

POLICY BRIEFING

The HLWG report on a future EU-US trade and investment agreement

A short comment

Abstract

The decision of EU and US policy makers, announced in early February 2013, to launch negotiations on a 'comprehensive, ambitious trade and investment agreement' has been widely welcomed. The EU and the US are major economic partners, together generating about half of the world's gross domestic product and almost one third of global trade. By eliminating customs duties and reducing non-tariff barriers, liberalising bilateral commercial relations further is expected to lead to sustainable economic growth and additional jobs on both sides of the Atlantic.

The final report of the High-Level Working on Jobs and Growth (HLWG) defines the scope of future EU-US negotiations. Implementing the HLWG's recommendations should lead to a better-integrated transatlantic marketplace, which Members of the European Parliament have been demanding for years. A far-reaching transatlantic agreement may have positive spillover effects regarding third countries —and notably emerging ones — and may help to restore the leadership that the EU and the US once enjoyed in international trade and investment matters.

Given the complexity and the difficulties of some topics, especially in the field of agriculture, the negotiations will need the full support of both the European Parliament and the US Congress to be completed within the timeframe envisaged.

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Table of contents

1.	Negotiations on a free trade and investment agreement	4
2.	Market access	4
2.1.	Estimates of overall gains for the EU and the US economies	5
2.2.	Tariffs	5
2.3.	Services	7
2.4.	Investments	7
2.5.	Regulatory issues and non-tariff barriers	8
3.	Rules addressing shared global trade challenges and opportunities	10
4.	Intellectual property rights (IPR)	11
5.	Environment and labour	11
6.	Other globally relevant challenges and opportunities	12
7.	Customs and trade facilitation	13
8.	Competition policy	13
9.	State-owned enterprises and other enterprises that benefit from special government-granted advantages	14
10.	Localisation of trade barriers	15
11.	Raw materials and energy	15
12.	Small- and medium-sized enterprises	16
13.	Transparency	17
14.	Other issues	17
15.	Conclusions	18

1. Negotiations on a free trade and investment agreement

At last, the EU and the US have decided to embark on negotiations for a free trade and investment agreement.

The announcement by US President Barack Obama that the US would, at last, be launching negotiations on a 'comprehensive Transatlantic Trade and Investment Partnership with the European Union' constituted the call the EU had been long waiting for. In fact, the idea of creating a transatlantic free marketplace, which had been time and again supported by Members of the European Parliament, had been lying dormant for a number of years, if not decades. When the US President himself spoke about the initiative — which he did on the margins of his 2013 State of the Union address on 12 February — he was motivated by the results and recommendations of the final report of the EU-US High Level Working Group on Jobs and Growth (HLWG)¹.

Following Obama's announcement, the European Commission, European political leaders, parliamentarians on both sides of the Atlantic, the transatlantic business sector, and EU and US business associations and organisations setting technical standards have all been caught up in a wave of optimism that a deal may be achieved.

The agreement has many enthusiasts, as well as some sceptics.

But other groups have not joined the chorus of FTA enthusiasts. Amongst those sceptics is the farming sector on both sides. European farmers fear that they will have to open their markets to US agricultural products, while US farmers, for their part, are only be interested in an EU-US trade deal if it offers increased access to European markets. Organisations that represent the interests of European consumers also fear that a future EU-US agreement might lower safety standards for foodstuffs.

Both supporters and sceptics have their valid points. On most chapters of the future agreement, negotiations are likely to progress smoothly, but much will depend upon the level of ambition. Some chapters of the HLWG report remain relatively vague on the question of which elements will have to be spelt out in more detail during the course of negotiations. Certain issues, including agriculture and subsidies, may also delay a rapid conclusion of transatlantic talks.

2. Market access

A transatlantic trade agreement should tackle market access obstacles relating to tariffs, services, investments and procurement in a comprehensive manner. The HLWG recommends that the objective of such an agreement be to achieve a market access package that goes beyond what the United States and the EU have achieved in previous trade agreements.

¹ HLWG, [Final Report](#) High Level Working Group on Jobs and Growth (11 February 2013)

2.1. Estimates of overall gains for the EU and the US economies

Deeper transatlantic economic integration should bring overall gains, estimated at 0.4-0.5 % of GDP.

Today, EU-US trade volumes account for almost 30 % of the world's trade in goods and around 35 % of the global trade in services. In their joint public statement of 13 February 2013, European and US leaders stressed that a EU-US free trade and investment agreement that would align rules and technical product standards could relieve transatlantic business transactions of cost burdens stemming from regulatory differences. The costs are estimated as equivalent to a tariff of more than 10 % — even 20 % for some sectors — whereas classic tariffs hover around 4%. According to European Commission's most recent estimates, a comprehensive and ambitious agreement could increase of the EU's gross domestic product (GDP) by 0.5 % annually and the US GDP by 0.4 % by 2027. For these two economies, which together generate around half of the world's GDP, a mutually open market would add the equivalent of EUR 86 billion to the annual income of the EU and EUR 65 billion to the annual income of the US². Stakeholders from the EU-US business community expect that a bold new trade pact could boost EU-US trade by more than USD 120 billion within five years³.

2.2. Tariffs

Tariffs on goods traded across the Atlantic are already low. Still, removing them completely would bring gains, simply because the volumes at stake are so enormous.

The HLWG recommends that the goal of the agreement should be to eliminate all duties on bilateral trade, dismantling many tariffs as soon as the treaty enters into force and a phasing out of all but the most sensitive tariffs shortly thereafter. In the course of negotiations, both sides should consider options for treating the most sensitive products.

With exceptions in the textile and automotive sectors, where there remain a number of peak tariffs, the average tariff that EU industrial and agricultural products face when entering the US market is low—3.5 % — while average equivalent EU import tariffs are 5.2 %⁴. Although existing import tariffs are not of major importance within transatlantic trade, eliminating them would still have an immense economic impact, simply because the volumes of goods exchanged in both directions across the Atlantic are so great; in 2012, this trade exceeded EUR 450 billion. The automobile sector is among the sectors that are projected to benefit the most from a new agreement, because higher tariffs still apply.

Yet the form of trade that stands to benefit the most is intra-company trade. The EU-US relationship is based on investment as well as trade. As a result, a substantial part of transatlantic trade is intra-industry or intra-firm trade. In 2011,

² Ibid.

³ [Joint press release](#) of BusinessEurope and US Chamber, 13 February 2013,

⁴ DG Trade, [European Union and United States to launch negotiations for a Transatlantic Trade and Investment Partnership](#) (13 February 2013)

Intra-industry or intra-firm trade will benefit the most from dismantling tariffs.

Given the relatively high tariffs and the food safety requirements in the agricultural sector, the transatlantic trade in agricultural goods may prove the most contentious part of future negotiations.

61 % of US imports were sourced from the EU subsidiaries of US companies, and 31 % of US exports to the EU were calculated to be intra-industry trade⁵.

The Munich-based Ifo Institute for Economic Research has calculated that the elimination of tariffs between the EU and the US could increase trade volumes by up to 5 %. However, the overall impact for the economy would range only between 0.24 % (for Germany) and 0.75 % (for the US) if one also considers that the revenues from import tariffs would die out⁶.

While eliminating tariffs on industrial goods such as machinery and transport equipment — and in particular automobiles — and other manufactured goods (which are the most traded products in both directions) appears to be fairly simple, agriculture is more contentious. Indeed, the vast majority of transatlantic trade disputes are in this sector.

Both the United States and the EU have significantly higher duties on agricultural products than on other goods: the EU has a simple average applied tariff of 13.9 % and the US 5.0 %. However, both the EU and the US permit some 30 % of all agricultural products to enter duty-free. Certain agricultural products are nonetheless among those exports that would benefit from the elimination of tariffs, according to an expert report⁷; these products include tree-nuts (which face a 5 % duty), wines (8.9 %), fruits and vegetables (where duties run between 15-20 %) and juice (37 %).

Amongst the most contentious agricultural issues are the tariffs that US beef and pork exports face when entering EU markets. US meat exporters complain that the tariffs are prohibitively high, and the limited exports that do occur are those that fall under the (restrained) quota portion of the US's tariff-rate quotas (TRQs). A special duty free quota was established in August 2009, but applies only to a limited amount of US 'High Quality Beef'.

Despite such restrictions, EU-US trade in agricultural products has grown over the years. In 2011, the volume of EU exports in agricultural products was EUR 13.8 billion. Agricultural products represented 5.3 % of the EU's total exports to the US and around 6.0 % (EUR 11.3 billion) of the EU's total imports from the US. The EU enjoyed a surplus in trade in agricultural products of EUR 2.5 billion in 2011. The EU was the second largest agricultural supplier for the US that year, while the EU has been the fifth largest market for US agricultural exports over the past four years. Among the EU's total imports of agricultural products, 8.5 % were from the US⁸.

⁵ IFO Institute, Munich, Studie im Auftrag des Bundeswirtschaftsministeriums für Wirtschaft und Technologie, Dimensionen und Auswirkungen eines Freihandelsabkommens zwischen der EU und den USA (not yet published), January 2013

⁶ Ibid.

⁷ Ross Korves, "[Zero Tariffs on U.S.-EU Agricultural Trade](#)", www.truthabouttrade.org, August 25, 2011.

⁸ DG EXPO Policy briefing, [Ways and means towards a future EU-US trade and investment agreement](#) (2012)

2.3. Services

Dismantling barriers in the EU and the US service sectors offers the greatest overall potential.

Estimates suggest the gains could reach USD 20-40 billion annually.

The HLWG recommends that the goal for services should be to bind the highest level of liberalisation that each side has achieved in trade agreements to date, while seeking new market access by addressing the remaining long-standing market access barriers. The sensitive nature of certain sectors will need to be recognised.

Both the EU and the US are large exporters of services. EU services exports to the US reached EUR 137 billion, or 24 % of the EU's total services exports, in 2011. In the same year, the EU imported services from the US worth EUR 135 billion, which represented more than half the total of US service exports. The service sector is believed to offer the greatest potential for further liberalisation.

In their responses to questions during consultations in preparation for the HLWG report, representatives of the European Services Forum (ESF) referred to projections that the trade in services could increase by 10-20 % — or USD 20-40 billion — if the existing barriers were removed. To unleash the full potential, those impediments to trade and investment in services that still exist should take priority in future negotiations. Barriers that should be tackled include reducing administrative burdens for what are defined by the World Trade Organisation (WTO) as 'Mode 4' services (temporary presence of natural persons for business purposes), opening up the public procurement market (e.g. architecture, engineering, urban planning, ICT services, environmental services, energy services, auditing and accounting, transport and logistic services and the mutual recognition of transport security requirements). There should also be closer cooperation in the field of telecommunications, financial services and postal and courier services.

2.4. Investments

Transatlantic investments continue to drive the partners' commercial relations.

The HLWG recommends that a comprehensive US-EU trade agreement include liberalising investments and protecting the provisions that both sides have negotiated to date and that include the highest levels of liberalisation and highest standards of protection.

The US and the EU combined hold 53 % of the world's total FDI 'inward stocks' and 65 % of the world's total 'outward stocks'. Both are largely composed of transatlantic FDI.

Table 1:

EU-US bilateral investment stocks

EU FDI stocks	2004 in EUR billion	2010 in EUR billion	% of total EU FDI
Outward (to US)	731.7	1 194.9	29 %
Inward (from US)	769.2	1 201.3	41 %

Source: Eurostat

Against the backdrop of these huge volumes, one could argue that investment, rather than trade, is the foundation of the transatlantic economic relationship. The magnitude of the investment relationship also reflects that generally open approach to foreign direct investment of both the EU and the US.

Barriers do nonetheless exist; the US, for example, has equity and control restrictions on foreign investments in airlines. The transatlantic partners have worked towards reducing this divide. In April 2012, they agreed on Shared Principles for International Investment. These principles, which reflect EU and US bilateral investment treaties (BITs), could form the basis of the investment chapter in the future agreement.

2.5. Regulatory issues and non-tariff barriers

Non-tariff measures and behind-the-border barriers are considered major obstacles to trade and investment.

Both sides agree on the importance of putting processes and mechanisms in place to reduce costs associated with regulatory differences by promoting greater compatibility, including, where appropriate, by harmonising future regulations. It will also be important to establish a system of equivalences, mutual recognition or tools to resolve the concerns and burdens that existing regulations have created.

Generally, regulatory barriers are considered to be the major obstacles to trade and investment. The benefit of removing all actionable non-tariff measures (NTMs) in transatlantic trade has been estimated to offer as much as EUR 122 billion to EU GDP per year, or 2.1 % of exports. EU industrial sectors, such as motor vehicles, chemicals, pharmaceuticals, food and electrical machinery, would benefit most. For the US, eliminating actionable NTMs could result in an increase of EUR 41 billion to the GDP per year and a rise of 6.1 % in exports. The US sectors that would benefit the most include electrical machinery, chemicals, pharmaceuticals, financial services and insurance. In the automotive sector, which is the largest commercial sector in EU-US relations, removing non-tariff measures could lead to a 14 % reduction in the costs of trading and investments in the EU and 15 % in the US.⁹

Closer regulatory cooperation would be key to resolving non-tariff barriers.

Provisions to encourage regulatory cooperation in the future agreement should include the following:

- **Regulatory principles** that emphasise and endorse regulatory best practices in the US and the EU.
- **Regulatory outcomes** that give regulators a clear goal of compatible regulatory regime determinations.
- **Transatlantic regulatory tools**, including transparency, information exchanges (e.g. in cases of urgent risks), confidentiality, processes for identifying proposed measures that may significantly affect transatlantic trade, a new regulatory compatibility analysis procedure, the legal authority to

⁹ European commission, DG Trade [Study](#) on Non-Tariff Measures in EU-US Trade and Investment, carried out at the request of the European Parliament, December 2009,

enter into bilateral agreements, and provisions to allow for the immediate suspension — and, if necessary, the rapid termination — of an agreement that no longer inspires confidence.

- **Institutional provisions** to establish an oversight body to address cross-sectoral issues, promote best practices, and manage processes to enhance regulatory compatibility.
- **Work programs for specific sectors** to encourage horizontal commitments and to develop practical tools for specific industries and between-counterpart regulators. The ongoing efforts of the US-EU High-Level Regulatory Forum (HLRF) and the Transatlantic Economic Council (TEC) should be included.

The HLWG has also recommended that the two sides should consider sanitary and phytosanitary (SPS) issues in their negotiations. Specifically, the group has suggested that an ambitious '**SPS-plus**' chapter be included, establishing a mechanism to improve dialogue and cooperation on SPS issues. Such a chapter would build on the key principles of the WTO SPS Agreement and would incorporate the requirements that each side's SPS measures be based on science and on international standards or scientific risk assessment, be applied only to the extent they are necessary to protect human, animal, or plant life or health, and be developed in a transparent manner, without undue delay.

As mentioned before, agriculture and food issues are the most contentious ones in the bilateral trading relationship and may pose the largest stumbling block to a future agreement.

Agricultural policies in the EU and the US have developed from different historical experiences and relationships between agricultural producers, governments, food processors, consumers and other interested parties. In the EU, agriculture — governed by EU's Common Agricultural Policy (CAP) — covers more than the production of food, as it also strives to preserve a rural way of life, improve animal welfare and ensure climate sustainability. The main aim of the CAP is securing farm income.

The US policy focuses primarily on preserving the 'safety net' for US farmers, although they are expected to adjust to markets¹⁰.

Regarding food safety, European consumers rely on a mixture of EU and national regulations, enforced at the level of Member States. Consumer confidence in regulation has been undermined on several occasions by the slow reactions of EU and national authorities and by the delays caused by EU coordination procedures. This was the case, for example, when cattle were discovered to be infected by bovine spongiform encephalopathy (BSE), when eggs were contaminated with dioxin, when outbreaks of E. coli occurred, and —most recently— when ready-to-eat dishes labelled as beef were found to include horsemeat.

In the US, the federal government regulates food safety. The Department of

Resolving existing SPS issues requires that the two sides develop greater confidence in one another's food safety legislation and standards.

Agricultural policies in the EU and US diverge, both in their purpose and in their administration.

¹⁰ GMF, [A Transatlantic Partnership - Agricultural Issues](#), October 2012,

Agriculture and the Food and Drug Administration, the bodies responsible for food safety, tend to base their regulatory decisions more exclusively on 'sound science' than does the EU.

Amongst the existing non-tariff barriers to trade in the field of agriculture are various incompatibilities in food safety requirements. US beef from animals treated with hormones and biotech products (such as genetically-modified corn, soybeans and cotton) are banned in the EU. Conversely, for reasons such as the BSE, EU beef is entirely banned from entering the US.

The EU and the US are involved in a number of disputes. Amongst those on which the WTO Dispute Settlement Body has made rulings against the EU are cases on hormones (DS 26) and on the marketing of certain biotech products (GMOs) (DS 291). It remains to be seen if the implementation of these rulings will be satisfactory to the WTO. Following a US request, a new dispute settlement panel was established on 19 November 2009 for EU import restrictions on US poultry that had undergone antimicrobial treatment involving chloride (DS 389 - Poultry Antimicrobial Treatment [AMT]).

Each case of transatlantic conflict is complex and not easily resolved. Discussing the new EU-US agreement with INTA-Members on 21 February 2013, EU Trade Commissioner Karel De Gucht tried to disperse the doubts of Members of the European Parliament regarding the EU's food safety standards by reiterating that there would be no lowering of EU standards, including those on SPS and genetically modified organism (GMO).

It may well be feasible in the short run to ensure consistency with the existing WTO SPS agreement to which the EU and the US are parties. However, harmonising and mutually recognising SPS standards based on science — including adopting measures such as equivalence of requirements — will require building confidence before a common ground can be reached. A first step would be for the EU and US to mutually recognise one another's inspection systems and their findings. To avoid new SPS quarrels from developing, an 'early warning system' could be established. This would encourage the European Parliament and the US Congress to take a pro-active role by cooperating with their counterparts when proposals are introduced that could lead to new regulation.

The EU and US are involved in a number of agricultural disputes.

Legislators in the EU and the US may take a pro-active role in cooperating with their counterparts and help to resolve this sensitive issue.

3. Rules addressing shared global trade challenges and opportunities

This is the third chapter of the HLWG report. The HLWG acknowledges that a common set of 'rules and principles, and new modes of cooperation' is needed to address shared global trade challenges and to create opportunities.

4. Intellectual property rights (IPR)

Although intellectual property is well protected in the EU and the US, the partners' views on matter diverge — as the EU's rejection of the ACTA treaty demonstrated.

How to preserve or alter the system of geographical indications — often applied in Europe but not entirely appreciated in the US — will also prove challenging.

Both the EU and the United States are committed to maintaining and promoting a high level of intellectual property protection, including enforcement, and to cooperating extensively on this issue. The two sides will continue and enhance their work on IPR issues. The HLWG recommends that the partners explore opportunities to address a limited number of significant IPR issues of interest to either side, without prejudice to the outcome.

Since the rejection of the Anti-Counterfeiting Trade Agreement (ACTA) by the EP, intellectual property has become a tricky issue. The US appears committed to completing ACTA negotiations, and public support for the agreement is strong in the US.

The HLWG recommendations are not very precise in this respect. While committing to cooperate extensively on, *inter alia*, enforcement (a topic covered by ACTA), the parties are only requested to address a limited number of 'significant' issues of common interest 'without prejudice to the outcome'. This wording carries the suggestion that the US and EU positions are diverging — although both partners maintain high IPR standards — and that no particular progress is expected for this chapter. In his presentation to the INTA Committee on 21 February 2013, De Gucht ensured Members that ACTA would not be reintroduced through the back door.

Geographical indications (GIs) are considered very important for the EU, and numerous products closely linked to their geographic origin are marked by this appellation. In the course of future negotiations, the EU would have to stress that this kind of intellectual property right is quite different from a simple marketing instrument. In the US, there is a certain reluctance to enforce GIs, as the practice of associating products names with their place of origin is not so widespread (with the exception of wines and spirits, for which special bilateral agreements already exist). The EU-US agreement should ensure that the inclusion of GI protection offers advantages for both parties.

5. Environment and labour

The US has included labour and environment chapters in most recent trade agreements.

The EU and the US are both committed to high levels of protection for the environment and workers. The HLWG recommends that the two sides explore opportunities to address this topic, taking into account the 'Sustainable Development' chapter of EU trade agreements and the 'Environment and Labour' chapters of US trade agreements.

The US has included a labour chapter in most recent trade agreements¹¹. While these chapters have often evolved since being signed, they generally include commitments to respect fundamental labour rights, effectively enforce labour

¹¹ USTR [Free Trade Agreements and Labour](#).

laws, provide domestic procedural guarantees, promote public awareness of labour laws, and establish consultation and dispute settlement mechanisms.

Similarly, the environment chapters in US agreements include obligations on effectively enforcing laws, preventing the derogation of environmental protections to encourage increased trade or investment, protecting domestic procedures and promoting public participation in environmental matters¹².

The EU has only recently begun to include a meaningful labour and development chapter in its FTAs. (Examples include the FTA with South Korea and the trade agreement with Colombia and Peru.) Such chapters generally include a shared commitment to International Labour Office (ILO) core labour standards and decent work agenda, including a commitment to ratify and effectively implement all conventions identified as up-to-date by the ILO (i.e. those going beyond conventions relating to the core labour standards).

Second-generation EU FTAs include a commitment to effectively implement all multilateral environment agreements to which all contracting parties are signatories.

Although the EU and US approaches, as described above, differ somewhat, they should not present insurmountable obstacles to finding an agreement on both chapters.

Labour is a relatively new issue for the EU's treaties.

These issues are unlikely to prove deeply problematic for transatlantic negotiators.

6. Other globally relevant challenges and opportunities

The last chapter of the HLWG report is dedicated to other issues that have gradually been included in the latest generation of FTAs. The report acknowledges that the global trade and investment system has radically changed over the years.

In particular, the report attaches great importance to 'the emergence of new patterns of production', based on integrated cross-border supply chains, and notes that anticompetitive practices have increased.

Areas that have been singled out by the HLWG are the following:

- customs and trade facilitation,
- competition policy,
- state-owned enterprises and other enterprises that benefit from special government-granted rights,
- localisation barriers to trade,
- raw materials and energy,
- small- and medium-sized enterprises,
- transparency.

These are global issues on which the EU and the United States share similar

A number of other issues have been singled out in the HLWG report, which emphasises the changing patterns of production and trade.

¹² USTR Bilateral and Regional Trade Agreements ([Environment Chapters](#))

A US-EU FTA will allow the partners to 'set the pace' in the 21st century.

concerns and objectives. Noting that 'a bilateral agreement in these areas could strengthen the rules-based multilateral trading system', the HLWG suggests that a deal on these issues may have important effects, not only for the two partners, but also for the entire international trading system. Closer bilateral EU-US cooperation will ensure that the transatlantic partners are the pace-setters for trade and investment rules and standards in the 21st century, rather than China or other emerging powers.

The report emphasises that the EU and the US should seek further bilateral cooperation on key policy chapters to restore their position of leading commercial powers in the world and to ensure that the international trading system is not jeopardised by new, sophisticated obstacles to trade.

7. Customs and trade facilitation

Customs and trade facilitation entails ensuring that there are effective measures to facilitate trade between the two partners, and that the measures be characterised by a level of ambition that goes beyond the disciplines under negotiation in the WTO.

The HLWG report expresses the hope that the US and the EU go beyond the trade facilitation¹³ chapter currently under consideration in the otherwise unsuccessful DDA negotiations.

Given the stalemate in the World Trade Organisation's Doha Development Agenda, the transatlantic trade agreement may provide a way out of the impasse.

WTO negotiations have focused on Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation) and Article X (Publication and Administration of Trade Regulations) of the General Agreement on Tariffs and Trade (GATT). Negotiations have also attempted to enhance technical assistance, capacity building and cooperation between customs authorities.

An EU-US agreement would present a way to advance beyond the stalemate of the Doha talks. According to WTO Director General Pascal Lamy, more efficient rules on trade facilitation could provide 'a USD 1 trillion boost to world economy'.¹⁴

8. Competition policy

Cooperation between the US and EU in the field of competition policy is well established. Both the US and the EU have promoted a sound economic environment by, *inter alia*, introducing a set of legislative rules to prevent market distortions or the excessive concentration of activities within a limited group of operators.

¹³ DG Taxation and Customs Union, [Trade facilitation](#) (definition)

Trade facilitation can be defined as 'the simplification and harmonisation of international trade procedures including import and export procedures'.

¹⁴ WTO, [A trade facilitation deal could give a \\$1 trillion boost to world economy](#) – Lamy (1 February 2013).

A number of agreements have been signed over the past two decades to coordinate the EU and US competition policies.

Decent cooperation has not prevented all disputes from developing, as evidenced by the EU's case against Microsoft.

In 1991, the EU and the US signed the Competition Cooperation Agreement to establish greater cooperation between the relevant authorities. The agreement notably guarantees that the authorities inform one another of competition cases, and that the competent authorities regularly exchange information on matters relating to the implementation of competition rules¹⁵.

The 1991 agreement was followed the 1998 EU/US Positive Comity Agreement. Under the terms of this agreement, one party signing an agreement may request that the other(s) to address anti-competitive behaviour originating in its jurisdiction that has a negative effect in the territory of the requesting party.

These two agreements are completed by the Administrative Arrangement on Attendance (AAA), which allows the signing parties to attend certain stages of individual competition cases.

Finally, the EU/US Best Practices on Cooperation in Merger Investigations entered into force in 2011.

A framework agreement on competition has not, however, prevented the US and the EU from having some serious disagreements about the application of anti-competition rules; an example is the EU's antitrust case against Microsoft a few years ago.

Including a meaningful chapter on competition practices would obviously represent a positive move towards a more coordinated approach. A strong competition chapter in the future EU-US FTA would likely serve as a benchmark for similar agreements with third countries, in which the legislation and enforcement of competition and antitrust policies could be improved.

9. State-owned enterprises and other enterprises that benefit from special government-granted advantages

Although a number of disputes allege that the EU has unfairly supported local businesses, the EU system has become more restrictive and transparent in recent years.

Local businesses in the

State support to private companies is often perceived very negatively by the US business community. In most trade defence cases (involving countervailing duties and safeguards), US petitioners have alleged that the EU provides substantial financial assistance to EU companies, and that this has an evident distortive effect on competition. Yet the situation is evolving: the times when the EU and its Member States supported declining industries (for example steel and coal) are gone for good. The EU has now a very stringent system of state aid that severely restricts financial assistance to European companies and that introduces a transparent system of notifications. US operators often fail to distinguish between legal financial assistance and illegal (or actionable) subsidies under WTO law.

In addition, US federal, state and local authorities have created a number of financial schemes for companies wishing to operate in the US or in the territory of a given state, county, city or town. The fact that most of these subsidies are not

¹⁵ For more details please refer to the site of DG Competition '[bilateral relations: the United States of America](#)'.

US also enjoy government-granted advantages — though these are not always disputed.

challenged does not mean that they are all WTO compatible.

To avoid unnecessary disputes in the future, it will be necessary to develop a better understanding of the EU's and the US's state aid systems. Even with this, however, finding a common interpretation of international subsidy rules may prove more difficult than expected because of the significant interests involved and the 'ideological' nature of these disputes.

10. Localisation of trade barriers

Localisation barriers to trade are measures designed to protect, favour or stimulate domestic industries, services providers or intellectual property at the expense of imported goods, services or foreign-owned or foreign-developed intellectual property.

The EU and the US have a strong record in tackling third countries' barriers to trade. In a world in which customs tariffs are steadily decreasing, non-tariff barriers (NTBs) represent an increasingly important obstacle to international trade. NTBs are also more difficult to address than traditional customs duties, and are by nature susceptible to being changed without notice.

The EU has developed a relatively efficient system of information called the Market Access Database (MADB). Thanks also to the efforts of the European Parliament, the EU has also created 'market access teams' active in most EU embassies in emerging countries (such as China)¹⁶.

With custom-made structures and teams, the EU and the US have effectively battled third countries' efforts to protect their local businesses.

The US has also developed a very efficient system of monitoring of NTBs. The US Trade Representative (USTR) publishes a 'National Trade Estimate Report on Foreign Trade Barriers'¹⁷ yearly, and many federal agencies (including the Department of Commerce, the International Trade Commission and the Treasury) are constantly monitoring third countries' potential trade barriers.

The wording used in the HLWG report suggests that the EU and the US should work together to better address potential distortions to trade in third countries. This goal is likely to be relatively easy to achieve, as most of the proposed actions already exist on each side.

Nonetheless, the issue of subsidies may prove contentious in sensitive sectors such as agriculture and aeronautics. (An example of such an issue is the Boeing-Airbus dispute, still open at the WTO.)

11. Raw materials and energy

Access to raw materials and energy has become a major geostrategic issue in the 21st century. Increased demand for energy and minerals — as well as for other commodities, such as rice and wheat — has boosted prices and made access to certain resources extremely difficult.

¹⁶ European Commission, [Market access database](#) (MADB)

¹⁷ USTR, [National Trade Estimate Report on Foreign Trade Barriers](#) (2012)

Raw materials are becoming an important in the 21st century issue, although the importance accorded them in the EU and the US has differed.

In 2008 the Commission published a communication known as the 'Raw Materials Initiative'. This communication was revised in February 2011 to further stress the importance of establishing a proper external raw material strategy at the EU level. In short, the new communication aims to ensure that international raw materials markets operate in a free and transparent way¹⁸.

In terms of international trade, the US has so far been somewhat reluctant to launch an integrated strategy on raw materials. This is partly due to the fact that the US is less dependent on energy and minerals than Europe, as the US has greater access to these resources. On the other hand, Washington has always been supportive of US mining and energy companies operating abroad, and the US administration is fully aware of the economic risks of insufficient access to resources.

In 2011, the Transatlantic Economic Council (TEC) approved a 'Raw Materials Work Plan', which included the preparation of a joint inventory of mineral raw materials data and of analysis undertaken by both sides. This was the first step towards enhancing transatlantic cooperation on raw materials. As a result of the work plan, a group of experts from the EU and the US meets regularly¹⁹.

12. Small- and medium-sized enterprises

Supporting small and medium-sized enterprises (SMEs) has become a priority for both the EU and the US.

The EU has a long record of initiatives supporting SMEs, both domestically (see e.g. the Small business Act²⁰ adopted by the Commission in 2008) and in international markets (with the inclusion of a dedicated chapter in the 2011 'Trade, Jobs and World Affairs' communication). The Commission and Member States have only recently come to understand that — particularly at a time of low demand within the EU — the internationalisation of SMEs, which represent more than 98 % of the EU's undertakings, could bring a vital contribution to the recovery of the EU's economy.

The US shares similar concerns and has adopted several initiatives to reinforce the role of SMEs in the US economy. In 2009 the USTR launched a new trade policy initiative to support the growth of SMEs through international trade²¹. The USTR and other federal agencies also pledged to increase their assistance to SMEs, with a view both to promoting trade promotion and developing market access.

Transatlantic cooperation on SMEs was launched. In 2011, when the US and the EU published a joint report on SMEs' best practices²². On 4 December 2012, US and EU

While the partners launched an effort to cooperate on small and medium-sized enterprises (SMEs) in 2011 — spurred in part by a growing appreciation of SMEs' potential — a chapter on the matter would

¹⁸ DG Trade, Page on [Raw materials](#)

¹⁹ US Department of State, [EU-U.S. Expert Workshop on Raw Material Flows & Data: Public Summary Document](#) (14 September 2012)

²⁰ DG Enterprise and Industry, [European Small Business Act](#) (SBA)

²¹ USTR, [Small Business](#).

²² DG Enterprise and Industry, European Union - United States [Joint Report: SME Best Practices Exchange](#), 28-29 June 2011.

be helpful.

representatives also signed a Memorandum of Understanding on promoting cooperation that addressed the topic of SMEs. The Memorandum foresees promoting SME events and business partnering activities, participating in sector-specific or thematic seminars and exchanging information on SME networking opportunities.

Yet transatlantic cooperation on SME matters could still be improved. The successful conclusion of a EU-US FTA including a meaningful chapter on SMEs would certainly be welcome.

13. Transparency

Transparency has several meanings in this context, but principally refers to the 'fight against corruption'. The parties have already undertaken similar steps against murky business practices and corruption, both domestically and abroad. Enhanced cooperation on this topic may be helpful to harmonise good practices and ensure proper enforcement.

14. Other issues

The HLWG report is notably silent on certain important issues, including agriculture and geographical indications; this silence suggests that these may prove troublesome in the negotiations.

As far as the EU is concerned, the mandate that the Council will give the Commission is likely to restrict the scope of negotiations of the new FTA. This mandate will not, unfortunately, be publicly available.

The list of topics mentioned above, which may well be among those negotiated, is not exhaustive. The HLWG has recognised that 'additional issues with relevance to the transatlantic or global economies may be identified for attention before or during the course of US-EU negotiations'.

The HLWG has been silent on a number of issues that may have an interest for one or both parties. This may suggest that no agreement on the level of ambition was found on these matters.

One of the main issues not mentioned in the HLWG report is agriculture. A modern and lively primary sector is vital for both the US and the EU. Despite several budgetary cuts, both the EU and US still provide sizable support to their farmers.

WTO negotiations have proven that while agriculture represents a relatively small fraction of world's GDP and trade, it still enjoys a disproportionate role in international negotiations. The Development Agenda (DDA) failed in part as the result of the US's refusal to lower its financial support to its farmers (e.g. those producing cotton). Agriculture is also a potentially sensitive issue also for a number of EU Member States and may represent a serious obstacle to the conclusion of negotiations.

Geographical Indications (GIs) form another sensitive issue for the EU — one not explicitly mentioned in the HLWG report.

15. Conclusions

The finalisation of the HLWG report and the official announcement of the launch of negotiations for a full-fledged free trade and investment agreement between the EU and the US represent remarkable progress towards the creation of a better-integrated transatlantic market place.

Absent any further details on the content of negotiations, predictions about the content of the negotiation directives can only be speculative. Yet the potential gains that such an agreement could bring both parties is possible to estimate, and they are likely to be significant. Moreover, a meaningful deal between the EU and the US may have positive effects on relations with third countries — and notably emerging ones — not least because the new agreement is likely to establish 21st century standards for trade and investment. This would also help restore the leadership the EU and the US once enjoyed on international trade and investment matters.

On the other hand, some chapters will certainly be contentious. As mentioned above, a number of relevant issues have not been explicitly named as falling within scope of the future negotiations.

The complexity of topics under scrutiny and the huge interests at stake mean that negotiations are unlikely to be completed in a two-year period, unless both parties show real dedication to the new trade and investment partnership and unless both the European Parliament and the US Congress give their full political support to this initiative.

Two years seems a short period to iron out all the differences likely to emerge in the negotiation process, but the support of the US Congress and the European Parliament will make a difference.