TTIP and financial services

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Free trade with financial services and the TTIP

• **World Trade Organization: Services agreement GATS and Understanding on Financial Services** (not signed by all WTO members): liberalization is the rule, regulation is the exception

• **The financial crisis** revealed how far-reaching the transatlantic market is already liberalized and that particular U.S. financial products can bring down EU banks and vice versa.

• However, **TTIP is based on old rules (GATS/Understanding)** and even goes – often different than CETA – **beyond**

Source image: David Shankbone / Wikimedia
Lobbying in advance by the EU and U.S. financial industry on both sides of the Atlantic

Problem 1: Market access in general (example)

• EU draft agreement (2 July 2013):

  the measures which a Party shall not maintain or adopt (...) are defined as: (…) 
  - “limitations on the total number of operations or on the total quantity of output”

• Potential conflicts with regulation:
  - Position limits for commodity speculators? (adopted in EU and US; challenged at U.S. court)
  - Separation of business operations of banks (planned in EU, adopted in US but challenged at U.S. court)

  🇨🇦 CETA clarifies that laws on „separate legal entities“ are fine
Problem 1: Market access for new financial products

• EU draft agreement (2 July 2013):

„Each Party shall permit a financial service supplier of the other Party to provide any new financial service. A Party may determine the juridical form through which the service may be provided and may require authorisation for the provision of the service.“

• What is with precaution? E.g. the European Securities and Markets Authority (ESMA) can now ban or restrict a investment product or a financial instrument on a precautionary basis, before it is marketed or sold to a client.

Canada CETA more careful, only against discriminatory rules
Problem 2: Regulation only as exception („carve-out“)

• EU draft agreement (2 July 2013):

„1. Each Party may adopt or maintain measures for prudential reasons, such as:
(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
(b) ensuring the integrity and stability of a Party's financial system.
2. ... measures shall not be more burdensome than necessary”

• One can never certainly know where an upcoming crisis originates. Hence proof of a precise necessity is impossible.

🇨🇦 CETA clarifies that prohibition of particular product is fine
Problem 3: Free movement of capital for investments

• EU draft agreement (2 July 2013):

„Each Party shall permit all transfers relating to an investment. (...) Such transfers include: (...) 

c) interest, royalty payments, management fees, and technical assistance and other fees (...)“

• Despite exceptions (e.g. for criminal law), concerns remain:

- Taxation is not explicitly protected. However, interest, royalties and management fees are also used to avoid taxes; rules against this could be hampered (cf. WTO dispute on Argentina's transfer pricing rules; ✝️ CETA: Germany sees conflict with tax treaties

- Capital controls could be hampered (cf. lawsuit of UK against financial transaction tax, even though unsuccessful)
Problem 4: „Harmonisation“ of regulation

- EU negotiating mandate (17 June 2013): “*With regard to financial services, negotiations should also aim at common frameworks for prudential cooperation.*” Commissioner Michel Barnier was engaged, commission paper January 2014

- U.S. finance minister Jack Lew: „*The question is ... whether it's a question of financial regulation or environmental regulation or labor rules, is a trade agreement the appropriate place to [address these issues]. Normally in a trade agreement, the pressure is to lower standards on things like that and that's something that we just think is not acceptable.*"
Even one-sided regulation or mutual recognition?

- Tightened regulation approach in United States is controversial:
  - **Case 1:** United States regulate EU subsidiary bank in the United States, e.g. require fulfillment of U.S. capital requirements
  - **Case 2:** United States regulate U.S. subsidiary bank in EU, e.g. reporting requirements for OTC derivatives

- EU demands „mutual recognition“ or harmonization of – in their view – equivalent standards, United States defend their approach.

Source image: Дмитрий-5-Аверин, CrazyPhunk / Wikimedia
Coordination of standards by recognition or harmonization not wrong in itself, but crisis rather reason for minimum, not maximum standards

EU – willingly or not – champions watering down higher standards on both sides of the Atlantic

Lobby organization TheCityUK on the commission paper of January 2014: “[it] reflected so closely the approach of TheCityUK that a bystander would have thought it came straight out of our brochure on TTIP.”
Problem 5: Regulation of state owned enterprises

• EU negotiation mandate (17 June 2013):

  “Furthermore, the Agreement should address state monopolies, state owned enterprises and enterprises entrusted with special or exclusive rights.”

• It is still unclear what is precisely negotiated on this topic, but United States declared that they consider this issue as important.

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• Already plenty of ongoing disputes related to financial services (31 as of June 2014): on haircuts (Argentina, in favor of investors; Greece, ongoing), bail-in of creditors for bank rescue (Cyprus, ongoing), currency devaluation (Argentina, in favor of investors), bank nationalization (Belgium, ongoing) e.a.

• Argentina: 41 disputes after crisis 2001, till now thereof 15 over $980 million successful; Argentina agreed 2013 to pay 677 million.

★★★★ CETA filter: weak, only consensus; Germany fears problems
Thank you for your attention!

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