

# Regulatory Convergence: Is It a Good Thing?

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On January 9, 2014, legislation was introduced in both the U.S. House of Representatives and the U.S. Senate that would fast track the approval of international trade agreements. However, environmental advocates have been warning that any such effort to make U.S. and European regulations more cohesive will have a chilling effect on rules in both regions.

The Transatlantic Trade and Investment Partnership, a trade agreement being hashed out between the United States and the EU, is expected to reduce non-tariff trade barriers between the two regions. But it could affect regulations as wide ranging as those governing chemicals, cosmetics, liquefied natural gas exports, and foods containing genetically modified ingredients.

Supporters of the new legislation say that fast-track approval (most used recently to approve a trade agreement in 2012 with Colombia, Panama, and South Korea) is necessary to complete the negotiating process.

Negotiators for both the U.S. and the EU have expressed interest in using the agreement—the largest bilateral trade and investment negotiation ever undertaken—to boost the regulatory compatibility between the two regions.

But environmentalists blasted the proposed legislation as soon as it was announced. They say that the agreements would result in weaker environmental rules and give corporations unprecedented power to challenge regulations. Environmental and consumer advocates on both sides of the Atlantic Ocean are worried that “regulatory convergence” will result in weaker environmental rules across the board in both nations. According to critics, the agreement would effectively call for a regulatory ceiling and add extra layers of review by an international regulatory board, as well as pre-empt efforts in U.S. states to promulgate stronger rules.

By contrast, farming advocates note that while the U.S. market is one of the most open in the world, U.S. farmers and ranchers face high tariffs and other noncompetitive practices when they try to export their products. They want U.S. agriculture to thrive by correcting these disparities and level the playing field.

The EU historically has taken greater action than the United States in addressing toxic chemicals, including putting in place bans on more than 1,200 components in cosmetics and disallowing testing on animals. How regulatory convergence would affect those specific rules—as well as how it would more generally bridge the

gaps between the U.S Toxic Substances Control Act and the EU Regulation on Registration, Evaluation, Authorisation and Restricts of Chemicals process—is unknown.

Negotiators are already working on whether voluntary energy efficiency labels, such as the U.S. Energy Star label, should be considered a trade barrier. An organic-standards deal reached last year between the United States and the EU could serve as an example of how regulatory convergence would work between the two nations. Under this new agreement, organic products certified in either the United States or the EU are allowed to be labeled and sold in either market as organic.

Aside from making it more difficult for either government to pass regulations that harm businesses, negotiators are also considering creating an investor-state resolution provision, according to reports on the negotiations. Such a provision would create an arbitration system outside each government's court system in which corporations could challenge regulations that violate the provisions of the trade agreement.