
WARNING:

TTIP 2.0 is about regulatory cooperation

A short critical background analysis of the EU-Commission's conformity
assessment mandate for negotiations with the United States

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by Max Bank (LobbyControl)

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The analysis in a nutshell:

The Commission's mandate for negotiations with the US on so-called „conformity assessment“ should be referred to as what it is: It is about eliminating non-tariff barriers to trade via regulatory cooperation. Instead of hiding behind technical terms, the Commission should make clear that this proposal is about cooperating with the US on product admission, an issue handled very differently on the US market than in the EU. To accept the other parties market admission procedures as equivalent might indeed reduce costs for companies and as a result reduce barriers to trade. But there are a lot of dangers in this, too. In many areas, such as chemicals or pharmaceuticals, the admission rules are far stricter in the EU than in the US. Regulatory cooperation on product admission processes might therefore lead to watering down high product admission standards in the EU.

Born out of necessity: A new regulatory cooperation mandate

When German Minister of the Economy Altmaier presented the 2019 annual report on the economy in a press conference on the 30th January, he pointed to the slow down of economic growth in Germany and highlighted the chances of pushing for a free trade agreement with the US. Altmaier made clear that Berlin warmly welcomes the two mandates on tariff elimination for industrial goods and on „regulatory cooperation“ (i.e. conformity assessment) Commissioner Malmström presented to the Council on January 18th.

The German government perceives the US threat of tariffs for EU automotive products as a direct confrontation with Germany's export-oriented car industry, which is still the backbone of the economy. Any threat to the car industry is seen as a threat to the German national interest as a whole. This is why Berlin is extremely nervous with respect to EU-US trade relations at the moment.

The (probably heated) discussions at the informal trade minister Council in Bucharest

It is certain that Germany is currently pushing behind the scenes for new trade negotiations with the US. This is what also happened during the informal trade minister Council in Bucharest on the 22nd February. However, there were apparently controversial discussions on the mandate during the meeting. The Council representative at the press conference made clear that there was „strong support“ for the mandate, but not „full support.“ According to Politico EU, it is especially France, which is rather reluctant to start negotiating with the US. Another sign that despite joint efforts to avoid this impression, the Franco-German axis is divided with respect to trade policy – and also beyond that.

Juncker's mission in July 2018: The starting point for the new mandate

In order to understand the dimension of the mandate that is currently discussed, it is necessary to take a step back in time. Due to the US tariff threats, the EU-Commission had been alarmed for quite a while. At the end of July 2018, Commission President Juncker travelled to Washington to meet President Trump for discussions on how to solve the conflicts in EU-US trade relations. The „Joint US-EU Statement“ released afterwards was the starting point for new trade negotiations and is crucial for the interpretation of the two mandates presented by Commissioner Malmström.

An ambitious transatlantic trade agenda

Juncker and Trump agreed on quite an ambitious agenda: „to work together towards zero tariffs, zero non-tariff-barriers, and zero subsidies on non-auto industrial goods.“ The statement mentions explicitly „services, chemicals, pharmaceuticals, medical products, as well as soybeans“ as areas in which trade barriers shall be wiped out. In order to take this agenda forward, an „executive working group“ was founded. **Until today, this group is working in secret behind closed doors.**

This intransparent way of working is a scandal given the content it is taking forward.

The content of the mandates

The two mandates presented by the Commission mirror the agenda of the July 2018 Juncker-Trump declaration. The first mandate is rather straightforward, it is about the „elimination of tariffs for industrial goods“ with the important exception of the sensitive issue of agriculture. The title „conformity assessment“ of the second mandate is however misleading, as it suggests that the mandate is entirely about technical questions. In reality, the mandate on conformity assessment is quite worrying, as it is about establishing mechanisms to eliminate non-tariff barriers to trade. In other words, it is about regulatory cooperation. German economic Minister Altmaier knew exactly why he called the mandate by its real name „regulatory cooperation“ in his press conference at the end of January 2019.

Conformity assessment: A mechanism for product admission

Now what is „conformity assessment“ exactly about? And how is it related to regulatory cooperation? According to the Commission, conformity assessment means the following: „A manufacturer can only place a product on the EU market when it meets all the applicable requirements. The **conformity assessment procedure** is carried out before the product can be sold. The European Commission's main objective is to help ensure that unsafe or otherwise non-compliant products do not find their way to the EU market.“¹ In other words, if you cooperate with the US on conformity assessment, it means you cooperate with the US on product admission on the EU market – i.e. you accept the other parties admission procedures to the market.

A narrow, but sensitive form of regulatory cooperation

To recognise the other parties' conformity assessment is one form of mutual recognition, a mechanism that is

one of several regulatory cooperation mechanisms. The mandate also mentions explicitly the EU-US agreements on mutual recognition and asks to address the relationship to those agreements which are currently in force (eg. Pharmaceutical Good Manufacturing Practices). So even though the mandate does not explicitly mention the term regulatory cooperation, it does mention the tools (cooperation on product admission) for regulatory cooperation instead. And although the mandate offers a narrow approach towards regulatory cooperation, cooperation on product admission can be very sensitive, as the admission procedure approaches between the US and the EU are quite different.

Many sectors can be included

Whereas the form of regulatory cooperation suggested in the mandate is rather narrow, the scope with respect to sectors it can be applied to is extremely wide. **It provides the basis for eliminating non-tariff barriers „in sectors where obstacles are currently found“**, i.e. in all areas. Explicitly mentioned are the „machinery, electrical and electronic sector“, but it can cover far more than that. On the aspirations, it makes sense to take into account the Juncker-Trump declaration, which mentions services, chemicals, pharmaceuticals, medical products, as well as soybeans.

Voluntary but dangerous

The language of the conformity assessment mandate remains rather soft, suggesting a voluntary form of regulatory cooperation as in the CETA agreement with Canada or the JEFTA agreement with Japan (the parties „should explore the feasibility“; „should develop requirements that would allow [not require] an importing party to accept conformity assessment“³). This can however still change during the Council discussions among member states in the coming weeks. Also, **one should not forget that a voluntary character doesn't eliminate the danger of watering down the standards of product**

admission.⁴ For the moment, it remains totally unclear, who will be responsible for carrying out the regulatory cooperation process. Past experience shows it was mostly trade bureaucrats in ministries, alongside with corporate lobbyists, who were responsible – a group of people not necessarily interested in high consumer and environmental standards. Moreover, the mandate contains all institutional preconditions for developing a more ambitious form of regulatory cooperation later on in the negotiation process.⁵

Due to the following reasons it is highly problematic to start negotiations on conformity assessment/regulatory cooperation at this moment in time:

1. US and EU standards and regulations vary greatly, also with respect to product admission procedures. High EU standards may be watered down when it comes to mutual recognition of product admission procedures.

2. The US has made quite clear that it will push for including negotiations controversial issues such as agriculture or data flow, both fields in which the two parties' approaches differ and could be addressed via a regulatory cooperation mechanism. The aggressive negotiation targets of the US become evident in the negotiating objectives published by USTR Robert Lighthizer.⁶

3. In a situation in which the US is making enormous pressure by threatening the EU with imposing tariffs on automobile products, EU-negotiations may be pressured to make concessions on standards and regulations. The European Parliament has highlighted this danger, too.⁷

4. As the Executive Working Group that has prepared the negotiations is working secretly behind closed doors and as we don't know the content of the current Council discussions on the mandate, the public is again in the dark with respect to the question which sectors may be addressed under regulatory cooperation. This increases the dangers that standards will be watered down behind closed doors.

1 https://ec.europa.eu/growth/single-market/goods/building-blocks/conformity-assessment_en

2 More on US-EU regulatory cooperation experiences in the past: https://corporateeurope.org/sites/default/files/attachments/regulatoryduet_en021.pdf

3 Mandate on Conformity Assessment, Annex, p. 1, Content. http://trade.ec.europa.eu/doclib/docs/2019/january/tradoc_157629.pdf

4 On US-Canadian experiences with voluntary regulatory cooperation: https://corporateeurope.org/sites/default/files/en_from-nafta-to-ceta_k2-1_final.pdf

5 Mandate on Conformity Assessment, Annex, p. 1, Final Provisions, 10.

6 US negotiations objectives with the EU: https://ustr.gov/sites/default/files/01.11.2019_Summary_of_U.S.-EU_Negotiating_Objectives.pdf

7 <https://www.bernd-lange.de/content/374506.php>

Our demands:

1. Transparency: Generally immediate publication of the mandate once it has been informally adopted and publication of detailed minutes of the Council discussion on the mandate.

2. No negotiations with the US under tariff threat: Like the European Parliament, we think it is very dangerous to negotiate with the US in a situation when it can always threaten the EU sides with tariffs. That is why the EU side should not start negotiations in a situation when it is threatened.

3. No regulatory cooperation in trade agreements: Regulatory cooperation degrades important consumer and environmental standards to „trade barriers.“ This perspective on important regulations in the public interest carries the danger to harm people and the environment.