

E U R O P E A N E C O N O M I C A R E A

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Report on

The Transatlantic Trade and Investment Partnership and its possible implications for the EEA EFTA States – Iceland, Liechtenstein and Norway

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Introduction - what is TTIP and what is its aim?

The Transatlantic Trade and Investment Partnership (TTIP) is a comprehensive free trade and investment agreement currently being negotiated between the European Union (EU) and the United States (US). The two parties are the world's largest economic powers, accounting for about half of the world's gross domestic product (GDP) and one third of world trade. By reducing tariffs and non-tariff barriers as well as enhancing closer regulatory cooperation, TTIP will make it easier for firms on both sides of the Atlantic to do business together and will increase overall trading activity. TTIP could, according to the negotiating parties and several studies, lead to lower consumer prices and the creation of millions of jobs. In Europe, it is estimated that it could bring overall gains of between 0.5% and 1% in GDP for the EU.

After years of lacklustre growth within the EU and US, TTIP is expected to provide a stimulus to these two giant economies which eventually could be beneficial for other parts of the world as well. An ambitious TTIP agreement that improves market access, strengthens the cooperation when setting standards and improves regulatory coherence could have an important impact on the world trade regime as well as on the Internal Market of the EU. TTIP can provide for high global standards, norms and rules that can be adopted on a global level and be advantageous for third countries. The promotion of trade and investment between the two parties is not, however, meant to entail any reduction in the level of environmental, labour, safety and health standards, nor lower consumer protection.

In a broader context, we observe that over the last decade there have been significant challenges to achieving substantial progress in the multilateral trade regime in the context of the WTO and the Doha Round. The so-called "mega-regionals", such as the TTIP and the Trans-Pacific Partnership (TPP), seem to have greater potential for success and could therefore also influence the world trade regime as such, since these agreements include many important countries in the trade scene. One might then question what impact it might have on the TTIP negotiations if the US concluded the TPP first. That might of course influence the course of development of the TTIP negotiations. Developments in the US and European economies could also potentially influence the progress of the negotiations.

The EU and the US have a combined share of world merchandise trade of 45%, and of world commercial services trade of 52%. They are also the EFTA States' two largest trading partners, together accounting for over 75% of EFTA merchandise imports and exports. In 2013, EFTA's total merchandise trade amounted to USD 459 billion with the EU and USD 52 billion with the US.

The three EEA EFTA States – Iceland, Norway and Liechtenstein – are closely integrated into the EU Single Market through the Agreement on the European Economic Area (EEA Agreement). The EEA EFTA States therefore follow the same Internal Market legislation as the EU Member States and ensures the same rights for business and citizens. The EU is the EEA EFTA States' most important import and export market, and it is therefore important to have the same regulatory framework.

Studies from the EFTA countries show that a TTIP agreement would have a significant impact on the EEA EFTA States both in terms of market access and in the areas involving mutual recognition of regulation and harmonisation of legal and technical standards. In this report we will take a closer look at how TTIP could affect the EEA.

1. What is being negotiated and what is the state of play?

1.1 The main areas covered

The launch of the TTIP negotiations was officially announced in June 2013. Based on the final report of the EU-US "High Level Working Group on Jobs and Growth"¹, three broad areas were included in both the European Council's mandate to the European Commission and the United States Trade Representative's (USTR's) notification letter to US Congress, setting out the parameters for the negotiations.

A first negotiating session took place in July 2013, and to date there have been eight rounds of negotiations on the three main areas to be covered in a possible TTIP agreement:

- **Market access**: aiming at removing customs duties on goods and restrictions on services, gaining better access to public markets, and facilitating foreign direct investment. It also

¹ http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf

includes issues such as rules of origin, trade remedies, investment and government procurement. Customs duties in most sectors of trade are already relatively low, but given the massive trade flows between the EU and the US, even small reductions in customs duties can have enormous economic leverage.

- Regulatory cooperation: aiming at improving the regulatory coherence and cooperation by dismantling unnecessary regulatory barriers such as bureaucratic duplications and double-testing of products, will be an important task for the negotiators. EU and US regulatory bodies usually have the same aims: they want to protect people from risks to health, ensure safety at work, protect the environment and guarantee the financial stability of firms. Yet, in spite of these common goals, different regulatory structures and traditions often exist on either side of the Atlantic, resulting in different regulations and costly bureaucratic hurdles that make it more difficult for firms to enter the other market. This particularly affects small and medium-sized enterprises (SMEs), which are unable to bear the extra costs. This chapter also covers technical barriers to trade and sanitary and phytosanitary measures.
- Rules and modes of cooperation: aiming at improving cooperation when it comes to setting international standards, notably more compatible regimes for intellectual property rights (IPR), sustainable development, customs and trade facilitation, competition, state-owned enterprises, raw materials and energy, SMEs and transparency.

1.2 State of play

The TTIP negotiations are well underway but have not progressed as fast as the initial plan. During the latest (8th) round, the negotiators worked on all three negotiating 'pillars' and marked the announced 'fresh start' as the first round with a new European Commission in place. It is foreseen that the next negotiation rounds until July will focus on the scope and structure of the TTIP. The start of 'hard talks' is foreseen after the summer 2015.

Due to the EEA EFTA States' participation in the Single Market through the EEA Agreement, they are following the TTIP negotiations closely, and it is vital that they remain in close dialogue with the EU on this issue.

1.2.2 Market access

With regard to market access, an exchange of offers between the negotiating parties on tariffs took place in February 2014. The current challenge in this area is how to close the gap between the offers. Trade-weighted tariffs that EU exports face when entering the US market stand at 1.3%, while trade-weighted EU import tariffs are at 1.8%. Removing these tariffs will have a strong impact as the volumes affected are enormous. However, there are some sectors in which higher tariffs still apply and negotiations include the possibility of longer time frames for the elimination of tariff duties or tariff rate quotas for sensitive products.

On services and investments, an exchange of offers took place in summer 2014. These offers are now being scrutinised before the next steps can be determined.

While the EU considers financial services a key sector in transatlantic economic relations, the US has so far indicated that the respective regulations should not be discussed under TTIP, but rather in other forums, such as the Financial Stability Board or the G20.

The application of "cultural exemptions" in the area of audiovisual services has been a long-standing area of divergence in transatlantic trade relations. The concept of cultural exemption was introduced by France in the General Agreement on Tariffs and Trade (GATT) negotiations in 1993. The idea is that cultural goods and services should be treated differently from other commercial products, and that they should be left out of international treaties and agreements. The goal is to protect and promote domestic artists and other elements of domestic culture, which in practice translates into measures limiting the diffusion of foreign artistic work via quotas, or into subventions to the cultural sector, such as film production and cinema. In the negotiating mandate for the European Commission, audiovisual services were exempted and in line with a (non-binding) resolution issued by the European Parliament. The Commission has clarified, however, that this exemption does not exclude audiovisual services entirely from the negotiations and they will be reassessed at a later stage in light of developments in relevant EU legislation.

There has been no exchange of offers regarding public procurement. This is a key interest for the EU, whose aim is to achieve an ambitious and comprehensive agreement in this area, but a politically sensitive issue for the US. While the EU's public procurement market is already one of the most open world-wide, the US relies on strong protectionist laws. The EU would like to improve its access to government procurement markets in the US, in particular at sub-federal level. It is an offensive EU-interest to abolish the existing "buy American" Act of 1933 which requires the US Federal Government to buy American-made iron, steel and manufactured goods when possible.

Another sector protected by US law is the sector of air and maritime transport. The EU aims to increase access to this sector through abolishing the "Jones Act", which protects the U.S. maritime industry from competition by requiring all waterborne shipping between US ports to be carried out by vessels built in the US and owned, registered and operated by Americans.

In the area of agriculture, the EU and the US have relatively high tariffs for dairy products, sugars, confectionery, beverages and tobacco. The EU also has relatively high applied tariff rates for meat products and cereals. In this respect, opening the EU market to US agricultural products is understood to represent a key challenge. On average, agricultural products entering the US are currently facing customs tariffs of 4.9%, and those entering the EU 13.8%. Agriculture products (plants, meat and dairy) are subject to sanitary and phytosanitary (SPS) requirements and in general a sensitive issue. However, the Comprehensive Economic and Trade Agreement (CETA) signed recently between the EU and Canada covers almost all agricultural tariff lines, which shows that it is possible to have an agreement that includes trade in agricultural products, even though the approaches to food safety are very different.

1.2.3 Regulation

The regulatory part constitutes a core element of the TTIP agreement. In this area there are various tools to obtain degrees of economic integration and cooperation, some more binding than others.

The negotiations in this field are divided into horizontal aspects and nine specific sectors², with the aim of assessing whether further regulatory compatibility is possible, either through greater bilateral cooperation, mutual recognition of regulations or equivalence through acceptance of the fact that different technical regulations fulfil the same policy objectives.

The area of regulation is moving to the centre of the negotiations focusing mainly on horizontal aspects, such as regulatory coherence on how to improve dialogue between regulators as well as technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS). Negotiations on regulatory issues focus on harmonisation, cooperation and transparency, including sharing of good practices, early consultations and impact assessments on both sides. Additionally, the European Commission issued a proposal during the 8th negotiation round for a regulatory cooperation body to strengthen cooperation in these areas. Negotiations are still at an early stage and cover complex issues that have not been negotiated in this way before. Regulators and trade negotiators are being brought together to discuss each regulation, of which there are often hundreds in each sector. Texts have been presented by one or the other side in some of these areas.

Regarding SPS measures, solutions will need to be found to bridge the differences between the US' strict adherence to science-based policies and the EU's reliance on the precautionary principle and other "legitimate factors". There are considerable divergences at present, in particular regarding genetically modified crops, animal cloning, meat pathogen reduction treatments, the application of antimicrobial rinses, the use of beef hormones, the EU's geographical indication of origin system and food safety regulations. It needs to be noted that the EU has no common liability law e.g. in the area of environmental protection which makes the application of the US approach in this area extremely difficult if not impossible.

In the area of TBT, TTIP targets an ambitious chapter, building on horizontal disciplines in the World Trade Organization (WTO) Agreement on TBT. This could have a significant impact on sectors such as the automotive and machinery industries, as technical

² Cars, textiles, pharmaceuticals, cosmetics, medical devices, information and communication technology (ICT), engineering, chemicals and pesticides.

requirements and assessment procedures are aimed at being more compatible without lowering levels of protection. In other sectors such as chemicals, technical regulations and standards differ substantially, making it more promising to focus on effective cooperation between regulators than harmonisation of rules.

1.2.4 Rules and modes of cooperation

The third main area of the negotiations, rules and modes of cooperation, includes issues such as sustainable development, competition, state aid, intellectual property, rules of origin and SMEs. Texts have been presented in some fields, while discussions are ongoing in others.

The EU has expressed an interest in developing specific provisions on energy and raw materials which would seek to open markets, fill gaps in World Trade Organization (WTO) rules, create global standards and diversify Europe's energy supply. So far, the US has shown reluctance to go along with the EU's request for a separate TTIP chapter on energy and raw materials trade. The scope for cooperation in this area was also discussed at the EU-US summit in March 2014. It remains to be seen to what extent TTIP may become an effective tool for cooperation in this area.

This area also includes investment protection provisions, including investor-state dispute settlement (ISDS). An objective in this area was to include investment protection in the agreement, including the possibility for investors to bring claims against a host state before an arbitral tribunal. However, negotiations in this area were put on hold by the EU in March 2014 to allow for a three-month public consultation on ISDS, which has emerged as one of the main concerns in some EU Member States in relation to the TTIP negotiations. Opponents argue that investment protection and ISDS in TTIP will jeopardize the legitimate right of governments to regulate in the public interest. Another concern is that ISDS proceedings are conducted in secret and include no possibilities for appeal. Certain EU stakeholders are also concerned that ISDS tribunals generate inconsistent and sometimes biased practice and their decisions should be subject to review.

The Commission received more than 150 000 replies to its public consultation. On 13 January 2015, the Commission published its report on the outcome. Currently, the Commission is working out its policy recommendations on ISDS which should be presented

before the summer break 2015. They are expected to contain improvement in four main areas:

- protection of the right to regulate
- the establishment and functioning of arbitral tribunals
- the relationship between domestic judicial systems and ISDS
- the review of ISDS decisions through an appellate mechanism.

A discussion with Member States and the European Parliament would follow.

1.2.5 Challenges and the way forward

The TTIP negotiations started with enormous political support on both sides of the Atlantic. In the meantime initial political enthusiasm has decreased with rising public scepticism. Furthermore, in 2014, several events took place that slowed down the process. On the EU side, the elections of the new European Parliament in May and the coming into office of the new European Commission in November made any significant progress on TTIP challenging. On the US side, mid-term elections took place in November 2014. Another important parameter will be the approval of trade promotion authority (TPA) for the Obama administration. The relevant bill was introduced in January 2014, which the Congress might approve before summer 2015.

In the public sphere, at least in Europe, it has been a bumpy road for TTIP since the negotiations started. Scepticism in public opinion, interest groups and political groupings on some of the elements to be included in TTIP has attracted a lot of attention. The fear that an agreement with the US would lead to the lowering of environmental and health standards, and give more power to multinational companies over national states through ISDS, as well as lack of transparency in the negotiations, were at the core of the TTIP debate in 2014. In the face of criticism, the Commission argues that the TTIP will not lower the existing EU standards nor take away the right of the governments to regulate markets for public benefit, as it was feared by the public when the European Commission proposed an 'regulatory cooperation body'. The aim of this joint body is rather to create a mechanism for dialogue and cooperation in terms of regulations. It will not affect the parties' rights to make new regulations, undermine their sovereignty rights or circumvent the regulatory

process in place. Even if the parties agree on a certain regulations, these will still go through the usual legislation procedures at each side of the Atlantic. The Commission points to the EU-Canada CETA as an example of an ambitious agreement with a developed country without any lowering of European standards.

Against the concerns about the lack of democratic scrutiny on the negotiations, the Commission argues that a certain level of confidentiality is needed in order to protect the negotiation position and not to show one's all cards in advance. However, motivated through public pressure, the European Commission under the new trade Commissioner, Cecilia Malmström, has recently launched a transparency initiative. In this context, the Commission has recently released a number of texts from the TTIP negotiations to the public and more texts will be published following the next round of discussions. This approach will be the standard practice for the future.

Furthermore, throughout the negotiation process, the Commission is keeping the EU Member States in the Council and the European Parliament constantly informed of developments. A regular dialogue with the European Parliament has also been launched. The Commission is also reaching out to trade associations, consumer organisations, industry and other representatives of civil society. In the end, when the negotiations are over, the final text will be examined publicly in a very detailed manner and then the Commission will work together with the Member States and the Parliament in order to reassure the public in the areas that create concern.

For the future it would be important to ensure that the public debate also focuses on what an agreement could bring, both economically and socially, to the two continents, and how it could influence third countries that are strongly integrated in the Single Market, such as the EEA EFTA States.

As regards the way forward, Trade Commissioner Malmström and US Trade Representative Froman met after the new Commissioner took up her position to discuss the next steps of the process. The new Commission is placing emphasis on the conclusion of an ambitious TTIP agreement. On the US side, following the mid-term elections in November 2014, trade is a possible common ground between the US Administration and the Republican-controlled Congress. There is now greater optimism that these political developments can contribute

to movement on the complex issues before the next US electoral cycle. Presidential elections will take place in November 2016. It is possible that Trade Promotion Authority (TPA), which is needed for the US Government to be able to conclude a deal, will be pushed in 2015. At the end of the process, the final agreement has to be examined and approved by the Council and the European Parliament on the EU side, and by the Congress on the US side. Depending on the outcome, a mixed agreement might be signed that divides competence between national and EU level. In that case the national parliaments would also have to approve the agreement.

The last round of negotiations took place in the first week of February 2015. Among others, the EU proposed a text that included the establishment of a regulatory cooperation body whose main objective would be to monitor the implementation of the chapter on regulatory cooperation. Decision shaping of regulatory matters is highly relevant to the EEA and developments in this area will be important to follow for the EEA EFTA States.

2 Implications for the EEA EFTA States

2.1 How will TTIP influence the EEA EFTA States?

A successful TTIP agreement would be of particular relevance to the EEA EFTA States due to the close and comprehensive links between the EFTA economies and those of the EU and the US. Both the EU and the US administrations have, however, so far been clear that they do not envisage associating third countries with the TTIP negotiations. However both sides are aware of the fact that this agreement would have direct consequences particularly on their close trading partners and therefore have to pay attention to inform these partners about the development of the negotiations and accommodate their concerns as much as possible.

Regarding cooperation or compatibility in the field of regulation, the EEA EFTA States will be directly affected through the EEA Agreement. It is therefore important to reflect the EEA EFTA States' role as a close partner when the Commission is preparing new rules and regulations bearing in mind the existing regulatory cooperation established under the EEA

Agreement (ref. EEA Art. 99-101 and protocol 12) when negotiating regulatory cooperation for the TTIP.

If we take the area of chemicals as an example, a few years ago the EU adopted the chemical package REACH³, which regulates and ensures the free circulation of substances with a high level of health and environmental protection in the Internal Market. REACH also applies to the EEA EFTA States through the EEA Agreement.

The EU recently started to work on the area of chemicals in TTIP and published a “draft outline for provisions on chemicals” that states that the EU’s point of departure is (1) no lowering of environmental and health standards with regard to chemicals, (2) no chilling effect on the implementation of existing EU chemicals regulations, and (3) neither full harmonisation nor mutual recognition feasible on the basis of existing US framework legislation.

Whatever the outcome, the results of the ongoing negotiations in the chemicals field will also affect the three EEA EFTA countries through the EEA Agreement, which highlights the importance of maintaining a close dialogue between the EEA EFTA States and the EU in order to uphold the homogeneity of the Single Market.

The same goes for trade in services and public procurement. All relevant EU rules are applicable to Iceland, Liechtenstein and Norway through the EEA Agreement. Any regulatory changes resulting from the TTIP negotiations would therefore have a direct effect on the three EEA EFTA States.

With respect to investment, there is a very important base of two-way foreign direct investment (FDI) stocks between EFTA and the TTIP parties. As the EEA Agreement contains a body of acts on company law aimed at facilitating the exercise of the right of establishment, the EEA EFTA States are bound to follow the EU’s legislative work in this respect.

As participants in the EU’s Internal Market the three countries would also be directly affected by other regulatory changes resulting from TTIP. In particular, Protocol 12 to the EEA Agreement foresees the negotiation, in parallel, of Mutual Recognition Agreements

³ Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals.

(MRAs) in relation to conformity assessment, certificates and markings of products such as pharmaceuticals and electronic equipment, in accordance with EU legislation. This means that if the EU concludes an MRA with the US, the EU is obliged to facilitate that this would also be possible for the EEA EFTA States.

While tariffs between the EU and the US are already quite low – 2% on average for the US and 4% for the EU – the elimination of tariff peaks may have significant effects on trade in products where imports or exports may be diverted away from existing partners. In the US, such peaks are notably concentrated in dairy products (19.1%), sugars and confectionery (16.6%), beverages and tobacco (15.4%), and clothing (11.7%). In the EU, tariff peaks affect dairy products (55.2%), sugars and confectionery (29.1%), animal products (23%), beverage and tobacco (19.2%), as well as cereals and preparations (16.3%). The EEA EFTA States have well-established commercial interests in some of the sectors, such as basic agricultural products, processed foods, fisheries and forestry. A TTIP agreement would for instance affect Norway's fish export due to increased competition.

Nevertheless, the increased growth in the EU and the US is eventually expected to bring benefits to the EEA EFTA States as a result of the increased demand for goods, services and investments in each side of the Atlantic. Mutual recognition or harmonisation of rules and standards between the EU and the US might also make it easier for the EEA EFTA countries to export to the US. However, it has to be ensured, the applicable and user-friendly rules of origin will be adopted under the TTIP agreement that are consistent with those of existing regional trade agreements.

A successful TTIP outcome under the rules and modes of cooperation would also likely have an effect on the EEA EFTA States. While legislation in the field of IPR is not completely harmonised within the EEA, Iceland, Liechtenstein and Norway actively follow EU initiatives in this area. Similarly, state aid and competition policy are covered by the EEA Agreement. Relevant changes on the EU side within these fields, including developments resulting from the TTIP negotiations, would need to be incorporated into the EEA Agreement.

2.2 Dialogue with the EFTA States

A dialogue on TTIP was established between the US and EFTA, including Switzerland, in November 2013. This focuses on general free trade and investment, and does not cover EEA-specific aspects to any significant extent.

The EEA EFTA States requested a similar dialogue with the European Commission in summer 2013, but the EU has been reluctant to engage with the EEA EFTA States on TTIP in the EEA context. Statements by the EEA EFTA States in the EEA Council in November 2013 and May 2014 did not receive any feedback from the EU side. A further statement was made by the EEA EFTA States during a meeting of the Internal Market Advisory Committee in December 2013.

However, the European Commission finally agreed to provide a briefing on TTIP in the EEA Joint Committee in December 2014, and should uphold this dialogue in 2015.

The EEA EFTA States expressed their wish at the EEA Joint Committee meeting for the briefing to be repeated on a regular basis in the EEA Joint Committee, whenever there were any new developments to report on. A continued dialogue will be particularly useful with regard to the regulatory aspects of TTIP, as a TTIP agreement would need to be incorporated into the Single Market framework. Information on more technical issues should be shared at EFTA working group level. It is extremely valuable for the EEA EFTA States to be informed at an early stage about important milestones in the TTIP negotiations, taking into account the confidentiality restrictions that need to be respected in the ongoing negotiations.

As a consequence of the recent transparency initiatives of the Commission the level of information sharing with close partners of the EU, including the EEA EFTA States, is expected to increase in the following period.

3 Conclusions

A TTIP agreement between the EU and the US is expected to contribute to growth in the economies on both sides of the Atlantic. Better purchasing power and more liberalised trade will also have positive spillover effects on third countries such as the EEA EFTA States.

A TTIP agreement may also have a potentially significant impact on market access and competitiveness for the EEA EFTA States in the markets of their most important trading partners. And, most importantly, since the EEA EFTA States are deeply integrated into the Internal Market through the provisions of the EEA Agreement, which are intended to ensure full homogeneity in the EEA, the regulatory aspects of a TTIP agreement between the EU and the US will be of particular importance to these countries.

The TTIP requires extremely complex international negotiations and it is unclear at this stage of negotiations what the final content will be. If realised, the final form of the agreement will have varying impacts both on each Member State and EEA EFTA States.

It is important for the EEA EFTA States to follow the TTIP negotiations closely and be informed by the responsible bodies of the European Union on a regular basis to undertake their own impact assessments and consider how to respond to the final agreement. A close dialogue between the negotiating parties and the EEA EFTA States regarding progress made in the negotiations is therefore essential.