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# **Environmental protection under TTIP**

For our environment

**Umwelt  Bundesamt**

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## List of Contents

P. 4	<b>Environmental protection under TTIP</b>
P. 4	1. „Regulatory cooperation“ in TTIP: cornerstones of the EU Commission’s proposal
P. 4	2. Differences between EU and US environmental standards
P. 5	3. Environmental protection in the context of regulatory cooperation
P. 6	4. Conclusion

# Environmental protection under TTIP

The declared objective of the planned free trade agreement with the US (Transatlantic Trade and Investment Partnership – TTIP) is to unify EU and USA standards as much as possible by regulatory cooperation. However, an improper design of regulatory cooperation carries considerable risks for environmental protection in the EU: environmental standards might be lowered and environmental properties of products may be endangered.

The main reasons for these risks are some substantial differences between the environmental regulations of the EU and the US: they will be explained in this paper. We will outline opportunities and risks of regulatory cooperation based on the EU proposal concerning environmental protection and show how the planned cooperation can be made more environmentally friendly.

## 1. „Regulatory cooperation“ in TTIP: cornerstones of the EU Commission’s proposal

The European Commission published its proposal for the design of regulatory cooperation in the free trade agreement between the US and the EU (TTIP) on 10 February 2015. The key points of this document are as follows:

- ▶ US and EU regulatory standards should gradually be brought closer through a dynamic process, which should also be maintained after the completion of the TTIP negotiations.
- ▶ The US should be informed of regulatory measures planned by the EU, and possibly also by the Member States at the earliest opportunity, if possible even before notification of the European Parliament, the Member States and European civil society.
- ▶ A Regulatory Cooperation Council should explore potential alignment of planned and existing regulatory proposals at an early stage. Representatives of different interest groups should be invited to this Council, and they should have the opportunity to submit proposals for reducing divergences in regulatory standard.
- ▶ Impact assessments must take into account the impacts on transatlantic trade and investment, including the interests of US investors,

which should explicitly be taken into account for all EU regulatory initiatives.

- ▶ In the areas in which EU and US regulations differ, it should be established as part of an equivalence test at which points formally divergent regulatory standards lead to the same level of protection. Based on the results, it will be decided which products will be granted market access despite differing requirements by the other party.

Information about the US proposal for regulatory cooperation is not available to the Federal Environment Agency because it is not publicly available.

## 2. Differences between EU and US environmental standards

There are many areas in the field of environmental protection in which EU and US standards differ. In some areas the US standards are more demanding, for example, energy efficiency requirements for electric motors, some air quality standards and related emission standards. In many other areas, however, EU standards are more demanding, as shown by the following examples:

- ▶ Pesticides and biocides: Unlike in the United States, both persistent, bioaccumulative and toxic substances (PBTs) and carcinogenic, mutagenic and teratogenic substances (CMRs) are no longer qualified for authorisation in the EU;
- ▶ Chemical residues in animal feed: Stricter limits apply in the EU than in the US. For example, large amounts of feed maize that were contaminated with the mycotoxin Aflatoxin B1 and should have been disposed of in the EU as waste were shipped to the United States as feed in 2012.
- ▶ Nanomaterials: A narrower definition applies in the US, which means that the environmental impacts of various materials are not included and their hazards cannot be counteracted.
- ▶ Fracking: A demanding regulation of mining operations, for example according to the Federal Water Act in Germany, leads to the fact that shale gas production permits have so far been much more difficult to obtain in the EU than in the US.

► Heavy metals: EU substance bans e.g. for electrical appliances, in particular for the use of heavy metals such as mercury and lead, are not valid nationwide in the US.

Different standards are often due to a fundamental difference in dealing with environmental and health risks: In the EU, risk regulation is based on the precautionary principle, which requires demonstration for each substance that no grave danger will emanate from it before it is approved. In the US, the approach is exactly the opposite: the „risk-based“ approach allows the use of a substance as long as no considerable danger has been detected. As a result, a large number of materials are banned in the EU, while they are approved in the US. Not only does this concern the approval of chemicals, pesticides and biocides within the EU chemicals regulation REACH, but also for example establishment of the state of art for emission limits from industrial and waste treatment plants.

### **3. Environmental protection in the context of regulatory cooperation**

The free trade agreement TTIP has the declared objective to unify standards – as much as possible – even in the environmental field. This aim cannot and will not be fully achieved by the time the contract is concluded. Instead, the harmonisation of standards is meant to continue in the framework of regulatory cooperation.

Based on the premise that no unilateral adjustment of US standards to the EU takes place during the TTIP negotiations, the harmonization of standards based on the precautionary principle would lead to a softening of this principle towards the „risk-based“ US approach. This would result in a lowering of environmental standards in the EU. Such a scenario is all the more likely because it can hardly be expected that the US will adopt all the demanding EU standards while the TTIP should explicitly promote a harmonization of standards.

A softening of demanding EU environmental regulations would not only be problematic in ecological but also economic terms. Because in areas where the European economy has a technological competitive advantage due to more demanding environmental standards, harmonisation with lower US standards or

recognition of their equivalence would mean giving up ecological and economic benefits. This is significant for example in the field of fluorinated greenhouse gases, where the US industry is not yet technologically capable of meeting the same standards as the EU industry and fears a competitive disadvantage due to more demanding standards.

Experiences from previous collaborations with the USA, which were not very successful in sensitive areas, also emphasise the need to strengthen environmental protection in the context of TTIP. Thus the attempt to accomplish a division of labour in the evaluation of pesticide agents in an OECD joint review process failed primarily because of the different assessment approaches adopted by the EU and the US or Canada. The EU has implemented the International Standard of Classification and Labelling of Chemicals („Globally Harmonised System“ GHS) developed at UN level with minor changes, whereas the United States has done so only in parts and with great delay.

EU initiatives to promote the achievement of more ambitious environmental targets in the United States have come to nothing. For example, the EU fought in the field of fluorinated greenhouse gases in US approval processes of various refrigerants for the substitution of environmentally harmful gases by more environmentally friendly solutions. However, these arguments did not succeed in the face of US industrial interests.

However, there was also positive experience in cooperation with the USA in the field of environmental and health protection such as the trilateral cooperation between the EU, the US and Japan to harmonise the requirements in the field of veterinary medicinal products (VICH) or in the OECD Chemicals Programme for cooperation in the technical field. Therefore, it would be useful to systematically examine in which areas and under what conditions regulatory cooperation could result in positive environmental effects on both sides. The identified areas could then be embedded in the form of a positive list in TTIP. Regulatory cooperation would then extend to the subjects listed in the positive list.

A bilateral cooperation with the United States should not compromise proven international coordination bodies such as OECD and UNECE. It would not improve environmental protection if TTIP weakened these

coordination committees. In addition, the uncoordinated coexistence of different cooperation processes can be counterproductive. There have already been harmonisation efforts at UNECE level for example in the field of emissions legislation. These must not be jeopardized by TTIP.

Regardless of the material scope of the treaty, cooperation must be regulated such that the Parliament and civil society have the full opportunity to intervene. The rules of the EU proposal, according to which the US trading partner must be informed about an EU legislation before the EU Parliament and the European civil society, contradict this democratic principle. Therefore, European legislative projects may be changed without the EU Parliament and civil society having opportunity to disagree. In extreme cases, it may even be that the European Commission drops a proposal because of objections raised by the US side without the European Parliament, the European Council and the civil society receiving notification of the proposal.

Maximum transparency with regard to the suggestions and comments of all stakeholders and a balanced integration of industry and civil society must be guaranteed for the operation of the Regulatory Cooperation Council. This is the only way to prevent a unilateral and excessive weighing of industry interests in legislation at the expense of environmental protection.

The EU proposal on regulatory cooperation suggests explicitly taking into account US trade and investment interests in the evaluation of EU laws in the context of impact assessments. This is reasonable in terms of a comprehensive impact analysis, but may not result in the rating of US trade laws and investment interests higher than environmental objectives as this would be contrary to principles of sustainable development. The risk of this happening is considerable, especially as the need to take account of general interest objectives such as environmental and consumer protection is mentioned only in a footnote in the European Commission's proposal; any indication of the fundamental importance of the precautionary principle is also missing.

Moreover, the costs and benefits for EU citizens should in principle be the focus of impact assessments and not equated with US companies' trade and investors interests. This would increase the risk of complicating or even preventing the further development of environmental legislation.

When testing the equivalence of environmental standards as envisaged in TTIP, it must be ensured that measurement and test methods are also considered in addition to limits or product standards. In some areas it is necessary to harmonize the relevant procedures to ensure an effective equivalence of results. This concerns for example the measurement of air quality and emission levels. Also, it must be ensured that US products and processes are not approved for the European market rashly, that is before completion of the equivalence test.

In order to ensure that environmental protection is appropriately considered in regulatory cooperation, environmental authorities should obtain access to EU documents at EU and Member States level and have the opportunity to comment on these. Likewise, access to US documents should be ensured.



#### **4. Conclusion**

The analysis shows that improper design of regulatory cooperation in TTIP carries potentially significant environmental risks. It is therefore necessary that adequate consideration is attributed to environmental and natural resources protection and is not sacrificed to corporate interests. At the same time it is important to use the opportunities of TTIP to systematically protect the environment, for instance through the establishment of a positive list.

Considering the environmental challenges of the future, it is evident that fundamental and rapid progress in environmental protection is required in many fields – such as climate protection or resource conservation. This also requires cooperation with the US beyond regulatory cooperation under TTIP. Among others it would be desirable to achieve enhanced cooperation between the EU and the US in formulating common demanding environmental and climate change objectives, strategic partnerships in the development and market diffusion of environmental and efficiency techniques, as well as joint efforts to reduce competition distortions through environmentally harmful subsidies.



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