

## Why critics are wrong about the outcomes of TTIP but right to protest against it



*The ‘Transatlantic Trade and Investment Partnership’ (TTIP) is the subject of increasingly fierce debate. Whilst some see the proposed US/EU trade deal as a vital boost for ‘free trade’, others fear we could cede control of everything, from the food on our plates to our public services, to ‘big business’. **Dr Eva Heims** argues it’s unlikely that the outcomes of TTIP will be as extreme as either side thinks, but its potential to perpetuate a global economic order already skewed towards large corporations should be taken seriously.*

The ‘Transatlantic Trade and Investment Partnership’ (TTIP) is a proposed trade deal between the US and the EU, which is well-known for the controversy it is causing. Proponents hail the economic growth ‘free’ trade will bring between the two economic powerhouses, while opponents – who are mainly found on this side of the pond – have claimed that the relatively high level of social regulation in the EU will be watered down to compete with lower US standards. This fear is most forcefully epitomised by the idea that ‘chlorinated chicken’ and ‘hormone beef’ will become the norm on European plates because of TTIP. As with most things in life, statements at both ends of the debate need to be treated with care. When it comes to TTIP, both sides tend to underestimate the complexities of regulation, which is the main barrier to trade between the EU and US since tariffs on imports and exports have all but disappeared in most sectors.

In the age of the ‘regulatory state’, in which the state has increasingly withdrawn from direct supply and production of services but has exploded in its role as a regulator, regulatory standards or other regulatory tools tend to cover most things imaginable, from the cocoa content chocolate must have to be called ‘chocolate’, to the width of seat belts. Essentially, striking a deal that allows for ‘free’ trade between the two biggest economies in the world is all about creating agreement on how to deal with differences in regulatory approaches and standards on either side of the Atlantic. Proponents and opponents tend to assume that the removal of these barriers will be feasible to a sufficient degree to cause beneficial or detrimental effects to materialise. In doing so, fierce proponents and opponents underestimate just how difficult the removal or approximation of regulatory standards across different jurisdictions is.



## What the EU experience tells us

The biggest experiment in removing trade barriers to date – the Single European Market of the EU – and literature on regulatory competition and national institutional contexts are instructive in reminding us of the complexity of this task, which gives us good reasons to believe that the comparatively small ambitions of TTIP are unlikely to have the extreme effects that are often predicted. That means that it is worthwhile considering the experience of the Single European Market and regulation scholarship in considering possible consequences of the adoption of TTIP.

The Single European Market project has been the single most ambitious free trade project in its aim to entirely remove any kind of barrier to trade between EU Member States. Its ambition far surpasses the objectives of a trade agreement like TTIP in its scale and scope. Yet, it is precisely this wealth of experience in trying to remove trade barriers consisting of different regulatory standards that makes the EU's experience instructive for TTIP. Much as is currently the case with TTIP, at the outset of Single European Market project fears that it was bound to have a deregulatory effect were looming large. Predictions of a 'race to the bottom' in regulatory standards were common then, just as they are now in the case of TTIP.

While the consequences of the Single European Market project are undoubtedly complex and not easily summed up in a single observation, most scholars in the field agree that no widespread deregulation has happened (indeed we have observed quite the opposite trend with EU regulatory standards increasing enormously since its inception). This has happened despite mutual recognition of regulatory standards becoming a key principle of European regulation through the landmark ruling of the European Court of Justice in 'Cassis de Dijon' in 1979. Broadly speaking, 'mutual recognition' requires the regulatory standards of one jurisdiction to be recognised as valid in another.

### Fear of a 'race to the bottom'

Mutual recognition is often believed to kick-start a process of regulatory competition, in which each jurisdiction keeps lowering its standards to provide industry (such as car manufacturing) with an incentive to stay or to relocate there. A fear of this dynamic is often voiced in relation to TTIP because agreement on new, shared regulatory rules ('harmonisation') is likely to be extremely difficult in many fields. This difficulty to agree on shared rules – well-known in the EU from, for example, the epic battle over the definition of chocolate – is indeed one reason why fears of the consequences of TTIP are likely to be exaggerated.

Much outrage has been directed at the possibility of US 'hormone beef' and 'chlorinated chicken' landing on Europeans plates. But food safety standards are so far apart that they are likely to be excluded from the agreement altogether (for solid evidence and further discussion of this, the interested reader is advised to read De Ville's and Siles-Brügge's '[TTIP: The Truth about the Transatlantic Trade and Investment Partnership](#)', published in 2015 by Polity Press). Fear of this particular aspect is hence very likely to be unnecessary. The agreement, however, is likely to include trade in many other sectors, such as car manufacturing, where the two jurisdictions are much closer aligned in their regulatory standards.

Because agreement on new, shared regulatory rules is likely to be extremely difficult even in these fields, it is expected that the deal will rely heavily on 'mutual recognition'. In a simplified way, this means that if a car was produced in line with US product and safety standards, the manufacturer should be able to export this to the EU without adapting it to EU standards. However, the concept of a race-to-the-bottom from mutual recognition is flawed on the theoretical level and there is little empirical evidence for it. On the theoretical level, race-to-the-bottom arguments usually assume that industry favours lower regulatory standards over higher standards. This neglects the possibility that big, multi-national firms may favour higher standards because it shields them from competition from smaller business and new entrants to the market.



'Big business' has a decisive advantage when it comes to meeting the highly complex regulatory demands placed on industry. Overall, race-to-the-bottom arguments neglect that the application of mutual recognition is situated in complex webs of the interests of political leadership, regulators, courts, and companies, which are all likely to question how this principle is applied in practice. Scholarship on the principle indeed often argues that it is in fact a type of governance, rather than merely a regulatory principle. At the same time, the idea of a 'race-to-the-bottom' neglects that companies are embedded in complex institutional structures in their production locations that industry may not necessarily be willing to leave for lower regulatory standards.

The relatively small amount of cases of races-to-the-bottom that have been observed in practice show that we need to take factors that might impede this kind of dynamic from unfolding seriously. On the whole, this means that even sectors not excluded from TTIP due to difficulties to agree on shared standards and in which mutual recognition is applied are unlikely to experience widespread 'races-to-the-bottom'. In this respect, fears of the consequences of TTIP may be inflated.

### **Protesting against an already existing economic bias**

This does not mean, however, that critics are not right to protest against the trade deal. For example, one key reason for the outrage caused by the TTIP negotiations is no doubt the perceived secrecy in which they are taking place (despite the fact that they are regarded as the most transparent trade deal negotiations ever to take place by experts). Such concerns regarding the process of negotiation – rather than its outcome – need to be taken seriously. This secrecy also means that commentary on the content of TTIP (including this one) are partially based on speculation on what will or will not be included in the agreement in the end.

While TTIP may be unlikely to have the disastrous consequences often predicted, it is much more difficult to argue that it will not perpetuate the current economic order. Once again, the Single European Market project is instructive to the extent that observers have noted that large companies have benefited from it to the detriment of small-and-medium sized enterprises. This has not been a result of deregulation, but – at least to some extent – the result of complex supranational regulatory rules that large corporations can comply with much more easily than smaller companies.

The envisaged Investor State Dispute Settlement (ISDS) tribunal under TTIP – similar to dispute settlement mechanisms established under bilateral investment treaties – that has attracted much criticism is an example of a process that is likely to further perpetuate the position of large corporations in our economic order. Much like bilateral investment treaties themselves this mechanism is designed to reassure companies and investors that investment will not become subject to sudden shifts in (regulatory) rules. A large part of regulation scholarship argues that our entire system of governance at the moment is built on providing this type of assurance of stability to the financial markets and mobile capital. For example, it has often been remarked that independent regulators have become so common because they fulfil the function of reassurance to mobile capital that regulatory rules will not change as a result of 'political' decisions. Since TTIP is essentially all about regulatory rules in the form of non-tariff barriers to trade, it is likely to further enhance the importance of regulators, courts and other organisations that write, monitor and enforce the application of regulatory rules.

In that sense, it is unhelpful to regard TTIP as a radical break with the past that will fundamentally alter our economies or the food on our plates. Instead, the trade deal is likely to perpetuate the current global economic order that is skewed towards large corporations. Seen through this lens, the protest against TTIP may be best interpreted as a protest against this order – under which we live already – rather than as a protest against something that will significantly alter dynamics already at play.

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*Note: this article gives the views of the author, and not the position of the Department of Government, nor of the London School of Economics.*

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