Four recommendations for TTIP Regulatory Cooperation Talks

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TTIP seeks to huge gains from trade via regulatory cooperation

- TTIP aims to create the largest free trade zone in the world, encompassing 800 million citizens and two huge economies that together comprise nearly half the world’s Gross Domestic Product (GDP).
- The two sides hope TTIP will generate more than $200 billion a year. Nearly two-thirds of those gains could come from regulatory cooperation between US and EU regulators!

How could TTIP regulatory cooperation yield such huge gains?

- In some cases, by harmonizing new regulations so that US and EU producers can design and manufacture to one standard.
- More often (given that both sides already have many regulations in place), by recognizing each other’s separate standards as mutually equivalent (where they are, indeed, equivalent)
- By eliminating duplicating testing, inspection and conformity assessment procedures that impose pointless costs.

So why are civil society groups on both sides of the Atlantic so anxious about this pact?

- They worry that TTIP will become a vehicle for trade officials, industry clients and OIRA/Sec Gen to pressure domestic regulators to lower health, safety, environmental and financial standards in order to promote trade.
- They also worry that TTIP will impose new analytical and consultation requirements that will further ossify and encumber necessary rulemaking.
Herein lies the challenge:

• To craft an agreement that eliminates needless barriers to trade -- while maintaining or enhancing vital protections for health, safety, the environment, and financial security.
• Then, establish a framework of institutions and processes that enables the two sides to preserve a proper balance between trade and regulatory goals going forward.
• Here are 4 recommendations for doing that . . .

1. Open up the negotiating process

TTIP regulatory cooperation talks are now being conducted in a most paradoxical manner: secret negotiations aimed at increasing transparency in regulation!
  – detailed position papers are not public (unless leaked)
  – at US insistence, negotiating texts are not public or open for comment
  – meetings are closed
  – public “listening sessions” are mostly theater

4 Recommendations for TTIP Process

1. Open up the TTIP negotiating process.
2. Respect sovereignty over political choices.
3. Adopt collaborative approaches to decisions where technical issues predominate.
4. “Horizontal” consultation mechanism should include (a) Regulatory Cooperation Council, (b) triggers for action, (c) targets and timetables, and (d) focus on early co-regulator (and possibly multi-stakeholder) dialogue.

Consequences of secrecy:

• Governments don’t get the best advice on complex technical issues, or get it in a fractured and inefficient format.
• Civil society groups and the public regard the whole process with suspicion.
• Opportunity to get wide buy-in is lost for no good reason.
  – Imagine the transformation in political atmosphere if civil society groups were brought into process instead of being largely excluded!
Some trade talks require confidentiality; but regulatory cooperation talks are not normal trade talks

- Classic tariff negotiations involve, for example, trading off US tariff concessions on cotton shirts for Chinese tariff reductions on semiconductors. For such negotiations, you don’t want the cotton shirt people in the room.
- Regulatory cooperation talks are different. They involve largely technical discussions of whether US and EU standards or regulations are equivalent, or how to make them so.
- For such complex, data-driven processes secrecy is the enemy of excellence.

What would an appropriately open TTIP process look like?

- Bracketed negotiating texts should be published for (informal) comment at the end of each round of talks.
- Balanced multi-stakeholder advisory committees should be allowed to attend negotiating sessions (except rare executive sessions).

Recommendation 2:
Respect sovereignty over political choices

- TTIP regulatory cooperation may not be the place to re-litigate the beef hormones dispute, or differences over GMOs, where US and EU have adopted different interpretations of precautionary principle.
- Instead, focus on areas where US and EU share values and risk preferences but have adopted different approaches to regulation.

Recommendation 3:
Adopt collaborative approaches to complex technical decisions

- Most TTIP issues do not involve sharp differences in values between EU and US.
- Rather, they reflect differences in regulatory approach, or enforcement method.
- Here, the question is whether US and EU approaches are mutually equivalent, or can be made equivalent readily. These are complex technical questions, not value clashes.
For these issues, consider a multi-stakeholder collaborative approach

- Rather than having governments negotiate an agreement in private and then present it to industry and civil society for comment, consider involving representative stakeholders in the regulatory deliberations themselves. *It’s more efficient.*
- Governments will get better information -- and more buy-in -- from this approach.
- Moreover, both US and EU have experience with collaborative approaches.

Recommendation 4:
Craft an effective “horizontal chapter” to provide a framework for future work

“Horizontal” chapter on TTIP regulatory cooperation should include:

(a) A Regulatory Cooperation Council to oversee implementation
(b) Triggers for action,
(c) Targets and timetables, and
(d) early co-regulator (and possibly multi-stakeholder) dialogue.

(a) Regulatory Cooperation Council

- An over-arching Council comprised trade and regulatory officials would oversee implementation of the TTIP regulatory coherence chapter.
- Each major sector requiring regulatory cooperation (e.g. autos, chemicals) would have its own multi-stakeholder sectoral advisory committee.

(b) Trigger for action

- Every process needs a trigger:
  - For TTIP this should take the form of a petition process whereby regulators, industry or civil society can nominate issues for regulatory cooperation decision-making after conclusion of TTIP talks.
  - High-level Regulatory Cooperation Council (RCC) and/or its sectoral sub-committees would be empowered to receive and vet petitions, and establish plan of action in response.
  - The two sides should agree on criteria and a process for determining whether a petition merits a sustained response.
(c) Targets and timetables

• Here, the phrase refers to plan of action for achieving regulatory cooperation on a given issue and a timeline for completion.
• Deadlines are needed to prevent repetition of past pattern of endless talk and no results.
• Note: timetables for decision would be set by RCC, but substance of decision would remain the prerogative of regulatory agencies.

RCC overseeing early, co-regulator (and multi-stakeholder?) dialogue

• RCC comprised of trade ministry and regulatory agency officials can vet petitions and set targets and timetables. But only regulators can make regulatory decisions.
• Horizontal chapter should provide for direct EU-US regulatory discussions as early as possible in the process.
• Discussions must include operational decision-makers. They might also include stakeholder representatives.

What NOT to do . . .

• Negotiators should NOT further encumber agencies with quantitative trade impact analyses for new regulations
  – Without early and direct dialogue among regulators agencies lack information to conduct such analysis
  – With such dialogue, the analysis is a waste of time, as regulators will know how best to regulate fairly and efficiently
• Lesson: direct and frequent dialogue among regulators is far better than endless and paralyzing quantitative analysis

Final Note: Need for assured resources

• You get what you pay for. Regulatory cooperation is a huge undertaking that will demand extra resources
• In the US, the legislative process is broken, and regulatory agencies that depend on legislative appropriations are starved for resources
• Effective regulatory cooperation needs reliable source of resources.
• TTIP negotiators and stakeholders should consider using TTIP implementing legislation to authorize a very small industry user fee to assure adequate agency resources for TTIP implementation. It will pay for itself many times over.