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How the EU/US Trade Agreement Impacts Product Safety and the Regulatory Process³

The Transatlantic Trade and Investment Partnership (TTIP) goes to the core of the work Consumer Federation of America and other consumer groups do every day, individually and collectively. TTIP is not a traditional trade agreement about tariffs, rather is an agreement about the laws and regulations that protect consumers. The broad scope of these negotiations could impact the many issue areas in which CFA is actively working to protect consumers. In particular, recent important product safety protections could be weakened by TTIP as could other regulations through regulatory preemption. Finally, we have serious concerns about regulatory convergence as it could be implemented by TTIP and the lack of transparency continues to be problematic.

Product Safety

An important product safety law, the Consumer Product Safety Improvement Act (CPSIA), passed in the United States in 2008 by large bi-partisan margins. This critical new law makes consumer products safer by requiring that toys and infant products be tested to mandatory standards before they are sold, and by practically eliminating lead and banning phthalates in children's products. The CPSIA includes the most significant improvements of the Consumer Product Safety Commission since the agency was established in the 1970's.

While there are many important provisions of the CPSIA, one of the most critical is the provision that requires third party testing of toys and infant and toddler products to mandatory standards.

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² Consumer Federation of America (CFA) is a nonprofit association of nearly 300 consumer groups that, since 1968, has sought to advance the consumer interest through research, advocacy, and education. Our members represent millions of people. CFA is also a member of the Transatlantic Consumer Dialogue, a forum through which U.S. and EU consumer organizations agree on policy recommendations concerning cross-border consumer issues. The TTIP goes to the core of our work, individually and collectively, because it is not an agreement about tariffs –it's about the laws and regulations that protect consumers.

³ The text of this article is substantively similar to testimony offered by author at a TTIP stakeholders meeting in Washington, DC on May 21, 2014.

The implications of the TTIP agreement on this important consumer protection are significant. Not only does the U.S. have some of the strongest standards in the world, such as for cribs, but the standards for many other products such as toys are different than those in the EU. Another critical difference is that in the EU, these products are not required to be tested by an independent third party. Rather, in the EU self declarations are acceptable. This is a substantial difference.

In the United States cribs, toys, and play yards, for example, have to not only meet a mandatory standard but a third party is required to test the product to ensure that the product does in fact meet the standard. This was an essential part of the CPSIA because in 2007, there were many recalls of popular children's products due to high lead levels and other hazards. It was clear that our global supply chain was not prioritizing safety. The third party testing provision was included in this law because it is an important mechanism to detect non compliance with mandatory safety rules as well as to identify defects that could pose risks to consumers.

The International Federation of Inspection Agencies, a trade group of international testing, inspection and certification companies conducted two studies in 2012 and 2013 which examined the compliance of self declared and third party tested products in Europe. The 2012 study examined self declared products in Europe and found a failure rate of 82%; 8% deemed dangerous and 15 critical failures reported to authorities. The 2013 study evaluated the compliance of products that were subject to third party testing in Europe and found vastly different results: 25% failure rate and 1 critical failure.

Given the significant distinction between the method of evaluation of the safety of products in the EU and the U.S. and the potentially serious impact on consumer protection, this issue cannot and should not be resolved through TTIP and should be resolved democratically by each region. Otherwise, an important U.S. consumer protection law could be extensively preempted under this negotiation.

Regulatory Preemption

Negotiators on both sides of Atlantic and President Obama have claimed that they don't intend to weaken consumer protections; they simply want to eliminate unnecessary barriers to cross border trade. But many companies and trade associations in the EU and in the U.S. have prioritized getting rid of and preventing the passage of future consumer protections, specifically ones they don't like and those which change the status quo. This has been the case for many years. The TTIP could provide these entities with an opportunity to weaken consumer protections, through a process that is much less transparent and democratic than the United States' normal legislative and regulatory systems. International trade agreements should not be used as a way to weaken important consumer protections.

Regulatory Convergence

The leaked EU position paper on regulatory convergence is very alarming. The idea that a new but ambiguous type of international "cooperation" will be established to change rulemaking in the EU and U.S. is problematic. While Consumer Federation of America and other similar groups have incomplete information about this "cooperation" we fear that it will create a mega non democratic international regulatory body that could be used by entities with extensive resources to block consumer protections. Further, this regulatory convergence could also include using "cost benefit" and "trade impact" analyses for proposed regulatory or legislative initiatives.

Using these types of analysis in the policy toolkit would not necessarily be a cause for concern, but using them as the primary means to measure the need for regulations, especially against the impact on trade, would be problematic because not all benefits can be quantified.

We are concerned that the Regulatory Cooperation Council (RCC) may be used to weaken and preempt existing consumer protections while creating a system to thwart future safeguards. We fear that there is no aspect of the RCC that seeks to protect consumer health and safety or ensure a fair marketplace.

Transparency

Transparency is the key to success of these negotiations, but unfortunately it is lacking. Consumer Federation of America and other consumer groups cannot accept agreements that are made in secret. The draft text of the TTIP must be made public at frequent intervals during the negotiating process. This is a critical democratic principle necessary to ensure that all stakeholders have opportunities to provide feedback to the text of the TTIP. Such access to the text cannot be constrained by security limitations that would make it impossible to work with each other and advocate effectively. The public and United States elected representatives must also be able to see the text. We understand the concerns that releasing the drafts of text might make the negotiations more complicated. Democracy and openness can sometimes make things more complicated, but they produce better outcomes and are essential when it is our hard-won rights and consumer protections that are being traded away.

Conclusion

Consumer Federation of America has significant concerns about the breadth of TTIP's scope and the negative consequences it could have on product safety, the regulatory process and transparency. International trade agreements should not weaken consumer protections. Unfortunately, it is possible that TTIP will do exactly that.