

‘Regulatory cooperation’: big business’ wishes come true in TTIP and CETA

The European Union is negotiating a number of free trade agreements that are highly controversial, both for the enhanced powers they would give to corporations, and the secrecy with which they have been negotiated. As a result, treaties such as the EU-US trade deal TTIP, and the Canada-EU trade deal CETA, have provoked furious public debate in Europe.

Corporate lobbies have had an influential role in shaping both CETA and TTIP: in Europe the Commission has worked hand in hand with big business to co-author these deals. It is no surprise, then, that these trade deals give excessive power to corporations. Particularly controversial are the way the trade treaties offer the right for corporations to sue governments over public interest laws. Less well known, however, is the way ‘regulatory cooperation’ in these trade deals means standards and regulations can, to a large extent, be set behind closed doors by big business and trade experts. Codified into these deals is the prioritisation of corporate profit above legitimate public interests such as health, climate justice, labour rights, and food safety.

The business groups behind corporate driven regulatory cooperation

The **Canada Europe Roundtable for Business** (CERT) lobbies by contributing recommendations on trade and investment to government officials and hosting thematic, high-level meetings between company executives and government officials. Its lead members include chemicals company (BASF), big pharma (Astra Zeneca), mining companies (Glencore, RioTinto and Vale), and financial companies (Toronto Stock Exchange).

BusinessEurope is one of Brussels' most influential big business lobby groups, working on behalf of 40 national business federations. Its partner companies include British American Tobacco, BMW, BP, ExxonMobil, Google, Microsoft, Pfizer, Philip Morris, Shell, and Total. In 2015 BusinessEurope spent over €4 million on EU lobbying, with 30 full-time lobbyists. When it comes to trade policies, BusinessEurope is a very special partner of the European Commission.

The **US Chamber of Commerce** represents the interests of US businesses and industry associations. Its board of directors includes the likes of Ford, Pfizer, ConocoPhillips, Bayer, and Dow Chemicals.

The **European Chemical Industry Council** (CEFIC) members include petrochemical giants such as BASF, Bayer, BP, Chevron Phillips, Dow Chemicals, ExxonMobil, Honeywell and Shell. CEFIC appears to be the top lobby spender in Brussels, spending over €10 million to lobby the EU in 2015 and employing 150 people.

1 Regulatory cooperation in European trade agreements

CETA and TTIP have been criticised by civil society groups for giving extended powers to corporations. Two chapters in those trade deals are especially controversial: the investment and regulatory cooperation chapters.

The investment chapters of TTIP and CETA include the right for corporations to sue states in parallel justice systems complete with their own courts. This includes the right to demand financial compensations if a new law could potentially hamper their profits. In contrast very little if no consideration is given for states' right to regulate in the public interest.

The regulatory chapters of TTIP and CETA aim to align standards across the countries by altering the way laws are made in the EU, the US, and Canada. Regulatory cooperation is worrying for public interest legislation for two reasons. First, standards will, to a large extent, be set behind closed doors by a limited group of actors: big business and trade experts. The way trade deals such as TTIP and CETA are negotiated is a perfect illustration of the way regulatory cooperation will work. And second, unelected officials are ready to further sacrifice our democratic rules, and reduce our social and environmental protections, such as healthy working conditions and product safety, on the altar of trade.

Business groups see a big opportunity in these trade deals: working with trade officials from both sides of the negotiating table to 'harmonise' standards to the lowest common denominator.

2 Regulatory cooperation: the gift for big business that keeps on giving

What big business lobbies say about regulatory cooperation

The US Chamber of Commerce described regulatory cooperation in TTIP as “the gift that keep on giving”.¹

BusinessEurope and the US Chamber of Commerce described regulatory cooperation as an instrument which could help them to “co-write regulations”.²

2.1 International trade concerns prevail

One of the commonalities of the regulatory cooperation chapters of CETA and TTIP is that they integrate one of big business’ main demands: the early involvement of trade administrations from Canada and the USA in domestic law-making.

This means that the European Commission’s department of trade will have to inform trading partners of upcoming laws, on any topic, as long as it could impact trade. Trade experts from those administrations will have an early eye and a substantial influence on upcoming European legislation – but solely and only for the purpose of increasing trade. Not with an eye on public health, nor climate change, nor any other public interest goal.

Trade negotiators have incorporated the demands of big business, with little changes, into CETA and TTIP’s regulatory cooperation chapters – as we can see from the similarity between the lobbyists’ demands and the final texts:

Business Community	European Union trade policies
CETA (final text)	
EU and Canadian authorities inform each other at an early stage when formulating legislation or regulatory decisions. ³ <i>Canada Europe Round Table – March 2009</i>	Exchanging information about contemplated regulatory actions, measures or amendments under consideration, at the earliest stage possible <i>Article 21.4, (f)</i>
TTIP (EU position)	
An important element of this process relates to the right of each side to be consulted early in the domestic regulatory process. ⁴ <i>BusinessEurope - 12th November 2012</i>	The Parties shall provide each other opportunities for cooperation and information exchange, at the earliest possible stage to allow for the responsible regulatory authorities of both Parties to discuss regulatory objectives and options and any other related issue <i>EU position, Regulatory cooperation, Article 4, Point 1&2</i>

2.2 Businesses amending laws before the European Parliament

Another similarity between the regulatory cooperation chapters of CETA and TTIP is that they give big business the right to be involved in law-making at an early stage.

Thanks to regulatory cooperation, the European Commission will provide an opportunity for big business representatives to comment on upcoming legislation, even before the European Parliament has a chance to. Big business representatives will thus gain a substantial lobbying advantage over upcoming laws, as well as increased influence over European legislation. The value of growing trade is paramount in this system, not protecting social safety nets, or public health, or environmental protections, nor any other public interest goal.

Trade negotiators included the demands of big business, which were incorporated with few changes into the regulatory cooperation chapters of CETA and TTIP:

Business Community	European Union trade policies
CETA (final text)	
<p>A process that provides for advance comment on potential impacts on trade⁵ <i>Canada Europe Round Table & Business Europe – November 2010</i></p>	<p>Providing, upon request by the other Party, a copy of the proposed regulation, subject to applicable privacy law, and allow sufficient time for interested parties to provide comments in writing <i>Article 21.4, (e)</i></p>
TTIP (EU position)	
<p>Provisions should establish procedures in both the EU and US to ensure stakeholders: (1) receive advance notice of proposals being considered by regulators and regulatory agencies; (2) are able to provide timely comments on draft rules and impact assessments, including full text⁶ <i>US Chamber of Commerce and Business Europe - 2014</i></p>	<p>When preparing regulatory acts, each Party shall,....: a) offer a reasonable opportunity for any natural or legal person, on a non-discriminatory basis, to provide input; b) publish either draft regulatory acts or consultation documents that provide sufficient details about a possible new regulatory act to allow natural or legal persons and the other Party to assess whether and how their interests might be significantly affected; c) consider the contributions received. <i>EU position, Good Regulatory Practices, Article 6, Point 1</i></p>

2.3 Harmonisation: low-cost global standards

Harmonisation is a process whereby laws or standards in different countries are made more similar to each other or even identical.⁷

While this may sound harmless enough, in reality, via the regulatory cooperation chapters of CETA and TTIP, big business will have great influence over new and existing laws – not to mention trade experts from foreign administrations. If big business and trade experts harmonise legislation, it is highly likely that the law most beneficial to corporations will prevail – what’s known as the ‘lowest common denominator’ – to the detriment of regulations whose objectives could be costly to big business but beneficial to society. This means, for example, that the weakest food safety law could become the standard for all, or the most lax financial regulations.

This is why harmonisation risks lowering our standards to the lowest common denominator. Again, harmonisation was a demand of big business that European trade negotiators included with little changes into the regulatory cooperation chapters of CETA and TTIP:

Business Community	European Union trade positions
CETA (final text)	
<p>We need greater harmonization of standards and regulations around the world and the appropriate mechanism to reduce regulatory divergence need to be put in place⁸ <i>CEFC – February 2016</i></p>	<p>Examining opportunities to minimise unnecessary divergences in regulations through means such as: (ii) achieving a harmonised, equivalent or compatible solution <i>Article 21.4 (g)</i></p>
TTIP (EU position)	
<p>There should be a clear goal of having counterpart EU and US regulators, in coordination with stakeholders and affected industries, determine where their regulatory regimes have common values and compatible regulatory objectives. Where these commonalities exist, they should be leveraged to focus on more efficient, coordinated processes so that a product or service sold in one market can be made available for purchase in the other.⁹ <i>US Chamber of Commerce and Business Europe - 2014</i></p>	<p>Cooperation activities ... should promote regulatory compatibility through different means and approaches, inter alia: b) Mutual recognition of equivalence or harmonization of regulatory measures in whole or in part. <i>EU position, Regulatory cooperation, Article x5, Point 1</i></p>

Secret trade deal with Japan

The European Union is currently also negotiating a trade agreement with Japan, the Japan-European Free Trade Agreement (JEFTA). Next to nothing is known to the public, not even the mandate given to the European negotiators.

As they did with CETA and TTIP, corporate groups such as BusinessEurope have also demanded wide-ranging and far-reaching regulatory cooperation clauses in JEFTA. Business Europe, for instance, lobbies for the harmonisation of standards and regulations in JEFTA, a strong voice for businesses in regulatory cooperation, and for early cooperation between the Japanese and European administrations over upcoming laws that could affect profit.¹⁰

Business driving away our protections

Behind these demands by big businesses to have trade deals written by and for them, lies the harsh ideology of European trade negotiators: what is good for business is good for society. The EU's trade negotiators appear to be willing to take this highly contentious and ideological position at any cost to society as a whole, and without exceptions.

In the case of CETA and TTIP, the winners would be few – big business – and the harm would be to many: workers, users of public services, or anyone wishing to live in a safe and non-toxic environment.

When big business and European trade negotiators are in the driving seat of trade negotiations, there is no speed limit and no police to remind the drivers that profits should not always come above people and the planet.

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- 1 Document released to CEO: EU Delegation to the US, Report of the visit of Ditte Juul-Joergensen, Director DG Trade F, to Washington, 16-18 January 2013, <http://corporateeurope.org/sites/default/files/the-gift-that-keeps-on-giving.pdf>
 - 2 <https://corporateeurope.org/sites/default/files/commission-assess-ment-bechamber-paper.pdf>
 - 3 <http://canada-europe.org/en/pdf/CERT%20policy%20priorities%20for%20a%20Canada-EU%20trade%20and%20investment%20agreement,%20March%202009%20FINAL.pdf>
 - 4 <https://corporateeurope.org/sites/default/files/commission-assess-ment-bechamber-paper.pdf>
 - 5 <http://canada-europe.org/en/pdf/CCC%20BUSINESSEUROPE%20CERT%20joint%20letter%20-%20November%202010.pdf>
 - 6 <https://www.businesseurope.eu/sites/buseur/files/media/imported/2014-00496-E.pdf>
 - 7 <http://ecologic.eu/sites/files/publication/2016/2586-regulatorische-kooperation-greenpeace-ceta.pdf>
 - 8 <http://www.cefic.org/Documents/RESOURCES/Cefic-Response-Cefic-Letter-to-CeficViews-on-Trade-for-All.pdf>
 - 9 <https://www.businesseurope.eu/sites/buseur/files/media/imported/2014-00496-E.pdf>
 - 10 https://www.businesseurope.eu/sites/buseur/files/media/position_papers/rex/2016-12-13_be-keidanren_statement_on_eu-jap_regulatory_cooperation.pdf