



Resource-Efficient Land Use –
Towards A Global Sustainable Land
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The Transatlantic Trade and Investment Partnership (TTIP) and its relevance for global sustainable land use

GLOBALANDS Discussion Paper

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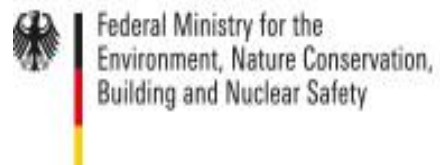
Christiane Gerstetter



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1. Introduction

The Transatlantic Trade and Investment Partnership (TTIP) is a comprehensive bilateral trade and investment agreement that has been under negotiations between the EU and the US since 2013.

The TTIP negotiations cover three main areas:

- Market access, notably for services, where in some areas markets are closed to foreign competitors or their role is limited
- Regulatory cooperation, covering both cross-cutting provisions and specific sectors such as pesticides and pharmaceuticals, with the aim of making EU and US rules more similar to each other
- Rules, including on investment protection and raw materials and energy

The overall aim of TTIP is to foster trade and investment between the two economic areas. TTIP is also conceived as a blueprint for similar agreements with other parties (e.g. China) and aimed at strengthening the political ties between the US and the EU, in light of the emergence of other powerful political actors at the international scene, notably the BRICS countries.

Currently, TTIP is still under negotiation. Due to public pressure there is now enhanced transparency of the negotiations: the EU Commission has committed to publishing some of the draft texts it proposes to the US.¹ Nonetheless, a comprehensive assessment of the likely impact of TTIP on global land-use is impossible to conduct in advance. While it seems politically likely that TTIP will be agreed upon in some form, it is open how exactly it will look like and how far-reaching rules it will contain. Even if the final text of the agreement was already known, the impacts would be difficult to predict with precision. How international trade and investment agreements get implemented also depends on the extent to which the parties involved use flexibilities usually inherent to such agreements and to what extent the agreements are used strategically in later political controversies, e.g. by business actors (through litigation or as part of political lobbying).

In the present context it should be noted that TTIP is no multilateral, let alone global agreement. Therefore, any direct impact of TTIP on land use would materialise primarily *within* the EU and the US. However, indirectly, the impact is likely to be more far-reaching. First, indirect impacts could take effect if TTIP

¹ European Commission publishes TTIP legal texts as part of transparency initiative, Press release of 7 January 2015, http://europa.eu/rapid/press-release_IP-15-2980_en.htm

is actually used by the EU or US as a blueprint for negotiations with other countries. Second, indirect impacts could result from a change in global trade flows a result of TTIP. There are different estimates on how TTIP would affect trade of the EU and the US with third countries.² Third, indirect impacts may result from regulatory changes within the EU and US as a consequence of TTIP that also apply in relation to third countries. For example, if the EU changed its current regime for the importation of genetically modified organisms into the EU's internal market in the wake of TTIP, such modification is unlikely to be limited to products from the US, but would be presumably more general in nature. Fourth, market actors from third countries might voluntarily adapt their products to common EU and US standards, given the size of these markets. Some spill-over of TTIP's impacts to third countries is thus likely.

Finally, it is important to keep in mind that TTIP is not the first and only bilateral or multilateral trade and investment agreement currently in place. Rather, global trade and investment relations are governed by the multilateral agreements of the World Trade Organization (WTO)³ as well as a dense net of bilateral and regional trade and investment agreements⁴. TTIP is not categorically different from existing agreements; indeed some of the published draft texts and positions papers refer to WTO law as a benchmark on which TTIP will build.⁵ However, TTIP is more ambitious, notably concerning the extent to which it seeks to make the two regulatory systems more similar to each other. Moreover, TTIP is – like other recent bilateral trade agreements, but unlike WTO law – conceived of as a “living agreement” that includes provisions on the institutional cooperation between the two parties on further initiatives e.g. in the area of harmonisation and mutual recognition.

2. Relevance of TTIP for land-use

² For an overview see Evita Schmiege, TTIP – Opportunities and Risks for Developing Countries Contributions in International Journals and Think Tank Publications 2013 – 2014, SWP-Zeitschriftenrundschau, January 2015, http://www.swp-berlin.org/fileadmin/contents/products/zeitschriftenschau/2014zs01engl_scm.pdf

³ See also Wunder et al (2013): “Governance screening of global land use”, discussion paper produced within the research project “GLOBALANDS – Global Land Use and Sustainability”, authors: Wunder, Stephanie; Hermann, Andreas; Heyen, Dirk Arne; Kaphengst, Timo, Smith, Lucy, von der Weppen, Johanna, Wolff, Franziska; Berlin, Ecologic Institute and ÖkoInstitute, October 2013, p. 101ff.

⁴ About 400 regional trade agreements that are in force have been notified to the WTO by 2015, see https://www.wto.org/english/Tratop_e/region_e/regfac_e.htm; UNTAD's database on bilateral investment treaties currently in force comprises more than 2200 individual agreements, see <http://investmentpolicyhub.unctad.org/IIA>

⁵ See for example the EU's textual proposal on SPS measures of January 2015, http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153026.pdf

The possible impact of TTIP on future land-use can be discussed along three trajectories: changes in the type and intensity of land-use as a result of different and extended trade and investment flows, the impact on existing regulation relevant to land-use, and the impact on such regulation in the future.

Changes in land use resulting from changes in trade and investment flows

Existing quantitative assessments of the likely economic impact of TTIP vary because different scenarios, models and methodologies are used. For example, the study underlying the Commission's impact on TTIP expects "significant economic gains" including income gains in an ambitious TTIP scenario.⁶ By contrast, another study predicts that 600.000 jobs would be lost within the EU and GDP and worker income would decrease.⁷ With such variations in results, the value of such assessments for predicting the future and thus informing policy-making is very limited. Moreover, these assessments have been criticised for some of their underlying assumptions.⁸ According to press reports, the Commission has recently corrected some of the more controversial assumptions on the positive economic effects in its impact assessment in light of persisting criticism.⁹ Overall, what the assessments share is the result that the benefits of TTIP in terms of GDP growth are relatively insignificant, even for scenarios of a far-reaching TTIP.¹⁰

If TTIP has any significant effects on trade and investment flows, it is plausible to expect that TTIP would have at least some impacts on land-use within the EU and US (and, if a trade-deviation effect occurs, also in third countries). Yet predicting how it will look like with any degree of precision is not possible; among others, such impact will depend on how future regulation relevant to land-use will look like. The general impact of trade liberalization on sustainable

⁶ Joseph Francois et al. Reducing Transatlantic Barriers to Trade and Investment - An Economic Assessment, Centre for Economic Policy Research, March 2013, http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf

⁷ Jeronim Capaldo, The Trans-Atlantic Trade and Investment Partnership: European Disintegration, Unemployment and Instability, Global Development and Environment Institute Working Paper No 14-03, October 2014, <http://ase.tufts.edu/gdae/Pubs/wp/14-03CapaldoTTIP.pdf>

⁸ See Sabine Stephan, Comments on the claimed benefits of TTIP, Presentation, Copenhagen 26 September 2014, http://www.boeckler.de/pdf/imk_vortrag_stephan_2014_09_26.pdf; Werner Raza et al., Assessing the claimed benefits of the Transatlantic Trade and Investment Partnership (TTIP), Austrian Federation for Development Research, Vienna, March 2014, http://www.guengl.eu/uploads/plenary-focus-pdf/ASSESS_TTIP.pdf

⁹ Peinliche Korrekturen am TTIP-Versprechen, Süddeutsche Zeitung online, 1. April 2015, <http://www.sueddeutsche.de/wirtschaft/freihandelsabkommen-peinliche-korrekturen-1.2417973>

¹⁰ See Sabine Stephan, Comments on the claimed benefits of TTIP, Presentation, Copenhagen 26 September 2014, http://www.boeckler.de/pdf/imk_vortrag_stephan_2014_09_26.pdf

land use has already been discussed in the global governance screening of sustainable land use within the GLOBALANDS project;¹¹ and hence does not need to be repeated here.

Impact on current regulation

In the above mentioned governance screening a broad range of policies has been identified as relevant for land-use. There are only a limited number of policy areas that are directly a part of the TTIP negotiations¹²; most of them do not seem directly relevant for land-use.¹³ One direct link is in the area of fracking: The EU is interested in obtaining a commitment of the US to lift existing restrictions on exports of raw materials, which would include natural gas and oil.¹⁴ If this is realised, production of such raw materials, including shale gas production, could increase in the US, with an obvious impact on land-use in the US.

However, most of TTIP's impact on current regulation of relevance for sustainable land-use would more likely be through its more cross-cutting, horizontal provisions. Two areas that are under discussion are rules on measures aimed at protecting human, animal and plant life or health (sanitary and phytosanitary (SPS) measures) and provisions on technical standards and regulations (TBT), each of them building on the respective WTO agreements. Both could be of relevance for land-use: rules on SPS would concern agricultural production of food, TBT rules are of relevance for labelling of products, sustainability standards for biofuels etc.

The text proposal of the EU on SPS measures¹⁵ suggests rules that are mainly aimed at facilitating trade in products subject to SPS rules (e.g. many agricultural products), mutual recognition of inspection procedures and

¹¹ See also Wunder et al (2013): "Governance screening of global land use", discussion paper produced within the research project "GLOBALANDS – Global Land Use and Sustainability", authors: Wunder, Stephanie; Hermann, Andreas; Heyen, Dirk Arne; Kaphengst, Timo, Smith, Lucy, von der Weppen, Johanna, Wolff, Franziska; Berlin, Ecologic Institute and ÖkoInstitute, October 2013, p. 104ff.

¹² See the list at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>

¹³ One area that is listed as part of the negotiation are pesticides. However, the proposals discussed in this areas are relatively modest, e.g. a proposal that EU products destined for export in the US be checked for pesticide residues within the EU and before export, rather than within the US, see http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153136.4.6%20Pesticides.pdf. Due to this modest ambition, it is unlikely that rules agreed in this area would

¹⁴ See European Commission, Raw materials and energy – Initial position paper, TTIP, July 2013, http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151624.pdf

¹⁵ EU Commission, Text proposal on SPS measures, tabled for discussion with the US in the negotiating round of (29 September - 3 October 2014) and made public on 7 January 2015, http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153026.pdf

provisions for consultation on new SPS measures. Most of them appear to have no immediate substantive effect on the policy measures and laws of relevance to land use, but rather have an impact on how some these measures are applied. One of the few rules that might be of more direct relevance for measures that influence land use is the provision that the US and the EU would have to conform their measures to certain future Codex Alimentarius¹⁶ standards in relation to tolerance and maximum residue levels. Under current WTO law, the EU and the US are not strictly bound to these standards, giving them the possibility to more easily adopt stricter standards, e.g. on pesticide residue levels, provided they were scientifically justifiable.

Similarly, the EU text proposal on TBT measures contains provisions on mutual consultation of the parties when developing future technical regulations, a commitment to make them more similar and streamline conformity assessment procedures. This mainly concerns either future regulation or the application of existing technical regulations. The immediate impact of such provisions on current regulation is likely to be limited.

Two other cross-cutting areas of the negotiations that could have an impact on sustainable land-use practices are investor-state dispute settlement (ISDS) on the one hand and on regulatory cooperation on the other.

Some of the problems associated with ISDS have already been discussed in the previous policy screening, using the example of the North American Free Trade Agreement (NAFTA).¹⁷ With regard to TTIP the risk of claims being brought by investors in relation to *existing* regulation of relevance to sustainable land use appears rather small. The reason is that investors would need to be able to claim a violation of a measure by the host state that violates their rights under TTIP.. So far, parties seem to be rather interested in limiting the scope of investment clauses as compared to earlier investment agreements;¹⁸ this is likely a reaction to widespread public discomfort with how investment arbitration has often worked in the past. Yet even if clauses similar to those in existing investment treaties were included in TTIP, it would be difficult to imagine how an investor could claim successfully e.g. that its legitimate

¹⁶ The Codex Alimentarius Commission, a public body established by FAO and WHO in 1963, develops harmonised international food standards, guidelines and codes of practice, see <http://www.codexalimentarius.org/>

¹⁷ See also Wunder et al (2013): "Governance screening of global land use", discussion paper produced within the research project "GLOBALANDS – Global Land Use and Sustainability", authors: Wunder, Stephanie; Hermann, Andreas; Heyen, Dirk Arne; Kaphengst, Timo, Smith, Lucy, von der Weppen, Johanna, Wolff, Franziska; Berlin, Ecologic Institute and Ökolnstitute, October 2013, p. 114f.

¹⁸ See for example the document for the EU Commission's public consultation on modalities for investment protection and ISDS in TTIP, http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152280.pdf

expectations and hence the fair and equitable treatment standard are violated through measures *existing* at the time when TTIP is concluded. Altogether, the impact of current EU and US regulation of ISDS provisions would likely be limited.

In the area of regulatory cooperation, the draft put on the negotiation table by the EU¹⁹, extends to both existing and future regulation. It features procedures that both parties would need to observe in regulatory decision-making, including providing early information to the other side on planned initiatives and an exchange on planned regulation, involvement of stakeholders, and taking into account the interest of the respective other side in impact assessments. The overall aim is to make the US and EU legal orders more similar to each other. From the way the text is worded, the thrust of these proposals is aimed at future regulation and policy processes, rather than at changing present regulation. The formal initiative for domestic policy-proposals still lies clearly within the national system of both sides; however, the draft also provides for the possibility for one party to request a dialogue on existing regulation. What impact such provisions would have on current regulation on land-use is difficult to predict – it would also depend on the political priorities of the parties in the area of regulatory cooperation.

Impact on future regulation

An aspect that is linked to, but not the same as the previous aspect is what impact TTIP could have on the future adoption and ambition of regulation aimed at making land-use sustainable. There is, in general, a discussion on the extent to which international trade and investment agreements lead to a “race to the bottom” in e.g. environmental and health standards in the countries that are parties to such an agreement and/or deter or delay such standards (“regulatory chill”). The previous screening of policies rightly notes that the scientific evidence on this question is rather anecdotal, case-specific and ultimately not conclusive.²⁰ Yet, to put this into perspective, proving a chilling effect in a conclusive manner would also be methodologically very difficult –

¹⁹ EU Commission, Text proposal on Regulatory Cooperation, tabled for discussion with the US in the negotiating round of 2 – 6 February 2015 and made public on 10 February 2015, http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153120.pdf

²⁰ See Wunder et al (2013): “Governance screening of global land use”, discussion paper produced within the research project “GLOBALANDS – Global Land Use and Sustainability”, authors: Wunder, Stephanie; Hermann, Andreas; Heyen, Dirk Arne; Kaphengst, Timo, Smith, Lucy, von der Weppen, Johanna, Wolff, Franziska; Berlin, Ecologic Institute and ÖkoInstitute, October 2013, p. 108, 112.

the outcome of political processes normally tends to be influenced by different factors.

In principle, all the cross-cutting instruments for regulatory cooperation that the EU envisions to include in TTIP – SPS and TBT chapters, rules on investment protection (in particular ISDS) and regulatory cooperation – could have such a chilling or weakening effect on regulation aimed at fostering sustainable land-use.

Generally, none of the planned chapters would abolish the normal EU or national decision-making procedures (i.e. that the Commission tables legislative proposals on the EU side and the Council and the European Parliament are then normally involved in taking a decision on proposed legislative acts); moreover, the right to regulate of both parties and maintain the levels of protection they wish is stressed in all of the drafts.

Yet some of the provisions contained notably in the chapter on regulatory cooperation could slow down regulatory processes as the respective other side needs to be given an opportunity to comment. Moreover, giving trade partners an enhanced role in the respective regulatory processes may lead to a situation where economic and trade concerns, including those of foreign companies, are given greater weight in the political discourse and bargaining; this might lead to a situation where environmental and other non-trade concerns have less chance of being taken seriously in the EU or US policy processes – the political playing field might become (more) loop-sided in favour of economic and trade interest and at the expense of sustainability interests.²¹

3. Summary assessment

The overall impact of the planned comprehensive trade and investment agreement between the EU and US on sustainable land-use cannot be meaningfully assessed currently. The agreement has not been finalised yet; even on the basis of a ratified agreement, predictions would be riddled with uncertainties.

Only few of the specific policy areas included in the TTIP negotiations are of direct relevance for land-use.

²¹ See also Gerstetter, Christiane, Lena Donat, Katharina Klaas, and Katherine Weingartner. *Regulatory Cooperation under TTIP - a Risk for Democracy and National Regulation?*. Berlin: Ecologic Institut/Heinrich Böll Stiftung, 2014. https://www.boell.de/sites/default/files/ttip_study_regulatory_cooperation_under_ttip_1.pdf.

Concerning the two most important cross-cutting mechanisms under negotiation – provisions on investor-state dispute settlement and regulatory cooperation – entail risks rather for future land-use related regulation than existing regulation. Generally, scientific evidence on the extent to which international trade and investment agreements lead to a “race to the bottom” in e.g. environmental and health standards in the countries that are parties to such an agreement and/or deter or delay such regulation (“regulatory chill”), is rather anecdotal, case-specific and ultimately not conclusive. Yet some of the mechanisms that according to the EU’s textual proposal are to be included in TTIP could slow down regulatory processes or may tilt the political playing field in favour of economic and trade interests at the expense of sustainability interests.