

The Regulatory Coherence Chapter of TTIP

Challenges and Opportunities

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caveat

/ˈkævɪət, ˈkeɪ-/ 

noun

noun: **caveat**; plural noun: **caveats**

1. a warning or proviso of specific stipulations, conditions, or limitations.

"there are a number of caveats which concern the validity of the assessment results"

synonyms: warning, caution, admonition, monition, red flag, alarm bells; [More](#)

- **LAW**

a notice, especially in a probate, that certain actions may not be taken without informing the person who gave the notice.



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



**THE TRANSATLANTIC
TRADE AND
INVESTMENT
PARTNERSHIP
AND
PARLIAMENTARY
REGULATORY
COOPERATION**

AFET

EN

2014



TTIP negotiations

contested, although MS variation

1. Transparency
2. 'Race to the bottom'
3. ISDS

There is **more to** TTIP

- Political and democratic control
 - Negotiations
 - Implementation
- Balance of commitments

What's **TTIP** ?

Trade perspective:

'New generation' trade agreement

Regulation perspective:

New form of International Regulatory
Cooperation

Why? How? What?

Why? How? What?

to eliminate, reduce or prevent
unnecessary
“behind the borders”
obstacles to trade

High-Level Working Group for Job and Growth, Final Report – February 2013

NTBs

domestic regulatory measures often
pursuing legitimate objectives,
(environment, health and safety)

Why? How? What?

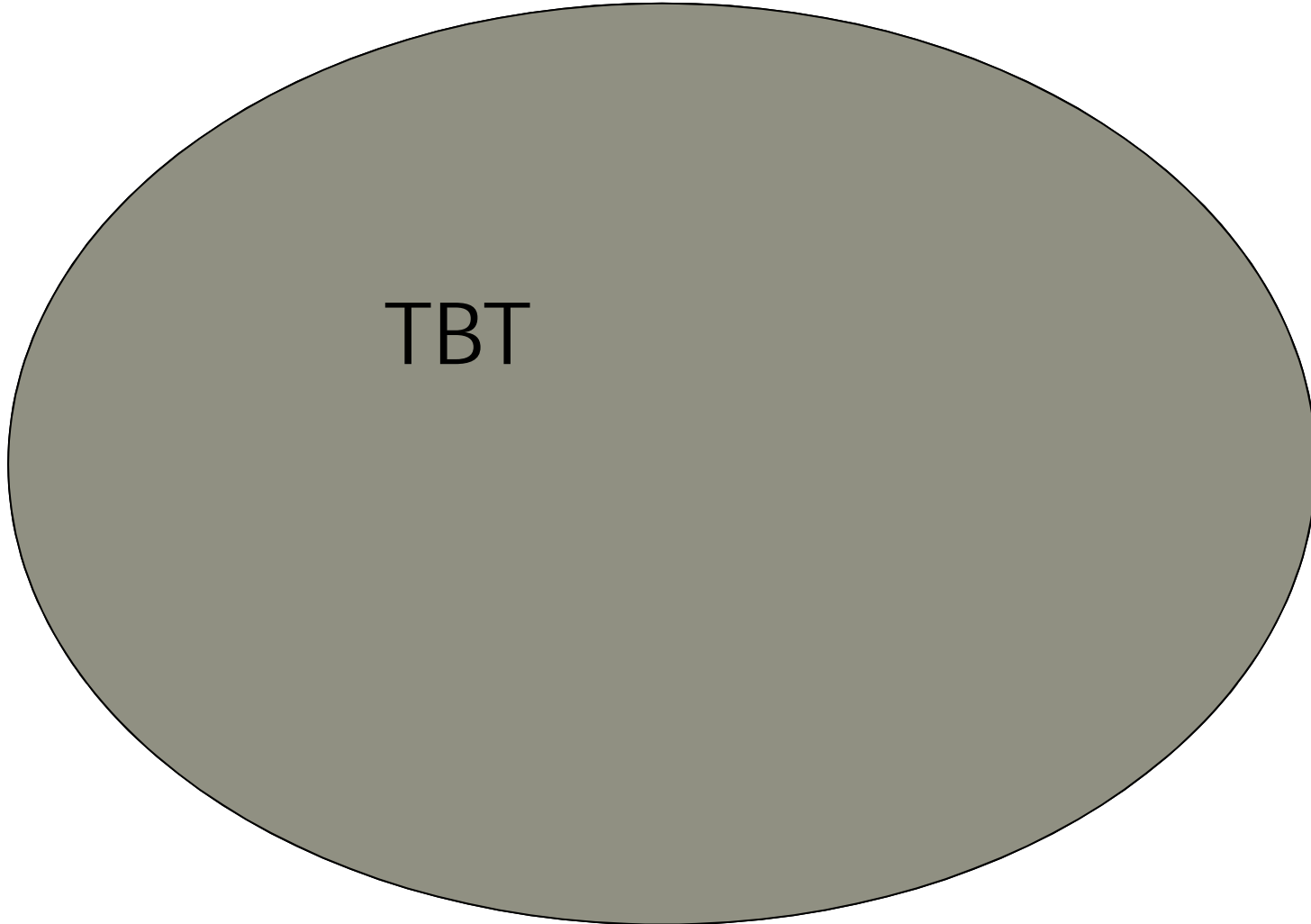
TTIP does not occur
in a vacuum



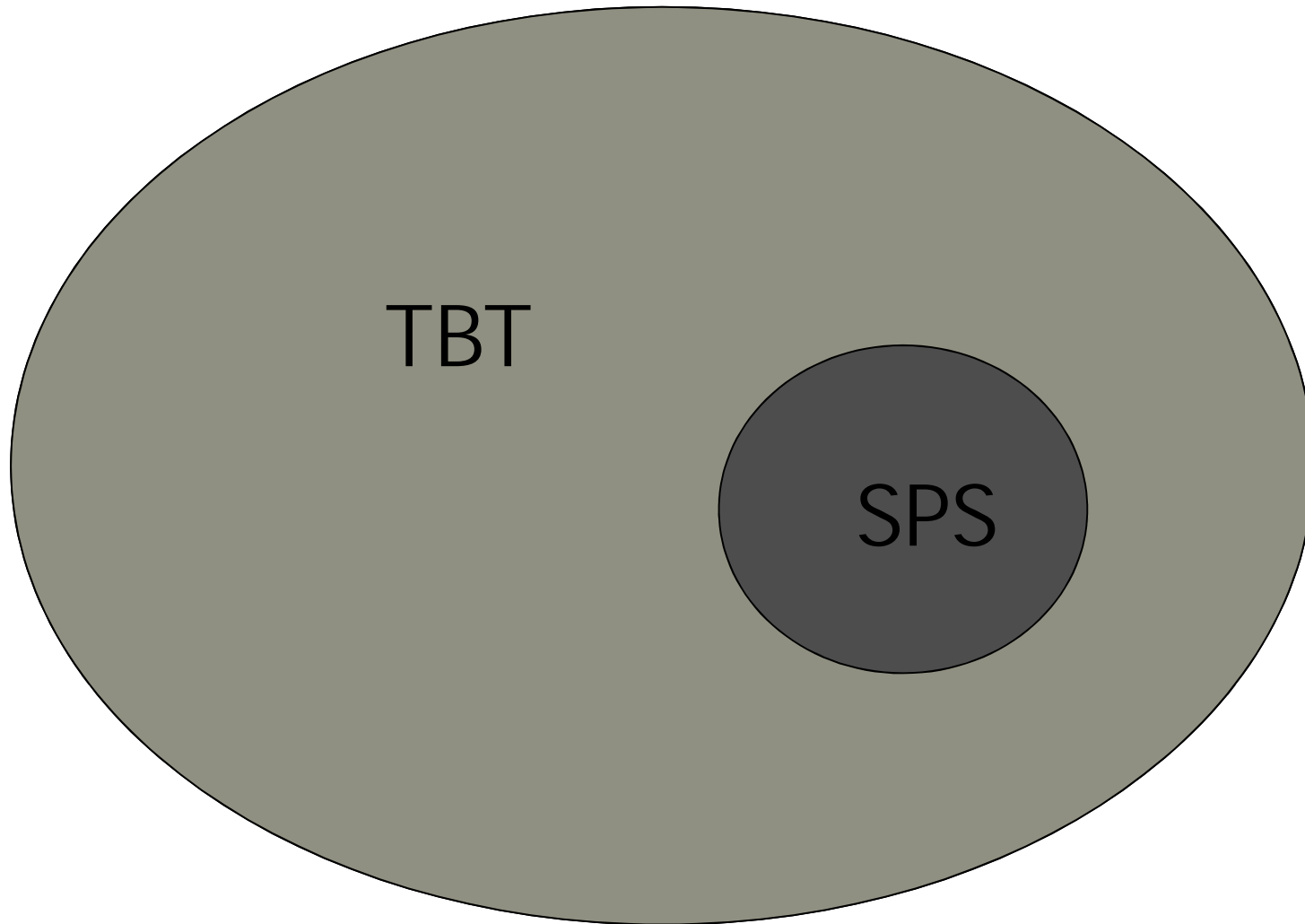
Transatlantic regulatory cooperation



NTBs



NTBs



WTO regulatory cooperation

- Duty to notify
- Non-discrimination
- International standards
- Scientific evidence
- Necessity

Procedural harmonisation

not enough

to mitigate the negative trade effects
stemming from regulatory divergence!

need to develop

NEW

regulatory co-operation
mechanisms



Why? How? What?

cooperation on **HOW**
NOT on **WHAT**
to regulate

assumption

convergence around
a **shared set** of processes
and procedures

may facilitate
substantive regulatory
convergence

The Canada-United States Regulatory Cooperation Council

The screenshot shows the top portion of a website. At the top right, there is a "CONTACT US" link. The main header features a large image of the American and Canadian flags with the text "BEYOND THE BORDER A SHARED VISION". Below this is a navigation bar with "Home", "Beyond The Border: News and Documents", and "Regulatory Cooperation Council: News and Documents" links, along with a search box. The main content area is divided into three columns. The left column is titled "BEYOND THE BORDER HEADLINES" and includes three news items: "July 30, 2012: Regulatory Cooperation in Action", "July 16, 2012: USDA, CFIA Announce Pre-Clearance Pilot Project", and "July 11, 2012: Residency Rule Amended for Canadian NEXUS Applicants". The middle column has a "Check Out Our Progress" section with a green checkmark icon and the text "View our progress in increasing efficiency at the border." The right column is titled "BTB-RCC Links" and lists "Beyond The Border: Archives", "Department of Homeland Security: Beyond The Border", and "Trade.gov: U.S.-Canada Regulatory Cooperation Council".

CONTACT US

BEYOND THE BORDER
A SHARED VISION

Home Beyond The Border: News and Documents Regulatory Cooperation Council: News and Documents Search

BEYOND THE BORDER HEADLINES

July 30, 2012: Regulatory Cooperation in Action
"Today we are pleased to announce an important step forward for a joint effort launched by President Obama and Prime Minister Harper to cut unnecessary red tape for companies small and large that want to do business cross our shared ... [Continue reading →](#)

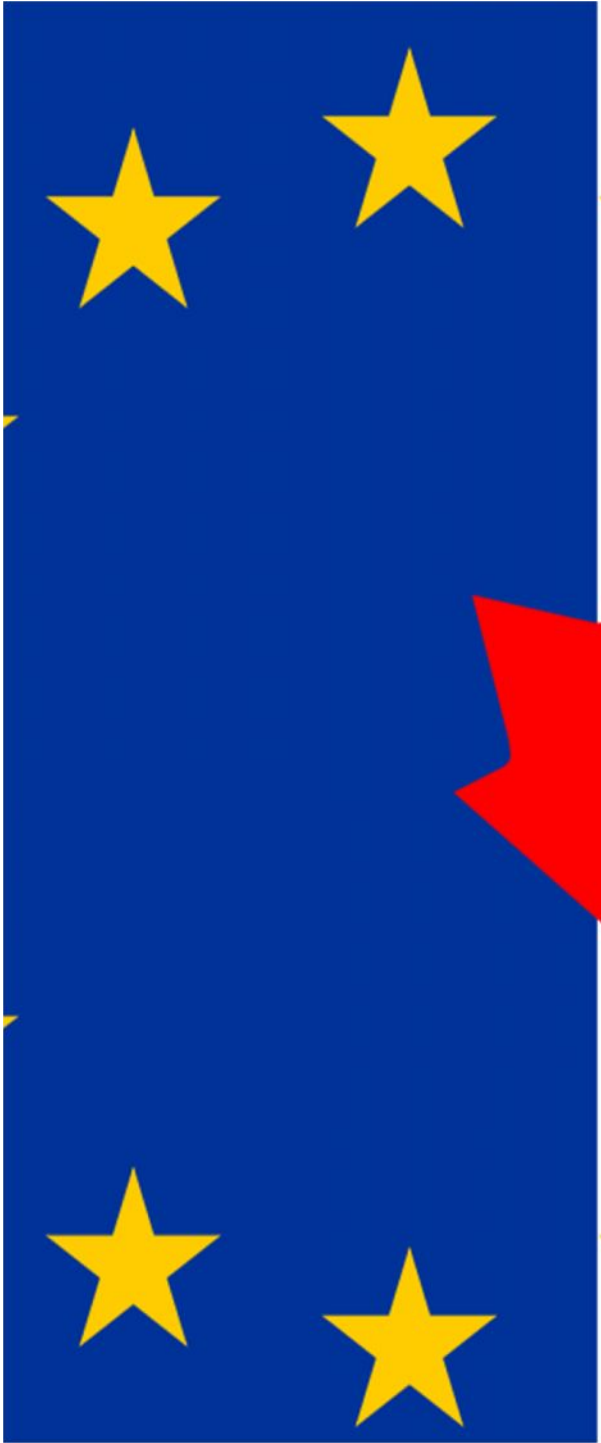
July 16, 2012: USDA, CFIA Announce Pre-Clearance Pilot Project
As part of the Beyond the Border Action Plan, USDA's Food Safety and Inspection Service (FSIS) is working jointly with the Canadian Food Inspection Agency (CFIA) to implement a pre-clearance initiative. (["target="_blank">Read More!](#))

July 11, 2012: Residency Rule Amended for Canadian NEXUS Applicants

Check Out Our Progress
View [our progress](#) in increasing efficiency at the border.

BTB-RCC Links

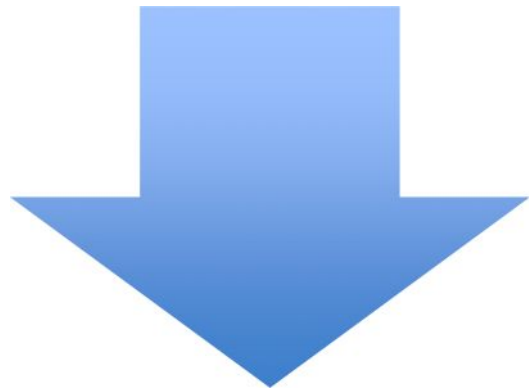
- [Beyond The Border: Archives](#)
- [Department of Homeland Security: Beyond The Border](#)
- [Trade.gov: U.S.-Canada Regulatory Cooperation Council](#)



beyond

permanent IRC may appease,
counter the ‘**negotiation mode**’ of
sector-specific dialogues and
help overcome fundamental differences
through a ‘**living agreement**’

TTIP game



Vertical annexes

(pharma, cosmetics, chemicals,
motor vehicles)



**Horizontal
discipline**



Horizontal Regulatory Chapter

as opposed to

Sectoral Agreements

scope

ie the regulations to which it will apply

all measures of general
applications, affecting goods and
services, **with transatlantic impact**

Which are those?

- In the US mainly **rules** (ie non-legislative acts)
- In the EU mainly **legislation**

Horizontal discipline

Reg Coop duty → permanent forum

Transparency → early warning: notification

Consultation → dialogue

Evidence-based → impact assessment:
extra-territorial impact

Mechanisms?

- NEW REGULATIONS

Regulatory Compatibility Assessment: contact, compare problem definition and analysis, consultation, costs of divergence

- EXISTING REGULATIONS

Regulatory Equivalence Assessment: petition + evidence, consultation and hearing

examples

- **Cosmetics**: MR of permitted/banned substances and common labelling
- **Chemicals**: data sharing; prioritization substances for RA; classification/labelling
- **Pharma**: MR of GMPs inspections plants

‘Race to the bottom’?

NO

REGULATORY AUTONOMY is preserved:

Parties bound **only if agreement on
compatibility/assessment **reached****

BUT....

OPEN QUESTIONS

implementation

How to **implement** the
horizontal regulatory chapter ?

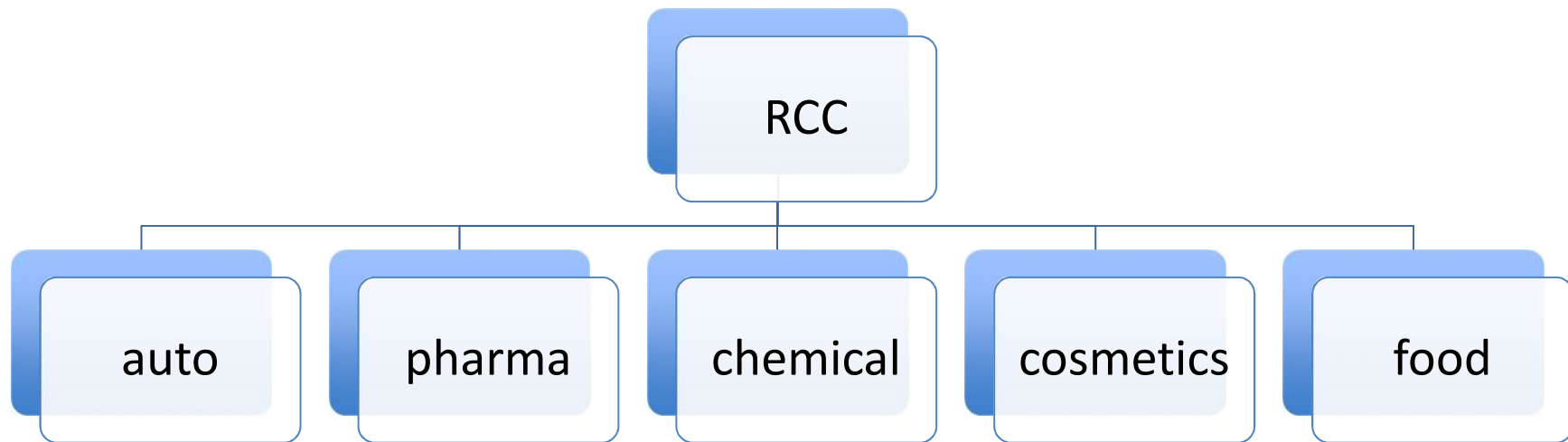
And which consequences on the
EU legal order?

2 moments

- **Implementation** horizontal discipline
 - RCC + sectoral committees
- **Transposition** of sectoral commitment
 - Each jurisdiction will implement in line with its constitutional system

What role for EP/Council and public?

institutional design



Who is going to sit in those committees ?

(only regulators and/or trade reps)

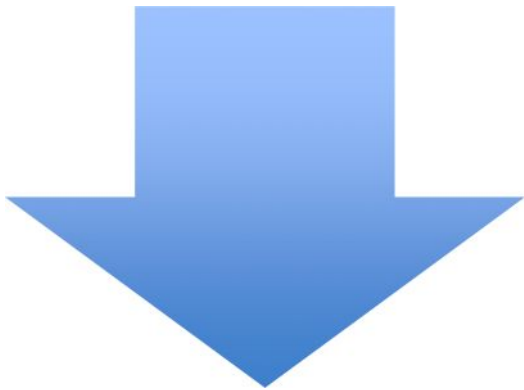
concern

innovative governance framework established
by TTIP is inevitably set to **reopen**
the legislative and rulemaking **processes**

need to ensure **participation**

need to ensure **political control**

BUT tension with TTIP effective operation



Effectiveness



**Political
control**



Concluding remarks

TTIP per se **won't diminish** regulatory autonomy, but

nature, format and degree regulatory coop
new and requires balancing btw democratic
control and effectiveness



Many thanks for your attention!

questions welcome at

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