



Transatlantic Trade and Investment Partnership Questions & Answers

KEY QUESTIONS

What is the EU-US trade agreement and what are its goals?

The Transatlantic Trade and Investment Partnership (TTIP) is the free-trade agreement currently under negotiation between the European Union (EU) and the United States (US). Decision-makers on both sides of the Atlantic are promoting a far-reaching agreement, encompassing all sectors. With trade tariffs already low, the proposed TTIP will focus in particular on “regulatory issues and non-tariff trade barriers”. In other words, the official objective of TTIP is to boost transatlantic trade through increased convergence of existing and future regulations in the EU and the US.

TTIP could be an opportunity for the US and the EU to increase welfare and well-being on both sides of the Atlantic, by raising standards that protect citizens and advance their established rights. However, civil society has expressed concerns about the aims of the TTIP, in particular because an agreement could threaten cornerstone regulations that protect consumers, the environment and society as a whole. It could also limit the scope of future decision-making. There are also concerns that the scale of the trade agreement means that it is likely to become the benchmark, not only for any future domestic regulations (in the EU and the US), but also for future agreements between the EU and the US and third parties.

Which issues are particularly at stake?

Civil society sees many risks if corporate interests remain in the driving seat of negotiations on the TTIP. The potential dismantling of established standards or the mutual recognition of standards of different protection levels could lead to serious problems, notably:

- Hygiene- and safety-standards in the food and agriculture area are very different on both sides of the Atlantic;
- In the US, genetically modified products are used in food products without any requirement to label them while the EU has a comprehensive labelling and traceability regime to give consumers more choice;
- Data protection standards in the US and EU are starkly different and unbalanced. Contrary to in the EU, in the US there is no statutory recognition of privacy as a fundamental right;
- The US does not recognise ‘the precautionary principle’ which is a guiding principle in the EU in the area of product safety and chemicals;

- Environmental protection might suffer as the US government and industry target EU legislation and policies to reduce climate emissions and other environmental safeguards
- Public health interventions could be undermined because of the lowering of policy standards, regulations and non-tariff barriers, under the pretence they are obstacles to trade;
- In the areas of alcohol, nutrition and tobacco there are divergences in regulatory policies between the EU and US. Alcohol and tobacco should not be considered as ordinary commodities;
- Including IP provisions in trade negotiations can compromise accessibility of medicines by means of 'evergreening' or use of minor modifications of existing drugs to extend market exclusivity. The agreement might also result in locking in very long periods of exclusive rights of test data for biologic drugs;
- The use of intellectual property as an 'investment' could lead to companies bypassing domestic regulations and overturn national public health legislation.

Only a trade agreement which delivers a fairer and safer consumer market in the EU and US, as well as resource-saving production process could be acceptable.

Is the negotiation process transparent and democratic?

The negotiation process is highly secretive. Meetings between negotiators are happening behind closed doors and neither the negotiating mandate nor the negotiating documents have been shared with the public. So far civil society is reliant on leaked document to have access to the content of the basis of negotiations that will affect all aspects of citizens' lives.

The European Parliament, which is the only directly elected EU institution, has limited access to the negotiators and the related documents. Only MEPs involved in the INTA committee responsible for trade can access the documents under strict security conditions. These MEPs only receive occasional briefings from European Commission representatives on the state of the negotiations. While the Parliament will eventually have to vote on the final agreement in plenary, MEPs are not properly involved in the discussions.

In the US, the process is also highly secretive. While 600 cleared "advisors" have access to the negotiating documents, nearly all of them represent corporations and industry groups. Individual members of the committee are bound to a strict security clearance mechanism and confidentiality.

Will a trade agreement prevent the EU from taking actions in the future in areas such as food safety or the regulation of extractive industries (such as tar sands or shale gas)?

This is a real possibility which makes civil society extremely concerned. By focusing on "regulatory convergence", the TTIP – as currently negotiated – will aim at harmonising standards and reach mutual recognition between the EU and the US. Unless safeguards are adopted to make sure that partners are free to enact higher standards than the ones agreed in the TTIP, there is a risk attempts by the EU and national governments to regulate in future beyond the terms of the TTIP will be very difficult. For example, an EU member state which bans the cultivation of a genetically modified maize authorised in the EU, but for which the EU and the US have agreed a mutual food standard agreement, may find it impossible to implement the ban if there is political and public desire to.



In addition, the possibility of the TTIP including an arbitration model (see ISDS definition below) that would allow investors to take States to court for introducing or implementing legislations that might hinder their profits might act as a deterrent to authorities to take more ambitious policy measures than what is in the deal. As is already happening in other parts of the world, this could undermine national attempts to legislate in the face of new developments.¹

What consumer, environmental, health or social demands does a future agreement need to meet?

The advancement of consumer rights, environmental and health protection and the long-term benefit of society at large needs to underpin the negotiations. As a minimum, this requires:

- full transparency of the negotiations, including access to the negotiation texts, and consultation with civil society throughout the process;
- high standards of consumer, environmental, health and social protection. Existing standards should not be lowered and the rights for both parties to maintain higher standards than what is agreed in the TTIP must be guaranteed;
- the exclusion of the investor-State Dispute Settlement mechanism from the agreement. As both the EU and the US have well-functioning and well-respected court systems, there is no need to include such a system to deal with investors' grievances.

Why is the EU-US trade agreement relevant for the rest of the world?

The EU and the US are the world biggest economic blocs, and they are each other's main trading partners. They, therefore, exert considerable influence over their respective trading partners, in particular when they agree on joint provisions – which will be the case with TTIP.

EU and US decision-makers have been explicit that the TTIP should be a model for future trade agreements by "setting the paths for global standards"². In such a configuration, any provisions adopted as part of the TTIP are likely to be re-used as reference in future trade agreements between the EU and the US and third parties, or the EU and the US could push for these to become global standards. Likewise provisions agreed under the TTIP could be used as a justification for including them in other trade agreements. This could be problematic if the TTIP allows for a weakening of the standards protecting citizens and if it opens the door to risky technologies and products that third parties are currently trying to bring to Europe.

Who will benefit from the TTIP?

The TTIP is being promoted as a way to boost jobs and growth on both sides of the Atlantic, based on the idea that regulatory convergence will ease trade. There are, however, important questions over whether this will in reality lead to more and better jobs. There are also concerns

¹ <http://corporateeurope.org/sites/default/files/publications/ceta-fracking-briefing.pdf>

² Leaked draft negotiating mandate, as adopted in the Foreign Affairs Council, 14 June 2013



it could simply increase the market share of larger companies at the expense of smaller ones and local economies.

It is also very much to be feared that attempts to boost jobs and growth will happen through a reduction of health, safety and environmental standards or the mutual recognition of standards that are not of equal protection level. The reduction of standards can have benefits for business but society risks paying the price for the weakening of environmental, social, health and other standards (such as the spread of genetically-modified crops or meat containing growth hormones). An unbalanced trade agreement would thus boost trade at the expense of society at large. This would be the wrong approach to addressing the current financial, economic and climate crisis.

DEFINITION AND PROCESS QUESTIONS

What is a Technical Barrier to Trade (TBT)?

Technical regulations or other requirements (for labelling, certification, marketing or testing etc.) often vary from one country to another. They can become barriers to trade as they potentially complicate the lives of producers or exporters who need to comply with these possibly conflicting regulations before engaging in a trade relationship. Because trade between the EU and the US is already highly integrated, EU and US decision-makers have focused on the importance of getting rid of TBTs for the success of the agreement. This is dangerous because this calls into question existing regulations on both sides of the Atlantic, identifying them as burdens, without taking into consideration their overall benefits for society.

What do sanitary and phyto-sanitary (SPS) measures refer to?

Sanitary and phyto-sanitary measures refer to standards that protect the health of humans, plants, and animals. In the context of the TTIP, examples of potentially controversial SPS measures include regulations on genetically modified (GM) food, and imports of chlorinated chicken or hormone beef, as the EU and the US currently have different approaches and standards in those areas. The inclusion of SPS measures must not lead to a weakening existing European safety standards.

What is an Investor-to-State dispute settlement (ISDS) mechanism and why is it important in the talks?

Investor-to-State dispute settlement mechanisms (ISDS) are provisions that apply under free trade agreements (FTAs) or bilateral investment treaties (BITs). They empower foreign investors to challenge national authorities in order to claim financial compensations when they deem that their investment potential (and the related profits) are hindered by regulatory or policy changes that occur at the national, regional, or local levels. It allows companies to demand financial compensation from taxpayers amounting to billions of dollars and thereby represents significant burdens on States' public finances.

Claims are handled behind closed doors in unaccountable arbitration tribunals bypassing the national court systems. The possibilities for appeal or annulment of decisions are very limited. Many arbitrators rotate between being "judges" and bringing cases for corporations against governments, creating inherent conflicts of interest.

ISDS can be a huge deterrent, especially for smaller countries, to pass legislation to protect consumers, public health and the environment for fear of being challenged by big companies.

REBUTTAL OF EUROPEAN COMMISSION CLAIMS

The European Commission claims that recognising partners' regulations is not going to affect existing regulations: is this true?

Mutual recognition means that each trading partner keeps their own regulations, but accepts the standards of the other. In practice, however, mutual recognition can be equivalent to lowering regulations by the backdoor. Trading partners have to accept imports of products complying with the standards of the other even though they do not meet the domestic ones. The citizens of the domestic trading partner in practice have to accept lower standards than their existing regulations would foresee. In the long term, domestic producers will pressure their governments to lower the domestic standards to remain competitive in comparison to the exporting trading partner. This can result in lowering the general level of consumer or environmental protection in the two blocks.

The European Commission claims that citizens do not have to worry about existing standards of consumers, environment and health protection: is this true?

No. The focus of EU and US negotiators on reducing "behind the border" obstacles puts existing standards of protection at risk. Current health, safety, or environmental standards could indeed be identified as such obstacles to get rid of in order to reduce the costs to businesses, while passing on the burden to the public and putting its protection at risk. This could take the form of lower requirements for product labelling, food safety assessments, etc.

What will happen to the food and farming sector? Will the EU be forced to change its laws on GMOs?

Agriculture and food safety will be critical sectors in the negotiations. The European Union has largely stricter standards for food safety than the US; this is why there is currently a ban on imports of products such as US hormone beef and a much more cautious approach on GMOs. Risks attached to food negotiations are likely to be the following: possible agreements on lowering existing standards as part of the agreement, or agreement between the parties to mutually recognise each other standards even though they are different. In the case of mutual agreement on GMOs, the EU would not be forced to change its laws, but the EU would change the implementing rules for them, for example by redefining thresholds for contamination with GMOs in food or seed or lowering safety checks for GMOs. GMOs coming from the US could legally enter the EU market, even though they fail EU food safety standards. Industry is also lobbying against the EU's mandatory labelling laws for GMOs.

The European Commission says we do not have to worry about the effect on the environment: is this true?

Any trade deal promoting more integrated exchanges between partners is likely to have a negative impact on the environment, including higher CO2 emissions. The European Commission impact assessment for the TTIP recognises that the environment is likely to be impacted, with vague claims that more trade in environmental goods and services are likely to offset negative impacts. The computational equilibrium model used to back up the findings

about the TTIP's expected benefits does not account for the net losses to overall society, including those resulting from impacts on health, trade, safety, or the environment. On the contrary, focusing on "regulatory convergence" is likely to put at risk important EU regulatory tools, such as the precautionary or the polluter-pays principles, and hence result in a negative effect on the environment.

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