BETTER REGULATION

TTIP under the Radar?

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250,000 demonstrate against TTIP and CETA in Berlin (Photo: © Jan Zappner/Greenpeace)

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Berlin, January 2016

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'Regulation, like taxation, is a price worth paying for living in a civilised society' [1]

Author: Pieter de Pous, EEB policy director, member of the EU's TTIP Advisory Group, assistant to High level group on administrative burden reduction member Nina Renshaw till 2014.

1 Freely after US Supreme Court Judge Oliver Wendell Holmes Junior.

Content

250,000 demonstrate against TTIP and CETA in Berlin (Photo: © Paul Langrock/Greenpeace)

Executive summary

The negotiations the EU are having with the US over a Transatlantic Trade and Investment Partnership (TTIP) would, if concluded as currently desired by the Juncker Commission, lead to new governance structures and procedures with a central objective of eliminating trade and investment barriers. These barriers by definition include EU and US environmental, consumer and social protection rules. This would create new opportunities for regulated industries to write their own rules through highly technical processes dominated by stakeholder consultations and trade impact assessments. The overriding objective to eliminate barriers to trade would effectively erode the EU's existing right to adopt new legislative measures that would provide a higher level of protection than in the US.

In parallel to TTIP and much less well known, the Juncker Commission has adopted a new 'Better Regulation' (BR) package and, under pressure especially from the current UK and, to a lesser extent, NL governments and vested interests, taken the BR agenda further than any other Commission has done before.

This BR agenda started off in the EU in the early 2000s with modest and reasonable goals, namely to identify unnecessary administrative burdens and remove those which were not necessary to achieve certain policy goals.

Over the years however the scope and ambition of this agenda has evolved slowly but surely to the point that an exercise that was originally about 'cutting red tape' has started to unravel the legislative safety net protecting people and the environment. This process is taking place both in the US and the EU and is following a very similar pattern, with the US so far being ahead of the EU. A defining moment in this process was the move away from identifying and removing unnecessary administrative costs to business to reducing overall costs of regulation to business. This move took place under the previous Commission under pressure from the so called 'Stoiber Group', a high level expert group dominated by industry that advised the Barroso Commission.

Under the latest BR plans from the Juncker Commission, parts of which were negotiated between the Commission, the European Parliament and Council, a revamped central expert body called the 'Regulatory Scrutiny Board' has now been given extended powers to quality check almost every initiative the Commission may take.

New guidelines for impact assessments are put in place and enforced that require in practice a

strong focus on monetising the costs and benefits of legislative measures and a requirement to minimise regulatory costs to industry. Stakeholder consultation procedures are extended without addressing the existing information asymmetry between regulated industries and public interest groups, which works in favour of the regulated industry.

The pressure and uncertainty over Brexit and the UK's central role in this BR agenda means that there is a real risk that renegotiations with the UK in the coming months, aimed at keeping the UK in the EU, would lead to even more far-reaching measures being adopted at EU level. For example the 'one in, one/two out' principle, a measure that requires that for every new law that leads to 1 Euro in additional regulatory costs, a reduction of 2 Euro through the elimination of another law should be provided.

Despite these developments, the Commission has so far always maintained that its Better Regulation agenda does not question the goals of EU policies as such and these should still be achieved.

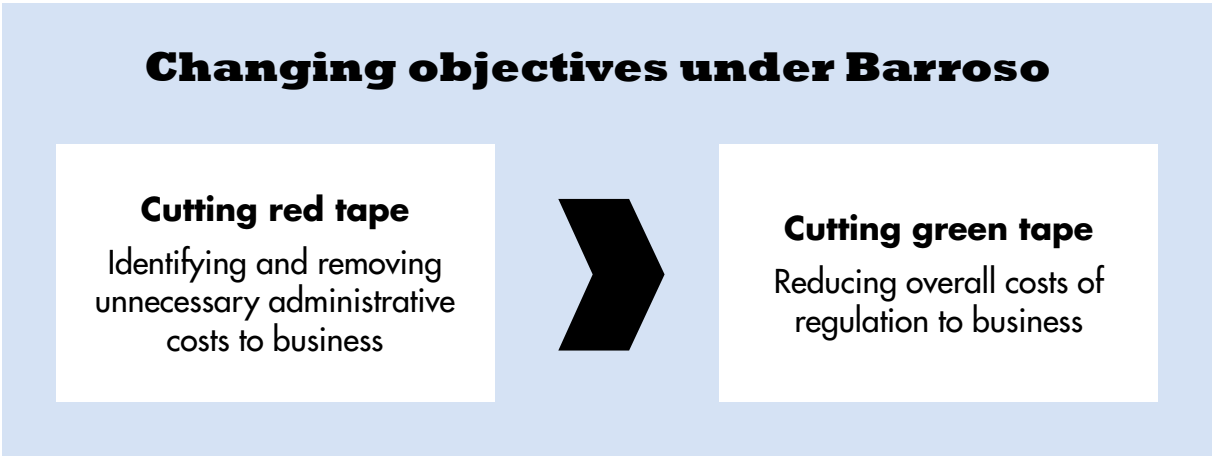
There are however a number of reasons why this BR agenda needs a thorough rethink. First, the evidence for its underpinning premise that rolling back environmental protection promotes jobs, growth and competitiveness is non-existent. What the evidence does tell us is that a continued focus on cutting 'green tape' will only actually deliver a subsidising of inefficient uncompetitive businesses at a staggering cost that will then be borne by taxpayers or through loss in health, human lives and degraded ecosystems. For an agenda, which has 'evidence based' and 'achieving competitiveness' as defining slogans, this is a problem that cannot be ignored.

Secondly, negotiations over parts of the Juncker's BR package, called Inter Institutional Agreement on Better Lawmaking resulted in significant changes to the original proposal, which should help the European Parliament cut to become more serious in its role of providing more effective democratic oversight over this powerful Commission they helped put in place. It has already prompted the European Parliament, which has so far supported most of the Commission's Better Regulation agenda, to draw a line between Better Regulation and Better Lawmaking. And to make it clear that the Better Regulation tool box does not apply to EU lawmakers.

Thirdly, the incoherence within the Better Regulation agenda between its goals of addressing the wish of regulated industries to reduce their costs and that of public interest groups to see policy goals being achieved is developing into a credibility problem for the EU. Everyone knows that there are tradeoffs between these two objectives. Yet instead of making these tradeoffs more transparent and understandable to citizens, the EU muddies the debate by pretending it is possible to have one's cake and eat it as long as we follow the Better Regulation tool box.

Another related problem is that most people don't get excited by a technocratic debate about 'good' and 'bad' laws that can only be understood by a small group of experts and a centralised process to deliver results that a small group of senior Commission officials and think tanks believe will make the EU popular again. If this Commission is actually interested in bringing the EU closer to its citizens, it will need to think of something very different.

With TTIP continuing to be in the focus of public attention and UK demands for EU reform becoming increasingly specific and a focus of public debate, the opportunity to develop a better solution to Europe's problem than an out of control BR agenda is one that should not be missed.



Under Barroso the 'Better Regulation' agenda changed substantially. (Figure: Marlene Haller/Greenpeace)

Regulated industries writing their own rules (Photo: © Gajus/fotolia.com)

Introduction

Since the start of the negotiations on a possible Transatlantic Trade and Investment Partnership in Washington on July 8 2013, generally referred to as TTIP in the EU and TAFTA in the US, it has quickly evolved into a politically highly controversial subject. Initial public debate focused on the possible inclusion of an Investor State Dispute Settlement clause, which for the first time would cover all US Foreign Direct Investment into the EU. More recently, the public debate has broadened to examine proposals for so-called 'regulatory cooperation,' including plans for new governance systems from the EU and proposals for the adoption of 'good regulatory practices' from the US. The attention around TTIP has also brought a lesser known but very similar deal between the EU and Canada into the spotlight, usually referred to as CETA. This is in a much more advanced stage with negotiations already concluded and a vote by the European Parliament and Member States expected in 2016.

Despite the controversy over the Investor State Dispute Settlement (ISDS) or private arbitration for investors, it is the proposal for regulatory cooperation and the size of the two markets involved that distinguish TTIP from most other trade agreements the EU has negotiated so far and from the World Trade Organization (WTO), where the focus is on tariffs and regulatory cooperation is either voluntary – like in CETA –, weak – like in the Free Trade Agreements with Korea and Singapore[2] – or absent.

In the midst of these negotiations a new European Commission led by President Juncker has come into power after the election of a new European Parliament in 2014. In its first month in office it has, apart from slight improvements in providing more access to more EU documents, broadly continued the previous Commission's approach to TTIP by brushing aside the growing criticism as primarily a PR problem. And in the hope of addressing the controversy over ISDS they have replaced it with a new arbitration system with a new name, the Investment Court System or ICS.

In parallel to these negotiations, the Juncker Commission launched a new initiative called 'Better Regulation'. This is in fact an older agenda, which sounds both technocratic and positive but in reality has developed into something that has started to put existing laws under pressure and makes it harder to develop new laws in the public interest. Juncker's initiative is now taking this agenda significantly further than any Commission before and changing the EU's governance system through new bodies and initiatives very similar to those being negotiated under TTIP.

The purpose of this paper is to provide an analysis of the proposals for regulatory cooperation as they are currently being negotiated, the 'Better Regulation' proposals the EU is pursuing unilaterally, how these compare to US regulatory reform efforts and the implications this has for the EU's political space to develop new regulatory initiatives to address well know challenges in the area of environment and development.

2 EU-Korea: trade.ec.europa.eu/doclib/html/148303.htm and EU-Singapore: http://trade.ec.europa.eu/doclib/html/151767.htm.

Under TTIP or CETA EU Member States could lose the right to go beyond minimum standards agreed under an EU rule.

Main elements of regulatory cooperation under TTIP and CETA

The purpose of regulatory cooperation in the context of trade negotiations is to eliminate so called non-tariffs barriers (NTBs) or non-tariffs measures (NTMs), which are often referred to as 'trade irritants' and 'behind the border barriers' by trade specialists. To everyone else, they are the laws and other regulatory acts that get adopted by governments and central national authorities in order to solve a societal problem. Such 'trade irritants' can be both quite literally about the size of knots and bolts or the colours of blinkers on cars (which are usually standardised to support the functioning of a single market) but also laws to protect citizens from, for example, harmful chemicals, predatory lending practices or the impacts of climate change. In most trade negotiations regulatory cooperation has never made it beyond the stage of voluntary or weak mechanisms and the argument of trade barriers is usually invoked by internationally operating industry groups when a country is putting in place policies that are more ambitious than its trading partner.

Most of the economic benefits that it is argued TTIP will bring, would need to be delivered through the elimination of such 'barriers' through new mechanisms for regulatory cooperation. But also a lot of the potential negative impacts of TTIP would come from such a mechanism given the fact that the EU and the US often have very different systems and approaches resulting in different levels of protection.

The question how TTIP would deliver all the acclaimed benefits without any of the negative impacts is one that no proponent of TTIP has ever been able to provide any other answer to than basically 'trust the people who will be doing this'. At the same time, often contradictory claims are made about what TTIP should do or be, including whether or not it should lead to the creation of a transatlantic internal market with common rules or not. That said, a number of things can be expected with reasonable certainty to end up in a likely final deal, in particular on the basis of the draft final text of CETA and the EU textual proposal on "Regula-

tory Cooperation" in TTIP as it was published in early 2015[3]. And a significant amount of analysis of these proposals has already been carried out[4]. This part of the paper will therefore be limited to a brief analysis of the main elements.

First, regulatory cooperation would be organised through a horizontal chapter and sector specific chapters on, for example, the automotive or chemical industries. Also the chapters on Sanitary and Phytosanitary Measures (SPS)[5] and Technical Barriers to Trade (TBT)[6], which would build on already existing multilateral agreements under the WTO, are relevant to this as they deal with, for example, food safety and private technical standards.

Under both CETA and TTIP there would be a horizontal chapter that foresees the creation of a new institutional mechanism to promote regulatory compatibility. This mechanism would take the form of a Regulatory Cooperation Body that would report to a Joint Ministerial Body in the case of TTIP and a Joint Committee and Regulatory Cooperation Forum under CETA. These bodies would consist of regulators from both parties. It is, however not foreseen that EU co-regulators like the EP would also be represented there. The main tools to be used under TTIP and CETA would be mutual recognition based on evidence of equivalent outcomes and harmonisation. Under TTIP, the 'simplification' of regulatory acts is added as a further tool. The trigger to achieve regulatory compatibility would be a follow up to sectoral commitments under one of TTIP's sectoral chapters, an initiative by the regulators of both sides or a substantiated request by stakeholders. This last option, in particular, creates significant opportunities for well resourced and well organised industry groups to bring forward proposals that will serve their interest.

The Joint Committee under CETA would be able to take legally binding decisions that would change for example the annexes of the treaty and would thereby make it a 'living agreement'. This would change the treaty significantly from that approved by the European Parliament and Member States. The obligation under CETA and TTIP to make a genuine effort to regulatory cooperation, and the procedural requirements this entails, such as developing a joint work programme and the listing of possible new regulations, is already likely to cause delays compared to a unilateral process as scarce resources within administrations would have to be re-allocated to deliver this. And although much has been said by negotiators that the EU's high standards of protection are not under threat, this fails to convince given that the primary objective of regulatory cooperation is the elimination of trade barriers, not the achievement of public interest goals, such as protecting people from harmful chemicals, which the regulations that are considered a trade barrier are meant to achieve.

An important difference between the EU single market, which was also created to reduce barriers to internal EU trade, and TTIP is that under the EU Treaty member states have maintained the right to go beyond the minimum standard agreed under an EU rule within specific areas like the environment, social issues and public health, provided that it is 'compatible with the treaties' – a right, which incidentally has been attacked under the EU's 'Better Regulation' agenda with the controversial labelling of 'goldplating'. In addition to founding the internal market the EU has also developed a body of law that seeks to protect the environment, consumers and workers. Under TTIP or CETA there is however no such provision foreseen, which effectively means that any minimum standard agreed between the EU and the US or Canada would automatically also be the maximum standard.

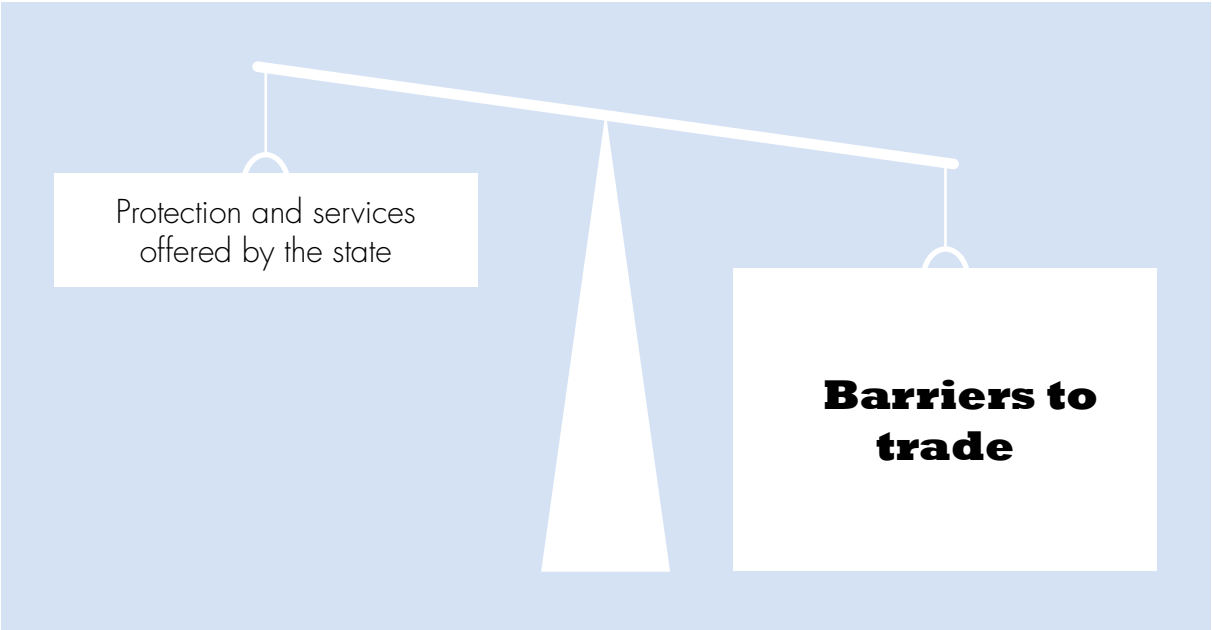
The US proposal for regulatory cooperation under TTIP is effectively requiring the EU to adopt the US's so called 'notice and comment' system. It is hard to find more details about this since the proposal has not been made public, but the system, as it works in the US, will be reviewed later in this paper.

Although there are many similarities between what has been agreed under CETA and what is being negotiated under TTIP, there are also likely to be some significant differences. Most importantly the difference in market size between Canada (30 million consumers) and the US (300 million consumers) means that the stakes, and therefore the political pressure, in RC leading to results under TTIP are a lot higher then under CETA. That

3 See http://trade.ec.europa.eu/doclib/html/153403.htm.
4 See for example legal analysis by Georg August University Goettingen on behalf of Austrian Chamber of Labour in German: http://akeuropa.eu/_includes/mods/akeu/docs/main_report_de_372.pdf English short version: http://media.arbeiterkammer.at/wien/PDF/studien/The_regulatory_cooperation_ttip_ceta.pdf.
5 See http://trade.ec.europa.eu/doclib/html/153026.htm.
6 See http://trade.ec.europa.eu/doclib/html/153025.htm.

means, that even under a more voluntary system of cooperation, trade specialists from the EU and US would suddenly play a central role in the development of new standards or the harmonisation of existing ones. And elected members of the European Parliament and national ministers, when negotiating on the Commission's proposal for a new law, would be consistently told that any serious amendment of the Commission's proposal would constitute an unacceptable barrier to trade. Political decision making on fundamental questions, such as what kind of a society citizens would like to live in, who pays for it, the benefits provided by services and the protection offered by the state, that is, the premise of democratic institutions, would be overshadowed by the singular aspect of whether or not a measure would create barriers to trade.

What is less known however is, that beyond the current focus on TTIP, in the EU, unilateral initiatives have taken place and are still happening under the 'Better Regulation' agenda that could have a very similar effect on the EU's ability to achieve its policy goals through effective new laws. Before looking into these initiatives we will first review the EU and US regulatory systems and how they have evolved through earlier initiatives for regulatory reform.



The 'barrier to trade' argument often outweighs benefits for the broader society, when power is awarded to trade specialists. (Figure: Marlene Haller, Greenpeace)

Industry groups making proposals under Regulatory Cooperation Body (Photo: © Eisenhans/fotolia.com)

US and EU approaches to regulatory reform

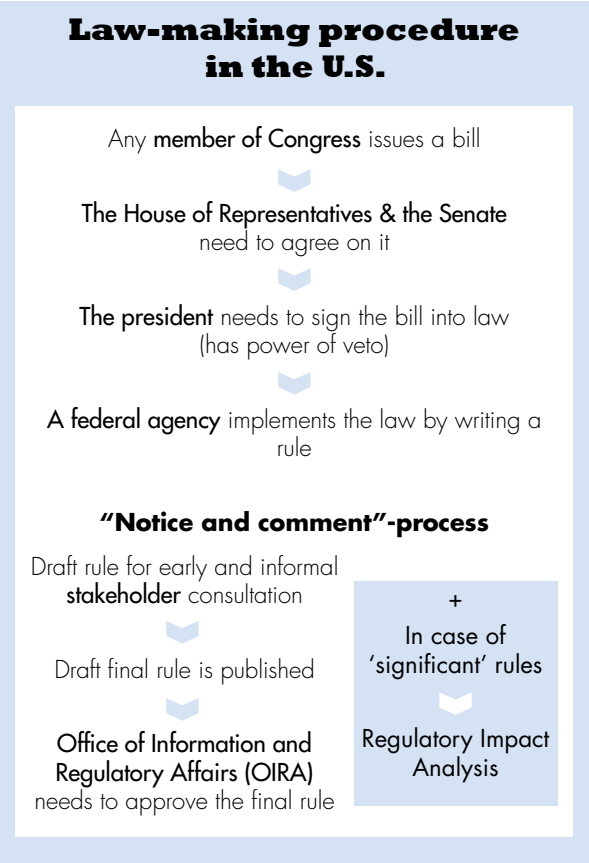
Introduction

Regulation is one of two principal binding instruments by which a government can achieve its policy goals and redistribute resources; the other being taxation and spending or investing through subsidies and procurement. Market-based instruments, which are often presented as an alternative to regulation, are actually a mix between a regulatory and a fiscal instrument. In the case of the EU, that has no ability to tax directly or intervene in national fiscal policies, unless with unanimous support of all its members, regulation is the only instrument it has in addition to spending what its member states are willing to contribute to the EU's budget by which it can achieve its policy objectives. A defining characteristic of a democratic state or an entity like the EU, is that such decisions are taken by a majority of elected representatives who need to regularly answer to their electorate during an election and take part in open public debate with representatives of different stakeholders.

Similarities between the EU and the US exist particularly at the level of basic democratic principles and values, but there are major differences regarding how well these principles are put into practice, leaving aside the differences that emanate from the fact that the US is a federal state and the EU a hybrid system and therefore the division and control of power are organised differently.

US System in a nutshell: bills, laws and rules

In the United States any member of Congress (which consists of the House of Representatives and the Senate) is able to initiate new federal legislation by introducing a bill. Such a bill does not need to undergo an impact assessment and both stakeholder consultation and scientific input are optional. For the bill to become law, both the House of Representatives and Senate need to agree on it and, if the process is successful, the US President needs to sign the bill into law. The President has a number of ways to shape the lawmaking process: by recommending legislation; recommending budgets for agencies; and, perhaps most importantly, by virtue of his power of veto. When a bill is finally signed into law, a federal agency is then given the authority to implement the law by writing a rule. It is at this stage that strict requirements have been put in place for this process and the so-called 'notice and comment process' starts. Under this process



The early involvement of stakeholders in the law making process allows regulated industries to influence the rules to their advantage. (Figure: Marlene Haller/Greenpeace)

a draft rule is published for early and informal stakeholder consultation and accompanied, in case of 'significant rules', by a draft Regulatory Impact Analysis.

Following the period of consultation, a draft final rule is published, which needs to reflect the comments submitted or explain why this has not been done, including an explanation for adopting the rule as opposed to not having a rule. At the end of all this, a special White House department called the Office of Information and Regulatory Affairs (OIRA) needs to approve the final rule before it can be published. Although this may seem like a more democratic process at first sight, especially compared to the EU, where the right of initiative is strictly limited to the only non-elected EU body, the European Commission, this is not necessarily the case in practice. At the moment over 7000 bills are pending in Congress of which only 5% are expected to ever become law. And even then there is still a long way to go before the implementing rule is adopted as originally asked for by the legislator. And the early involvement of stakeholders in the drafting of the rule, which requires in-depth technical expertise and knowledge that is usually held and jealously guarded by the regulated industry, means that the system effectively allows such regulated industries to write the rules to their advantage.

Regulatory Reform in the US

From the 1950s until the early 1970s it was the US that was more advanced, compared to the EU, in developing, for example, federal level environmental policies, which at the time were groundbreaking. This was both a response to rapidly growing levels of pollution coming from booming industries, as well as a general recognition of the inadequacy of the system in place until then, where individuals were seeking redress for environmental grievances under the common law. This led to the creation of several federal programmes, originally set up as monitoring programmes, which in 1970 came together in the founding of the Environmental Protection Agency (EPA) and the subsequent adoption of flagship policies like the Clean Air Act, the Clean Water Act in 1972, the Toxic Substances Control Act in 1976 or the Endangered Species Act in 1973. Also front-runner states like California, which have considerable freedom to develop their own policies, played an important role in pushing forward such changes.

Federal level regulatory action was however always politically controversial in the US. One of the ways in which regulated industries pushed back, following the progressive wave in the 1970s, was through an agenda of 'regulatory reform', which sought to change the way in which federal regulations and rules were written and adopted.

This led to the adoption of the Paperwork Reduction Act in 1980 and the establishment of the OIRA, with the task of providing federal agencies with requirements on how they collect information for regulatory purposes. Following further acts and executive orders it currently functions on the basis of Executive Order 12866[7] "Regulatory Planning and Review," issued by President Clinton in 1993 and is the main agency to implement the US's programme of reducing regulatory burden with the

7 Available at: http://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf.

power to significantly amend or seriously delay draft rules.

According to a 2011 paper from the Centre for Progressive Reform the sphere in which OIRA's involvement has been most pronounced is environmental rules. For example, at OIRA's prodding, the EPA removed manganese from a list of hazardous wastes and exempted certain types of engines, including motorcycles and snowmobiles, from a rule limiting emissions.

In 2008, an OIRA review by the Bush administration deleted a provision intended to protect plant life from the effects of ozone, a key component of smog. The EPA had proposed a sharp reduction in the permissible levels of ozone to protect forests and vegetation, which naturally remove carbon from the atmosphere. According to an investigation by the House Committee on Oversight and Government Reform, the White House summarily overturned the unanimous recommendation of the EPA's Clean Air Scientific Advisory Committee and an array of expert testimonies[8].

In 2013 the Administrative Conference, an independent federal agency that reviews government administrative processes, released a study of the OIRA's effect on the application and interpretation of science the agencies gather and analyse to write rules. In examining a group of air-quality regulations, the study found that most of the OIRA's suggestions involved substantive changes. The report concluded that in some instances, the office has proposed changes to the basic science underlying the rules. These included revising numbers in tables created by the EPA, altering technical discussions and recommending different standards altogether[9].

A 2003 Government Accountability Office (GAO) study found that "regulated parties," typically corporations or their lobbyists, frequently get what they want after meetings with the OIRA. Sometimes, the language of the edited rule is similar to that proposed by the regulated parties themselves[10].

Beyond the OIRA, the Small Business Administration (SBA) Office of Advocacy, which describes itself as 'an independent voice for small business within the federal government, the watchdog for the Regulatory Flexibility Act (RFA)[11] and the source of small business statistics', plays an important role in the US anti-regulatory debate. For example, since 1995, it has commissioned a series of reports, each of which has attempted to calculate the total "burden" of federal regulations, and to demonstrate that small businesses in all economic sectors bear a disproportionate share of that burden. The latest of this is the 2010 'Crain and Crain' report on the impacts of regulatory costs on small firms which found that the "annual cost of federal regulations in the United States increased to more than $1.75 trillion in 2008." Following criticism by CPR, the Congressional Research Service, and others, the SBA now states that the report's figures should be seen as estimates, not verifiable facts, but this has not stopped the figure fuelling the anti-regulatory crusade in the US.

In addition to this institutional support for regulatory reform, the US significantly widened the application of Regulatory Impact Assessments in the 1980s and made simple cost benefit analysis the required approach and put a strong focus on costs to business and finding alternatives to regulation.

EU system in a nutshell: a normal procedure

Following the entry into force of the Lisbon Treaty most EU Directives and Regulations are adopted through the so called 'normal procedure'. A proposal for a Directive or a Regulation is made by the European Commission which has the exclusive right of initiative, then the European Parliament and the Council, representing Member States, amend and negotiate this proposal through up to three formal rounds or 'readings' until either a deal is reached or the proposal is withdrawn. Following the adoption of the Directive or Regulation, the Commission then sets about writing either a delegated act or implementing act that is necessary to implement the Directive's or Regulation's provisions[12]. In the EU there are strict requirements for Impact Assessments and

8 At: www.progressivereform.org/articles/OIRA_Meetings_1111.pdf.
9 At: www.acus.gov/sites/default/files/documents/Science%20in%20Regulation_Final%20Report_2_18_13_0.pdf.
10 At: www.gao.gov/new.items/d03929.pdf.
11 At: www.sba.gov/advocacy/regulatory-flexibility-act.
12 A potential source of confusion here is the fact that in the US context, 'regulations' are referred to as the implementing rules of primary legislation which are called 'acts' whereas in the EU context a regulation is one of two forms of primary legislation and delegated and implementing 'acts' are forms of secondary legislation.

stakeholder consultation in the preparation of proposals by the Commission, though much less so in the case of implementing and delegated acts where the Commission has significant flexibility to decide how much and how they engage with stakeholders.

Regulatory Reform in the EU

EU environmental policies were generally developed later than in the US with a stronger focus in the early years of the EU on common policies like the Commission Agriculture Policy (CAP), building the Single Market or reform of the coal and steel sectors. EU environmental policy also started off in the early 1970s with the adoption of a first environmental action programme, the creation of a dedicated department or directorate general for the environment and the subsequent first Directives which laid the foundations for EU environmental policy. It wasn't until the 1980s, 1990s and even right up to the first decade of the 21st century that flagship policies comparable to the US Endangered Species Acts, Clean Air and Clean Water Acts and Toxic Substances Control Act (TSCA) such as the Birds and Habitats Directive (1979 and 1992 respectively), the Water Framework Directive (2000) or REACH – the European Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (2004) were developed and adopted. But when they were, they were generally more ambitious, reflecting increased levels of understanding of the nature of environmental problems and how to solve them.

At the same time, however, that the EU was developing and adopting these flagship policies, the first regulatory reform initiatives took off as well, in the EU generally referred to as 'Better Regulation'. Analysis by scholars like Gilmore and Colin from the University of Edinburgh[13] has reconstructed the origins of this agenda and shown the role played by companies like British American Tobacco who, together with front groups like the think-tank European Policy Centre played a central role in influencing the debate on the Treaty of Amsterdam which amended the EU Treaty. This led to the inclusion of a legally binding Subsidiarity Protocol and ensured that the Commission should consult widely before proposing legislation and take duly into account the need for any burden to be minimised and proportionate to the objectives to be achieved. Although this may all seem fair and reasonable at first sight, it also means that the EU treaty now effectively requires costs and benefits to be assessed and created the basis for subsequent initiatives to develop this system further.

An important next step was the establishment of an integrated impact assessment system in 2002 which, contrary to demands from business, formally aims to take a balanced look at economic, environmental and social impacts, including the impacts of doing nothing. On the other hand, the more detailed impact assessment guidelines that the Commission's central services that report directly to the Commission President, Secretariat General impose on the different departments, combined with the way the system works in practice, puts a strong focus on transforming all impacts into monetary costs and benefits. Such a focus generally works against policies that deal with non-market goods like human health or the environment on which it is hard to put a meaningful monetary value. There are two other factors that tend to work against ambitious policies in such a system. First, is that short-term impacts on the regulated industries are usually easier to quantify and data often more readily available, even considering that such costs are systematically overestimated[14], as those industries are usually lining up to provide studies and reports. Second, the benefits of ambitious policies (and the costs of failing to introduce them) are widespread throughout society and concentrated with the front runners in industry, while the costs are left for the laggards of an industry. But the laggards within a sector tend to dominate the position of industry.

In 2003 an Inter Institutional Agreement on Better Law Making was agreed between the European Commission, European Parliament and Council that sought to improve the quality of law making through a series of new procedures and initiatives. It covers coordination on the work programme of the three institutions and commitments to early stakeholder consultation; puts a lot of emphasis on considering alternatives to regulation such as

13 Katherine E. Smith, Gary Fooks, Jeff Collin, Heide Weishaar, Sema Mandal, Anna B. Gilmore (2010): 'Working the system', British American Tobacco's Influence on the European Union Treaty and Its Implications for Policy: An Analysis of Internal Tobacco Industry Documents. PLOS. January 12, 2010. DOI: 10.1371/journal.pmed.1000202

14 IVM Report 'Ex-post estimates of costs to business of EU environmental legislation' commissioned by DG Environment European Commission.

Edmund Stoiber, on the left, holding the report "Cutting Red Tape in Europe: Legacy and outlook", and José Manuel Barroso. (Photo: © European Union, 2014/Source: EC – Audiovisual Service, Shimera/Photo: Etienne Ansotte)

self-regulation or co-regulation; and underlines the importance of impact assessments and implementation as well as the need to simplify and reduce the volume of legislation[15].

In 2008, the Commission then created the Impact Assessment Board (IAB) which consisted of a small number of senior ranking officials from different departments who were expected to act in an independent 'personal' capacity. Although this Board had no formal veto, any draft legislative and even non-legislative proposal would in practice need a positive opinion from this IAB before having a realistic chance of being adopted by the college of Commissioners.

Around the same time two expert groups on reducing administrative burdens were created. One was chaired by a former premier minister from the German state of Bavaria, Edmund Stoiber, and consisted of carefully selected stakeholders most of whom had a background in industry or national level regulatory reform initiatives with a small minority of environmental NGOs, trade union and consumer representatives. A second and lesser known group consisted of member state experts chaired by the Commission's most senior civil servant at the time, Catherine Day. Originally these groups and the Commission's Better Regulation initiative sought to limit the degree of unnecessary administrative burden on business, using the Standards Cost Model, something that most NGOs could also agree with at the time. Towards the end of its lifetime (2012–2014) however, the group's mandate was broadened by the European Commission to assess all regulatory costs including compliance costs. It therefore effectively became a calling point for anyone, and in particular for people who knew Mr Stoiber, to complain about EU-related issues. This shift of focus from unnecessary administrative burdens to all regulatory costs, including compliance costs, may seem trivial at first sight. But it was perhaps one of the most significant developments as this essentially transformed the 'Better Regulation' agenda from an effort that enjoyed a reasonably wide consensus among most stakeholders in pursuit of a legitimate goal to a highly controversial one. In effect, it transferred a debate about the costs and benefits of regulation from the political sphere, where it belongs, to that of expert groups and reduces it to a technocratic question of good or bad laws.

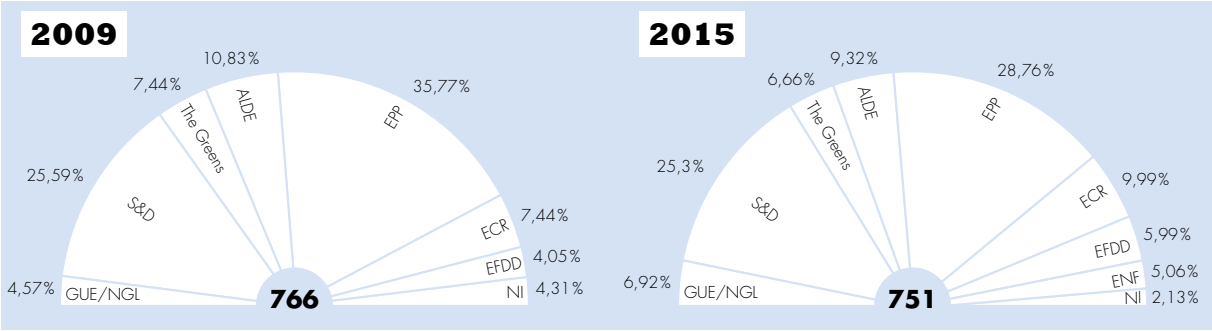
The final recommendations of the group were largely drafted by a prominent member of the group, Michael Gibbons, who chairs a UK regulatory reform outfit, mirroring closely the UK government's anti-red tape programme. Mr Stoiber presented those draft recommendations to the group with a simple take it or leave it attitude with no intention of holding a serious debate on its merits. Four members of the group representing environment, labour, consumer and health interests rejected a majority of those recommendations and issued a dissenting opinion[16].

Following a series of Communications referring sometimes to 'Smart Regulation' and sometimes to 'Better Regulation', the regulatory reform agenda was again given a more prominent role in EU decision making through the establishment of the so called Regulatory Fitness and Performance Programme or REFIT in 2012. Under this programme, the Commission notes that its target of reducing the administrative burden in the EU by 25 % has been met and extends the scope of its REFIT programme to cover all 'unnecessary regulatory costs', mirroring the change in the mandate to the Stoiber group. This is a very similar development to that in the US where the OIRA initially looked at information requirements only to then extend its scope to cover overall regulatory burdens.

The main tool under REFIT are so-called 'Fitness Checks' of existing policies, which seek to assess whether policies are still fit for purpose. This pro-

15 Text of agreement can be found here: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:321:0001:0005:EN:PDF.

16 At: ec.europa.eu/smart-regulation/refit/admin_burden/docs/annex_12_en_hlg_ab_dissenting_opinion.pdf.



The recent relative success of eurosceptic groups can be seen in the European Parliament and is being used by the European Commission to justify deregulation (Seats in the European Parliament by political groups; 2015 compared to 2009, increasing number of seats Europe of Freedom and Direct Democracy Group – EFDD and Europe of Nations and Freedom Group – ENF) (Figure: Marlene Haller/Greenpeace)

cess is followed up with a yearly score card by which the Commission reports directly to heads of government on progress made, without necessarily involving the ministers with competence of the issue in question.

In parallel to all this and as part of efforts to complete the internal market, the EU has, since the 1980s, started to increasingly rely on the use of private industry standards to support its policy objectives. Under the so called 'New Approach' legislation the EU provides private standard setting bodies like the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC) with a mandate to develop a standard which would then serve to achieve the objectives of such 'New Approach' legislation. Effective participation in such processes again requires a very high level of technical knowledge and expertise which creates a competitive advantage for regulated industries over public interest organisations. The last couple of years have also seen a growing tendency to even see private standards as providing an alternative to legislation. Not surprisingly perhaps, in the context of the TTIP negotiations, the US side therefore has a strong interest in including standardisation as part of the Technical Barriers to Trade chapter in a possible final deal.

Finally, and similarly to the US, the public debate in the EU on better regulation or cutting red tape is dominated by a high degree of fact-free misconceptions about the impacts of regulation and a firm belief that slashing regulation is good for the economy. The evidence base for the premise that rolling back environmental rules will boost growth and competitiveness is basically non-existent and all available evidence suggests that there it hardly has any impact at all[17].

More particular to the EU is the recent relative success of eurosceptic groups in national and European elections. They want to repatriate powers from the EU to the national level and this demand is being used by the current European Commission to justify rolling back or reviewing existing legal protections.

In conclusion, both the EU and the US regulatory systems have produced important pieces of environmental law that have gone a long way in addressing a certain number of well known environmental problems. At the same time both systems have already undergone significant changes in the last decades as a result of campaigns for regulatory reform. This means that already today under both systems impact assessments are required that tend to put a strong emphasis on costs to regulated industries. Both systems also use early stakeholder

17 See for example: Adam Jaffe, Steven Peterson, Paul Portney, and Robert Stavings (1995): "Environmental Regulation and the Competitiveness of U.S. Manufacturing, What Does the Evidence Tell Us?". Journal of Economic Competitiveness, vol. 33, issue 1, pages 132–163. Or: www.lse.ac.uk/GranthamInstitute/wpcontent/uploads/2014/11/Impacts_of_Environmental_Regulations.pdf. Or: www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP(2013)88&docLanguage=En.

18 http://www.gao.gov/products/GAO-13-696T.

19 see CHEM Trust briefing on TTIP and chemicals, section 3, http://www.chemtrust.org.uk/wp-content/uploads/Final-CHEM-Trust-TTIP-EAC-evidence-Jan15.pdf .

20 See http://www.who.int/ceh/risks/cehemerging2/en/.

21 See https://ustr.gov/sites/default/files/2014%20TBT%20Report.pdf, and here: http://www.theguardian.com/environment/2015/may/22/eu-dropped-pesticide-laws-due-to-us-pressure-over-ttip-documents-reveal.

Case study: chemicals

The US Toxic Substances Control Act (TSCA), adopted in 1976, provides the EPA with limited authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures. Under TSCA, roughly two-thirds of submissions for approval to manufacture new chemicals do not include test data on chemical properties, and almost 85% of submissions provide no data on health effects. The US chemical management system places the burden of proof on the regulators (and thus, on the public), rather than on the commercial interests seeking to bring a chemical to market. US regulators must prove that industrial chemicals pose an unreasonable risk, but regulators cannot require manufacturers to generate the health and safety data needed to demonstrate risk, unless an unreasonable risk is shown – a classic catch-22 situation. Hence, US regulators have only been able to restrict the use of five out of over 60,000 industrial chemicals that were presumed safe[18].

REACH, the European Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals, entered into force on 1 June 2007. It went significantly further then TSCA introducing new groundbreaking principles such as 'no data, no market', substitution, building on the precautionary principle and places the burden of proving the safety of chemicals on companies. Following the REACH "no data, no market" principle, a chemical is only allowed on the market once manufacturers and importers register the substance and prove it is safe by submitting specific information. Where a chemical is shown to be hazardous, REACH promotes the substitution of substances of very high concern (SVHCs) with safer alternatives. In contrast to TSCA, EU chemicals control regulation (including both REACH and other chemicals related laws) restricts over 1,000 chemical substances.

The adoption of REACH was one of the most fiercely fought lobby battles in EU history, with a key role played by different impact assessments. US industry, supported by the US government, was one of the strongest lobbies against REACH, arguing that it would create a trade barrier.

As a result major compromises had to be made on the original objective of REACH that was to improve the safety of chemicals. Nevertheless REACH has become the law of the land and, again despite significant efforts by industry to undermine its implementation, it is starting to deliver, improving the substitution of harmful chemicals, risk management and information for citizens and downstream users. And the EU system is now providing significantly higher levels of protection to its citizens than the US.

The US has raised concerns regarding REACH as a major trade irritant for exporting chemicals at every meeting of the WTO's Technical Barriers to Trade Committee since 2003 – indeed the issue has been raised over 30 times[19]. This in itself shows that REACH, if it would have been developed under a system of regulatory cooperation as currently negotiated under TTIP, with the avoidance of trade barriers as its main objective, would have never seen the light of day. The ability of REACH however to provide these higher levels of protection depends completely on how well it is implemented. And it is at this implementation stage that both TTIP and the EU's Better Regulation agenda could cause significant difficulties and delays. The EU's four objectives for a specific chemicals chapter under TTIP are: first of all mutual consultation in prioritising, secondly harmonisation in the classification and labelling of chemicals; thirdly the avoidance of differences in tackling new issues like nanomaterials and Endocrine Disrupting Chemicals (EDCs)[20]; and fourthly addressing confidential business information. REACH, despite being slowed down in its implementation on grounds of 'confidential business information' and as a general 'burden' for industry, is reviewing significantly higher numbers of substances than the US.

Apart from undermining REACH in its implementation and thereby in achieving its objective of chemical safety and stimulating innovation towards safer chemicals, there are serious risks about addressing existing legislative gaps in REACH. Outstanding questions not resolved under REACH, such as dealing with endocrine disrupting chemicals, nanomaterials and so-called cocktail effects from mixtures of chemicals, remain, as is the EU's commitment to developing a comprehensive strategy for a non-toxic environment by 2018. The fact that both nanomaterials and EDCs feature next to REACH in the US Trade Representative's 2014 Technical Barriers to Trade report as well as documents retrieved by the NGO PAN-Europe suggest that an inclusion of the chemical sector in a regulatory cooperation chapter would make this all highly uncertain[21].

consultation systems that fail to address the problem of information asymmetry between different stakeholder groups and which therefore favour those who control the data, in particular on the more technical complex aspects of regulations. And they have both led to the establishment of central bodies with the power to amend and even withhold initiatives.

This is problematic in itself, given that, despite significant progress, major environmental and health challenges remain. These include climate change, ecosystem degradation and collapse, overconsumption of natural resources and damage to peoples' health, and will require decisive and ambitious new regulatory instruments to resolve them. In addition to this scientific imperative, there is since September 2015 a political one as well with the adoption in New York of the 2030 Sustainable Development Goals[22] which are universal in nature and commit the EU to action.

Yet instead of rethinking its approach to regulatory reform, the current European Commission's political priorities and proposals on 'Better Regulation' take things to further extremes – even to the point of potentially shutting down the EU lawmaking machine altogether when it comes to protecting the environment.

But before going into further details on this, a closer look at some of the practical implications of the existing differences and similarities between the EU and US through the two case studies on chemicals and GMOs and the outlook for these sectors under TTIP and 'Better Regulation' is needed.

Case study: GMOs in developing countries

While developed countries dominated the global biotechnology development and setting up of domestic biosafety regimes, many developing countries only started to discuss the establishment of own national safety systems at the end of the last century. This situation led to the development of an international binding agreement called the UN's Cartagena Protocol on Biosafety. Today, under this Biosafety Protocol, which entered into force in 2003 (though the US and Canada are not among the 170 members) developing country parties have obligations to ensure an adequate level of protection from genetically modified organisms (GMOs, known in the Protocol as LMOs) that may have adverse effects on the conservation and sustainable use of biological diversity, also taking into account risks to human health. This includes the possibility to impose import restrictions on GM crops as the Protocol is based on the precautionary principle. This principle allows policy makers to take decisions in the face of scientific uncertainty, in order to avoid or minimise potential adverse effects. And several African countries have been making use of this possibility to either ban imports or to impose restrictions, for example, restricting food aid imports to ground maize only, to avoid the spread of GM maize.

Under the EU's proposal for a chapter on Sanitary and Phytosanitary measures, the objective would be mutually satisfactory cooperation in relevant multilateral fora. Under CETA, the EU and Canada have agreed to a specific article on bilateral cooperation on biotechnology with the objective of a 'more efficient, more science-based approach to the authorisation of GM products.'

The US often presents a science-based approach to decision-making as the opposite of using the precautionary principle, but this is misleading as it wrongly characterises the precautionary principle as 'unscientific'. The actual debate is about the question of how much scientific uncertainty is acceptable before deciding that a risk is serious enough to address through precautionary measures. What is usually referred to as a science-based approach means that serious negative effects must first occur before action is justified. A more appropriate definition of this approach would be the 'bolting horse principle' after the expression "closing the stable doors after the horse has bolted".

In practical terms, a commitment by the EU to side with the US and Canada in international fora (e.g the WTO) would mean that developing countries who wish to take measures on the basis of the precautionary principle would have lost a powerful ally.

22 See https://sustainabledevelopment.un.org/post2015/transformingourworld .

Topics like biodiversity, natural resources and environmental health were cut from the environmental agenda in the Juncker Commission. (Photo: © Markus Mauthe/Greenpeace)

Juncker's Better Regulation agenda

Political context

The Juncker Commission came into office after the European Parliament elections in 2014 that saw a record number of MEPs from eurosceptic groups enter the EP. In response to this, the then President-Elect Jean-Claude Juncker, referring to his Commission as the Commission of a last chance, presented his political guidelines with 10 priority actions, as well as a new Commission structure of Vice Presidents, as his response to the outcome of these elections. These guidelines foresaw the appointment of a Vice President tasked with 'cutting red tape' and 'liberating SMEs[23] from burdensome regulation'.

There was also an unprecedented sidelining and downsizing of the environmental agenda – climate change, energy and 'green growth' were addressed, but issues like biodiversity, natural resources or environmental health were omitted. This was further confirmed by the abolishment of standalone Commissioners for climate action and for environment. Finally the mandate letter to the new Environment Commissioner Karmenu Vella left no room for misinterpretation by instructing him to review pending new proposals on air pollution and waste management as well as review existing nature laws in light of the Juncker Commission's 'new' jobs and growth priorities. This approach took no notice of existing legally binding commitments under the Seventh Environmental Action Programme (7EAP) to develop the environmental policy agenda further.

However the European Parliament never gave its formal backing to Juncker's political programme, only endorsing the President and the Commissioners. The political guidelines as presented by then President-Elect Juncker were the result of a series of meetings he held with the different political groups, but they were never subject to the kind of negotiations that lead to coalition agreements and the associated democratic legitimacy. This is an essential point since the Juncker Commission has been citing European Parliament support for Juncker's political programme as the main source of its legitimacy for everything the Commission has done since taking office.

In fact, when the candidate Commissioners went to the European Parliament for their hearings with the EP Committee responsible for their file, the EP's Environment Committee criticised the mandate let-

23 SMEs are Small and Medium Enterprises.

ter to Vella and requested it be rewritten to take account of legal commitments under the 7EAP. And it was EP President Schulz himself who, on behalf of the Environment Committee, requested that the then President-Elect Juncker include sustainability in the portfolio of one of the Vice Presidents to ensure this would be given appropriate attention. These requests from the European Parliament were only very partially addressed. Vella's mandate letter was not changed as requested and, although Vice President Timmermans was given responsibility for sustainable development, this was not reflected in the political priorities and guidelines of President Juncker.

The original task of Frans Timmermans, however, was to be political responsible for the implementation and further development of the 'Better Regulation' agenda, a task which is widely considered as shutting down the Brussel's law-making machine where it's considered politically inconvenient[24]. The idea behind these expectations is that the EU is an out-of-control over-regulating machine that should focus on fixing the economy in order to save the EU and the euro. Linked to this is the outdated view that sees environmental protection as mostly a block on growth and a liability to create negative headlines, despite tons of evidence pointing in the other direction. In fact most of the negative headlines in relation to the EU's environmental initiatives in the last year were in relation to the Juncker Commission's attack on environmental policies. This was most notably the case regarding the Commission's intention to withdraw two major new pieces of EU environmental law, including a proposal for stronger recycling targets and for improving air quality.

The 2015 Better Regulation package

In May 2015, First Vice President Frans Timmermans published a new 'Better Regulation' Package.[25] The primary difference between the Better Regulation agenda of this Commission and that of the previous Commission is the extent to which requests from conservative vested interests in industry and governments like the UK, which have a longer tradition of deregulatory policies, are getting much more traction.

Even before the publication of this package, the Commission had already adopted an internal document on 'working methods' that significantly enhanced central control of the Commission by the Secretariat General[26]. This states Juncker's intention to not only 'deliver results on the 10 policy priorities under his guidelines', but explicitly orders his officials to leave all other policy areas to the member states where they are better equipped or have more legitimacy to deal with them in accordance with the subsidiarity and proportionality principle.

The document mandates the Secretary General to 'enforce rigorously respect for a collegial decision making process, including confidentiality'. It states that Inter Service Consultations are the start of a political process which needs formal approval from first Vice President Timmermans before it is launched and that he must assess whether an initiative is in line with Juncker's political guidelines. It also states that Timmermans will be supervised by the President's cabinet and the Secretary General. Further, all initiatives, including delegated and implementing acts, expected to have any significant impact need to have a green light from the Regulatory Scrutiny Board which is thereby given a de facto veto over new initiatives. Finally, it agrees the setting up of a special Inter Institutional Relations group consisting of deputy heads of cabinet and chaired by the President's office to coordinate all formal and official communication by the Commission.

The package consists of a number of Commission decisions that will establish two new bodies and new guidelines that will be used immediately by the Commission for its internal procedures in preparing laws without negotiations with the EP and Council and, most importantly, a proposal for a new Inter Institutional Agreement on Better Law Making which will be subject to negotiations with the European Parliament and Council:

- A general **Communication** setting out the main elements and political context.
- State of Play of the **REFIT Programme.**
- A Commission Decision to establish a new stakeholder platform, a **'REFIT Platform'**

24 http://www.economist.com/news/europe/21643199-frans-timmermans-takes-brussels-blob-when-less-more.

25 See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Better regulation for better results – An EU agenda. Strasbourg, 19.5.2015, COM(2015) 215 final at http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447863398835&uri=CELEX:52015DC0215.

26 Available at: http://ec.europa.eu/transparency/regdoc/rep/3/2014/EN/3-2014-9004-EN-F1-1.Pdf.

that will succeed the Stoiber group and a lesser known group of MS representatives on Better Regulation and that will mainly serve as a gathering and filtering point for complaints about EU regulation.
- A Commission Decision establishing a **Regulatory Scrutiny Board,** succeeding the existing Impact Assessment Board.
- **New Better Regulation Guidelines including new guidelines on impact assessment and stakeholder consultations** (following a consultation on these in 2014) that apply only to the Commission's internal working procedures.
- A proposal for a new **Inter Institutional Agreement on Better Lawmaking** that is subject to negotiations with the EP and Council.

Generally the package builds on existing structures and procedures, but strengthens these in a way that gives significant more power to the Commission at the expense of the Council and the EP and that accelerates the transfer of political decision-making to a technocratic exercise about 'good laws that deliver' by putting a central focus on reducing overall regulatory costs and requiring all EU institutions to systematically apply this approach as well.

The introductory text of the Communication is noticeably positive about EU legislation being the EU's main strength and that this agenda is not about deregulation or about undermining environmental or social standards. Yet most of the substance in the package is about putting in place procedures and bodies that seem mostly designed to hamper the further development of EU law.

Under the heading of improved stakeholder consultation, the Commission is effectively proposing to introduce something similar to the US system of 'notice and comment', something that the US is currently also asking the EU to adopt as part of the TTIP negotiations on regulatory cooperation. In short, this would mean that all draft delegated acts and 'important' implementing acts will be subject to a four-week consultation period.

It uses some very dubious language about gold plating for Member States who exercise their right enshrined in the EU Treaty to go beyond the minimum requirements of EU law, proposing a 'don't do it or explain yourself' approach.

Old bodies with new names and functions

This replaces the current Impact Assessment Board with a new Regulatory Scrutiny Board (RSB) which would be composed of three senior Commission officials and three external experts, who would be recruited through an open procedure and then become effectively paid senior Commission staff on a three-year contract. The RSB would have expertise in matters of macro and micro economics, social and environmental issues. The chairperson and all members will be formally appointed by the Commission President. The difference from the existing system is that it now also includes evaluations of existing policies including fitness checks, not only new initiatives.

All proposals that will be submitted to a formal Inter Service Consultation (ISC) process need to include the opinion of this RSB on the accompanying report. It should also be part of the proposal that will be submitted to the College for Commissioners for adoption. But it is only once a proposal is actually adopted and published that the opinion of the RSB will be publicly available. This means that opinions leading to proposals not being adopted would never be published.

The new Better Regulation Guidelines are even more explicit and state that 'DGs are expected to modify their reports to reflect the Board's opinion. In the case of impact assessments, and according to the Commission Working Methods, a positive opinion from the Board is necessary before a formal ISC can be launched.'

The 'Stoiber Group' and the Member State expert group on Better Regulation are replaced by a REFIT Platform. This would act as the main stakeholder platform to provide input to this process. Its main task is to assist and advise the Commission and assess proposals for improvements brought forward through the Commission's consultation website. It will consist of two clusters, one consisting of 28 MS representatives and one consisting of up to 20 stakeholder representatives.

A new Inter Institutional Agreement on Better Law Making

The proposal for a new Inter Institutional Agreement on Better Law Making was negotiated with the European Parliament and the Council,who reached agreement by the end of 2015.

Important elements of the Commissions proposal were arrangements for joint programming of the Commission Work Programme and applying 'Better Regulation' principles to the full co-decision

process. The latter would effectively and for the first time formally commit the EP and Council to Juncker's 10 political priorities as a basis for the joint programming. Under this arrangement the Commission would 'exchange views' with the EP and Council on the basis of a written contribution from the Commission President on the annual Work Programme and, for the purpose of multi-annual programming, on the basis of the Commission President's Political Guidelines. The Commission would commit to take into account the views expressed and give reasons for noting on the information provided.

On the basis of the Commission Work Programme, the three institutions would then need to agree annually on a list of proposals, including ones to update or simplify existing legislation and reduce the regulatory burden, which will receive priority treatment in the legislative process. This again confirms a major departure from the earlier days of better regulation where the focus was on administrative burdens rather than compliance costs and the need for the European Parliament and Council to take the same approach, as is now the case.

The European Parliament and Council would commit to impact assess any major amendment to the Commission proposal and, as a rule, would use the Commission impact assessment (IA) as the basis for this. Each institution would be able to ask an 'independent panel' (members of this would be appointed by all three institutions) to quality check major amendments to Commission proposals.

Under policy evaluations, all three institutions would agree that proposals for significant amendment or development of EU legislation should be rooted in a strong prior evaluation of the efficiency, effectiveness, relevance, coherence and added value of the existing law and policy. This would effectively overrule any other criteria used in existing policy evaluation.

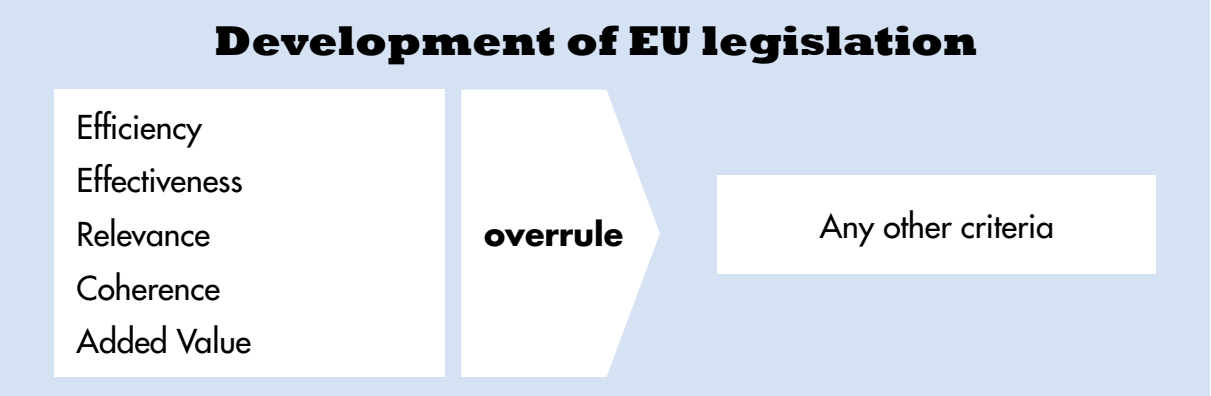
Finally it addresses the coordination of the co-decision process which seems designed to accelerate decision-making including an 'appropriate use' of second reading agreements.

On implementation it would promote fast transposition and implementation of Directives, but it fails to say anything about the quality of implementation. Instead, it mostly concentrates on winning the blame game of who is responsible for 'bureaucracy'.

Apart from all these new elements and procedures, its also important to note what is not in the proposal. Noticeably absent in the Commission's proposal, for example, is a target to reduce regulatory costs, whether called 'one in, one out' or otherwise. Also absent from the proposal is an idea first Vice President Timmermans supported in various debates in the run up to the publication of an expert panel to be able to quality check the final outcome of negotiations between the Commission, the EP and Council against 'Better Regulation' criteria and with the power to request a renegotiation if deemed necessary. This would give such a body powers that not even the OIRA in the US currently have since the OIRA can only do this on secondary legislation, not primary.

National level initiatives: UK and the Netherlands

Few other countries in the EU have embraced regulatory reform with as much vigour as the UK. The UK's Better Regulation agenda has led to the creation of a large and unaccountable bureaucracy with a central role played by the Regulatory Policy Committee, a panel composed mainly of business



As any amendment of EU legislation should be rooted in a strong prior evaluation of these 5 parameter any other criteria would be overruled. (Figure: Marlene Haller, Greenpeace)

representatives that 'validates' departments' estimates of the costs of new regulation, providing official opinions with the power to delay the introduction of new rules. It enforces a so called 'one in, two out rule', a rule that prevents government departments from implementing new laws that impose £1 of cost to business unless they also save £2 elsewhere, regardless of social or environmental benefits. It requires impact assessments to complete a detailed appraisal of proposed policy changes and, where possible, express all impacts in terms of monetary values. The UK government also launched a 'Red Tape Challenge', a crowdsourcing initiative in which the government invited the public to propose existing laws that should be scrapped[27]. Interestingly, an independent analysis found that '[m]ost of the comments [from the RTC website] were generally of a 'more' regulation nature rather than the hoped-for calls for eliminating red tape.' Unfortunately, the same review found that 'the quality and quantity of crowdsourced comments proved to be of little importance to the actual deliberations.' It seems that deregulation, in the abstract, is an attractive idea, but when confronted with specific protections, most people quickly recognise how important good regulation is to the quality of their lives[28].

In relation to EU legislation, UK Prime Minister David Cameron set up a business task-force to identify sources of EU red tape, the so called COMPETE (Competitiveness test, One-in, one-out, Measure impacts, Proportionate rules, Exemptions and lighter regimes, Target for burden reduction, Evaluate and enforce) principles were developed, claiming widespread stakeholder support (though all stakeholders supporting this are lobby groups from industry, regulatory reform outfits and the Stoiber group, which consists of a combination of the two. Members representing public interest explicitly and strongly disagreed through a dissenting opinion).

A 2014 progress report from this UK task-force lists all their 'achievements', noting all the 'costly' and 'disproportionate' proposals for environmental policies on soil protection, waste management, access to justice, shale gas or the protection of temporary and pregnant workers that have been withdrawn or been subject to exemptions[29].

Within the Netherlands, the 'Make it Work Initiative' (initiated by the Dutch Ministry of Environment and Infrastructure) is presented as a contribution to the Better Regulation agenda in the field of the environment. And although its objectives again look reasonable at first sight, one of the means to deliver this is through the drafting of standard legal texts on commonly used provisions on rather critical elements of regulation such as compliance monitoring or information requirements where the focus is on reducing the burden of reporting. The most immediate risk with this initiative seems to be a reduction in the flow of data and information from national to EU level that is essential to allow the EU to ensure compliance with its laws.

Supportive jurisprudence

In April 2014 the European Court of Justice ruled in a case brought against the Commission by Council in which it challenged the Commission's withdrawal of a proposed piece of law. The Ruling 409/13[30] affirmed the Commission's right to withdraw legislation in case the EP or Council amends it 'significantly' (though also requiring certain conditions to be met before proceeding with a withdrawal such as taking all necessary steps in line with the principle of 'good faith' to avoid this being necessary), which would leave the European Parliament and Council with no other choice, if they were to accept the Commission's proposal for an Inter Institutional Agreement on Better Law Making (IIABLM), but to accept the Commission's system of impact assessment or risk the Commission withdrawing a proposal in case of disagreement.

27 Extensive review of UK Better Regulation initiatives at: b.3cdn.net/nefoundation/9c5f5f6281c949ddd9_uom6bvj9y.pdf.

28 Martin Lodge & Kai Wegrich (2014). Crowdsourcing and regulatory reviews: A new way of challenging red tape in British government? Regulation and Governance, (November 2013). Retrieved from http://doi.org/10.1111/rego.12048.

29 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/371088/Cut-eu-red-tape_one-year-on.pdf.

30 Ruling available at: curia.europa.eu/juris/liste.jsf?language=en&num=C-409/13.

The Better Regulation Package prepared by Frans Timmermans takes Barroso's Better Regulation agenda even further. (Photo: © European Union, 2015/Source: EC – Audiovisual Service, European Parliament – EP/Photo: Mathieu Cugnot)

Conclusions and implications

Putting aside the usual uncertainties about the outcomes of trade negotiations, it seems plausible that either a significant and well resourced transatlantic governance structure would need to be set up to deliver on TTIP's acclaimed economic benefits (which in turn would then need to address questions of democratic accountability and legitimacy), or the initiative would be left to well resourced and well organised stakeholders to develop proposals. This in practice is likely to mean the well resourced and well connected industrial interests being able to write their own rules to the detriment of the public interest or newcomers in industry. Either way, new procedures and commitments would be put in place that could have far reaching implications for the way the EU and US adopt new legislation and which, given that the objective of such structures is the elimination of trade barriers, is unlikely to result in the EU developing better and more ambitious policies to address public benefit goals.

At the same time, the unilateral initiatives that the Juncker Commission is taking to new extremes under the heading of 'Better Regulation' will also have a significant and very similar impact on the way the EU will govern itself as TTIP would have if adopted. The last year has seen a shift of power towards the European Commission and within the European Commission, to its central services, the Secretariat General. This system of central control makes it possible to shut down any initiative not considered to be in line with President Juncker's political priorities. It requires almost all initiatives to be subject to an impact assessment system that puts a strong focus on placing monetary value on impacts, which tends to work against the public interest and in favour of regulated industries. It extends the powers of a central body of experts within the Commission that can effectively veto proposals. This transforms political decision-making about the costs and benefits of action and in-action to a technical debate about 'good laws that reduce regulatory costs' versus 'bad laws that increase regulatory costs'. A consequence of this is that crucial decisions on the details of legislation are delegated to expert bodies or even private standardisation organisations where again industry, having the advantage of owning relevant data and information, exerts a strong influence on the debate.

The irony of all this is, that it is being done and presented as an effort to bring the EU closer to its citizens and to improve its democratic deficit. Going beyond irony, even though this agenda of 'regulatory reform' has existed for 30 years, there has been surprisingly little research on whether it actually delivers on its objectives, namely creating jobs and growth. The research that is available shows that it hardly has any impact at all.

Both under TTIP and through its unilateral Better Regulation agenda, the EU's governance system is changing significantly with a stronger role for well resourced regulated industries to write their

own rules, either in order to 'reduce or avoid trade barriers' or in order to 'reduce regulatory costs'. There are however also important differences between TTIP and BR. The EU's better regulation agenda is a domestic one and, despite receiving widespread political support from member states and parliaments, mainly because it is presented as 'cutting red tape', can in principle be reversed. If TTIP were to be concluded and adopted as binding international law, the system for regulatory cooperation and its implications would be much harder, if not impossible, to reverse.

In the 1970s the US was leading in the adoption of key pieces of federal environmental laws like the clean air and endangered species acts, whereas the EU only adopted comparable pieces of law in the 1980s and 1990s. Perhaps not surprisingly, the anti-regulatory backlash in the US also started earlier but the EU is trying hard to catch up. It may however not come to that.

First, that the European Parliament and member states did not accept the European Commission's proposal for a new IIABLM and significant compromises were made before they came to an agreement. This will not change the way the Commission organises its internal procedures or constitute in itself a major rethink of its BR agenda, but it will at least ensure a better balance of power. Crucially, it may finally help the European Parliament to start providing more effective democratic oversight to the most powerful European Commission which it helped put in place.

Secondly, industry's continuous calls for ever more cuts of 'green red tape' on grounds that they don't feel the effect of previous efforts could become self-defeating[31]. Given the lack of evidence behind the better regulation agenda, it's hardly surprising that industry fails to feel significant benefits. The uncomfortable truth behind the evidence is that businesses that are unable to be competitive without dumping parts of their costs on the environment (and that are loudest in calling for cuts in 'green tape') are basically not competitive. A continued focus on cutting 'green tape' will therefore only actually result in the subsidising of inefficient uncompetitive businesses at a staggering cost that will then be borne by taxpayers or through loss in health, human lives and degraded ecosystems.

Thirdly, the strategy of this and previous Commissions and European leaders to react to increased levels of euro-scepticism (which is just one form of the increasing distrust of mainstream political parties) by transforming and muddying political decision-making at EU level is very likely to backfire. Most people do not get excited by a technocratic debate about 'good' and 'bad' laws that can only be understood by a small group of experts and a centralised processes to deliver results that a small group of senior Commission officials and think-tanks believe will make the EU popular again. And it is even more unlikely to bring Europe successfully out of the multiple crisis it is facing since it is making it harder for the EU to adopt the necessary legislative measures needed to achieve this.

All this means that the EU's agenda of regulatory reform is ripe for a deep and serious rethink that should be embedded in a broader debate about democratic reform. The pressure of a referendum in the UK to remain in or out of the EU is both a threat and an opportunity in this respect.

It is a threat, because the current UK government's vision of EU reform is to limit the EU to being a single market and foresees no role at EU level for environmental protection. Although concrete reform proposals from the UK are still non-existent in the public domain, commonly heard demands put the cutting of red tape for small businesses and an increase in growth and jobs as the overriding objectives of any regulatory system, high up on the list of demands.

But at the same time, the referendum is an opportunity because it will force everyone else in Europe, including UK civil society and the political opposition, who do not wish to sign up to Cameron's reform agenda to start articulating better alternatives.

And the fact that the ongoing negotiations on TTIP have already mobilised large sections of European civil society has created the perfect starting point to now seize this opportunity.

31 http://www.eef.org.uk/resources-and-knowledge/research-and-intelligence/industry-reports/green-tape-manufacturers-views-of-progress-on-defras-regulatory-reform-agenda.

Annex 1: List of abbreviations

BR Better Regulation
CETA Comprehensive Economic and Trade Agreement
CEN European Committee for Standardization
CENELEC European Committee for Electrotechnical Standardization
CRS Congressional Research Service
EAP Environmental Action Programme
EDCs Endocrine Disrupting Chemicals
EP European Parliament
EPA Environmental Protection Agency
EU European Union
GAO Government Accountability Office
GM Genetic Modification
GMO Genetically Modified Organism
IA Impact Assessment
IAB Impact Assessment Board
ICS Investment Court System
IIABLM Inter Institutional Agreement on Better Law Making
ISDS Investor State Dispute Settlement
ISC Inter Service Consultation
NL Netherlands
NTB Non Tariff Barriers
NTM Non Tariff Measures
MEP Member of European Parliament
MiW Make it Work
MS Member State
OIRA Office of Information and Regulatory Affairs
PAN Pesticide Action Network
REACH Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals
REFIT Regulatory Fitness
RFA Regulatory Flexibility Act
RC Regulatory Cooperation
RSB Regulatory Scrutiny Board
SBA Small Business Administration
SDG Sustainable Development Goals
SME Small and Medium Sized Enterprise
SPS Sanitary and Phytosanitary Measures
TTIP Transatlantic Trade and Investment Partnership
UK United Kingdom
WTO World Trade Organization

Annex 2: Glossary

Barroso Commission: The Barroso Commission was the European Commission in office from 22 November 2004 until 31 October 2014. Its president was José Manuel Barroso, who presided over 27 other commissioners (one from each of the states composing the European Union, aside from Portugal, which is Barroso's state). On 16 September 2009 Barroso was re-elected by the European Parliament for a further five years and his Commission was approved to take office on 9 February 2010. » https://en.wikipedia.org/wiki/Barroso_Commission

Brexit: United Kingdom withdrawal from the European Union, often shortened to Brexit (short for British exit) is a political aim of some political parties, advocacy groups, and individuals in the United Kingdom for the country to leave the European Union. » https://en.wikipedia.org/wiki/United_Kingdom_withdrawal_from_the_European_Union

Better Regulation Watchdog: A network of 64 European consumer, environmental, development, citizens, public health, as well as trade unions and organization advancing social justice, founded in May 2015 in reaction to a growing concern about the direction and implications of the EU's Better Regulation agenda. » http://www.betterregwatch.eu/

Cartagena Protocol on Biosafety: The Cartagena Protocol on Biosafety to the Convention on Biological Diversity is an international agreement which aims to ensure the safe handling, transport and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effects on biological diversity, taking also into account risks to human health. It was adopted on 29 January 2000 and entered into force on 11 September 2003. » https://bch.cbd.int/protocol

College of Commissioners: The Commission is composed of the College of Commissioners of 28 members, including the President and Vice-Presidents. The Commissioners, one from each EU country, are the Commission's political leadership during a 5-year term. Each Commissioner is assigned responsibility for specific policy areas by the President. » http://ec.europa.eu/commission/2014-2019/

Comprehensive Economic and Trade Agreement (CETA): The Canada-EU summit on 26 September 2014 in Ottawa marked the end of the negotiations of the EU-Canada trade agreement (CETA). The agreement will remove over 99% of tariffs between the two economies and create sizeable new market access opportunities in services and investment. The text of the agreement will now undergo a legal scrubbing followed by a translation into all official languages of the EU. At a later stage, the agreement will need to be approved by the Council and the European Parliament. » http://ec.europa.eu/trade/policy/countries-and-regions/countries/canada/

Decision: Binding in its entirety upon those to whom it is addressed. It has been used in the environmental field in connection with international conventions and with certain procedural matters. » http://www.ieep.eu/understanding-the-eu/eu-glossary/

Directive: Binding as to the results to be achieved, but leaves to the Member States the choice of form and methods. It is therefore the most appropriate instrument for more general purposes particularly where some flexibility is required to accommodate existing national procedures and, for this reason, is the instrument most commonly used for environmental matters. » http://www.ieep.eu/understanding-the-eu/eu-glossary/

Directorate-Generals (DGs): The services of the Commission are divided into Directorate-Generals (DGs), which are further split into Directorates and Units. The administrative head of a DG is known as the 'Director-General' (a term sometimes also abbreviated to 'DG'). » http://www.ieep.eu/understanding-the-eu/eu-glossary/

7EAP: Environmental Action Programmes have been the EU's main instrument to set out its environmental policy agenda since the 1970's. The 7th Environmental Action Programme entered into force on January 2014 and commits the European Commission, the European Parliament and the Member States to a common agenda to be implemented till 2020. » http://ec.europa.eu/environment/action-programme/

Endocrine disrupting chemicals (EDCs): Endocrine disrupting chemicals (EDCs) and potential EDCs are mostly man-made, found in various materials such as pesticides, metals, additives or contaminants in food, and personal care products. EDCs have been suspected to be associated with altered reproductive function in males and females; increased incidence of breast cancer, abnormal growth patterns and neurodevelopmental delays in children, as well as changes in immune function. » http://www.who.int/ceh/risks/cehemerging2/en/

Fitness Check: A Fitness Check is a comprehensive evaluation of a policy area that usually addresses how several related legislative acts have contributed (or otherwise) to the attainment of policy objectives. Fitness checks are particularly well-suited to identify overlaps, inconsistencies synergies and the cumulative impacts of regulation. » http://ec.europa.eu/smart-regulation/evaluation/index_en.htm

Horizontal chapter: In the context of TTIP, a horizontal chapter sets out a system for regulatory cooperation separate from what would be agreed on related matters under a specific sector chapter such as cosmetics, textile or chemicals.

Investor Court System: EU proposal for a reformed approach on investment protection and a new and more transparent system for resolving disputes between investors and states. It is intended to replace the existing investor-to-state dispute settlement (ISDS) mechanism in TTIP and in all ongoing and future EU trade and investment negotiations. » http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc_153955.pdf

Impact Assessment: Before the European Commission proposes a new initiative, it assesses the need for EU action and the potential economic, social and environmental impacts of alternative policy options in an impact assessment. Impact assessments are prepared for Commission initiatives expected to have significant economic, social or environmental impacts. » http://ec.europa.eu/smart-regulation/impact/index_en.htm

Inter Institutional Agreement: The European Commission, the European Parliament and the Council can develop semi-constitutional law by reaching a common agreement, rather than by amending existing treaties. These so-called 'inter-institutional' agreements are binding for the contracting institutions. » http://en.euabc.com/word/576

Investor State Dispute Settlement: If an investor from one country (the 'Home State') invests in another country (the 'Host State'), both of which have agreed to ISDS, and the Host State violates the rights granted to the investor under a treaty, then that investor may bring the matter before an arbitration tribunal. » https://en.wikipedia.org/wiki/Investor-state_dispute_settlement

Regulatory Cooperation Forum (CETA): Under CETA, the EU and Canada have agreed to set up a Regulatory Cooperation Forum. The Forum will function as a voluntary cooperation mechanism to exchange experiences and relevant information among regulators, and to help identify areas where regulators could cooperate. » http://ec.europa.eu/trade/policy/in-focus/ceta/

Joint Ministerial Body (TTIP): A proposal by the EU under the negotiations for TTIP to oversee the governance system that would be put in place to organize its regulatory cooperation. » http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153120.pdf

Juncker Commission: The European Commission which is currently in office and is led by President Jean Claude Juncker. Under this Commission all EU Member States still provide on Commissioner but a system of vice presidents has been created whose main task is to coordinate other Commissioners. They have also been given significant responsibility to implement Juncker's political priorities and guidelines. » http://ec.europa.eu/commission/2014-2019/president_en

Living agreement: When an agreement is referred to as a 'living agreement' this means that a mechanism will be included which would foresee for a light procedure to amend such an agreement, for example to take into account the outcome of regulatory cooperation processes.

Notice and comment: Notice-and-comment rulemaking is a common rulemaking procedure in the US under which a proposed rule is published in the Federal Register and is open to comment by the general public. Rules that are exempt from 'notice-and-comment' requirements are those dealing with military or foreign affairs functions and those 'relating to agency management or personnel or to public property, loans, grants, benefits or contracts.' » http://www.foreffectivegov.org/node/2578

Non-tariff barriers (NTBs): such as quotas, import licensing systems, sanitary regulations, prohibitions, etc. Same as 'non-tariff measures'. » https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm

Non-tariff measures (NTMs): such as quotas, import licensing systems, sanitary regulations, prohibitions, etc. Same as 'non-tariff barriers'. » https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm

Precautionary Principle: The UN Conference on Environment and Development (1992) adopted the precautionary principle in order to protect the environment. The precautionary approach means that where there are threats of serious or irreversible damage to the environment, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation. The precautionary principle permits a lower level of proof of harm to be used in policy-making whenever the consequences of waiting for higher levels of proof may be very costly and/or irreversible.
The precautionary principle is detailed in Article 191 of the Treaty on the Functioning of the European Union (EU). The scope of this principle covers environmental protection, consumer policy and human, animal and plant health. The principle was first set out in a Commission communication adopted in February 2000 on recourse to the precautionary principle. In this document, the Commission sets out the specific cases where this principle is applicable: where the scientific data are insufficient, inconclusive or uncertain; and where a preliminary scientific evaluation shows that potentially dangerous effects for the environment and human, animal or plant health can reasonably be feared. In both cases, the risks are incompatible with the high level of protection sought by the European Union. It also sets out the three rules which need to be followed for the precautionary principle to be observed: a complete scientific evaluation carried out by an independent authority in order to determine the degree of scientific uncertainty; an assessment of the potential risks and the consequences of inaction; and the participation, under conditions of maximum transparency, of all the interested parties in the study of possible measures. The Commission also point out that the measures resulting from recourse to the precautionary principle may take the form of a decision to act or not to act, depending on the level of risk considered "acceptable". » http://www.ieep.eu/understanding-the-eu/eu-glossary/

Private arbitration: a form of dispute resolution outside the court system where the parties to a dispute refer it to *arbitratio*n by one or more persons (the 'arbitrators', 'arbiters' or 'arbitral tribunal'), and agree to be bound by the arbitration decision (the 'award'). A third party reviews the evidence in the case and imposes a decision that is legally binding on both sides and enforceable in the courts. » https://en.wikipedia.org/wiki/Arbitration

REACH: REACH is a regulation of the European Union, adopted to improve the protection of human health and the environment from the risks that can be posed by chemicals, while enhancing the competitiveness of the EU chemicals industry. It also promotes alternative methods for the hazard assessment of substances in order to reduce the number of tests on animals. » http://echa.europa.eu/regulations/reach

Red/Green tape: Red tape is an idiom that refers to excessive regulation or rigid conformity to formal rules that is considered redundant or bureaucratic and hinders or prevents action or decision-making. It is usually applied to governments, corporations, and other large organizations. Green Tape is a term used by industry to frame environmental legislation as primarily a source of red tape and cause of excessive cost to business. » https://en.wikipedia.org/wiki/Red_tape

Regulation: Directly applicable law in the Member States and is mostly used for rather precise purposes such as financial matters and the day-to-day management of the Common Agricultural Policy. It is increasingly being used for environmental matters. » http://www.ieep.eu/understanding-the-eu/eu-glossary/

Right of initiative: The Commission has the exclusive right of initiative which empowers and requires it to make proposals on the matters contained in the Treaty, either because the Treaty expressly provides so or because the Commission considers it necessary. Despite having the quasi-monopoly over the formal right of legislative initiative, the Commission has to share the right of political initiative with the European Council, the European Parliament, and since the introduction of the citizens' initiative under the Lisbon Treaty, with EU citizens. However, the formal right of initiative gives the Commission the power to decide whether it will respond to a request for legislative action and, if so, how it will design the proposal. » http://www.ieep.eu/understanding-the-eu/eu-glossary

Regulatory Cooperation: There is no internationally agreed definition of international regulatory cooperation. In an OECD context international regulatory cooperation is defined as any agreement or organisational arrangement, formal or informal, between countries (at the bilateral, regional or multilateral level) to promote some form of cooperation in the design, monitoring, enforcement, or ex-post management of regulation, with a view to support the converging and consistency of rules across borders.

Regulatory Cooperation Body: The body that is mandated to supervise and manage the regulatory cooperation process. » http://www.oecd.org/gov/regulatory-policy/irc.htm

Regulatory Impact Assessment: Regulatory Impact Analysis or Regulatory Impact Assessment (RIA) is a document created before a new government regulation is introduced. RIAs are produced in many countries, although their scope, content, role and influence on policy making vary. » https://en.wikipedia.org/wiki/Regulatory_Impact_Analysis

Regulatory Policy Committee (UK): Set up in 2009 as independent advisory non-departmental public body to rate the quality of evidence and analysis supporting new regulatory and deregulatory proposals, and check the estimates for the equivalent annual net cost to business of new regulations. We do this to ensure decisions are made on the basis of a robust, evidence-based policy making process. » https://www.gov.uk/government/organisations/regulatory-policy-committee/about

Sanitary and Phytosanitary Measures (SPS): Measures dealing with food safety and animal and plant health. Sanitary applies to human and animal health. Phytosanitary applies to plants and plant products. » https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm

Secretariat-General of the European Commission: Central services of the European Commission who report directly to the Commission President and, since the Juncker Commission to one or more of its Vice Presidents. Task is to ensure the overall coherence of the Commission's work – both in shaping new policies, and in steering them through the other EU institutions. » http://ec.europa.eu/dgs/secretariat_general/what_we_do/index_en.htm

Small and medium-sized enterprises (SMEs): Small and medium-sized enterprises (SMEs) represent 90% of all businesses in the EU. The definition of an SME is important for access to finance and EU support programmes targeted specifically at these enterprises. Small and medium-sized enterprises (SMEs) are defined in the EU recommendation 2003/361. The main factors determining whether an enterprise is an SME are: staff headcount and either turnover or balance sheet total. » http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/index_en.htm

Subsidarity Protocol: Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. » http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/protocols-annexed-to-the-treaties/657-protocol-on-the-application-of-the-principles-of-subsidiarity-and-proportionality.html

Stakeholder: Any person or organisation with an interest in or affected by EU legislation and policymaking is a 'stakeholder' in that process. The European Commission makes a point of consulting as wide a range of stakeholders as possible before proposing new legislation or new policy initiatives.

Standard Cost Model: Under the Standard Cost Model administrative burdens are calculated on the basis of the average cost of the required administrative activity (Price) multiplied by the total number of activities performed per year (Quantity). » http://ec.europa.eu/smart-regulation/refit/admin_burden/scm_en.htm

Stoiber Group: Frequently used name for the High Level Group on Administrative Burdens, chaired by Edmund Stoiber. It advised the Commission on how to reduce administrative burdens linked to its legislation. Examples include recommendations concerning the facilitation of electronic invoicing and the exemption of micro enterprises from EU accounting rules. » http://ec.europa.eu/smart-regulation/refit/admin_burden/high_level_group_en.htm

Substances of Very High Concern (SVHCs): Under REACH, substances that may have serious and often irreversible effects on human health and the environment can be identified as substances

of very high concern (SVHCs). If a substance is identified as an SVHC, it will be added to the Candidate List for eventual inclusion in the Authorisation List. » http://echa.europa.eu/addressing-chemicals-of-concern/authorisation/substances-of-very-high-concern-identification

Sustainable Development Goals (SDGs): Adopted in September 2015 as part of 'Transforming our world: the 2030 Agenda for Sustainable Development'. Unlike the Millenium Development Goals which they replace, the SDG's are universal and commit all, including the EU to transpose this transformational agenda. » https://sustainabledevelopment.un.org/?menu=1300

Technical Barriers to Trade (TBT): Regulations, standards, testing and certification procedures, which could obstruct trade. The WTO's TBT Agreement aims to ensure that these do not create unnecessary obstacles. » https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm

Trade Impact Assessment: Specific form of impact assessment that focuses on the impact of new regulations and policies on trade.

Toxic Substances Control Act (TSCA): The Toxic Substances Control Act of 1976 provides the US Environmental Protection Agency (EPA) with authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including, among others, food, drugs, cosmetics and pesticides. TSCA addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon and lead-based paint. » http://www2.epa.gov/laws-regulations/summary-toxic-substances-control-act

Transatlantic Free Trade Agreement (TAFTA): A Transatlantic Free Trade Area (TAFTA) is a proposal to create a trans-atlantic free-trade area covering Europe and North America. Such proposals have been made since the 1990s and since 2013 an agreement between the United States and the European Union has been under negotiation: the Transatlantic Trade and Investment Partnership. » https://en.wikipedia.org/wiki/Transatlantic_Free_Trade_Area

Transatlantic Trade and Investment Partnership (TTIP): On 14 June 2013, Member States gave the European Commission the green light to start trade and investment talks with the United States. The launch builds on the report of a High-Level Working Group on Jobs and Growth, published in February 2013. In March 2013, the European Commission proposed negotiating guidelines to the Member States and released an impact assessment on the future of the EU-US trade relations and an in-depth independent study on the potential effects of the EU-US TTIP. When negotiations are completed, this EU-US agreement would be the biggest bilateral trade deal ever negotiated. The European Union and the United States have the largest bilateral trade relationship and enjoy the most integrated economic relationship in the world. » http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/
The first TTIP negotiation round took place in July 2013, the 12th round is foreseen for 22–26 February 2016.