



TTIP in the debate: Engineering and Electronics Industry

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The aim of the working group is the information of small and medium-sized enterprises (SMEs) in Germany about possible consequences and effects of TTIP. Further to providing information, the initiative intends to strengthen the voice of the critical middle class as well as the SMEs, which are not present in the current communication policy of the European Commission.

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TTIP Could Be a One-Way Street for European Business

There are fundamental differences between the European and US conformity assessment and product approval systems. Consequently, the Transatlantic Trade and Investment Partnership (TTIP) could result in trade advantages biased towards American companies. Furthermore, it is highly likely that TTIP will lead to a lowering of Europe's current environmental and safety standards.

According to a survey – called "Going International" - carried out by the DIHK (German Chambers of Commerce & Industry), 75% of those export-orientated companies surveyed believe the biggest benefit from TTIP relates to standards and certification. Proponents of TTIP see regulatory cooperation as the main point in the project's favour. They cite the following examples: cars in the USA have red indicators; cars in the EU have yellow ones. And in electronics, the standard neutral cable in the EU is blue, whereas in the USA it is white. These sorts of differences in product requirements do indeed represent a serious problem for small-margin manufacturers who want to gain a foothold on the opposite side of the Atlantic.

But these examples are not a reason to proceed with TTIP – because standardisations of the type given in the above examples do not require complex, international treaties like TTIP. All that is needed here is sector-specific agreements. And we know that such agreements are possible: take the example of the common standards that exist in the USA and the EU for organic products.

Furthermore, the examples cited by those in favour of TTIP detract from the important problems that arise from the deal:

I. Differing Quality of Safety and Environmental Standards in Europe and the USA

For a substance to be brought to market in Europe, proof must be presented that the product is not dangerous. The American system comes at this from the completely opposite angle: in other words, in the USA a product can be brought to market until such time as its harmfulness is proven. Any compromise between these two systems would probably mean a lowering of European standards (which are usually higher than in the USA) and consequently a competitive disadvantage for those companies that produce products in line with these high standards.

II. Differences in Conformity Assessment and Certification

European standards and norms conform to the international ISO standards. The guiding principle is: one product or process, one standard. By contrast the American internal market is, thus far, not standardised and as such product requirements can vary within individual states or even from county to county. With TTIP we face not only the threat that Europe's highly successful standards system could be undermined, but also that American companies would gain easy access to the European market. European companies, meanwhile, would have to continue to take into account the regional and non-unified product requirements that exist on the American market. Critically, such a competitive disadvantage would be felt most by small and medium-sized enterprises.



III. Liability Risk

If problems do arise, damages claims in the USA can be very high. It remains to be seen whether – should TTIP lead to the mutual recognition of conformity assessments – American courts and insurance companies, like their European counterparts, will recognise the European CE label and ISO certificates. This uncertainty represents a major risk for European companies.

IV. Systemic Disadvantages for SMEs

As with other trade agreements there is a risk that small and medium-sized enterprises will not be able to lobby for their interests to the same degree that large corporates can. This problem stems either from the structures in place, or as a result of central tools such as the Investor Protection system that is planned under TTIP.

One of the issues the VdTÜV e.V. (German Federation of Technical Inspection Associations) is concerned about is that TTIP could be a one-way street for European business.¹ If regulatory cooperation were to be fixed in TTIP, that would set in train an irreversible process.

Background to the Individual Points Outlined Above

I: Differing Quality of Safety and Environmental Standards in Europe and the USA

In the EU the risk assessment of a material or product is governed by the precautionary principle. This means that for each substance that is to be used in a product or in the production process, proof must be provided that the substance does not represent a significant risk. Only then can it be granted a licence. The American approach to risk assessment is completely the reverse. In other words, a substance may be used until such time as proof is presented that it represents a risk. The consequences of this different approach are particularly apparent in the cosmetics industry: in Europe 1,200 substances are banned from cosmetic products; in the USA the figure is twelve².

Thus we see that safety and environmental regulations tend to be stricter in the EU than they are in the USA. This is why the German Federal Environment Agency has expressed the following concerns: “Any blurring of the EU’s very demanding environmental regulations would be both ecologically as well as economically problematic. The reason for this is that in those areas where these demanding environmental standards mean European companies currently have a competitive advantage, any alignment to the lower US standards, or recognition of them as equivalent, would mean these ecological and economic advantages would be lost.”³ The Agency continues: “Such a scenario is highly probable, given that on the one hand it is hardly likely that the USA will assume all of the EU’s demanding standards; and on the other, TTIP explicitly calls for a harmonisation of standards.”

¹ cf.: Twelve VdTÜV Demands of TTIP, www.vdtuev.de/dok_view?oid=516456

² Source: “UL Certification Should Not Be A Licence To Print Money”, Karin Zühlke, in: www.elektroniknet.de.
Link: www.elektroniknet.de/elektronikfertigung/strategien-trends/artikel/124103/

³ German Federal Environment Agency, Position Paper, March 2015 Environmental Protection Under TTIP



II: Differences in Conformity Assessment and Certification

While standards in Europe’s electronics industry are harmonised with the International Organisation for Standardization (ISO) and the International Electrotechnical Commission (IEC), to date the US market remains highly fragmented with different regulations and standards applicable in each of the 50 federal states.⁴

The differences in product conformity assessment and certification are a result of fundamentally different systems on either side of the Atlantic. In Europe the procedure is that – as far as possible - manufacturers independently undertake CE labelling with a view to obtaining a licence for the European market. By affixing or having affixed the CE marking, the manufacturer indicates that s/he takes responsibility for the conformity of the product with all applicable requirements set out in the relevant Community harmonisation legislation (cf. European Parliament and Council Decision No. 765/2008). Only in special cases is it necessary to consult further “competent authorities as neutral arbiters”. This affects explosion prevention, particular areas of engineering, and specific medical devices. Competent authorities include TÜV (German technical inspection association) and the VDE (German Association for Electrical, Electronic and Information Technologies). Dependent on a product’s risk potential, it may require a third competent authority to obtain final certification. In 90% of cases, manufacturer labelling will suffice. So, for example, pace makers have to be tested by a competent testing authority; walking aids, such as walking frames and crutches, do not.

By contrast, in the USA the rule is that all products can be brought to market, but not all products can be used. Thus it is the market that demands safety standards certification. The American Occupational Safety & Health Administration (OSHA) has, to date, accredited 18 commercial laboratories to carry out certification. The astonishing thing is that these laboratories, known as National Recognized Testing Laboratories (NRTLs), not only certify the actual products, they also create and define many of the standards and their related test methods. Some of the existing laboratories use different testing reports and they do not necessarily recognise certificates issued by each other’s laboratories. There is no legal requirement for the NRTLs to recognise each other’s procedures. Even American companies have been struggling with this issue for many decades - and there would appear to be no solution in sight. Ultimately it is the end user who decides which product certificate s/he is prepared to recognise. If there is any doubt in a public procurement case, it is the local fire chief who determines which product certificate applies.

This system is even more problematic for component manufacturers whose component parts are used in different products; because it may well be that each new product requires new certification. In other words, if the manufacturer of a particular device requests certification from a specific NRTL, then the component supplier will also be obliged to obtain his certification from the same NRTL. In practice what has happened is that the largest laboratory – namely UL (Underwriters Laboratories) – has more or less created a monopoly, with most clients now demanding UL certification.

Furthermore, the USA has more than 1,000 so-called “Authorities Having Jurisdiction” (AHJs) that are allowed to impose product requirements over and above the established standards. These AHJs can be at federal, state, regional or municipal level. As such the USA has considerably higher fire safety standards because – among other things – many American houses are built of wood.

⁴ CENELEC (European Committee for Electrotechnical Standardization) notes: “This difference in interpretation is mainly affecting sectors where ISO or IEC standards support European Directives or Regulations, whereas in relevant corresponding US Regulations, the standards that are referenced are very often domestically developed by organizations claiming to be international.” From CENELEC, Position Paper on EU-US Transatlantic Trade and Investment Partnership (TTIP), p3.



Fire safety standards are set at regional level, so de facto a house-buyer in the USA would not want to be without UL certification because of the liability risk. You need an awful lot of experience in and knowledge of the American market to know which is the relevant AHJ in any given location and which specific requirements that AHJ has. And even if you do know the requirements, it will still be very expensive to develop product variations that meet the various and differing region-specific requirements.

As such the EU's Internal Market and the American market cannot be viewed as equivalents. The American system cannot be changed at the federal level: all 50 federal states would have to agree to any changes – and that would be resisted by the very powerful lobby groups. And yet the EU's negotiating partner for TTIP is the American federal government.

It is therefore unrealistic to assume that, in the medium term, there will be any harmonisation of standards between Europe and the USA. And indeed, this would not be desirable. Europe's standards are harmonised with international standards and there is no reason to abandon this situation. In its position paper on the subject, the ZVEI (German Electrical and Electronic Manufacturers' Association) says, "Harmonisation in this context cannot be only on a bilateral basis. It must be done at the level of the international standardisation organisations [...], as otherwise the harmonisation already achieved with other world regions would be placed at risk."⁵ But any mutual recognition of standards without prior harmonisation poses two major risks: firstly, the European doctrine of defining one standard for each product or process would be undermined. In the same paper ZVEI states that "negotiations in the field of technical barriers to market access also involve risks for the European electrical industry. These [could] materialise [if] the results of the TTIP negotiations [undermined] the functioning of technical regulation at the European level"⁶. In addition to the many potential technical problems, this would also lead to additional costs which would be particularly hard for small and medium-sized enterprises to bear. On this issue, the European Committee for Electrotechnical Standardisation (Cenelec) notes: "Mutual recognition of US standards would increase costs for industry and other stakeholders, as they would need to be involved in more than one standards development process. It would also be more difficult for EU stakeholders to access US processes than those of the ESOs"⁷. Secondly this asymmetrical situation would result in a situation whereby "US companies [would] enjoy easy market access [to] the EU while European companies [would] continue to be confronted with heterogeneous and complicated US product requirements"⁸. And in the event of any doubt, they would still have to pay out large sums of money for UL certification because this is what American clients would want.

Therefore, any harmonisation of standards and norms is only feasible if it is done at an international level only and through the use of ISO or IEC standards. It should not be done by way of bilateral agreements.

⁵ ZVEI (German Electrical and Electronic Manufacturers' Association), position paper: "[TTIP – Transatlantic Trade and Investment Partnership](#)", September 2015, p15.

⁶ Ibid. p5

⁷ CEN and CENELEC paper: The risks of mutual recognition of voluntary industry standards within the context of a future EU-US trade agreement (TTIP) and alternative approaches, p2. Download: www.cencenelec.eu/news/policy_opinions/PolicyOpinions/TTIP_std_mutual_recognition.pdf

⁸ ZVEI (German Electrical and Electronic Manufacturers' Association), position paper: "TTIP – Transatlantic Trade and Investment Partnership", September 2015, p17



III: Liability Risk

The risk-orientated American safety regime works partly because, in the event of a damages claim, the penalties imposed are draconian. This is certainly a major incentive for the competent authorities to minimise risk. Even if the TTIP negotiating partner – namely the US federal government – were to recognise EU standards and certificates for the American market, that is far short of a guarantee that the American courts and insurance companies would take the same position in the event of compensation claims.

On 6th August 2015 the MEP Quisthoudt-Rowahl (CDU) submitted the following parliamentary question to the European Commission on this very issue:

“Is it possible, through the inclusion of certain phrases in TTIP, to prevent the emergence of any legal disadvantages – particularly in relation to increased liability risks by comparison with product marketing in the EU – for European manufacturers whose products comply ‘only’ with the European product requirements, i.e. may not meet conflicting US requirements in every detail?”⁹

Speaking on behalf of the Commission, Mrs Malmström gave the following answer to the above question:

“TTIP will not alter the EU and the US respective legal systems governing product liability nor will it affect competences that currently lie with the EU or US authorities.”

This response clearly shows that what we have here is a fundamental, systemic, regulatory problem that has not yet been addressed. The Commission’s response does not answer the concrete question posed about the increased liability risks for European manufacturers who enter the US market.

IV: Systemic Disadvantages for SMEs

It is the nature of things that small and medium-sized enterprises do not have the same level of resources as do the large corporations to lobby for their interests at an international level. Take the example of the proposed dispute-settlement process. Regardless of whether this is to be called ISDS (Investor-State Dispute Settlement) or ICS (Investment Court System), the core problem remains. Only large corporations will be able to go to settlement arbitration because most SMEs will not be able to afford the high court costs (which on average will be US\$8 million).¹⁰ Equally SMEs will not enjoy the same level of representation as that enjoyed by large corporations on the committees that will negotiate the harmonisation of norms and standards between the EU and the USA. The harmonisation of national norms and standards to ISO and ICE standards is costly; yet another parallel system for the market between the EU and the USA is unnecessary and will be too great a burden for SMEs.

⁹ See following link for question details: www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2015-012038+0+DOC+XML+V0//EN

¹⁰ cf. Katharina Reuter, UnternehmensGrün, „TTIP & Co. schaden dem Mittelstand“
In: “38 Arguments against TTIP, CETA, TISA & Co.”, attac texts 48, p46

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Sources

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VdTÜV e.V.

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European Commission

Written question from Godelieve Quisthoudt-Rowohl, MEP, to the European Commission – and reply:

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„UL certification should not be a licence to print money“, Karin Zühlke, elektroniknet.de, 16.10.2015:

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„TTIP: Die Selbstaufgabe des Staates“, Fritz Glunk, in: Blätter für deutsche und internationale Politik, November 2015

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