

How the danger from the EU-US trade agreement TTIP still lurks in the fine print



By [Gabriel Siles-Brügge](#)

26 april 2016

<http://blog.policy.manchester.ac.uk/posts/2016/04/how-the-danger-from-the-eu-us-trade-agreement-ttip-still-lurks-in-the-fine-print/>

Controversy surrounding the UK's trading relationship with the US continues, following President Barack Obama's visit here. Whilst investment protection remains the key issue in the EU-US Transatlantic Trade and Investment Partnership (TTIP) talks, Gabriel Siles-Brügge argues that a key danger is being ignored: the agreement's cross-cutting regulatory provisions.

This week sees the 13th round of negotiations on the Transatlantic Trade and Investment Partnership (TTIP) taking place in New York, following Barack Obama's visit to the UK where the issue of UK-US trade relations also sparked considerable interest. Much of the controversy surrounding the TTIP talks – conducted largely in secret between the EU and the US – has focused on the proposed investor-to-state dispute settlement (ISDS) mechanism (see [the post by my colleague](#) on this important issue). This has meant that arguably the key aspect of the talks has been neglected by reporting on the issue.

Negotiators working on TTIP want the agreement to contain horizontal provisions on regulation. These are intended to reinforce a set of EU policies known as the [Better Regulation Agenda](#). Its aim is to cut red tape for business, potentially at the expense of ambitious levels of social, environmental and public health protection.

Living agreement

The key barrier to transatlantic trade [is said to be](#) the existence of 'non-tariff barriers' between the EU and the US economies: in other words, differences in the way both the EU and the US specify safety and/or other requirements for goods and services (such as an [EU de facto ban on Genetically Modified Organisms](#)) as well as other measures to protect their citizens from socioeconomic risks (e.g. environmental damage).

Given the difficulties of agreeing on [sector-specific measures in the negotiations](#), much effort has been put into making TTIP a 'living agreement', with an impact beyond its ratification. These 'horizontal' (or cross-cutting across sectors) provisions would encourage further conversations between regulators on both sides of the Atlantic to avoid unnecessary regulatory barriers ('regulatory cooperation') and get them to implement so-called 'good regulatory practices' (GRPs) when adopting rules that govern economic activity.

This sounds harmless enough. What could possibly be wrong about policymakers talking to each

other to avoid (for example) duplicate vehicle testing and adopting ‘good practices’ (such as transparency and the possibility for stakeholder comment) when it comes to proposing regulatory measures? Why would [NGOs say](#) that the latest European Commission proposals in this area of the negotiations pose the risk ‘of increased bureaucracy, decreased transparency and reduced democratic accountability’?

Hidden dangers

Having analysed the Commission’s proposals over the course of the negotiations ([in this policy paper](#)) – the US Trade Representative unfortunately does not release its negotiating texts or detailed position – it therefore makes sense why many NGOs are concerned about the horizontal TTIP chapters on regulatory cooperation and GRPs!

Most tellingly, in [a position paper](#) at the start of the TTIP talks in July 2013, the European Commission stated its desire for a ‘streamlined procedure to amend sectoral annexes of TTIP or to add new ones, through a simplified mechanism not entailing domestic ratification procedures’. In other words, it wanted to use TTIP’s horizontal ‘living provisions’ to bypass existing legislative processes which, given the aim of TTIP to cut ‘red tape’, may have lowered standards.

While the Commission has been forced to tone down its level of ambition, especially in the [regulatory cooperation proposal](#) – and [now emphasises](#) that the chapters are not intended to usurp legislative authority (and are even a means of improving levels of protection) – there is still a lingering suspicion that the horizontal provisions of TTIP could be used to put pressure on regulators not to introduce measures that might introduce barriers to transatlantic trade and investment.

Most significant is the fact that, [despite pressure from NGOs and wary Member States](#), the Commission’s [proposed provisions on GRPs](#) have been strengthened over the course of the negotiations (in part also due to US pressure). They currently closely mirror the European Commission’s own ‘Better Regulation Agenda’. With its [purported goal](#) of ‘designing EU policies and laws so that they achieve their objectives at minimum cost’ (to business), [this is leading to an](#) increased emphasis on providing advance notice of regulation, conducting impact assessments and allowing stakeholder input at earlier stages of the regulatory and legislative process.

More obstacles

The TTIP GRP chapter can be read as committing both parties to maintaining such measures and is thus said to be ‘[binding](#)’ the Better Regulation agenda, bringing it closer to the US ‘notice and comment system’. This is an even more onerous set of requirements to publish proposals early and take into account stakeholder views that US federal regulatory agencies have to follow and [that has been criticised](#) for unduly strengthening the hand of business in regulation.

‘Better Regulation’ is said to lead to ‘[paralysis by analysis](#)’ when it comes to enacting ambitious social, environmental and public health measures. It is already putting obstacles in the way of such legislative and regulatory proposals, not only delaying but also potentially blocking their adoption. As a stark illustration of this dynamic, in its 2015 Programme the Juncker Commission withdrew 80 proposals, while only initiating 23 ([in 2016](#) the figures were 23 new proposals and 20 withdrawn proposals).

When the Commission and other advocates of TTIP say that this will not usurp the power of parliaments and regulators this is formally correct. But if we examine the content of the current proposals and initial intentions there are grounds for concern – as TTIP reinforces a series of domestic policies (the Better Regulation Agenda) that throws a spanner in the works before laws and rules even reach parliaments and regulators. As we argued a year ago, [beware the fine print!](#)

- *This blog post draws on a [policy paper](#) written by the author and funded by an ESRC Impact Accelerator grant ([‘A TTIP-ping Point for Democracy? Demystifying and Shaping the Transatlantic Trade and Investment Partnership’](#)) jointly held with [Dr Nicolette Butler](#) from the University of Manchester School of Law.*

Tagged With: [EU-US trade](#), [European Commission](#), [TTIP](#)



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