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TTIP: released emails show biotech, seeds on the trade talks table

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The secretive discussions about the Transatlantic Trade and Investment Partnership (TTIP), a trade agreement between European Union and the United States under negotiation since July 2013, have led to many concerns being raised regarding food and environmental safety standards. One of the most contentious issues is whether TTIP will weaken Europe's rules over genetically modified organisms (GMOs), a long-time target for US exporters who claim these rules hamper their profits.
Meanwhile, the biotech industry is pushing for the products of the 'next generation' biotech crops to escape the EU's legislation on GMOs and therefore to go unregulated. Is there a link between this new push, and TTIP? Emails obtained via a Freedom of Information request show this might indeed be the case.

Responding to public concerns, the European Commission has fervently denied any claims that EU food safety standards, or other standards for that matter, would be lowered as a result of TTIP. In early 2013, for example, the New York Times reported former European Commission President Barroso as stating, "restrictions in Europe on genetically modified crops would not be up for

discussion" in the negotiations [1]. The TTIP Q&A website set up by the European Commission, in reply to the question "*Will TTIP force the EU to change its laws on genetically modified organisms?* " says: "*No. The EU basic law on GMOs is not up for negotiation. It will not change as a result of TTIP*" [2]. The @EU_TTIP_team on Twitter also vigorously echoes this assertion.

Yet serious doubts have been raised about these statements. For one, a trade agreement similar to TTIP, the Canada-EU free trade agreement (CETA), explicitly mentions lifting "trade barriers" for biotech crops. And where CETA goes, TTIP is very likely to follow. Indeed, it would be surprising if this were not the case, given that the EU's GMO rules are a burning issue for the US (see box below, GM rules as 'barriers to trade').
According to industry, "{}TTIP is about simplifying procedures and improving mutual recognition of comparable standards; it is not about setting new rules or policies, neither in Europe nor in the US", as Garlich von Essen of the European Seed Association (ESA) put it [3]. However, it has been pointed out that even when existing legislation is not changed, food standards – and other standards – could still be affected by changing the rules about how they are implemented, or by accepting lower standards from the other party as 'comparable' through mutual recognition. Moreover, TTIP is very much also about the future development of rules to protect people and the environment.

New techniques of biotechnology on the TTIP table

One such area of contention is over 'New Breeding Techniques' or 'new GM'. 'New' refers to the various techniques that have been developed in recent years to genetically engineer living organisms [4]. Examples include cisgenesis, oligonucleotide-based techniques, nucleases (DNA scissors) and direct interventions in gene regulation (epigenetics) [5].

The question that has been posed is whether organisms produced via these techniques should be regulated in the same way as existing GMOs in Europe, which undergo some form of risk assessment, are labeled, and so forth. To be regulated this way, these plants would need to meet the definition of a GMO under the current directive (2001/18) [6] (and not be excluded from its scope for other reasons either [7]).

The European Commission has been working on this issue of 'new biotech' for over seven years now, and has yet to come to a conclusion. For the biotech and seed industry this is a crucial opportunity to avoid regulation of new GM products, by getting them classed as non-GM. This would also make them go unlabelled. Given the general public rejection of GM in Europe, such invisibility is one of the preconditions for commercial success for those GM products.

GM rules as 'barriers to trade'

The US has been clear in its rejection of EU rules on GMOs, calling them trade barriers. Their concerns include the EU authorisation procedure for GMOs, labelling of GM food and feed, the zero-tolerance policy for illegal (non-authorised) GMOs, and national bans by several EU member states outlawing the cultivation and/or imports of specific GM crops. In February 2015, 13 US business organisations wrote to the European Commission complaining that the EU is taking too

long to deliver final decisions on GMO applications, "*not complying with its obligations to make timely decisions on biotechnology applications*" [8].

It is very instructive to also look at the recently concluded CETA trade agreement between Canada in the EU, as it is likely to provide an insight into the future of TTIP. Here, the EU and Canada agreed for instance that they would "*cooperate internationally on issues related to biotechnology such as low-level presence of genetically modified organisms*". Currently the EU does not allow any presence (contamination), low or otherwise, of non-authorised (illegal) GMOs in food stuffs and seeds, also called the zero-tolerance policy. This issue is a long standing thorn in the side of the major GM-exporting countries not least the US. Under CETA EU and Canada will also cooperate "*to minimize adverse trade impacts of regulatory practices related to biotechnology products*" [9]. The Canadian government cheered and agribusiness applauded: "*We look forward to the EU adopting more timely and science-based policies related to the approval of biotech traits as well as addressing issues related to establishing low-level presence policies.*" [10]

New biotech techniques under scrutiny in Europe

To understand these new technologies is not an easy matter. The European Commission set up a 'New Techniques Working Group' in October 2007 to assess whether a number of new biotech techniques are giving rise to products falling within the scope of the GMO legislation. This working group looked at Oligonucleotide Directed Mutagenesis (ODM), Zinc Finger Nuclease Technology (ZFN) comprising ZFN-1, ZFN-2 and ZFN-3, Cisgenesis and Intragenesis, Grafting, Agro-infiltration, RNA-dependent DNA methylation (RdDM), Reverse breeding and Synthetic genomics. This Working Group could not reach a unanimous scientific opinion on all of the techniques [11].

The Commission also requested opinions from the European Food Safety Authority (EFSA) on cisgenesis/intragenesis and Zinc Finger Nuclease 3, to assess the risks they might pose and whether the existing risk assessment guidance is appropriate for these techniques.

Following these assessments, and after various delays, the Commission now says that by the end of this year it will publish its own legal interpretation on which of these techniques meets the definition of a GMO as spelled out under the current legislation, and should be regulated accordingly. The Council (Member States) and the European Parliament will have no say in the matter.

As stated, there is a huge industry desire to see these techniques go unregulated. An industry lobby platform was formed to make the case for their non-regulation: the New Breeding Techniques platform run and chaired by a Dutch lobby consultancy, Schuttelaar and Partners. This 'NBT platform' produced a legal opinion with a clear conclusion: none of those technologies result in GMOs, and therefore they should be deregulated[et legal analysis by the NBT platform].

In stark contrast, an open letter from over 30 organisations to Health and Food Safety Commissioner Andriukaitis earlier this year demanded that the products from new biotech techniques should be regulated by the EU GMO rules, and moreover, that "*health and environmental safety testing requirements are strengthened in light of the enhanced ability of these new techniques – individually or in combination – to alter the genetic code of plants, animals and other organisms*". The organisations also demanded that: "*Nothing in the TTIP and CETA negotiations will limit Europe's sovereignty and ability to regulate new genetic engineering methods and products as GMOs.*"

The US GM free-for-all

The US way of dealing with GMOs is entirely different from the EU's. According to the Center for Food Safety, US regulation of GMOs is almost entirely voluntary and full of loopholes, without risk assessment of human health or environmental aspects [12]. The US has already given some of the new biotech techniques the green light, including the Oligo-Directed Mutagenesis (ODM) 'Rapid Trade Development System' (RTRS) developed by US company Cibus, some use of the Zinc finger nucleases and reverse breeding. The EU will face big problems when GM products from new techniques produced in the US would end up in the global food chain, while the EU has not decided whether they should be regulated.

EU Delegation invited by seed industry

Emails released by the European Commission to Corporate Europe Observatory under freedom of information rules show that new biotech techniques are indeed being discussed by US and EU officials and industry. The first mail was sent by an official at the Office of the US Trade Representative (USTR) to the EU Delegation in Washington [13] on 17 March 2014, just after the March 2014 TTIP talks in Brussels.

In the email [14], the EU Delegation was invited to attend a lobby meeting with the American Seed Trade Association (ASTA) and the European Seed Association (ESA) to discuss the industry's "*interest in TTIP*". The email confirms that "*bilateral cooperation on seed trade issues*" was an issue touched on in the SPS (Sanitary and Phytosanitary) discussions during the TTIP round:

Dear x and x
I wanted to invite you to a meeting with the American Seed Trade Association and the European

The author of the email goes on to specify that the participants will include the Dutch seed association (Plantum), US agencies APHIS (the Animal and Plant Health Inspection Service of the US Department of Agriculture) and FAS (Foreign Agricultural Service, promoting export opportunities for US agribusiness).

The invitation was accepted. In other words, official US and EU delegations had a meeting with the US and EU seed industries (both largely representing the interests of the same big biotech corporations like Monsanto, Syngenta, Bayer, BASF, Limagrain and Du Pont/Pioneer) discussing the industry's position paper on TTIP.

The EU Delegation then circulated an email [15] to colleagues in the European Commission, DG SANCO (now called DG SANTE), summarising the ASTA/ESA paper:
Both [EU and US] seeds associations focus on three priority issues for TTIP: phytosanitary issues and the role of the bilateral plant health working group can play in this respect, new plant breeding techniques (both see no specific need for regulation) and the presence of GMOs in conventional seed.

This shows that two out of three priority issues of the seed industry for TTIP are related to GM: the new biotech techniques (called by the industry 'new plant breeding techniques'), and the previously described EU zero-tolerance policy for contamination of seeds and food with illegal (unauthorised)

GMOs.
The author of the email confirms that two members of the EU Delegation in Washington will indeed join the meeting with the seed industry, and asks DG SANCO for advice on what lines to take on these topics.

DG SANCO responded with some clarifications [16]. It is clear however from the excerpts of DG SANCO's response that were released, that the very fact that the EU Delegation met with their US counterparts and the transatlantic seed industry lobbies to discuss issues that are key to the way the EU regulates GMOs, is not being questioned.

Late in the evening of Friday 21 March there followed a short report back from the EU Delegation in Washington to DG SANCO about the meeting [17]. It shows that not only the Dutch National Seed Association was present, but also the German and French counterparts. The lobby meeting was not only convened by the US Government, but also chaired by the US Trade Representative office. The EU Delegation, the report back says, "*participated in a more or less listening mode*". It continues:

The European Seed Association stressed these three points [the three priority issues] are not controversial between the industries on both sides of the Atlantic and that they would not touch upon the policy goals of the EU or the US but concentrate on areas of common acceptance.

Both the ESA and the ASTA emphasized that new breeding techniques would have the potential to disrupt trade if there was a patchwork of different regulatory approaches and therefore the best approach was not to regulate them.

The ASTA-ESA paper itself was also disclosed to CEO [18]. It explains:

The future use of New Plant Breeding Techniques... and the introduction of the resulting new plant varieties in commercial farming will strongly depend on an enabling regulatory environment and a supportive public policy. Differences in definitions and regulatory frameworks would create major barriers for trade and deployment of these techniques. Generally, for New Plant Breeding Techniques, ESA and ASTA see no specific need for regulation.

Conclusion: EU GMO rules not on the table in TTIP?

These emails obtained via a freedom of information request show that during the March 2014 TTIP talks, "*bilateral cooperation on seed trade issues*" was brought up. It is now up to the Commission to clarify what exactly was discussed during those talks on these issues, and by whom.

And there is more explaining to do. We now know that the EU Delegation in the US then joined a meeting convened by the office of the US Trade Representative to get briefed on the transatlantic seed industry's demands for TTIP. Two of three priority issues are GM related. The European Commission back in Brussels provided input to that meeting, apparently not pointing out that it would be inappropriate to discuss the implementation of the EU GMO rules in the context of TTIP.

What these emails also reveal is that (perhaps unsurprisingly) the USTR is effectively acting as the extended arm of industry by convening this meeting. The documents also indicate that the EU Delegation in Washington is a lobby target for both US and EU industry, something that may have gone largely unnoticed so far. The ASTA is not registered in the EU Transparency Register, nor is ESA in the US Lobbying Disclosure Register. These registers therefore fail to capture these transatlantic lobbying activities.

Both the issue of the regulation of new biotech techniques and the EU zero-tolerance policy for illegal GMOs, are at the heart of the EU GMO rules. The fact that indeed they were discussed in such meetings as transpires from these emails, is highly worrying. In both cases, it is not necessarily the rules themselves that would be changed, but rather how they are implemented – but with potentially enormous implications for food and environmental standards.

These documents, in sum, do cast another light on the Commission's claims that the EU GMO legislation is not on the table in TTIP.

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[1] http://www.nytimes.com/2013/02/14/business/global/obama-pledges-trade-pact-talks-with-eu.html?pagewanted=all&_r=1

[2] http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/questions-and-answers/index_en.htm

[3] https://www.agra-net.net/agra/agra-europe/analysis/interview-eu-must-deliver-legal-certainty-for-seed-and-plant-sectors-458540.htm

[4] https://www.testbiotech.org/sites/default/files/Testbiotech_Future_Biotech.pdf

[5] Short descriptions of these techniques can be found here:
https://www.testbiotech.org/sites/default/files/Testbiotech_Factsheet_Synthetic_Gene_Technologies.pdf

[6] See directive (2001/18): http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0018
Currently, "GMOs" are defined in the EU as: "an organism, with the exception of human beings, in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination;
Within the terms of this definition:
(a) genetic modification occurs at least through the use of the techniques listed in Annex I A, part 1;
(b) the techniques listed in Annex I A, part 2, are not considered to result in genetic modification;"

[7] Under the current directive (2001/18), two techniques are considered to give rise to GMOs but are excluded from its scope due to a "history of safe use".

[8] https://soygrowers.com/wp-content/uploads/2015/02/Letter-on-EU-Biotech-Approvals-to-Commissioner-Andriukatis-2-12-15.pdf

[9] See consolidated CETA text, page 442: http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf
Analysed in briefing FOE Europe: https://www.foeeurope.org/sites/default/files/press_releases/briefing_-_gm_food_and_the_eu-us_trade_deal.pdf

[10] http://www.ccga.ca/News/Pages/Canada%E2%80%99s-Canola-Farmers-Support-Conclusion-to-CETA.aspx

[11] New Techniques Working Group (2012). Final Report, European Commission

[12] http://www.centerforfoodsafety.org/issues/311/ge-foods/regulations

[13] A permanent representation of the EU in the US, part of the European External Action Service (EEAS).
http://eeas.europa.eu/delegations/us/index.htm

[14] http://corporateeurope.org/sites/default/files/27._e-mail_from_ustr_to_eeas-washington_17-3-2014._registered_version.pdf

[15] http://corporateeurope.org/sites/default/files/28._e-mail_from_eeas_to_dg_sanco_-_march_2014._registered_version.pdf

[16] http://corporateeurope.org/sites/default/files/29._e-mail_from_sanco_to_eeas_-_20-3-2014._registered_version-1.pdf

[17] http://corporateeurope.org/sites/default/files/27._e-mail_from_ustr_to_eeas-washington_17-3-2014._registered_version_0.pdf

[18] http://corporateeurope.org/sites/default/files/asta-esa_paper.pdf

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