



Consumer Federation of America

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Consumer Federation of America
To Negotiators in the Transatlantic Trade and Investment Partnership
May 21, 2014

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.

CFA works in the areas of insurance, energy, financial services, food and product safety, electronic commerce, telecommunications and privacy. Thus the broad scope of these negotiations could impact the many issue areas in which CFA is active.

Today I want to focus on four main issues: the impact of TTIP on product safety; regulatory preemption; regulatory coherence; and transparency.

Product Safety

At Consumer Federation of America, I am the legislative director and senior counsel and much of my substantive work focuses on product safety. An important product safety law, the Consumer Product Safety Improvement Act, passed in the United States in 2008 by large bipartisan 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 them is the provision that requires third party testing of toys and infant and toddler products to mandatory standards. The implications of the Transatlantic Trade and Investment Partnership 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 significant 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.

A study by the International Federation of Inspection Agencies, a trade group of international testing, inspection and certification companies conducted two studies in 2012 and 2103 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 that there is a significant distinction not only between the method of evaluation of the safety of products in the EU and the U.S. as well as a significant consequence on consumer protection, this issue cannot and should not be resolved through TTIP and should be resolved democratically by each region. Otherwise, there is a significant risk that an important US consumer protection law could be extensively preempted under this negotiation.

Regulatory Preemption

We have been assured by negotiators on both sides of Atlantic as well as by President Obama 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 consumer protections they don't like and prevent new or stronger protections from being enacted 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 our normal legislative and regulatory systems. We need you to help ensure that this does not happen. International trade agreements should not be used as a way to weaken important consumer protections.

Regulatory Convergence

We have seen the leaked EU position paper on regulatory convergence, and it 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 we 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. We also understand that this regulatory convergence could also include using "cost benefit" and "trade impact" analyses for proposed regulatory or legislative initiatives. The use of these types of analysis as one of a set of tools would not necessarily be a cause for concern but using this tool as a primary measure to support the existence of regulations would be problematic

due to the fact that cost benefit analysis often minimizes the benefits of a regulation due to the fact that not all benefits can be quantified.

We understand that this new system of regulatory convergence could include the creation of a trans-Atlantic scientific body to guide regulatory decision making. A system, in which regulators would have to submit their proposals to an unelected body for review and input, before submitting those proposals to the public for comment, is not democratic. Governments can currently consult with each other about legislation and regulatory ideas and they can maintain a dialogue about such issues. To oversee this, we understand that the EU has proposed the creation of a Trans-Atlantic institutional framework, the Regulatory Cooperation Council (RCC), consisting of representatives from selected regulatory bodies in the US and EU. The council would oversee the development and implementation of laws in the EU and US. However, the creation of a new international body that evaluates regulatory proposals does not serve the public interest. This would create a new layer of bureaucracy that may be neither accessible to all stakeholders nor transparent and would almost certainly create additional opportunities for corporate influence.

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. We 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 that the text of this and other agreements has been withheld because it makes 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

I appreciate the opportunity to share Consumer Federation of America's views on TTIP and hope that our comments clarify our significant concerns about how this trade agreement could devastate consumer protections.