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TTIP: hope or hype – or a risk to the environment?

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Background: Trade and environment – how are they related?

- (-) Emissions generated by trade increase with more trade
- (-) Trade as a vehicle for environmental risks (e.g. alien invasive species)
- (-) Intensification of economic activity, more resource use
- (-) **Race to the bottom in environmental standards**
- (-) **Limitation on future regulatory space through trade agreements**
- (+) Wider diffusion of environmentally friendly technologies
- (+) Changes in composition of production in a given country, more efficient (and thus less) resource use
- (0) More efficient, larger-scale production > productivity gains which could be used for environmental protection either at firm or societal level/increase demand for environmental protection



TTIP – what do we know about its (environmental) impact so far?

- ▶ Discussion on TTIP is phrased in terms that do not adequately reflect environmental concerns (e.g. GDP very questionable indicator from environmental point of view, growth leads to more intensive environmental resource use as there is no absolute decoupling)
- ▶ Environmental regulation as „trade barrier“/NTB

Study commissioned by EU (Francois et al)

„negligible effects on CO₂ emissions and sustainable use of natural resources“

SIA yet to come



Environment: the EU Commission's negotiation mandate (I)

- ▶ Reference in preamble to sustainable development as overarching objective of parties
- ▶ Explicit recognition of right of parties to take measures „necessary“ to achieve legitimate policy objectives, including a level of environmental and health protection they consider appropriate
- ▶ Agreements should recognise that Parties will aim at ensuring respect for international agreements, including environmental agreements, and will not encourage trade and investment by lowering domestic standards, including on the environment
- ▶ General exception clause modelled on Art. XX GATT
- ▶ Commitments by parties in terms of environmental aspects of trade (e.g. green public procurement)



Environment: the EU Commission's negotiation mandate (II)

- ▶ Rules on investment protection and regulatory compatibility should be without prejudice for EU to adopt and enforce measures necessary to pursue legitimate policy concerns
- ▶ Mechanisms to promote multilateral environmental agreements
- ▶ Provisions in support of internationally recognised CSR standards
- ▶ Trade in legally obtained, sustainable natural resources
- ▶ Provisions on trade and investment in energy and raw materials



Normative starting point

„TTIP is not an environmental, but a trade agreement.“

► Yes, BUT:

environmental integration clause in Art. 11 TFEU:

„environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities“



TTIP: Hope for the environment?

- ▶ Agreeing on harmonised technical standards for environmentally friendly products/food safety or environmentally friendly product-related standards (e.g. on emissions levels)
 - ▶ Not impossible, but do we need a comprehensive trade and investment agreement for this? E.g. existing mutual recognition agreement between EU/US and existing avenues for dispute settlement

- ▶ Reduction of tariffs on environmentally friendly goods and services (EGS)
 - ▶ No bad idea, but tariffs already low in many areas, do we need TTIP for this purpose?



TTIP: Hope for the environment? (cont.)

- ▶ Commitment to reducing environmentally harmful subsidies in TTIP
 - ▶ In line with logic of free trade agreements of reducing „trade distortions“, no bad idea, but not mentioned in EU negotiating mandate
- ▶ Commitment of US to sign and ratify multilateral environmental agreements
 - ▶ No bad idea, but how likely?
- ▶ Rules on corporate social responsibility?
 - ▶ EU has only non-binding instruments, so good idea – but how strong?



TTIP: Race to the bottom in regulation?

- ▶ How different are US and EU regulation in the area of environment, risks, food safety?

David Vogel (2012): US health, safety, environmental regulations more stringent, risk averse, comprehensive, than those in EU until ca. 1990; since then, EU regulatory leadership

Jonathan Wiener et al. (2011): In some areas EU more precautionary, in others US

Gerstetter et al 2013 (GMOs, chemicals, emissions trading for the aviation sector, poultry): regulatory intensity of EU in these areas is higher, US either does not acknowledge certain risks the EU considers relevant or relies much more on voluntary approaches



TTIP: Race to the bottom? (contin)

▶ EU mandate: Is it enough?

e.g. „necessary“ replicates WTO rules that pose quite a high hurdle for environmental regulation

e.g. Art. XX GATT hardly ever successfully used by WTO parties in WTO dispute settlement

- ▶ According to WTO law, e.g. sanitary and phyto-sanitary measures must be „based on“ scientific risk assessment (except where there is no sufficient evidence for such risk assessment) as well as on relevant international standards
- ▶ Particular sensitive areas unlikely to be included in sectoral commitments on regulatory compatibility



TTIP: investor state dispute resolution (ISDR) – a risk for environmental regulation?

ISDR has been used by companies to attack (legitimate) environmental policies/decisions of states (e.g. Vattenfall vs. Germany over German nuclear phase-out, Lone Pine Resources vs. Quebec Government on fracking ban under NAFTA)

Certain clauses that EU proposes have been very problematic in past cases (e.g. fair and equitable treatment, indirect expropriation)

ISDR proceedings outside democratic control

Really needed between two evolved legal systems?



Conclusions

- ▶ TTIP is more likely to bring negative environmental effects than beneficial ones
- ▶ Some rules currently under discussion could restrict future regulatory freedom of parties quite substantially, many others not more than WTO law does
- ▶ Aspects positive for the environment could in principle be included in TTIP, but either a comprehensive trade and investment agreement is not needed for this purpose or they are unlikely to materialise in practice



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Thanks for listening

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