

Cooperating to deregulate

By Kenneth Haar, Corporate Europe Observatory

ABSTRACT

When negotiations began on the EU-US trade deal known as the Transatlantic Trade and Investment Partnership or TTIP, it was clear that “regulatory coherence” was to become the cornerstone of the agreement. It was less clear to most, how negotiators would tackle the diverging approaches to regulation that have been a source of conflict between the two powers for at least two decades. Now, after two years of negotiations, “regulatory cooperation” has emerged as the key strategy chosen.

Regulatory cooperation is a series of procedures designed to allow the two regulatory rulebooks to converge over time. Especially at this current moment, the implications for the decision-making process in the EU are serious. In the EU institutions, a strategy to roll back “burdensome regulation” for businesses, has been unfolding for the better part of 15 years, and recently, this “Better Regulation Agenda” has been stepped up. This context combined with Regulatory Cooperation under TTIP could open up a new phase of hyper-deregulation.

Since the negotiations on TTIP started in July 2013, the fear that the trade deal will lead to “lower standards” in food safety, environmental protection and consumer rights, has been widespread. These concerns over de-regulation are at the forefront of reasons for the ever-more critical public stance on TTIP. Recently, a resolution in the European Parliament repeated a demand that negotiations must not lead to lower protection levels, as has been said before by member state governments, and indeed by the EU negotiators themselves.

Many such promises have been made in the course of the negotiations, and for that reason alone, it is unlikely that the TTIP agreement, if or when finalised, will include clear and open attacks on for example EU chemicals regulation or food standards. Agreements on harmonization in sensitive areas are unlikely in the short term. But what about the long term? For what TTIP will include, according to all accounts and a series of leaks from the negotiations, is a comprehensive set of procedures to be used in the future, overseen by a new regulatory institution, that is to take the two parties on a path towards “regulatory coherence”. To all intents and purposes this would push the most controversial regulatory decisions to *after* TTIP is signed and the public outcry and scrutiny has passed.

This type of “Regulatory Cooperation” is not new, but is an upgraded version of existing agreements between the EU and the US. And when seen together with the unfolding “Better Regulation Agenda” in the EU, this kind of cooperation could result in comprehensive changes in decision making. The two separate developments on European regulatory issues – regulatory cooperation under TTIP and the “Better Regulation Agenda” – are set to introduce a new style of rulemaking in the EU, one that would introduce severe obstacles to anything that would be against the interests of multinational corporations in the EU and the US.

In both cases, the chief concern is over what business lobby groups call “burdensome regulation” raised by them over the years. “Better Regulation” is about giving business “relief” by reviewing existing and future EU rules, and “Regulatory Cooperation” is about introducing procedures that are to roll back impediments to trade or investment over time, giving US companies and the US

trade authorities a stronger say in the decision making process. In both cases, Commission officials and governments claim it will not have an impact on "protection levels" – be it of the environment, public health, or labour protection – however, the proposals that have come from the Commission show a very different picture: that of putting business first (and second). The procedures proposed so far will lead to a series of new barriers to sensible regulation, including a maze of decision procedures where rules eg. on enhanced environmental protection could easily be filtered away. A new era of "deregulation" could begin.

Regulation of regulation

The Better Regulation Agenda and Regulatory Cooperation have the same subject matter, best defined as anything that touches on how companies produce or deliver services. In some definitions, 'regulation' would be about rulemaking that details the implementation of a law, but in this case, 'regulation' must be understood very broadly as the adoption of any rule that governs procedure or behavior, in this case of companies. It can be a law, it can be an implementing act (in the EU). It should not be confused with the legal instrument in the EU, a regulation, as in this case it covers other legal instruments as well, including EU directives. The two concern both 'primary' and 'secondary' legislation.

Better Regulation and Regulatory Cooperation include very similar proposals. Impact assessments, consultation procedures, guidelines for regulation, and the setup of institutions or bodies to guide long term strategies. In both cases, the EU will be brought closer to a kind of 'regulation of regulations', rules that are to give general direction to regulation, mandatory guidelines established to improve the 'competitiveness' of businesses.

The impact on decision making in the European Union will be subtle, but comprehensive. The Union is built on a Treaty that poses some limits to the creativity when new procedures on regulation are crafted, and there are some procedures that cannot be skipped or fundamentally changed. For instance, main decisions on new laws will still have to be made by the Council. So it might be concluded, as some analysts do, that regulatory cooperation in itself will pose no threat to protection levels, as decisions will ultimately be made by elected representatives.ⁱⁱ

But if looked upon from the viewpoint of the political context, and the history of regulatory cooperation, what emerges is a troubling image of a power grab. Transnational corporations on both sides will be well positioned to exert even stronger influence in the decision making process. In fact, the main proposals of the EU have the footprint of major industry lobby groups.ⁱⁱⁱ

With the rules of Better Regulation and Regulatory Cooperation come a rhetoric about increased transparency and public participation. 'Stakeholders' are to be more active and enjoy more access to decision makers. That term refers not only to business groups, but to other actors as well, however, by design, the new platforms offer ample opportunities for businesses, whereas the agenda of eg environmental movements and consumer groups fit poorly with the two programs. In their case, the effective form of regulation would indeed be of a kind that would impose "burdens" on business. Add to this the armies of industry lobbyists in Brussels and the privileged access they already enjoy, especially to Commission officials, and you have a scenario where the two initiatives open the door to corporate lobbyists even further than is the case today.

But how, then, do the two initiatives interact? How are they related?

The transatlantic divide

As a first step to establish the links between Better Regulation and Regulatory Cooperation, a few notes on the history of trade disputes between the EU and the US is necessary.

It should come as no surprise that a trade agreement with the US would touch upon regulation in a broad sense. The impetus to the TTIP comes very much from a series of disputes over the past

two decades, most of which had direct implications for 'behind the border regulation' in the EU. To mention but a few high-profile cases:

- In the early years of the World Trade Organisation (WTO), US launched and won in a case against EU rules on hormone residues in beef.
- The US trade authorities since then have pursued various avenues to open EU markets to GMO products, including a complaint at the WTO dispute settlement body
- The US sided with Canada in an attempt to do away with the ban of asbestos in France in 1996.
- The US was deeply involved in the struggle over EU chemicals regulation, pushing for the non-adoption of the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals).
- The US is dissatisfied with bans in the EU of the use of a chlorinated substance to clean chickens, and the ban on the use of lactic acid to make beef more tender – until the latter was lifted as a sign of good will ahead of the TTIP negotiations.

These disputes were not merely circumstantial, but revealed major differences in the approach to regulation, in terms of both the principles and the procedures. The strict EU limits on hormone residues, for instance, was an outcome of the 'precautionary principle', formally acknowledged in the EU Treaty as a cornerstone of EU regulation. Precaution in its original definition, means the authorities can press ahead with eg. a ban of a substance, even if scientific evidence is not conclusive. In the US, on the other hand, the precautionary principle is not recognised, and instead is based up the principle known as 'scientific risk assessment', which requires the authorities to produce indisputable proof of a danger before a substance or a product can be banned.

Also, regulation in the EU tend to be more politicised. In the US, regulatory agencies enjoy autonomy within the confines of legislation, whereas in the EU – though the Commission enjoys a powerful position^{iv} when laws are to be implemented via 'delegated acts' or 'implementing acts' (the 'comitology procedure') – member state representatives do have the power to stop or amend a proposal, eg. the approval of certain additives in food. Finally, in the US, 'stakeholders' enjoy a formalised right to 'notice and comment' on regulatory proposals – a right which is often used to block or seriously delay a proposal. While there are traces of the same procedure in the EU setup, it does not go as far as in the US.

Regulatory cooperation as the remedy

This leaves us with an image of two powers with rather incompatible approaches to regulation, but the EU system in particular, is not a static phenomenon. This is shown by the way that the interaction with the US on regulatory affairs has given impetus to a push from industry lobby groups, and has spurred parts of the Commission to work for procedures that would align the EU regulatory process, as well as the regulatory outcomes, with those of the US. Regulatory cooperation, which took off in the late 90's, is about procedures that can ensure greater convergence by rolling back existing differences and by preventing new ones from arising.

The history of regulatory cooperation has proved this to be a difficult task. You only have to look at the list of conflicts on regulatory issues, such as the ones above, that ran in parallel to the formal pledges to co-operate and strive towards convergence. Still, from the mid 90's the EU and the US built structures and procedures to promote regulatory cooperation, but in parallel the two were at loggerheads over chemicals, food standards, GMOs and many other issues. On other issues, the EU was more forthcoming. On data privacy, hazardous substances in electronic equipment, animal testing in the cosmetics industry, and on restrictions on the use of ozone depleting substances, the EU gave concessions to the US, avoiding divergence.^v

These outcomes, seen as very positive by business lobby groups on both sides, helped create the momentum for the negotiations of a comprehensive trade agreement, the TTIP. As both the Commission, member state governments and business lobby groups were quite aware of the difficulties in agreeing on harmonisation or 'mutual recognition' in one big blow, Regulatory

Cooperation was set to become the cornerstone of the TTIP from the outset. The experiments from the past two decades – earlier attempts to cooperate on regulation - are reviewed, made more effective, more binding, more comprehensive.

Regulatory cooperation under TTIP

What will regulatory cooperation then look like in TTIP? Obviously, as negotiations have not finished, and as the parties have different positions, it is not possible to fully predict the outcome. Furthermore, the US position is not publicly available. What we do have are the proposals that have come from the European Commission, and which have been discussed with the Council in the Trade Policy Committee.^{vi}

The main elements of the proposal on cooperation across issues and sectors, include six key elements:

Early warning

The other party has to be notified on all proposals – whether legislative proposals or implementing acts – at an early stage, ie before the proposals are adopted by the Commission. As the Commission has the monopoly on proposals, this could mean it will have to discuss the measure concerned with the US trade authorities before they are brought up for discussion at the Council and in the European Parliament. This can be significant as the Commission has shown a will on earlier occasions to fundamentally change its proposals following discussions with the US trade authorities before adopting them.^{vii}

Trade impact assessments

Impact assessments will have to include assessments of a given proposals impact on trade, in other words its impact on US companies. While the proposals of the Commission thus far are not very specific, there has been a dialogue between the EC and the US regulatory authorities for about a decade on the nature of a good impact assessment. In this dialogue, the precautionary principle has come under a lot of fire from the US.

Regulatory dialogues

Whenever a proposal might have significant impact on trade, there is to be a "regulatory dialogue" between the parties. Whether this type of dialogue is to take place when a measure is taken by a member state or a US state is under discussion. The Commission prefers this to cover the member state level as well.

Strategic planning - Regulatory Cooperation Council (RCC)

A Regulatory Cooperation Council (or Regulatory Cooperation Body) is to be set up to guide the two parties towards regulatory convergence. It will consist of representatives from the Commission and from the Office of Information on Regulatory Affairs (OIRA) in the US. They will refer to a ministerial body, but so far the division of labour and competences are unclear.

Notice-and-comment

"Stakeholders" will be asked for input on proposals from the RCC, and they will be invited to raise queries through contact points. Comments will have to be "taken into account".

Sectoral working groups

The RCC will establish sectoral working groups (eg on chemicals, food standards, consumer rights) to work out a strategy for regulatory convergence in a specific area. At an early stage, the Commission committed to awarding business lobby groups privileged access to the sectoral working groups.

On top of this design of 'horizontal regulatory cooperation' comes a series of sub-agreements on special procedures for particular sectors. None of the known proposals offer any indication that the EU will be able to strengthen or maintain existing protection levels, quite the contrary. The EU proposal on chemicals is strikingly similar to that of the chemicals lobby on both sides,^{viii} the

proposal on pesticides^{ix} will block development of rules on pesticides in the US as well as the EU, and the proposal on financial regulation has been hailed by the CityUK, a British financial lobby group, as "reflect[ing] so closely the approach of TheCityUK that a bystander would have thought it came straight out of our brochure on TTIP".^x

A short history of better regulation

To understand the implications of this proposal to deepen regulatory cooperation, it is necessary to look at the internal development in the EU in the very same area, the so called 'Better Regulation Agenda' unfolding after years of more cautious experiments.

The Better Regulation Agenda stems from a Commission proposal, approved by the European Council in 2002, designed to cut so-called 'red tape', ie lighten the burden for businesses.^{xi} Further steps were taken in 2007, when the "Action Programme for Reducing Administrative Burdens in the EU" was launched, setting a target of reducing administrative burdens for business by 25 percent in 2012. That same year a "High Level Group on Administrative Burdens" was formed, also known as the Stoiber Group, headed by Edmund Stoiber.

Based on the recommendations from the Stoiber Group^{xii} to 'simplify' regulation, the most recent version of the Better Regulation Agenda, the Commission's 'Regulatory Fitness and Performance programme (REFIT)', was launched in December 2012 to eliminate "unnecessary regulatory burdens". A year later, in October 2013, the Commission announced it would simplify 46, repeal 7, and evaluate a further 47, laws. In May 2014, 133 initiatives were identified for further action, and 53 proposals were dropped entirely.

The essence of the initiative is to relieve the administrative and regulatory burden on companies in order to improve "competitiveness". Innocent as this may sound, it was met by skepticism from many quarters from the very beginning in 2002. Fears that what was really at play was a deregulation push were manifest among green groups and consumer groups from the beginning. Still, the proposals dropped under the REFIT programme became a wake-up call for both trade unions, environmental groups, and consumer groups. Among the proposals dropped were one on access to environmental justice, another on the protection of soil, and rules on supervision of medicines. Also, a proposal to introduce minimum standards on maternity leave was removed from the Commission's workplan under the REFIT programme.

The Juncker Commission: the long term agenda for Better Regulation

With the Juncker Commission that took office in late 2014, the Better Regulation Agenda moved up the agenda and took centre stage in many ways. For a start, the Commission itself was restructured, putting Vice President Frans Timmermans in a very powerful position, giving him the possibility to veto anything that would go against the Better Regulation Agenda. Commission President Juncker wrote in his Mission Letter to Timmermans, "that respect for the principle of subsidiarity, proportionality and better regulation will be at the core of the work of the new Commission".^{xiii}

Timmermans would soon prove to be an ardent supporter of the Better Regulation Agenda, and relatively quickly a series of proposals would emerge in order to mainstream the principles of the Agenda into rulemaking in the EU.

Three elements of the most recent Better Regulation Package stand out:

- A new Regulatory Scrutiny Board is to be given the authority to stop a proposal if it is not accompanied by a satisfying impact assessment. "In principle, a positive opinion is needed from the Board for an initiative accompanied by an impact assessment to be tabled for adoption by the Commission," as the Commission explains on its website.^{xiv} This is a novelty, as Commission services would be able to circumvent a decision made by the existing Impact Assessment Board. These assessments do include social and

environmental impacts, but other concerns than those of business interests tend to take a back seat. They are becoming crude cost-benefit exercises, and at the moment there is lots of lobbying to tilt the scale even more. Business groups are pushing for the inclusion of an “innovation principle”, as they are concerned “that the necessary balance of precaution and proportion is increasingly being replaced by a simple reliance on the precautionary principle and the avoidance of technological risk”. What they ask for is that “whenever precautionary legislation is under consideration, the impact on innovation should also be taken into full account in the policy and legislative process”. In other words a clear weakening of the precautionary principle.^{xv}

- In a similar fashion, the Commission is proposing a far-reaching measure that will allow any institution (the Commission, the Council, or the European Parliament) to demand the legislative process be stopped if the original proposal is altered in a way that changes or disturbs the calculations in the impact assessment significantly. In the words of a Communication from May 2015, the Council and the European Parliament are asked to support a future proposal “that each institution may call for an independent panel to carry out an assessment of these factors following any substantial amendment to the Commission proposal.”^{xvi} At the moment, this proposal is discussed in the framework of an Interinstitutional Agreement.^{xvii}
- Lastly, the Commission pledges a strong commitment to “transparency”: “The Commission intends to listen more closely to citizens and stakeholders, and be open to their feedback, at every stage of the process – from the first idea, to when the Commission makes a proposal, through to the adoption of legislation and its evaluation.”^{xviii} While this sounds undeniably sympathetic, the real context is an industry demand to have easier access during the entire decision making process, with other stakeholders sidelined.

As would be expected, the package was received warmly by the business lobbying community, as in the case of one of the chief lobbyists from the European Banking Federation: “What strikes me the most in this package [on Better Regulation] is the expansion and the generalisation of the impact assessments, not to forget the ex post evaluations and the measurement of cumulative impacts of legislation. It could definitely enhance the dialogue at different stages of the legislative process”.^{xix}

The amalgamation of two initiatives: the filters and the maze

So how will the Better Regulation initiative and Regulatory Cooperation combine in practice? Far from cutting 'red tape' business dislikes so much, they can be seen as adding filters to proposed new regulation while tangling up regulation that industry dislikes in a maze of impact assessments and trade-related bureaucracy.

The package was received well by the US business community as well, particularly the US Chamber of Commerce which had been one of the main forces behind the push for comprehensive regulatory cooperation. In the words of two of the chief executives of the group it “represents a step forward in the European Union's decade-long journey to bringing coherence and rationality to its legislative and regulatory process.”^{xx} And according to the main publication on US trade policy, Inside US Trade, the package “partially addresses U.S. demands in trans-Atlantic free trade talks for more transparency and opportunities for stakeholders to influence the crafting of EU rules.”^{xxi}

The Better Regulation Package had an immediate effect on the TTIP negotiations. At a meeting of the Commission in July this year, two months after the publication of the package, Trade Commissioner Malmström said there were “advances in talks on cooperation on regulation, for which the 'Better Regulation' package adopted by the Commission on 19 May was particularly useful.”^{xxii}

So it seems Regulatory Cooperation under TTIP is to some extent already making its way into the EU legislative process, and it is being done under the Better Regulation Agenda. The question is how the two will interplay when they unfold according to existing plans and proposals.

First of all, Regulatory Cooperation and Better Regulation entail a common strategic vision of future regulation, and they establish the mechanisms to achieve it. The Commission has already taken steps with its "Regulatory Fitness and Performance Programme" (REFIT), and with programmes to reduce the "regulatory burden" on companies. The strategic plans for convergence between the US and the EU, and the sectoral strategies that are to be developed by the Regulatory Cooperation Council fits neatly with this design, and the two initiatives can easily become mutually reinforcing. Increasingly, there will be 'filters' that will remove the type of regulation from the agenda that would enhance environmental protection or labour protection – through industry pressure, or from the trade authorities from the other side of the Atlantic.

These filters will be coupled with what could become a spaghetti-like maze with several dead ends. If the Better Regulation Agenda unfolds in the way now envisioned by the Commission, and if regulatory cooperation with the US goes ahead as proposed, it will affect the legislative process in the EU significantly. If we take the legislative process chronologically, the Commission would have to consult with both with business groups - and with the US authorities, if it has an impact on US businesses. At this stage, it would be their privilege to comment on the nature of the proposal. While there is a chance that some civil society groups other than business lobby groups, will be able to comment, it will not be a level playing field between different actors^{xxiii}. At this stage, the extra element added by Regulatory Cooperation is the fact that under Better Regulation, primary legislation is not included^{xxiv}, only "delegated and implementing acts", and not least: there is no requirement to enter into a dialogue with trade partners, in this case the US.

The next step will be the production of an impact assessment, which is much more than a mere report produced by specialists. An impact assessment is an evaluation of a proposal which under the two programs is based on inputs from other actors as well, not least from business groups, and from the US authorities. It would be more precise to regard it as a review process. Methodologically, an impact assessment will always include a view on the environmental and social implications of a proposal, but they increasingly take the form of a cost-benefit analyses with economic factors gaining importance. That will be taken a step further if trade concerns are to be further incorporated.^{xxv}

All this is to take place before a proposal is even adopted by the Commission. In other words, a significant exchange between important forces – the business community and the US authorities – are to happen before the Commission even decides whether or not to adopt a proposal and in what form.

Finally, we have the proposal from the Better Regulation Package to insert a procedure that could block or pause the political decision process – a pause in the procedure in order to evaluate amendments through another impact assessment. Also, should a proposal come out that would still go against interests of parts of the business community, then the US authorities could ask again for a "regulatory dialogue" as proposed by the EC as part of Regulatory Cooperation. During that exchange, several options are to be explored in order to avoid or limit the negative impact for US companies, including "simplification", a concept that is key to the Better Regulation Agenda.

Conclusions and policy proposals

The scenario above builds on proposals, only some of which have actually been adopted. Also, the negotiations on TTIP are far from finished. But it does tell us about the agenda of industry lobby groups and key parts of the European Commission, so far with the support of member state governments.

From that viewpoint, Regulatory Cooperation under TTIP is set to have a serious effect in the European Union. It will increase the influence of the US trade authorities (or the US government) in

EU politics, and it will strengthen the hand of US corporations, often working in tandem with their European counterparts.

But the threat from regulatory cooperation is not merely external in nature. It is not about the good European rules versus the naked deregulated capitalism of the US. Regulatory cooperation fits hand in glove with a development already on its way in the European Union, pushed by business lobby groups and the Commission. The Better Regulation Agenda is partly about implementing some of the measures in regulatory cooperation, and it is driven by the same objectives, that of removing supposed 'regulatory burdens'. Inevitably, such strategies will take their toll on protection levels, be it of the environment, public health, or consumer rights.

Additionally the Commission has already clearly shown its willingness to take its strategy into the area of labour laws, too. In that respect, the European Trade Union Institute (ETUI) notes a concern among trade unions that the Commission would be able to make the two agendas mutually reinforcing: "The dangers for workers come also from the Commission and the connections it might well see fit to establish between TTIP and the European REFIT programme. While the Commission states that the aims of REFIT are to reduce regulatory costs and to simplify administrative procedures in Europe, the programme stands ready to serve as an instrument for the implementation of TTIP and its threatened onslaught on the health and safety of European workers".^{xxvi}

In many ways, this comes back to the question of democracy. The "regulation of regulation" that is at the heart of both initiatives, is set to steer political decision making away from rules that would be costly for business, and while it does not fully prevent measures such as enhanced environmental protection, it does erect new and formidable barriers to creating and implementing them.

The main policy proposal should be nothing less than the roll back of the deregulation agenda embodied in the two initiatives. To do that, it is necessary to unpack and attack the ideology of the 'regulatory burdens', and put an end to the massive regulatory capture that would be the outcome of the two initiatives.

- i Anne Meuwese; “EU-US Horizontal Regulatory Cooperation”, Tilburg University, 2011, page 2 ff, https://pure.uvt.nl/portal/files/1326017/Meuwese_EU_US_horizontal_regulatory_cooperation_110420_postprint_immediately.pdf
- ii An example is the report from the Ecologic Institute; “Regulatory Cooperation under TTIP – a risk for democracy and national regulation?”, September 2014, https://www.boell.de/sites/default/files/ttip_study_regulatory_cooperation_under_ttip_1.pdf
- iii The first position paper from the European Commission on Regulatory Cooperation from December 2013 resembled the agenda that two powerful lobby groups, BusinessEurope and the US Chamber of Commerce, had been pushing for for at least a year. See Corporate Europe Observatory; “Regulation: None of Our Business?”, December 2013.
- iv In most cases, a proposal from the Commission can only be rejected if there is a qualified majority against it.
- v Upcoming report from Corporate Europe Observatory & LobbyControl. See also Oliver Ziegler; “EU Regulatory Decision Making and the Role of The United States”, Springer Verlag, 2013.
- vi For an overview of the latest proposal from the European Commission, see Kenneth Haar & Max Bank; “Regulations Handcuffed”, January 2015, <http://corporateeurope.org/international-trade/2015/01/ttip-regulations-handcuffed>
- vii This was the case with a proposal on electronic waste in the early days of Regulatory Cooperation. See Oliver Ziegler; “EU Regulatory Decision Making and the Role of The United States”, Springer Verlag, 2013.
- viii ClientEarth & Centre for International Environmental Law; “Toward a Toxic Partnership”, July 2014, <http://www.clientearth.org/reports/10714-response-to-eu-position-paper.pdf>
- ix Centre for International Environmental Law; “Lowest Common Denominator. How the EU-US Trade Deal Threatens to Lower Standards of Protection from Toxic Pesticides”, Januar 2015, http://www.ciel.org/wp-content/uploads/2015/06/LCD_TTIP_Jan2015.pdf
- x Richard Normington in TheCityUK, 5 February 2014, <http://www.thecityuk.com/blog/without-financial-services-the-ttip-could-be-made-to-look-a-monkey/>
- xi For an overview of the Better Regulation Agenda, see Corporate Europe Observatory; “Cutting Red Tape: How the European Commission and Big Business Push for Deregulation”, <http://corporateeurope.org/power-lobbies/2014/10/crusade-against-red-tape-how-european-commission-and-big-business-push>
- xii The High Level Group on Administrative Burdens; “Cutting Red Tape in Europe”, 24. July 2014, http://ec.europa.eu/smart-regulation/refit/admin_burden/docs/08-10web_ce-brocuttingredtape_en.pdf
- xiii Jean-Claude Juncker; “Mission Letter” to Frans Timmermans, 1. November 2014. https://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/timmermans_en.pdf
- xiv http://ec.europa.eu/smart-regulation/index_en.htm
- xv Letter to Commission President Barroso from 12 corporations, 24. October 2013. <http://corporateeurope.org/lobbycracy/2013/10/looking-real-transparency-open-letter-european-commission-chief-scientist>
- xvi Communication from the Commission; “Better regulation for better results – an EU agenda”, COM (2015) 215 final, http://ec.europa.eu/smart-regulation/better_regulation/documents/com_2015_215_en.pdf
- xvii European Commission; “Proposal for an Interinstitutional Agreement on Better Regulation”, 19. May 2015, http://ec.europa.eu/smart-regulation/better_regulation/documents/com_2015_216_en.pdf
- xviii Ibid. page 4.
- xix Olivier Thomas (EBF, July 2015. <http://enews.ebf-fbe.eu/2015/07/can-the-new-eu-better-regulation-package-stop-the-legislative-frenzy/>
- xx Peter Chase & Adam Schlosser; “Better Regulation – An Ongoing Journey”, July 2015, <https://www.uschamber.com/issue-brief/better-regulation-ongoing-journey>
- xxi “EU Meets U.S. Regulatory Demands Halfway With Better Regulation Agenda”, 9. July 2015.
- xxii Minutes of the 2136th Meeting of the European Commission, meeting held at 22. July 2015, minutes dated 8. September 2015. <http://ec.europa.eu/transparency/regdoc/rep/10061/2015/EN/10061-2015-2136-EN-F1-1.PDF>
- xxiii This question – that of whether stakeholders enjoy equal rights under Regulatory Cooperation – will be dealt with in detail in an upcoming report from Corporate Europe Observatory and LobbyControl. Regulatory Cooperation between the EU and the US in the past, was always very open to the big business community, with the Transatlantic Business Dialogue (TABD) as their main vehicle of influence. Despite promises of a “level playing field”, other groupings never enjoyed a fraction of the influence of the TABD.
- xxiv In its communication on the “Better Regulation Package” in May 2015, the Commission makes it clear that for the first time, “stakeholders will be able to provide feedback on acts setting out technical or specific elements that are needed to implement the legislation adopted by the European Parliament and the Council”. However, in the texts leaked on Regulatory Cooperation, primary legislation is included.
- Communication from the Commission; “Better regulation for better results – an EU agenda”, COM (2015) 215 final, http://ec.europa.eu/smart-regulation/better_regulation/documents/com_2015_215_en.pdf
- xxv An example of how trade concerns can negatively affect impact assessments can be seen from a report from the first dialogue between the Commission and the US agency OMB. In it, comment by the Transatlantic Consumer Dialogue on the effects of potentially “excessive attention” given to trade concerns, the two bodies respond, that “regulations that unnecessarily restrict international trade and investment reduce competition, thereby harming consumers through higher prices and reductions in incentives for producers to innovate and increase productivity”. See Secretariat General of the European Commission & OMB; “Review of the application of EU and US regulatory impact

assessment guidelines on the analysis of impacts on international trade and investment”, May 2008, page 28.
xxvi “The Transatlantic Trade and Investment Partnership (TTIP): a controversial agreement and dangerous for workers”, ETUI, September 2015, page