornerstone of TTIP. According to both leaked and published proposals, the EU is betting on regulatory cooperation as the key to the removal of 'barriers to trade'. Via the new Regulatory Cooperation Body and a myriad of working groups and procedures, the incoherences between the EU and US regulatory systems will gradually be removed, step by step.

EU negotiators and the Commission routinely assert that such an approach will not lead to lower standards or reduced levels of protection. This claim, however, is belied by experience. Regulatory cooperation under the TTIP follows in the tracks of past experiments, and a series of incidents clearly shows that it does indeed pose a threat to regulation in the public interest. Evidence from very different areas, including financial regulation, data privacy, environmental protection, and even ethics (as with animal testing for cosmetics), is unambiguous concerning the dangers. Regulatory cooperation provides the means and opportunities to attack protection levels, and it is inevitable that this will happen.

The aim of regulatory cooperation is one-dimensional: to remove 'trade barriers'. Trade barriers can be anything in today's political context, and this alone should make citizens apprehensive. And when people understand that this regulatory cooperation is to be with the US – the major economic power that has attacked EU food safety standards and environmental policies on many occasions in the past two decades – they should be alarmed.

But fundamentally, what is at stake has more to do with corporations versus the public interest than nationalist sentiment. Regulatory cooperation is as much as anything a toolbox for corporate lobbyists. It provides a series of inroads for industry to dominate the official regulatory agenda – opportunities they will not hesitate to make use of.

At the end of the day, regulatory cooperation under TTIP encroaches on democracy. It will most certainly lead to close cooperation between civil servants and lobbyists, and will curb the influence of elected politicians.

Enforced regulatory cooperation with the US, as envisioned by the Commission, would deeply affect decision making. It would open the doors wide to corporate lobbyists, not only from the US, but also in collusion with their European counterparts. It would create a separate sphere of dialogue between the Commission and the US that could significantly affect what comes out of the executive EU body. It could even prevent regulation in the public interest from appearing on the political agenda in the first place.

The solution is straightforward: this agenda must be stopped. And stopping TTIP would be a wise first step.

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110. Document from BusinessEurope and the US Chamber of Commerce, October 2012, <http://corporateeurope.org/sites/default/files/businesseurope-uschamber-paper.pdf>
111. Minutes from a meeting of Commission officials with the two lobby groups on the international trade issue, <http://corporateeurope.org/sites/default/files/minutes-commission-be-chamber-meeting.pdf>
112. Internal assessment of the proposal by the European Commission, <http://corporateeurope.org/sites/default/files/commission-assessment-bechamber-paper.pdf>
113. BusinessEurope and US Chamber of Commerce proposal on regulatory cooperation, <http://corporateeurope.org/sites/default/files/businesseurope-uschamber-paper.pdf>
114. Executive Order 13609 of 1 May 2012, section 3c, https://www.whitehouse.gov/sites/default/files/omb/inforeg/eo_13609/eo13609_05012012.pdf
115. European Commission, Textual Proposal for Regulatory Cooperation, April 2015, http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153120.pdf
116. Henry A. Waxman, "A special interest case study: the chemical industry, the Bush Administration, and European efforts to regulate chemicals", Unites States House of Representatives Committee on Government Reform, 1 April 2004, page 12 ff.
117. REACH is still noted in the US as an example of the EU ignoring agreements on regulatory cooperation. See for instance Raymond Ahearn, "Transatlantic regulatory cooperation: background and analysis", CRS Report for Congress, 22 October 2008, page 16, <https://www.fas.org/sgp/crs/row/RL34717.pdf>
118. European Commission, Textual Proposal for Regulatory Cooperation, April 2015, article 3, http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153120.pdf
119. Ibid., articles 5 and 6. This is already underway in the EU. With the Better Regulation Agenda, a similar early notice for 'stakeholders' has been proposed by the Commission. However, that proposal is only about 'implementing acts' and 'delegated acts', not primary legislation, as is the case with the proposal on regulatory cooperation. This proposal from the Commission would thus expand the scope considerably.
120. See an 'illustrative list' of early warning items in Claudia Decker, "The Tension between Political and Legal Interests in Trade Disputes: the Case of the TEP Steering Group", page 14, <http://www2.jura.uni-halle.de/INSTITUT/Heft43.pdf>
121. European Commission, Textual Proposal for Regulatory Cooperation, article 7.
122. Stoll, Holterhus & Gött, "Die geplante Regulierungszusammenarbeit zwischen der Europäischen Union und Kanada sowie den USA nach den Entwürfen von CETA und TTIP", AK Europa, June 2015, http://www.akeuropa.eu/_includes/mods/akeu/docs/main_report_de_372.pdf
123. European Commission, Textual Proposal for Regulatory Cooperation, articles 9 and 10.
124. Ibid., article 9, para 7 reads: "Each Party shall communicate without delay to its legislative authorities and via its Focal point specific written comments or statements received from the other Party concerning regulatory acts at central level which are being prepared or reviewed by those bodies."
125. That this is the composition the European Commission has in mind is made explicit in its first position paper from December 2013: "TTIP: Cross Cutting Disciplines and Institutional Provisions. Position paper: Chapter on Regulatory Coherence", December 2013, <http://corporateeurope.org/sites/default/files/ttip-regulatory-coherence-2-12-2013.pdf>
126. See the document leaked from the Commission in January 2015: <http://corporateeurope.org/sites/default/files/attachments/ttip-eu-regulatory-coherence-draft-proposal-23.01.15.pdf>
127. European Commission, Textual Proposal for Regulatory Cooperation, article 11.
128. See former State Senator Sharon Treat's points from a talk on TTIP in Brussels, July 2014, http://www.greens-efa.eu/fileadmin/dam/Documents/report_Sharon_Treat_Regulatory_Cooperation_for_food_policies_In_TTIP.pdf
129. European Commission, Textual Proposal for Regulatory Cooperation, article 15 para 3.
130. See the minutes of the meeting on 8 November 2012, <http://corporateeurope.org/sites/default/files/minutes-commission-be-chamber-meeting.pdf>
131. For a more detailed comparison between the proposal of the Commission and that of the chemicals industry, see "Toxic Partnership Revealed" from CIEL, ClientEarth and NRDC, http://ciel.org/Publications/TTIP_Leaked_29Sep2014.pdf
132. The close cooperation with the car lobby is explicitly stated in the Commission's own "Position Paper" on its proposals, http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152467.pdf See also Corporate Europe Observatory, "VW: Tested once, approved everywhere", October 2015, <http://corporateeurope.org/international-trade/2015/10/vw-tested-once-approved-everywhere>
133. Richard Normington in TheCityUK, 5 February 2014, <http://www.thecityuk.com/blog/without-financial-services-the-ttip-could-be-made-to-look-a-monkey>
134. Monique Goyens, "Regulatory cooperation: Perhaps boring, but the TTIP storm on the horizon", 3 February 2015, <http://www.beuc.eu/blog/regulatory-cooperation-perhaps-boring-but-the-ttip-storm-on-the-horizon/>
135. See the report of a visit by DG Trade to Washington, January 2013, <http://corporateeurope.org/sites/default/files/the-gift-that-keeps-on-giving.pdf>

