Regulatory chill? Why TTIP could inhibit governments from regulating in the public interest

blogs.lse.ac.uk/europpblog/2015/06/09/regulatory-chill-why-ttip-could-inhibit-governments-from-regulating-in-the-public-interest/

6/9/2015

On 10 June a key debate in the European Parliament on the Transatlantic Trade and Investment Partnership (TTIP) was suspended. As **Gabriel Siles-Brügge** *and* **Nicolette Butler** *write, much of the criticism of TTIP has focused on its impact on public healthcare systems and the role of 'corporate tribunals'. They argue that this overlooks one of TTIP's central purposes: a series of provisions that could make it more difficult for governments to regulate in the public interest for the sake of promoting regulatory convergence between the EU and the US.*

The Transatlantic Trade and Investment Partnership (or TTIP), a free trade agreement being negotiated between the EU and the US, has been the subject of much controversy. In the UK, criticism has focused on two things: the impact that the agreement would have on the NHS and the ability of multinationals to sue governments in international arbitration tribunals (thus bypassing domestic courts) using what is known as investor-state dispute settlement (ISDS).

While the impact of TTIP in these areas is certainly likely to be problematic, these headlines bypass an important aspect of the agreement that warrants further scrutiny: its provisions on 'regulatory convergence'. Of course, the term is enough to put most people to sleep, but it is seen as the main purpose of the negotiations. Given that tariffs between the EU and the US are generally very low, the main existing 'trade barrier' between both parties is said to be differences in the way that both economies are regulated. For example, the EU and US have different standards for chemicals or motor vehicles – and advocates of TTIP are likely to tell you that levelling such differences (by adopting a common standard, harmonisation, or 'mutually recognising' the standards of the other party) helps to promote 'growth and jobs' and global economic leadership.

The argument has been made elsewhere as to why these two promises are unlikely to be delivered. Our focus here is on the potential deregulatory effect that regulatory convergence might have. The negotiations on regulatory cooperation feature two other main components. These are a series of 'sectoral chapters' where negotiators are trying to bridge the regulatory gap for a specific set of goods and services (not just chemicals and motor vehicles but also things like cosmetics, pharmaceuticals and textiles) and chapters covering Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) measures (building on similar provisions incorporated into WTO Law).

Credit: © European Union 2015 – European Parliament (CC-BY-SA-ND-NC-3.0)

However, given the difficulties in bridging quite significant regulatory differences in such areas as food or chemicals safety, as well as the entrenched interests of regulators, much of the focus of the negotiations has been on a so-called 'horizontal' regulatory cooperation chapter. This was not only the principal subject of the last round of TTIP talks held in New

York at the end of April, but is also what a lot of business groups are pinning their hopes on (as we argue in a recently published policy briefing).

Based on the EU's proposal as tabled in New York, the main aim of this 'horizontal chapter' is to cut across all areas of regulation and institutionalise a process of 'regulatory exchange' between both parties. This would see the US federal government and the EU having to provide each other with a list of planned legislative acts, to be analysed for their potential impact on transatlantic trade. Similar procedures would exist for the 'non-central' level of decision-making (US State governments and EU Member States), although the procedure would be less onerous. The proposed chapter would also institutionalise stakeholder (in particular, business input) into the regulatory process through a so-called 'regulatory cooperation body' (RCB) composed of representatives of both parties that would oversee the process.

The fear here, voiced by numerous NGOs and critical scholars, is that such procedures would result in 'regulatory chill'. By having to subject their proposals to such scrutiny – where the principal metric is the extent to which such measures unduly impinge on transatlantic trade rather than a broader social, environmental or public health objective – the ability of governments to regulate in the public interest would be constrained. Of course, the exact impact of such 'non-decisions' is very difficult to gauge, but these moves are certainly intended to move regulators and legislators in the direction of doing 'less' rather than 'more'.

In this vein, evidence did emerge recently that suggested that the mere fact that negotiations on TTIP were taking place was already inducing regulatory chill. The European Commission is alleged to have postponed legislation on endocrine-disrupting chemicals in pesticides as a result of pressure from US trade negotiators and business interests. What all of this suggests is that, headlines on the NHS and ISDS aside, it's time more people started reading the fine print when it comes to TTIP.

Please read our comments policy before commenting.

Note: This article draws on a Policy Briefing prepared by the authors together with stakeholders on the current state of the TTIP talks. This was funded by an ESRC Impact Acceleration Account. The summary of this policy briefing originally appeared at the Manchester Policy Blogs. The article gives the views of the authors, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

Shortened URL for this post: **http://bit.ly/1JBOXpg**

About the authors

Gabriel Siles-Brügge – *University of Manchester*
Gabriel Siles-Brügge is Lecturer in Politics at the University of Manchester.

–

Nicolette Butler – *University of Manchester*
Dr Nicolette Butler is a lecturer in the School of Law at the University of Manchester, and has previously researched the possibility of establishing an appeal mechanism in international investment arbitration.