

Analysis of Leaked TTIP Chapters and Papers

Greenpeace is not in possession of the full text of EU and US TTIP proposals, but the leaked 13 chapters indicate human health and environmental protections will be seriously undermined if negotiations continue on the current path. Also leaked was a paper called “Tactical State of Play (March 2016)” which contains the EU views of the results of the 12th negotiation round and shows interesting differences to the “official” version (Public Report) of the paper.

EU Regulations, such as [REACH](#), for chemicals, which incorporate the precautionary principle, and regulatory processes to remove the most hazardous chemicals from the market would be weakened and jeopardised by a risk assessment approach favoured by the US chemical industry where the aim is to improve management of hazardous substances without removing them from the market.

In the chapter on sanitary and phytosanitary protection measures, proposals by the US delegation refers to “products of modern agricultural technology”, which clearly indicates their pressure to get rid of trade barriers for genetically-modified organisms (GMOs), as the proposal also refers to the Global Low Level Presence Initiative, which addresses contamination of agricultural products by GMOs.

Other concerning provisions would allow corporations or other actors to have unprecedented access to (and interference with) regulator's deliberative processes on both sides of the Atlantic and in the case of disputes, allow the complaining party to choose the forum for resolving the dispute, which will undoubtedly result in “forum shopping” to produce a result to the complainant's liking.

Although trade negotiations are nominally conducted behind closed doors to prevent undue influence by outside parties, the leaked documents make clear in several instances that negotiators (both EU and US) consult with industry and trade associations before arriving at their positions. In the “Tactical State of Play” document (which describes the state of negotiations) the US delegation notifies its EU counterpart that the US Occupational Safety and Health Administration has solicited the views of the American Chemistry Council (ACC, a trade association), as to whether a section of the treaty on chemical hazard data is acceptable to industry. Another note in the same section says the ACC is urging the US Environmental Protection Agency to rely on study summaries, rather than full data sets, when promulgating regulations. On the EU side, the delegation notes that its position on alcoholic spirits is “based on the joint position of EU and US industries”.

Agriculture – This chapter outlines the ways in which the EU and US support agriculture in their respective areas. Far from agreement, the two parties’ philosophy on agriculture are in opposition and further, Parties cannot agree on the means to resolve these differences. The EU wants the agreement to state that nothing will restrain the Parties from taking measures necessary to achieve legitimate policy objectives such as the promotion and protection of public health, safety, environment, public morals, even cultural diversity. The US, in contrast, considers such measures “trade distorting” and advocates for lower standards of protection.

Regulatory Cooperation – The chapter aims at making EU and US regulations equal, irrespective of the issue at stake. The provisions discussed in the chapter clarify that stricter regulations, whether in the EU or the US, will be scrutinized and, eventually, revised. The attempt to reconcile different regulatory systems has fundamental consequences on domestic policymaking. Provisions aiming to increase the involvement of the private sector in regulatory policymaking will most benefit well-resourced business lobbies.

Technical Barriers to Trade – Although an agreement on Technical Barriers to Trade (TBT) already exists as part of the World Trade Organisation (WTO) agreement, the TTIP TBT negotiations underway would allow industry unprecedented access to the regulatory processes (such as the labelling of hazardous products) of each member state.

Sanitary and Phytosanitary Measures – “Sanitary and Phytosanitary Measures” refers to efforts to protect food safety and plant and animal health. The US delegation is proposing a new section for this chapter, “Science and Risk”. Under this scenario, the burden of proof on whether a product is safe or not could be shifted to fall on public authorities, not on those who seek to sell it. Under such a system, a pesticide that is scientifically linked to cancer could still be approved, unless there is a 100 per cent consensus on its harmful effects. The EU's REACH regulation, by contrast, places the burden of proof on the manufacturer to demonstrate that its product is not harmful before it is allowed into the marketplace (the “no data, no market” principle).

Dispute Settlement – Dispute Settlement between the parties of TTIP, not to be mixed up with Investor to State Dispute Settlement, is often promoted as a method of enforcing environmental, labour or social commitments of parties to FTAs, but the leaked chapter shows this will be unlikely under TTIP. Rather than set high regulatory standards, in its current form the proposed dispute settlement mechanism in TTIP would constitute a significant step back when it comes to environmental protection. Where state to state disputes involve measures taken to protect the environment, the dispute settlement mechanism provides no guarantee that environmental concerns will be given adequate weight. Provisions on the appointment and expertise of arbitrators, access to technical advice and especially intervention by civil society or affected groups, show significant deficiencies and fall short of the EU's stated objectives, the provisions in the WTO system or even the controversial TPP agreement.

Tactical State of Play – This chapter gives insights into areas of agreement and disagreement between the Parties. It is an analysis of what the EU thinks about the current state of the negotiations and therefore is important background to interpret the leaked negotiation text. On key issues such as chemicals or agriculture negotiators either put forward industry proposals or are unwilling to agree to changes without consulting with their industry first. The EU's official [Public Report – March 2016 on The Twelfth Round of Negotiations for the Transatlantic Trade and Investment Partnership \(TTIP\)](#) has one minor mention of industry input whereas the leaked document repeatedly talks about the need for further consultations with industry or explicitly states how industry input has been considered.

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