

TTIP, AGRIFOOD TRADE AND REGULATORY COHERENCE

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Many previous initiatives...

1990	1995	1998	2002	2005	2007	2011
The Transatlantic Declaration	New Transatlantic Agenda adopted in Madrid	Transatlantic Economic Partnership	Guidelines on Regulatory Cooperation and Transparency	High-Level Forum for Regulatory Cooperation	Transatlantic Economic Council (TEC)	High Level Working Group on Jobs and Growth

... leading to the launch of TTIP in June 2013

TTIP state of play

- **Feb 2013** President Obama announces start of negotiations in State of the Union message
- **Feb 2013** HLWG final report recommends launch of negotiations on a comprehensive trade and investment agreement
- **June 2013** Negotiations launched at G8 Summit in Northern Ireland
- 11 negotiating rounds to date with 12th planned for **Jan/Feb 2016**

Proposed structure of TTIP

- 24 chapters grouped in three pillars
- **Market access**
 - Goods, agriculture, services including e-commerce, public procurement, rules of origin
- **Regulatory cooperation**
 - Chapters on regulatory co-operation/coherence, TBT, SPS, and nine sectoral annexes (including one on pesticides)
 - Regulatory cooperation discussions are led by the regulators from the EU and the US.
- **Rules**
 - Sustainable development including labour and environment, trade facilitation, competition, energy, raw materials, state owned enterprises, subsidies, SMEs, investment protection, intellectual property protection, dispute settlement, among others

Agrifood tariffs faced by US and EU exporters, 2010/2011

WTO Tariff Profiles 2011	MFN average of traded tariff lines Trade-weighted		Duty-free imports	
	Simple	Trade-weighted	Tariff lines %	Value %
Average tariff faced by EU agrifood imports to US	7.1	2.2	23.9	47.1
Average tariff faced by US agrifood imports to EU	16.9	5.7	14.7	46.9
CEPII MAcMap 2010	Applied protection		Share tariff peaks (AVE > 15%)	
Average tariff faced by EU agrifood imports to US	6.4		6.5	
Average tariff faced by US agrifood imports to EU	12.9		28.7	

Source: WTO World Tariff Profiles; Disdier, Emlinger and Fouré 2015

Tariff negotiations

- Second tariff offers now exchanged by both sides
- **Tariff outcomes** should be at least as ambitious as in the CETA agreement (on the EU side) and the TPP agreement (on the US side)
- Eliminating agricultural tariffs (or opening larger TRQs for sensitive products) would certainly be beneficial
- However, all agree that the main action in these negotiations is around **non-tariff measures (NTMs)** including EU demand for recognition of particular **Geographical Indications (GIs)**

Differences in regulatory approaches

- US and EU **share basic mandate** to achieve a high level of food safety and consumer protection
 - EU General Food Law 2002
 - US Food Safety Modernization Act 2011
- Both laws contain **many similarities** in approach...
- ..but cultural, political and institutional differences between the US and EU continue to result in **different perceptions of risk** and thus **different regulatory outcomes**

SPS high-profile issues

- Beef hormones
- Beta agonists e.g. ractopamine in pork
- Biotechnology
- Pathogen reduction treatments
- US dairy standards (Grade A Pasteurized Milk Ordinance)
- Proposed changes to EU pesticide regulations which would ban substances classified as endocrine disruptors and set default low MRLs
- Antibiotics in animal feed
- Cloning restrictions

Significance of agrifood NTMs (ad valorem equivalent)

ECORYS (2009)	US	EU
Processed foods (food & beverages)	73%	57%
Disdier, Emlinger and Fouré (2015)		
Agri-food product	36%	40%

NTMs in a modern society

- Governments **rely on NTMs** to achieve public policy goals, including the protection of human health and the environment – the fact that trade is affected is a normal and legitimate consequence of such regulation.
- On the other hand, NTMs may be used to shield domestic producers from foreign competitors, or they may be **unnecessarily trade restrictive**.

NTMs in a modern society

- To trade economists, NTMs are perceived as a **distortion**.
 - “As much as 80% of the total potential gains come from **cutting costs imposed by bureaucracy and regulations**, as well as from liberalising trade in services and public procurement” (CEPR, 2013).
 - By ignoring market imperfections, welfare is found to increase when NTMs are reduced and trade expands
- Taking account of consumer welfare, the optimal degree of regulation is not zero (Beghin et al., 2012, Beghin et al., 2015)
- **Increasing compatibility of NTMs** across trading nations is a clear gain

Previous efforts at regulatory convergence

- **Previous efforts have had limited success**
 - 1995 New Transatlantic Agenda
 - formalizing regulatory cooperation agreements in virtually all areas of economic regulation through a Joint EU-US Action Plan outlining over 150 specific areas of cooperation
 - 2002 Guidelines for Regulatory Cooperation and Transparency agreed to encourage US and EU agencies to consult each other on a regular basis
 - 2004 Roadmap for EU-US regulatory Cooperation and Transparency
 - 2005 High-Level Regulatory Cooperation Forum set up
- **Some successes in the agri-food area**
 - Veterinary Equivalence Agreement (1998)
 - Wine Agreement (2006)
 - Organic Equivalence Agreement (2012)
- **Key issues**
 - How would an agreement affect EU decision-making on SPS and TBT issues?
 - What enforcement mechanism would be available?

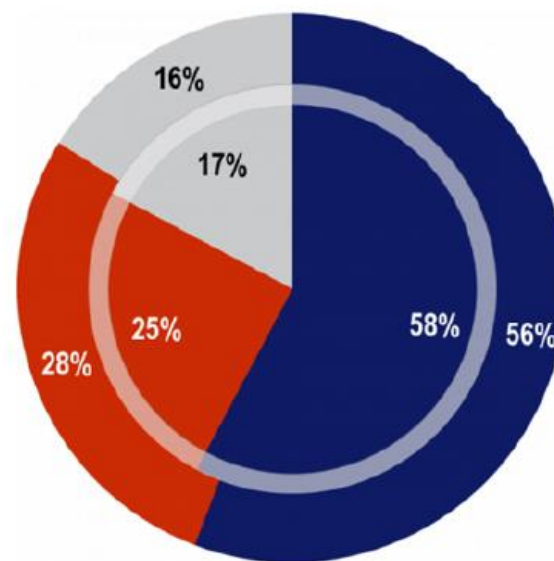
Over-dramatised claims ...

- TTIP was going to be an ambitious agreement, intended to remove non-tariff barriers to trade
- Karel de Gucht: “the purpose is ‘to create an **internal market** between the US and the EU’ ”
- The US and EU would agree on harmonised standards and rules which would become the **gold standard** for the rest of the world
- All this would be completed “on one tank of gas”, with de Gucht expressing the hope that negotiations might be wrapped up by end of 2014

...brought an inevitable counter-reaction

- Civil society groups mounted an energetic campaign to discredit TTIP
- Fears focused on the regulatory agenda and ISDS, fanned by allegations of lack of transparency
- Concerns about ‘race to the bottom’ and ‘regulatory chill’
- And that regulatory rules would be decided by trade officials

A free trade and investment agreement between the EU and the USA



- For
- Against
- Don't know

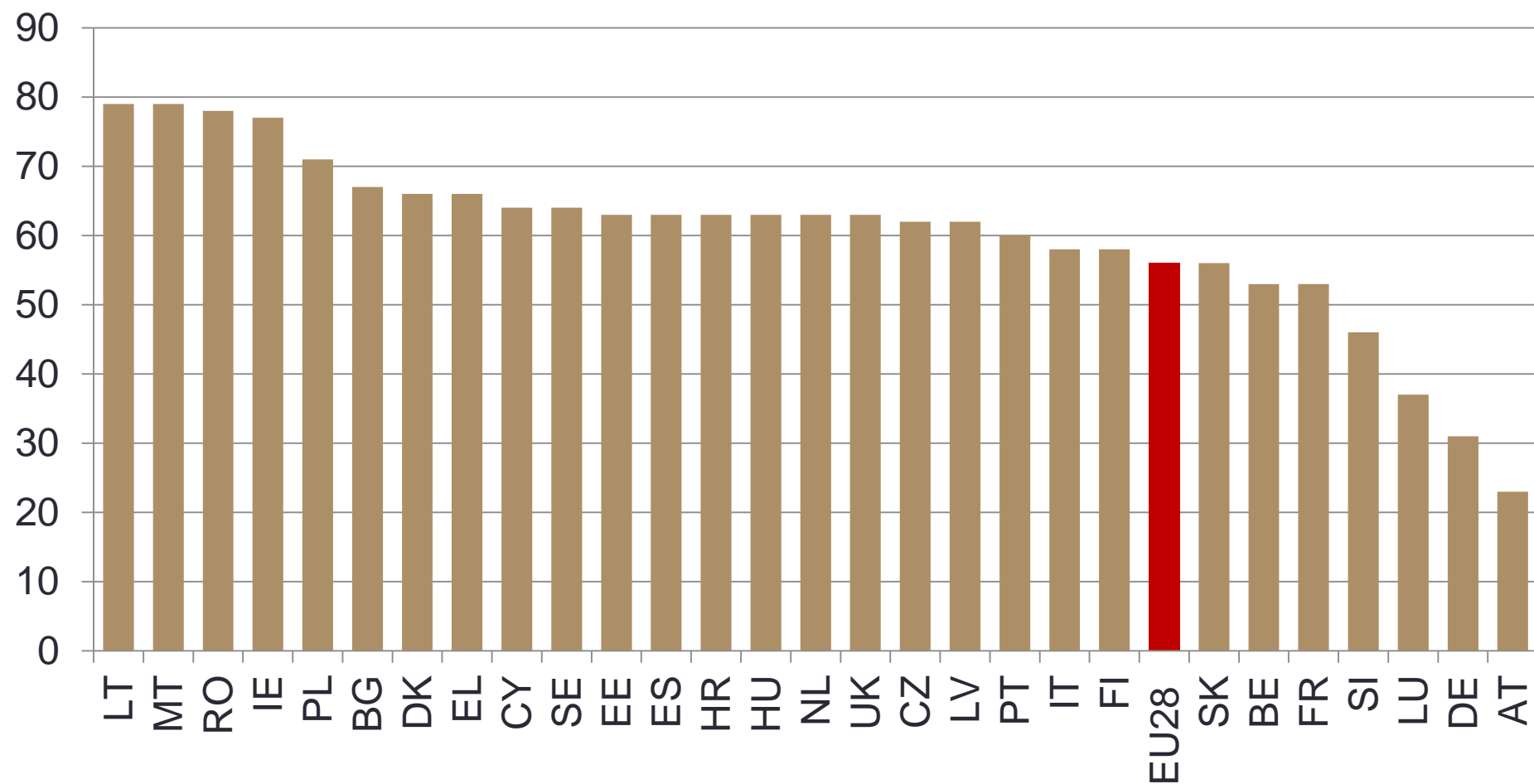
Inner pie : EB82 Aut.2014

Outer pie : EB83 Sp.2015



Source: Eurobarometer

Percent in favour of TTIP agreement, 2015



Source: Eurobarometer, Spring 2015

Models of international regulatory cooperation

- A hierarchy of models (OECD, 2013)
 - Agreement on **information exchange**
 - Agreement to adopt **good regulatory practice**
 - Mutual recognition of testing and **conformity assessment procedures** while maintaining separate standards
 - Recognition of **equivalence** of each other's standards:
 - **Mutual recognition of different standards** as providing the same level of health, safety or environmental protection.
 - **Harmonisation of standards**, meaning that two countries agree to adopt the same standards.

The WTO baseline – SPS and TBT Agreements

- **SPS Agreement**

- Recognises right to implement SPS standards but seeks to minimize negative effects on trade
- Contains obligations on good regulatory practice, including that measures should be based on scientific principles.
- Allows for (encourages) recognition of mutual equivalence.
- Encourages harmonisation based on international standards.
- Contains information sharing obligations

- **TBT Agreement**

- Recognizes countries' rights to adopt the standards they consider appropriate
- Standards should not be more restrictive of trade than necessary
- Encourages use of international standards
- Encourages transparency and information sharing

EU draft text on regulatory cooperation

- Recognise “**the importance of regulation** to achieve public policy objectives, and their right to regulate”
- **Regulatory practice**: emphasis on providing opportunities for public involvement, obliging agencies to take into account the regulatory approaches of the other Party, requiring consultations
- Encouraging **greater regulatory compatibility** through joint examination “provided mutual benefits can be realised without compromising the achievement of legitimate public policy objectives” (Art. 10)
- Establish **Regulatory Cooperation Body**

EU draft text on SPS+ chapter

- **Import checks** Art 8: Parties would recognise each other's competent authorities
- Art 9 deals with **recognising equivalence** of different standards and contains [Annex] detailing equivalent measures
- **Animal welfare** Art. 17 requires parties “to respect trade conditions for live animals and animal products that are aimed to protect their welfare”, to collaborate on research and exchange information
- Provides a **framework for dialogue and cooperation**

TTP Chapter 25 Regulatory coherence

- Affirms **importance of “the role that regulation plays in achieving public policy objectives”**
- Defines **regulatory coherence** as the use of good regulatory practices in establishing regulations and enhancing regulatory cooperation across governments
- Limits scope to **covered measures**, i.e. those which are notified by the Parties
- Sets out standards for **good regulatory practice**
- Establishes a **Committee on Regulatory Cooperation** to review implementation and to consider future priorities.
- All of this chapter is excluded from the **dispute settlement** procedures of the agreement.

TTP Chapter 7 on SPS Measures

- **Objective**, inter alia, to “protect human, animal or plant life or health in the territories of the Parties while facilitating and expanding trade by utilising a variety of means to address and seek to resolve sanitary and phytosanitary issues”
- **Equivalence**: Goes beyond SPS Agreement by specifying the steps a Party must take when a request for recognition is received
- **Precaution**: Less prescriptive than the SPS Agreement
- **Risk assessment**: SPS measures should be based on science but goes no further than the SPS Agreement
- **Import checks**: requires clear information on what is required
- **Information exchange**: Including an SPS Committee
- Neither decisions on equivalence nor risk assessment can be subject to TPP **dispute settlement**

TTP Article 2.29 on 'trade in products of modern [agricultural] biotechnology'

- 11 Paragraphs
- 1 + 4. “The Parties confirm the importance of transparency, cooperation and exchanging information related to the trade of products of modern biotechnology. “
- 2. “Nothing in this Article shall prevent a Party from adopting measures in accordance with its rights and obligations under the WTO Agreements or other provisions of this Agreement.”
- 3. “Nothing in this Article shall require a Party to adopt or modify its laws, regulations, and policies for the control of products of modern biotechnology within its territory.”
- 5-11 How to address LLP occurrences through information exchange and a standing committee

Trade rules and regulatory autonomy

- Parties agree regulatory decisions “subject to their respective applicable internal requirements and procedures” (CETA)
- But what about **state-to-state dispute settlement**?
- Could the US rely on a TTIP provision to overturn an EU regulation it felt was inconsistent with its obligations?
- Where a Party is found in breach of its obligations, it is required, whenever possible, to eliminate the non-conformity
- In the event of non-implementation, the complaining Party is entitled to compensation and may suspend benefits

Trade rules and regulatory autonomy

- Could a **private party** rely on TTIP commitments to overturn an EU regulation?
 - ECJ provisions indicate that some limited elements of international agreements can have **direct effect** in EU law
 - In signing recent bilateral FTAs, e.g. Korea, Columbia Peru, the **Council added provisions** specifying that *“The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals.”*
 - **CETA Article 14.14** *‘Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in the domestic legal systems of the Parties.’*

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Much ado about nothing?

- The Shakespearean parallel
- A reading of the available texts suggests **little immediate change** in EU or US SPS regulations...
- ... and therefore limited immediate gains from regulatory cooperation
- ... even if worth making the effort for the potential gains
- ... However, expectations for a '**living agreement**' weakened by hesitant responses of the regulatory agencies
- **Political assurances** on retaining key EU regulations
- Implications for **ratification**
 - May enhance the chances for ratification on the EU side of the Atlantic
 - But likely to reduce the chances for ratification on the US side