

## SNAPSHOT

# TTIP – into the first year

25 March 2014

The Trans-Atlantic Trade and Investment Partnership (TTIP) negotiations are currently dominating EU political debate, receiving much attention in Member States and in the context of the forthcoming European Elections. After an energetic start and initial enthusiasm over the possible economic benefits of the deal, the talks are now encountering serious obstacles, ranging from diverging negotiation positions to growing public opposition. On the occasion of the 26 March EU-US summit which sees President Obama visit Brussels, this snapshot provides an update on the state of play and analysis of the main obstacles on the road to reaching a TTIP.

### Introduction

TTIP is widely described as the most far reaching trade and investment agreement to date: in contrast to most existing free trade agreements, TTIP is not only about tariff reduction, but at its centre lies the idea of enhanced regulatory cooperation and convergence that in some instances can lead to equivalence of regulation or even mutual recognition. In view of the low level of existing tariffs between the EU and the US, regulatory cooperation is the area expected to have the biggest impact on growth and jobs. On the other hand, as discussed in our [June 2013 Snapshot](#), this makes the negotiations more challenging. Regulators do not necessarily rank free trade as a top priority, and there are concerns that a compromise trade agreement will necessarily erode regulatory standards.

### State of play

The fourth round of negotiations, originally launched in July 2013, took place in Brussels in the week of 14 March. Commissioner for Trade Karel De Gucht and his counterpart US Trade Representative Michael Froman met for a stocktaking session in February this year.

Negotiations are still at an early stage with talks focused largely on exchanging proposals. The parties are not yet working on concrete texts.

During the fourth round parties mainly discussed:

- Technical Barriers to Trade (TBT) – the EU has put forward proposals
- Regulatory coherence – parties are discussing concepts such as greater compatibility
- Sanitary and Phytosanitary Measures (SPS)
- Sector-specific discussions – including pharma, cosmetics, textiles, ICT, automotive and chemicals

- SMEs – The EU and the US have published a joint paper on how TTIP can benefit SMEs

Negotiations are moving forward more slowly than anticipated and some issues seem difficult to bridge. “We know we have a lot of work ahead of us, but we have a good understanding of the key issues that need to be resolved”, Froman has stated.

Pressure from EU and US civil society is also mounting, and media reporting of the negotiations is increasingly negative. NGOs in particular decry a lack of transparency, the planned Investor State Dispute Settlement (ISDS) mechanism, and the erosion of EU regulatory standards through non-democratic negotiations behind closed doors.

The upcoming European elections are also putting the negotiations under the spotlight, with many politicians fuelling discussions with populist and superficial arguments. As the elections draw nearer the debate will become only more heated.

The agenda for the talks is very tight. At least four more rounds are planned this year, with the next round foreseen before the summer, followed by another in June or July and a second stock-taking meeting in September. However it is unlikely that 2014 will see the real breakthrough in negotiations the parties hope for. But at the very least by the end of the year we should have a clear vision of the prospects of success of the TTIP negotiations.

### Contentious issues

Some disagreements have emerged that will be particularly challenging to overcome:

- **Geographical Indications (GIs):** For the European food & agriculture industry GIs are key. GIs define and protect the geographical provenance of specific products (eg Roquefort cheese, Champagne wine, Parma ham, etc) and add value to those products in the global marketplace. In the US however they are perceived as protectionist: recently 55 Senators signed a letter calling on the US administration to aggressively fight EU GIs. Given the strength of feeling on both sides, it will be interesting to see who gives ground. The EU has already hinted at compromise, with Garcia Berbero, the EU’s chief negotiator, saying that “on the basis of pragmatism from both sides, one should be able to find a satisfactory solution”.
- **Food Safety, Sanitary and Phytosanitary Measures (SPS):** Despite food safety standards being very high in both regions, varying traditions and approaches result in important differences that will be difficult to bridge. The Obama administration has publicly stated the need to eliminate SPS barriers to US meat exports, including bans on growth-promoting substances and chlorine-washed poultry. In the EU these issues are extremely

sensitive, not only because consumer groups would find it unacceptable to lower standards, but also because higher EU standards create higher costs and eliminating trade barriers would then make EU products uncompetitive.<sup>1</sup> On the other hand, the EU is contesting US trade barriers such as the long delays for dairy-product certification, and the handling of export applications for apples, pears, stone fruits and bell peppers.

- **Financial services:** The EU would like to include regulatory cooperation in financial services in the negotiations in order to overcome conflicting and inconsistent regulation. The US treasury is firmly resisting these attempts, mainly because it would interfere with ongoing discussions such as in the G-20 and Financial Stability Board.<sup>2</sup>
- **Elimination of tariffs:** The US chief negotiator Daniel Mullaney has said that the US seeks to bring all tariffs to zero. In contrast, Garcia Berbero referred to the EU mandate which states that both sides can consider options for the most sensitive products, which would also include tariff quotas. For the EU, products such as dairy, sugar and fish are classified as sensitive and today have significantly-above-average tariff levels.
- **Free flow of data:** Both sides confirm that data protection is not part of TTIP but is covered by the Safe Harbour agreement, a process to ensure that US companies comply with EU data protection standards. However, ensuring the free flow of data is key for US companies and it will be covered in discussions on e-commerce and e-services. It remains to be seen whether negotiators manage to keep data protection out of the discussions, in particular as the European Parliament says it will withhold its consent on TTIP unless the US fully respects EU data protection standards.

### The rising tide of civil society discontent

Public and civil society interest in TTIP has dramatically increased in the past months and it has become one of the top campaign topics ahead of the European elections.

#### Investor State Dispute Settlement

So far the main target of outrage is ISDS. The NGO Corporate Europe Observatory (CEO) describes ISDS as “dangerous corporate privileges that threaten public interest”<sup>3</sup>. CEO says that ISDS would threaten the power of governments to protect the environment and citizens from risky technologies.<sup>4</sup> Mainstream media in many countries have reported on these concerns and much of EU civil society is under the impression that ISDS could overrule national or EU legislation.

By way of replying to these concerns, the European Commission (EC) has stated that EU Member States have around 1,400 investment protection agreements in place and that ISDS is not directed against democratically-enacted legislation but against arbitrary and discriminatory treatment. These assurances are however generally ignored.

An area that has been missing from the public debate is whether ISDS could make a significant contribution to job creation and protect European companies against unfair treatment by the US through a system based on the rule of law. Due to the sensitivity of this issue, the EC has decided to stall negotiations on ISDS and launch a public consultation on this matter.<sup>5</sup>

#### Erosion of standards

Another criticism directed against TTIP is that it could undermine standards in food safety, animal welfare, environmental protection, data protection and a host of other important and topical areas. The EU consumer protection group BEUC has said that TTIP is not an agenda for trade but an agenda for deregulation.<sup>6</sup> TTIP negotiations do indeed aim to lower those trade barriers resulting from diverging regulation. But the EC counters that lowering trade barriers is not to be achieved by lowering standards, but cooperating on making regulation more compatible. In some sectors, such as the automotive or machinery industries, the two sides might go so far as to agree on equivalence or mutual recognition of rules. However the EC is aware that European civil society will never accept a deal that involves compromising fundamental standards in sensitive areas such as food safety or environmental protection, no matter how strong the pressure from US industry.

It is justified to insist that a trade deal should not undermine democratically-established standards. NSA revelations have of course increased European mistrust of the US, and it will require more than a Commission-drafted FAQ document to assuage fears and regain trust.

However this should not be cause for EU civil society to junk TTIP as a whole. There is now an opportunity for civil society parties to constructively engage with the negotiators and ensure that standards are maintained or even enhanced, while reducing unnecessary obstacles.

#### Transparency

Lastly, civil society parties criticise the lack of transparency of the negotiations. Many of the official documents are not disclosed or become only publicly available through leaks, as was the case with the EU negotiating mandate. The EC informs the public through public briefings during the negotiating rounds. The European Parliament’s (EP) Trade Committee receives more in-depth briefings from the EC, as well as all documents shared with the Council’s Trade Policy Committee. While hardly revolutionary, these measures are unprecedented, and mean that the EC has been more transparent in these trade negotiations than in any other before.

It is also true that negotiations require a certain level of confidentiality. Not only would EU be in a weaker negotiating position if it had to disclose its objectives and expectations in advance, but it would also be impossible to create the necessary trust and openness among negotiators if everything had to be disclosed. While it is important that public and parliaments be informed about the key provisions and topics under negotiation, it cannot be expected that draft negotiation papers be disclosed. The safeguards of EP approval and

<sup>1</sup> Euractiv, Interview with Pekka Pesonen, Secretary General of Copa Cogeca

<sup>2</sup> Congressional Research Service: Transatlantic Trade and Investment Partnership (TTIP) Negotiations, February 2014

<sup>33</sup> CEO, 4 October 2013

<sup>4</sup> CEO: No fracking way, March 2014

<sup>5</sup> European Commission, Press release 21 January 2014

<sup>6</sup> BEUC, TTIP - Challenges and benefits of regulatory cooperation from the consumer perspective, 17 March 2014

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Member-State ratification guarantee that the agreement will not be implemented without democratic scrutiny and legitimisation.

### Fast Track Authority

The US Trade Promotion Authority (TPA) (or “fast track” authority) allows the US President to negotiate international agreements that Congress can approve or disapprove but cannot amend or filibuster. The use of TPA sends a strong signal that Congress supports the negotiations, which increases trust among the negotiating partners.

In the US TPA has a defined mandate and has to be renewed. The stumbling block is that it is unlikely it will gain sufficient support in Congress for renewal, with the Democratic Party in particular firmly opposed. TPA also covers Trans-Pacific Partnership (TPP) negotiations, which the US is currently engaging in with 11 parties, mainly from eastern Asia. Without TPA, negotiations become very difficult, as Congress can then amend or refuse any single provision agreed in negotiations. The Cato Institute thinks that real progress in trade negotiations will be achieved only after the end of the Obama administration’s mandate if no TPA is in place by the end of 2014.<sup>7</sup> An important opportunity arises with the US mid-term elections in November 2014, at which all seats of the House of Representatives will be up for grabs. A former senior Obama administration trade representative has even suggested that Obama could form a coalition of convenience with cooperative Republicans supportive of free trade.

### The way forward

Political support for TTIP is fading. In its first resolutions the European Parliament was supportive of TTIP if certain conditions were met. In contrast recent contributions by MEPs have demonstrated greater negativity and mistrust. The next EP is going to be more fragmented, and will include many parties that have already voiced strong criticism of TTIP, which will make the debate even more challenging. National parliaments are also voicing concerns of their own: even the German Bundestag, normally the standard bearer among the supporters of free trade, has criticised the lack of transparency of the negotiations. Lastly, the idea of the ISDS mechanism is strongly contested.<sup>8</sup>

It will be a real challenge to gain the support of regulators, civil society groups, national parliaments and indeed the general public which will be imperative for arriving at an agreement. To that end the EC must actively engage all stakeholder groups and address their concerns. The business community will also have a role in explaining the benefits of an agreement at all levels if it wants the negotiations to succeed. And civil society partners, particularly in the EU, need to be convinced that the agreement does not only benefit corporate interests but also the citizen, in terms of job creation, lower costs and better consumer choice without lowering standards.

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<sup>7</sup> Daniel R. Pearson, The Obama Administration’s Trade Agenda is Crumbling, Free Trade Bulletin 19 March 2014

<sup>8</sup> German Bundestag, Committee for Environment, Construction and Reactor Safety, Debate on 19 February



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