

BRIEFING

# Transatlantic Trade and Investment Partnership (TTIP) negotiations: State of play

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## Abstract

The negotiations on a comprehensive Transatlantic Trade and Investment Partnership (TTIP) started in June 2013, with enormous political support on both sides of the Atlantic. One year on, after six rounds of negotiations, initial enthusiasm in view of an agreement which would create a transatlantic market free of tariffs and other non-tariff barriers with the aim of boosting growth and creating additional jobs, both in the EU and the US, has given way to defence of own markets.

Be it increased access to markets for goods, services and public procurement, closer regulatory cooperation, an investment chapter that includes sound investment protection provisions and an Investor-State Dispute Settlement clause, intellectual property rights, a chapter on energy and raw materials, etc., all the issues involved appear to be contentious in some way for the transatlantic negotiators.

The European Parliament, which will have to give its consent to the TTIP (as will the US Congress), has been following the negotiations closely.

This paper is an initiative of the Policy Department, DG EXPO

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**PUBLICATION:**

English-language manuscript completed on 28 August 2014.

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*Printed in Belgium.*

This paper is available on the intranet site of the Directorate-General for External Policies, in the [Regions and Countries](#) or [Policy Areas](#) section.

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## 1 Timetable

<b>Political launch of negotiations:</b>	17 June 2013 (in the margins of the G8 Summit at Lough Erne, Northern Ireland)
<b>Negotiating rounds:</b>	1st round: 8-12 July 2013 in Washington, DC 2nd round: 10-15 November 2013 in Brussels 3rd round: 16-20 December 2013 in Washington, DC
	The first three negotiating rounds were introductory; the negotiators focused on understanding each other's approach to the range of topics to be covered by the agreement ( <u>core areas</u> : (1) market access (tariffs, services/investment, and public procurement); (2) regulatory part (compatibility and cooperation); and (3) rules and identifying areas of convergence and divergence).
<b>Political stocktaking:</b>	17-18 February 2014 in Washington DC
	Commissioner Karel De Gucht met with US Trade Representative (USTR) Michael Froman in order to assess the progress made so far and provide the negotiators with guidance on how to maintain the momentum and how to best move the negotiations forward.
<b>Continuation of negotiations:</b>	4th round: 10-14 March 2014 in Brussels 5th round: 19-23 May 2014 in Arlington, Virginia 6th round: 14-18 July 2014 in Brussels
	The 4th round was the beginning of 'real' negotiations. Ahead of this round, the two sides exchanged initial tariff offers (sensitive products had not been specified at this stage). During the 5th and 6th rounds, discussions continued on issues such as trade in goods and services, regulatory issues, government procurement, environmental protection and labour rights, energy and raw materials, and opportunities for small and medium-sized enterprises (SMEs). The chief negotiators report steady progress on the majority of issues, but no consolidated texts have been drafted as yet.
<b>Forthcoming round:</b>	29 September - 3 October 2014 in Washington DC
<b>Political stocktaking:</b>	Commissioner De Gucht and USTR Froman will meet on 13 October 2014 to assess the progress of the negotiations.

## 2 Objectives of the Transatlantic Trade and Investment Partnership (TTIP)

The EU is the US's largest economic partner, and vice versa. Together, they represent about half of the world's gross domestic product and one third of world trade.

The future TTIP was initiated with the intention that bilateral trade and investments free of barriers would boost economic growth and create jobs.

Six rounds of TTIP negotiations have taken place so far. Initial enthusiasm has given way to some scepticism.

The economies of the EU and the US represent about half of global gross domestic product (GDP) and a combined market of 800 million consumers. The transatlantic market for goods and services, which in 2013 had reached a volume of around EUR 800 billion, accounts for more than one third of world trade. With regard to foreign direct investment (FDI), the EU and the US are the two leading investors. The EU and the US are also the largest investors in each other; in 2012 the EU had an investment stock of EUR 1 655 trillion in the US and the US an investment stock of EUR 1 536 trillion in the EU. In the aftermath of the international economic and financial crisis, the magnitude of the transatlantic economic exchange was the major reason behind the idea of boosting growth and creating jobs on both sides of the Atlantic via a better integrated transatlantic market.

EU-US bilateral customs duties are already relatively low. However, the aim of the TTIP is to remove remaining customs duties on goods and restrictions on services, as well as to gain better access to public procurement markets and make it easier to invest. Furthermore, transatlantic trade and investment should be facilitated by removing existing behind-the-border barriers, for example by closer regulatory cooperation. An impact assessment by the Commission showed – under an ambitious scenario – that the TTIP would increase the size of the EU economy by around EUR 120 billion (or 0.5 % of GDP) and the US economy by EUR 95 billion (or 0.4 % of GDP)<sup>1</sup>.

Meanwhile, six rounds of negotiations have taken place since mid-2013. Initial enthusiasm on the part of the EU was dampened by the revelations of the NSA's surveillance programme shortly after the start of the TTIP negotiations. One year on, after negotiations across the board and the exchange of some concrete offers on market opening for goods and services, an increasing number of defensive issues have been put forward by both the EU and the US<sup>2</sup>.

## 3 Specific issues

### 3.1 Market access, including public procurement

The TTIP aims at increasing access to markets for goods, services and public procurement.

For goods and service

The Commission has underlined the need to move forward on all three aspects of the **market access negotiations – tariffs, services/investment and public procurement (PP)** – in parallel, in order to retain a good overall balance.

In February 2014, the parties **exchanged their initial tariff offers** (removing customs duties on goods, including industrial, consumer and agricultural products). The reciprocal offers that the US side presented fell short of the

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<sup>1</sup> [TTIP, the economic analysis explained](#), September 2013.

<sup>2</sup> European Commission, [State of Play of TTIP negotiations after the 6th round](#), 29 July 2014.

markets, offers on how to dismantle tariffs and non-tariff barriers were exchanged, without respective negotiations having started.

There are indications that better access to US public procurement for EU supplies will prove to be very difficult.

EU's expectations. Trade Commissioner De Gucht claimed publicly that the US tariff offers needed substantial improvement before the EU would accept them for negotiations.

Ahead of the negotiations on **market access to services**, the Commission stressed that the TTIP, like all other EU trade agreements, leaves EU governments free to regulate whatever they consider to be public services, such as public education, public health and water distribution. The liberalisation of such public services will explicitly be ruled out. Market access **offers were exchanged** shortly before the 6th round (14-18 July 2014).

**Access to US federal, state and local procurement** has been one of the EU's key offensive interests. Both the EU and the US are parties to the plurilateral WTO Agreement on Government Procurement (GPA). Negotiations on public procurement (PP) have not yet started. So far, the parties have explained how to access their respective systems. On the US side, the existing 'Buy American' Act of 1933, which requires the US Federal Government to buy American-made iron, steel and manufactured goods wherever possible, could prove to be a major obstacle to the further opening of US PP markets.

### 3.2 Regulatory issues

In addition to removing existing tariffs and other non-tariff barriers, the TTIP is believed to offer a unique opportunity to overcome behind-the-border barriers that are caused by regulatory requirements and red tape.

The regulatory chapter of the TTIP (reducing unnecessary regulatory barriers such as bureaucratic duplication of measures so as to facilitate trade) is critical, both in terms of expected economic benefits and broader policy relevance. Both economies have their own regulatory history with standards of protection that are similarly high. To dispel fears that the TTIP may lead to safety standards being lowered, both the Commission and the US administration have stressed that the TTIP does not have a deregulatory agenda and that it should support, rather than undermine, existing high standards in the areas of the environment, health and safety, protection of privacy, and workers' and consumer rights.

So far, the parties (negotiators, including representatives of EU and US regulatory agencies) have exchanged information on their respective regulatory systems. It seems probable that mutual recognition of existing regulations (i.e. mutual recognition of good manufacturing practices with regard to pharmaceuticals) or harmonisation of regulatory requirements (i.e. safety standards for passenger cars) will be agreed on when the levels of protection are similar. For areas where the level of protection differs, different standards will likely persist, for example specific safety standards for chemicals (i.e. the EU will continue applying its regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and the US its Toxic Substances Control Act (TOSCA)).

So far, discussions have taken place in parallel on horizontal issues of regulatory coherence and on regulatory cooperation in specific sectors – chemicals, cosmetics, motor vehicles, pharmaceutical products, textiles and clothing (for which the Commission has published detailed position papers), and also medical devices, engineering, information and communication

technologies, (ICT) and pesticides. The US side has put forward a proposal for the regulatory coherence chapter.

**Regulatory cooperation with regard to financial services:** the EU continues to insist that banking and equities activities should be included in the regulatory cooperation chapter of the TTIP, while the US maintains its position that the G20 is the appropriate forum for discussing capital requirements, over-the-counter derivatives and/or rules on foreign banking organisations.

### 3.3 Investment chapter, including investment protection and Investor-State Dispute Settlement (ISDS)

The European Commission's proposal to include sound investment protection provisions, including an Investor-State Dispute Settlement (ISDS) clause, in the TTIP has run into rough waters.

The European Parliament seems to be divided with regard to an ISDS clause. Should the TTIP provide for ISDS, MEPs will call for existing imperfections and loopholes in current investment protection systems to be tackled.

With the entry into force of the Lisbon Treaty, the competence to negotiate investment agreements was transferred from Member State level to the EU<sup>3</sup>. There are currently around 1 400 national bilateral investment treaties (BITs) altogether<sup>4</sup>, which will gradually be replaced by EU agreements (either as investment chapters in broader FTAs, i.e. Canada, Singapore, Japan and the US, or as stand-alone investment agreements, i.e. China). Negotiations to this end encompass substantial investment protection provisions, including a specific dispute settlement mechanism (investor-to-state dispute settlement (ISDS)). The Commission stresses that it wishes to ensure the right balance between high standards of protection and the right to regulate, while acknowledging that the investment protection systems implemented by Member States have some imperfections and loopholes.

**European Parliament resolutions** draw attention to certain elements where the existing investment agreements could be improved, and note some perceived negative aspects of ISDS, criticising the way it has worked, but also stating that ISDS is an important element of investment agreements. The European Parliament clearly expressed its views on this matter in its [resolution of 6 April 2011 on the future European international investment policy](#) (rapporteur: Kader Arif, FR-S&D), in which it, inter alia, called 'on the Commission to include in all future agreements specific clauses laying down the right of parties to the agreement to regulate' (paragraph 25) and also took 'the view that, in addition to state-to-state dispute settlement procedures, **investor-state procedures must also be applicable in order to secure comprehensive investment protection**' (paragraph 32). This line has been subsequently reiterated in country-specific resolutions, such as on [Canada](#) (paragraphs 11 and 12), [Russia](#) (paragraph 12) and [China](#) (paragraphs 42 and 43).

As many BITs are not directly enforceable in domestic courts, investors that have faced administrative, regulatory or judicial measures that have led to a

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<sup>3</sup> Either as investment chapters in broader FTAs or stand-alone investment agreements. Such negotiations are basically completed on FTAs with Canada and Singapore, and are ongoing with the US, Japan, China and other countries.

<sup>4</sup> Nine EU Member States also have BITs with the US: Bulgaria, Croatia, Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania and Slovak Republic.

The European Commission gave in to critics: while negotiations on the investment chapter were suspended, the public was given the opportunity to express its views.

direct or indirect expropriation, discrimination or other adverse treatment – on the basis of a respective BIT with an ISDS clause – have turned to an independent arbitration tribunal. By the end of 2013, there were 560 such investment disputes. This increase of international arbitration cases led to a major concern by critics that investment protection rules could be abused by foreign investors with a view to preventing (or at least limiting) countries' 'right to regulate', i.e. make legitimate policy choices, especially in the fields of environment, public health and social protection. Such concerns have been voiced mostly by [NGOs](#) and think tanks that have called not only for the removal of ISDS clauses from the TTIP but also for rejection of the TTIP altogether on the grounds of ISDS.

On 27 March 2014, prompted by civil society and by critics in some EU Member States, the European Commission – on the basis of a proposed EU text for the investment part of the talks with Canada – launched a public consultation on investment protection provisions, including ISDS in the TTIP<sup>5</sup>. By the closing date of the consultation, on 14 July 2014, the Commission had received 150 000 replies. According to the Commission, a factual report will be issued soon after the closure of the consultation phase. After translation and analysis of the replies, a substantial report should follow, which will not, however, be available before the end of 2014. For the time being, negotiations on the investment chapter remain suspended.

### 3.4 Intellectual Property Rights (IPR), including Geographical Indications (GIs)

The IPR chapter – encompassing geographical indications and anti-piracy policies on the internet – seems to be a contentious one as well.

With regard to the enforcement of intellectual property rights, the EU and the US – both parties to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) – are interested in high standards of IPRs and the promotion of strong policies against counterfeiting. Discussions so far have been focused on the architecture of the chapter and the identification of potential topics.

However, the positions differ strongly on two main issues: geographical indications (GIs) and anti-piracy policy on the internet. The US rates the EU's position on the use of geographical indications (GIs) on the basis of the relevant EU regulation as a protectionist measure. If the US were to accept the EU's proposed terms, the EU could reserve GIs for cheese such as 'parmesan' and 'feta', and for meat such as 'bologna', although all these names are also commonly used in the US. From a US perspective, which protects GIs through trademark law, it would appear to be very difficult to find a solution within the TTIP. EU-US differences, for example on the liability of internet service providers for infringing contents on their networks, which is also dealt with by the Anti-Counterfeiting Trade Agreement (ACTA), deepened when the European Parliament denied its consent to the ACTA. The fact that the EU is not a party to this plurilateral agreement on copyrights

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<sup>5</sup> [Public consultation on modalities for investment protection and ISDS in TTIP](#), 27 March 2014.



and trademarks raises questions over a profound IPR chapter within the TTIP on the US side<sup>6</sup>.

### 3.5 Energy and raw materials

As for obtaining access to the US energy and raw materials markets, the EU will have to convince its partner.

Today, a US law dating back to 1938 prevents export of natural gas (restrictions that do not apply to crude oil) if this threatens national security conditions. At the same time it establishes that national interest is self-verified when a country has an FTA in force with the US. That is why, in the context of the TTIP negotiations, the EU is seeking guarantees that energy and raw materials will be traded in accordance with market principles. According to an initial EU position paper<sup>7</sup>, apart from applying general disciplines and commitments concerning trade in goods and services, with the TTIP, the EU will seek non-discrimination, and the elimination of import and export duties and other restrictions.

An on-going debate in the US Congress suggests facilitating the export of energy even before a respective trade agreement is in force. On 25 June 2014, the US House of Representatives voted 266 to 150 to approve legislation aimed at expediting approvals for shipments of liquefied natural gas (LNG) to countries that are members of the World Trade Organization. According to this legislation, it would be the US Department of Energy that, within a period of 30 days and after an environmental impact assessment, would issue an export permit for LNG. The Department of Energy would further be able to waive the requirement that the importing country have an FTA in place with the US. Approval by the US Senate is pending and not certain.

### 3.6 Other issues

The EU and the US are also discussing disciplines in competition policies (anti-trust considerations, anti-subsidy rules and rules for state-owned enterprises), ways to help small and medium-sized enterprises (SMEs) profit from a future agreement, and rules of origin. On customs and trade facilitation matters, an initial list of topics of common interest has been agreed upon. The TTIP will also include a chapter on trade and sustainable development, including labour and environmental standards. Since the US has not ratified a number of relevant international conventions, the discussion on the substance of the sustainability provisions has begun. Enforcement of these provisions should follow at a later stage of the negotiations.

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<sup>6</sup> Congressional Research Service, [Transatlantic Trade and Investment partnership \(TTIP\) Negotiations](#), 4 February 2014.

<sup>7</sup> European Commission, [EU-US Transatlantic Trade and Investment Partnership, Raw materials and energy](#).

### 3.7 Next steps

New Commission and US mid-term elections – all these events could deter the progress of the TTIP.

Before the term of the new European Commission begins in October 2014, there will be a further round of negotiations in September 2014, followed by a stocktaking meeting between Commissioner De Gucht and USTR Froman in October 2014. In November 2014, mid-term elections take place in the US. The Commission considers that a political conclusion to the TTIP negotiations by the end of 2015 is feasible.

## 4 European Parliament position on the TTIP negotiations and their follow-up

Similarly to the position of the US Congress, the European Parliament largely supported the opening of the TTIP negotiations. However, as the negotiations progressed, certain reservations and defensive issues surfaced.

The interest of the European Parliament in the TTIP is manifested in the procedures that were introduced which allow it to follow negotiations closely.

The European Parliament largely supported the opening of TTIP negotiations with its resolution of 23 May 2013<sup>8</sup>, expressing caution with regard to several sensitive issues, however, including the protection of geographical indications (GIs); the need for a high level of protection for personal data; US restrictions on maritime and air transport services; the agricultural sector, including perceptions of genetically modified organisms (GMOs), cloning and consumer health; and the precautionary principle with regard to safety standards, as well as calling for the exclusion of cultural and audiovisual services from the EU's negotiating mandate.

The revelation of mass surveillance of European citizens, including heads of government, by the National Security Agency (NSA) has tempered initial support considerably, but without resulting in the European Parliament calling for the suspension of the TTIP talks<sup>9</sup>.

The European Parliament has been following the negotiations very closely and the transparency of the negotiation process has been an important issue. Under the Lisbon Treaty and the Framework Agreement between Parliament and the Commission, the Commission is obliged to share with Parliament the same degree of information related to negotiations that it provides to the Council. Such information (including confidential documents) is provided to Parliament through the INTA Committee, which is the committee responsible for following international trade negotiations. Early in 2014, Commissioner De Gucht claimed that certain sensitive TTIP documents could also be shared with other relevant committees. The Commission's chief negotiator, Mr Ignacio Garcia Bercero, usually briefs the informal INTA Monitoring Group for the US (in camera) before and after each negotiating round. INTA has also extended an invitation to these meetings to the chairs and certain rapporteurs of eleven other committees (AGRI, LIBE, CULT, ECON, EMPL, ENVI, AFET, ITRE, IMCO, JURI, TRAN), and to the Chair of the US Delegation.

Once negotiations are completed, Parliament will be asked to give its consent to the TTIP.

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<sup>8</sup> [European Parliament resolution of 23 May 2013 on EU trade and investment negotiations with the United States of America.](#)

<sup>9</sup> [European Parliament resolution of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs.](#)