

# EU FTA Policy Developments

**July 2013 Report (covering development April – June 2013)**

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The information in this report is designed to provide a general understanding of the issues discussed and is not intended as legal advice.

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## TTIP NEGOTIATIONS

### EU PERSPECTIVES

- Discussions leading up to adoption of EU negotiating directives on 14 June 2013

### US PERSPECTIVES

- Civil society stakeholder and lawmaker input leading up to first negotiation round

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## EU perspectives

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### Introduction

During the months of April, May and June, a series of important developments unfolded as the EU discussed its negotiating mandate for the Transatlantic Trade and Investment Partnership (TTIP) agreement, which culminated in its adoption by the EU Council on 14 June 2013. The EU's preliminary goals for TTIP negotiations were exposed through the leak of several key documents relating to the draft negotiating mandate and position papers during these months. At the same time, the US spying scandal was revealed in the month of June, leading to strong reactions from EU officials calling for solid data protection as part of the TTIP agreement.

Below, we discuss the key TTIP developments from an EU perspective during this time period.

### TTIP – Key monthly developments

#### i) **April 2013**

The confidential first draft negotiating mandate for EU-US TTIP negotiations (dated 12 March 2013), which was presented by the European Commission to the EU Member States for discussion, was leaked to the public in [April 2013](#). In this draft mandate, the Commission highlighted, among other things, the requirement that each side's SPS measures should be based on science and on international standards or scientific risk assessment, and called for the adoption of sectoral agreements on regulatory issues and non-tariff barriers in areas such as cars, chemicals, and pharmaceuticals. The draft mandate also referred to expected agreement on "cross cutting disciplines on regulatory coherence and transparency for the development and implementation of efficient, cost-effective and more compatible regulations for goods and services". The European Commission further highlighted Geographical Indication (GI) protection as a priority, and stated that a TTIP agreement should cover customs facilitation, competition policy, and trade in energy and raw materials.

One issue became particularly controversial once the Commission had issued the first draft negotiating mandate, which is the fact that the Commission promised to uphold the EU's "cultural and linguistic diversity, namely in the audiovisual sector", but without providing for an explicit exclusion of **cultural and audiovisual services** from the scope of the TTIP negotiations. On [18 April 2013](#), France (seemingly without strong support from other

Member States) stated it would block proposed negotiations unless the cultural sectors were excluded from the talks.<sup>1</sup> Other Member States (including Sweden), however, warned that excluding the cultural sector from trade talks could prompt the US to reject certain important EU demands. Within the European Parliament, it was also noted that the first draft of the proposed negotiating directives did not explicitly exclude audiovisual services from the scope of negotiations, while questions were posed to the Commission on how it intended to protect the EU's cultural industry during TTIP talks.<sup>2</sup> In response, the Commission stated that it was reflecting with the Member States how to find the right balance between, on the one hand, the sensitivity of the audiovisual sector and the need to maintain commensurate policy space and, on the other hand, the objective of broad and ambitious negotiations.<sup>3</sup> The Commission further highlighted that the proposals for a negotiating mandate with respect to Japan and the Doha Development Agenda did not entirely exclude the audiovisual sector. On 22 April, EU Trade Commissioner Karel De Gucht confirmed again in a statement that the cultural exception would not be up for negotiation (while refraining from proposing an explicit exclusion), stating that there are certain red lines (including the cultural exception) that the European Treaties oblige the Commission to protect.<sup>4</sup>

On 11 April 2013, EU Competition Commissioner Joaquin Almunia stated to the press that disciplines for **state subsidies to firms** could be covered in the TTIP negotiations, going beyond the WTO rules on subsidies and strengthening the enforcement of rules.<sup>5</sup> Commissioner Almunia added that the cooperation already established between EU and US anti-trust authorities should be confirmed in TTIP provisions (similarly to a clause included in the EU-Korea FTA).

European Commission President José Manuel Durão Barroso addressed the European American Chamber of Commerce on 12 April 2013, stating that the negotiating TTIP parties will not be able to eliminate all regulatory divergences in one round, but they should aim for a '**living agreement**' that removes the main trading obstacles of the past while working on the prevention of future regulatory barriers through the creation of a framework for regulatory cooperation in a number of sectors. Barroso further emphasized that the transatlantic trade and investment relationship is **not contradictory to multilateral discussions**, as TTIP negotiations will be used to strengthen the multilateral trading system.<sup>6</sup> The latter point was confirmed by Commissioner De Gucht after an informal meeting with the EU Trade Ministers held in Dublin on 18 April 2013.<sup>7</sup> De Gucht further stated that both parties should be particularly ambitious in the regulatory area since that would increase the scope for the TTIP to influence the multilateral level.

After an EU Trade Minister meeting including EU Trade Commissioner De Gucht and then-International Trade Advisor to the US President Mike Froman on 18 April 2013, the Irish Presidency to the EU announced that **the Member States had made progress** in reaching a common position on the draft negotiating mandate.<sup>8</sup> This was the first time a representative of the US Administration discussed EU-US trade relations directly with all EU

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<sup>1</sup> See <http://www.reuters.com/article/2013/04/18/us-eu-us-trade-idUSBRE93H11A20130418>.

<sup>2</sup> See <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2013-005353&language=EN>.

<sup>3</sup> See <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-005353&language=EN>.

<sup>4</sup> See [http://europa.eu/rapid/press-release\\_MEMO-13-363\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-363_en.htm).

<sup>5</sup> See <http://www.highbeam.com/doc/1G1-325979302.html>.

<sup>6</sup> See [http://europa.eu/rapid/press-release\\_SPEECH-13-315\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-315_en.htm).

<sup>7</sup> See [http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\\_151041.pdf](http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151041.pdf).

<sup>8</sup> See <http://eu2013.ie/news/news-items/20130418post-tradeinformalpr/>.

Trade Ministers. The Irish Presidency also confirmed its goal to have the negotiating mandate adopted before the end of June 2013 (i.e. the final days of its Presidency).

On 25 April 2013, the European Parliament's **International Trade (INTA) Committee adopted a draft resolution** calling for the EU Council to authorize the start of TTIP negotiations.<sup>9</sup> In addition, INTA urged the Commission to maintain a high level of protection for personal data, to negotiate rules on financial services, to maintain the precautionary principle with respect to GMOs, cloning and consumer health, and to address US restrictions in maritime and air transport services. The draft resolution further stated that cultural and audio-visual services should be explicitly excluded. The INTA Committee also called on the US to lift its EU beef import ban as a "trust-building measure".

Other countries, such as China, also raised concerns around this time with respect to the effects of an EU-US Free Trade Agreement (FTA) on future standardisation and trade rules. China had reportedly expressed its concerns on a possible future TTIP agreement during a meeting between the Chinese Foreign Minister and the EU High Representative Catherine Ashton that took place on 25 April 2013. The EU reportedly assured China during the meeting that countries that were not part of the TTIP agreement would still benefit from it, noting that the TTIP would be an open agreement.<sup>10</sup>

## ii) **May 2013**

A series of institutional discussions on the TTIP negotiating mandate were held by the EU throughout the month of May.

On 21 May 2013, the European Commission issued a **new revised draft mandate** (which was subsequently leaked).<sup>11</sup> One important revision was that the new draft mandate no longer stated that a TTIP agreement should include provisions on **defence procurement**. The Commission reportedly removed this reference to defence procurement in the negotiating mandate in response to concerns expressed by France and other Member States that including it would force their companies into domestic competition with US firms for lucrative defence contracts. Some Member States allegedly also argued that the Commission does not have the competence under the EU Treaties to negotiate on matters relating to defence procurement.

The revised draft mandate specified in the section on **investment protection** that any provisions agreed should be without prejudice to the rights of the EU and its Member States to pursue public policy objectives including "the stability of the financial system" (while previous versions only listed social, environmental, security, public health and safety objectives in this context). The draft mandate also specified that "[t]he investor-to-state dispute settlement mechanism should contain safeguards against frivolous claims", to address Member States concerns that such a dispute mechanism could result in excessive

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<sup>9</sup> See original draft motion here:

[http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/inta/re/929/929186/929186en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/inta/re/929/929186/929186en.pdf), and tabled amendments here: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-508.204+01+DOC+PDF+V0//EN&language=EN>.

<sup>10</sup> See <http://www.reuters.com/article/2013/05/07/us-eu-us-trade-idUSBRE9460QG20130507>.

<sup>11</sup> A leaked copy of the revised mandate can be found here: [http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-05/31/2013/revised-eu-draft-mandate/menu-id-172.html?utm\\_medium=twitter&utm\\_source=twitterfeed](http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-05/31/2013/revised-eu-draft-mandate/menu-id-172.html?utm_medium=twitter&utm_source=twitterfeed).

lawsuits challenging national regulations, including environmental and public health provisions.

Language to safeguard **national immigration laws** within the EU had also been added to the draft TTIP mandate, specifying that the Commission should ensure that “nothing in the Agreement prevents the Parties from applying their national law, regulations and requirements regarding entry and stay, work and labour conditions”, while such conditions should not however “nullify or impair the benefits” of the trade deal.

The revised EU draft mandate further included new language with respect to **intellectual property rights** (IPRs), specifying that the TTIP agreement’s IPR provisions should build upon and complement the WTO TRIPS Agreement and that the TTIP parties should explore opportunities to address other IPR issues, besides GIs.

The revised draft mandate did not add any language concerning the exclusion of the cultural and audio-visual sector, but provided for the **exclusion of the public utility sector** in order to protect Member States from having to liberalize access to investment in government controlled infrastructure (e.g. state controlled electricity grids and power generators). The draft also promised in the context of **rules of origin** that consideration of possible cumulation with neighbouring countries that have FTAs both with the EU and the US will be made eventually.<sup>12</sup>

On 22-23 May 2013, the **European Parliament**, in its plenary session, debated on and **adopted the draft resolution proposed by the INTA Committee calling for the Council to authorise the Commission to start TTIP negotiations**.<sup>13</sup> The main concerns that were raised during the debate in the plenary session relate to cultural and audio-visual services, defense and safety procurement, and agriculture and GMOs. Consistent with the draft resolution adopted earlier by the INTA Committee, the resolution eventually adopted by the full Parliament calls for the explicit exclusion of cultural and audio-visual services from the mandate. The Parliament’s resolution – which is not binding, but suggests a political desire to act in a given area – further emphasizes that the TTIP agreement should not undermine the precautionary principle in the EU, while calling on the US to lift its import ban on beef products as a trust-building measure.

In its resolution, the European Parliament further emphasized that no FTA can take effect without the Parliament’s consent, and that “its positions should therefore be duly taken into account at all stages”.

During the 51st meeting of the EU-Turkey Association Council that took place on 27 May 2013, **Turkey reportedly raised concerns about being left out of the TTIP talks**. This stems from a Turkish concern that the Commission would not take Turkey’s views and expectations into consideration during TTIP negotiations, even though Turkey will be directly affected by the outcome of the TTIP negotiations through the EU-Turkey Customs Union.<sup>14</sup> Turkey has therefore reportedly called for the inclusion of a provision in the negotiating

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<sup>12</sup> At present, only one neighbouring country, Mexico, meet this criterion of having FTAs with both the EU and the US. Canada, which is a member of NAFTA (along with the United States), is currently in the final stages of negotiating an FTA with the EU. Chile, Peru and South Korea also have existing FTAs with both TTIP parties.

<sup>13</sup> See <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-227>.

<sup>14</sup> See, e.g. European Policy Centre, “Between a rock and a hard place: What is Turkey’s place in the transatlantic market?”, 9 July 2013, available at [http://www.epc.eu/documents/uploads/pub\\_3656\\_between\\_a\\_rock\\_and\\_a\\_hard\\_place.pdf](http://www.epc.eu/documents/uploads/pub_3656_between_a_rock_and_a_hard_place.pdf); <http://www.europarl.europa.eu/document/activities/cont/201306/20130619ATT68026/20130619ATT68026EN.pdf>.

mandate to enable the proper functioning of the EU-Turkey Customs Union, and for support from the EU with respect to the possible launch of FTA talks between Turkey and the US. Joint Declarations where the EU invites its FTA partners to enter into negotiations with Turkey, and those partners promise to “make their best efforts” to do so, have been incorporated into existing EU FTAs, including the recently negotiated FTA with Peru and Colombia.<sup>15</sup>

At the industry level, the European Business Alliance for TTIP was created at the European Business Summit held on 16 May 2013.<sup>16</sup> The alliance was formed by BusinessEurope, Eurochambres, the European Association of Craft, Small and Medium-Sized Enterprises, the Transatlantic Policy Network, the American Chamber of Commerce to the EU, AmChams in Europe, the US Chamber of Commerce, the Transatlantic Business Council and the European Services Forum and aims to press for a Transatlantic Trade and Investment Partnership by assisting the EU and US governments throughout the negotiations.

### iii) **June 2013**

On 11 June 2013, it was reported that the EU, intent to include financial services in the scope of TTIP regulations, aims to establish general, high-level criteria in a framework for closer cooperation with respect to financial services rather than addressing specific financial services laws and regulations.<sup>17</sup> According to these reports, the EU also wants to establish a process under which specific authorities would have to respond according to a set timeline when a party complains that the other is diverging from the framework approach on financial services regulations. The EU’s demand to include financial services in TTIP negotiations allegedly stem at least in part from a concern that US rules on financial services could have extraterritorial reach and would include requirements that conflict with EU rules. Press reports also indicate that the US, on the other hand, favours keeping financial services outside the TTIP, but in parallel negotiations.

On 14 June 2013, the **EU Council adopted the negotiating mandate for the TTIP negotiations** after a long debate between the Commission and the Member States. (A copy of this adopted EU negotiating mandate has subsequently been leaked and published on the Internet.)<sup>18</sup> According to the Commission, the Council agreed that audio-visual services will not be covered in the mandate, but the Commission has the opportunity to cover this issue in additional negotiating mandates (which still need to be approved by the Council).<sup>19</sup> Trade Commissioner De Gucht emphasized in a statement that this should not be considered a carve out on audio-visual services.<sup>20</sup> Investor-to-state dispute settlement remained included in the negotiating mandate with safeguards to avoid any abuse of the system (as reported above).

The EU and the US formally launched TTIP negotiations at the G8 summit on 17 June 2013.<sup>21</sup>

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<sup>15</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:354:0003:2607:EN:PDF> (p. 2607).

<sup>16</sup> See <http://www.businesseurope.eu/content/default.asp?PageID=568&DocID=31660>.

<sup>17</sup> See <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-06/14/2013/eu-envisions-binding-framework-on-financial-regulation-through-ttip/menu-id-172.html>.

<sup>18</sup> See [http://www.europolitics.info/pdf/gratuit\\_en/339750-en.pdf](http://www.europolitics.info/pdf/gratuit_en/339750-en.pdf).

<sup>19</sup> See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=918>.

<sup>20</sup> See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=917>.

<sup>21</sup> See [http://ec.europa.eu/commission\\_2010-2014/president/news/archives/2013/06/20130617\\_2\\_en.htm](http://ec.europa.eu/commission_2010-2014/president/news/archives/2013/06/20130617_2_en.htm).

During a ministerial meeting held by the European Free Trade Association (EFTA) on 24 June 2013, the four EFTA states (i.e. Iceland, Liechtenstein, Norway and Switzerland) discussed the upcoming TTIP negotiations while focusing on the effect that an elimination of tariffs and non-tariff barriers (NTBs) under the TTIP would have on the competitive position of the EFTA states' exporters.<sup>22</sup>

The **US data spying scandal** that broke out over the course of June triggered a strong reaction from the EU institutions and the Member States while indicating that the EU would be determined to uphold its tougher data protection standards in the TTIP agreement.<sup>23</sup> By way of background, the European Commission issued a proposal for a draft data protection regulation in 2012, imposing stricter privacy rules.<sup>24</sup> The draft legislation still needs to be approved by the European Council and the European Parliament, but US lawmakers had reportedly hoped to water down the Commission's proposal through free trade negotiations. EU Commissioner for Justice Viviane Reding stated in a press interview that a big transatlantic agreement cannot be negotiated if there is concern that the EU's negotiators are being spied on, and confirmed that questions had been posed to the US in relation to spying allegations on 10 June 2013.<sup>25</sup> Within the European Parliament, the French Socialist Group and the Greens called for the suspension of negotiations,<sup>26</sup> while other Members called for the suspension of parts of the trade talks until a parliamentary investigation has taken place to examine the allegations.<sup>27</sup>

An EU-US Ministerial level meeting took place at the EU's Justice and Home Affairs (JHA) Council meeting in Dublin of 14 June 2013 to discuss the PRISM revelations.<sup>28</sup> After the meeting, Commissioner Reding stated that US Attorney General Holder had agreed to set up a group of experts to share information about the US' PRISM programme and to consider safeguards.<sup>29</sup> The European Commission in the end considered that whilst the beginning of TTIP negotiations should not be affected by the spying scandal, there remains a strong need for "confidence, transparency and clarity among the negotiating partners".<sup>30</sup> The start of the first round of TTIP negotiations was therefore not delayed as a result.

With respect to the actual TTIP negotiations, the **EU's preliminary negotiating position** was revealed through a leaked Commission note dated 21 June 2013 outlining the goals envisaged by the Commission for the first round of negotiations.<sup>31</sup> This note contains a set of position papers summarizing some of the EU's initial goals on regulatory harmonization, which were sent to the US side ahead of the first round of negotiations.

The leaked note includes initial proposals on regulatory issues involving the automotive sector, chemicals, pharmaceuticals, Technical Barriers to Trade (TBT), Sanitary and Phytosanitary (SPS) matters, a proposal for a chapter on Trade and Sustainable Development, a proposal on competition rules, a proposal for cross-cutting disciplines and

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<sup>22</sup> See <http://www.efta.int/about-efta/news/2013-06-24-efta-ministerial-trondheim.aspx>.

<sup>23</sup> See <http://online.wsj.com/article/SB10001424127887323936404578577053539567198.html>.

<sup>24</sup> See [http://ec.europa.eu/justice/data-protection/document/review2012/com\\_2012\\_11\\_en.pdf](http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf).

<sup>25</sup> See <http://www.euractiv.com/infosociety/reding-doubts-eu-institutions-da-interview-529032>.

<sup>26</sup> See <http://www.greens-efa.eu/fr/spy-attacks-against-the-eu-10218.html>.

<sup>27</sup> A first hearing of the European Parliament's Committee on Civil Liberties (LIBE) to investigate the alleged spying of EU institutions and European citizens is scheduled to take place on 5 September 2013. Twelve meetings are scheduled to take place before the end of 2013.

<sup>28</sup> See [http://europa.eu/rapid/press-release\\_MEMO-13-550\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-550_en.htm).

<sup>29</sup> See [http://europa.eu/rapid/press-release\\_SPEECH-13-536\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-536_en.htm).

<sup>30</sup> See [http://europa.eu/rapid/press-release\\_MEMO-13-641\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-641_en.htm). See

[http://insidetrade.com/iwfile.html?file=jul2013%2Fwto2013\\_2105a.pdf](http://insidetrade.com/iwfile.html?file=jul2013%2Fwto2013_2105a.pdf).

<sup>31</sup> See [http://insidetrade.com/iwfile.html?file=jul2013%2Fwto2013\\_2105a.pdf](http://insidetrade.com/iwfile.html?file=jul2013%2Fwto2013_2105a.pdf).

institutional provisions on regulatory issues, a proposal on trade in raw materials and energy, and a so-called 'non-paper' on public procurement. Below is a summary of the highlights of these documents.

- Automotive sector

The EU sets out ambitious goals with respect to regulatory compatibility/convergence and recognition in the automotive sector. The EU's primary goal would be to achieve mutual recognition of motor vehicles, using a staged approach. When TTIP negotiations are concluded, recognition of equivalence for regulations deemed to have similar test and in-use effects should be achieved. Such recognition would concern the technical requirements and technical specifications applicable to motor vehicles and their parts and components, but would not be extended to conformity assessment as the EU has found that there remains a wide divergence between the Parties' conformity assessment systems. The EU also envisages defining a built-in agenda for further regulatory convergence in the long term, after the TTIP negotiations have been concluded.

Secondly, the EU has found that TTIP should also strengthen EU-US cooperation in the framework of the UNECE 1998 Agreement, which should in turn lead to the adoption of Global Technical Regulations for new technology.

- Chemicals

The EU has been less ambitious in identifying its goals for a chemicals annex in TTIP, stating that neither full harmonization nor mutual recognition seem feasible in light of the existing framework legislations in the EU and the US.

The EU instead aims to agree on a mechanism for mutual consultation on prioritization of chemicals for assessment/risk management and for cooperation in the development of assessment methodologies; commit themselves to implement the UN Globally Harmonized System of Classification and Labelling of Chemicals for a broad range of chemicals, and possibly reach an agreement on a mechanism for mutual consultation and involvement with respect to the classification and labelling of substances; establish a mechanism to regularly consult with each other on new and emerging issues such as endocrine disruptors, nanomaterials and mixture toxicity; and analyse the parties' expectations with respect to the exchange of information and the protection of confidential business information.

- Pharmaceuticals

The EU recognizes that together with the US, it has already reached a high level of regulatory cooperation in the pharmaceuticals area, both at the bilateral and the multilateral level. The EU nevertheless considers that TTIP could reinforce these existing regulatory processes. The EU therefore proposes to explore the possibilities for improving recognition of each other's Good Manufacturing Practice ('GMP') inspections; allow for the exchange of confidential information and trade secret information; commit to establishing functioning systems for the authorization of biosimilars; work towards the revision of guidelines of the International Conference on Harmonization (ICH) on paediatrics; work towards the implementation of a harmonized terminology for pharmaceutical products; and continue existing

cooperation on ‘parallel scientific advice’ and ‘parallel evaluation on quality by design applications’.

- TBT

Apart from the regulatory issues that are specific to identified product sectors listed above, the EU also plans to address those issues for which sectoral measures are not yet envisaged. The EU proposes in that context to improve the basic framework conditions for market access (which involves, for example, transparency and accessibility of the regulatory system), increase information exchange between regulators before the WTO notifications are carried out, aim for common/coherent technical regulations where neither side has regulations in place, and increase the scope of TBT disciplines to sub-regional (in the EU) and sub-federal (in the US) level of regulation.

With respect to standard setting, the EU proposes to improve links between the EU and the US systems by increasing cooperation between EU and US standardization bodies, while allowing each side to maintain its distinctive character. The EU has further recognized that ambitions for increasing substantial convergence in the area of conformity assessment procedures with respect to existing products should be lower than in new areas.

- SPS

As regards SPS matters, the EU aims to build on existing principles of the WTO SPS Agreement and the EU-US Veterinary Equivalence Agreement. The EU proposes to achieve full transparency with respect to SPS measures, establish provisions for the recognition of equivalence, establish a clear and streamlined procedure for the listing of establishments, prevent the implementation of pre-clearance, introduce a disease-free and pest-free health status for the Parties, and recognize the principle of regionalization for both animal diseases and plant pests.

- Trade and Sustainable Development

In accordance with the EU’s practice when negotiating FTAs with third countries, the EU envisages introducing a separate chapter in the TTIP devoted to labour and environmental issues, including climate change, and their inter-linkages. This chapter will reflect the Parties’ commitments with respect to, inter alia, various agreements of the International Labour Organization (ILO), and the core Multilateral Environmental Agreements (MEAs).

- Competition Policy

Both the EU and the US have consistently aimed to include competition provisions in their respective bilateral agreements concluded with third countries. The EU is aiming to make the competition provisions in the TTIP serve as a benchmark for future negotiations with third countries. The TTIP competition provisions would address antitrust and mergers disciplines and include, inter alia, the possibility to consolidate best practices, a commitment to ensure that competition policy is implemented in a transparent and non-discriminatory manner, provisions regarding the application of antitrust and merger rules to state owned enterprises (SOEs) and

enterprises granted special or exclusive rights or privileges (SERs), and provisions on cooperation between the competition agencies of the Parties.

- Cross-cutting disciplines on regulatory issues

The final report of the EU-US High Level Working Group on Jobs and Growth of 11 February 2013 (which advised the EU and the US to start negotiations on a comprehensive trade and investment agreement) proposed a possible horizontal chapter introducing disciplines for development and implementation of more efficient regulations. Such a horizontal chapter would contain principles and procedures with respect to the use of early consultations, impact assessments, periodic reviews and good regulatory practices. In principle, these provisions would apply to regulations defined in the broad sense, i.e. all legislative and implementing acts of general application pertaining to areas covered by the TTIP and which concern product or service requirements.

The Parties further aim to establish a framework for identifying opportunities for future regulatory cooperation.

- Raw Materials

The leaked note contains an initial position paper that aims to identify the common grounds between the EU and the US on trade and investment in raw materials and energy. These proposed specific raw material and energy provisions will focus on areas such as transparency and predictability, market-access and non-discrimination (such as the elimination of export restrictions), competitiveness (with respect to government intervention in the price setting, and SOEs), trade in sustainable energy, and security of energy supply.

The EU has noted that disciplines with respect to trade in raw materials and energy that are agreed in the transatlantic context could serve as a model for negotiations with third countries.

- Public Procurement

The note finally also includes a first informal discussion draft, a “non-paper,” on public procurement. As confirmed in other fora, the EU aims to include procurement commitments at all levels, i.e. including state and municipal governments, and for all goods and all sectors. The EU further emphasizes that the text of the public procurement chapter in TTIP could set a higher standard that may inspire a future revision of the WTO Government Procurement Agreement (GPA).

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# US perspectives

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## Introduction

Activity in the United States surrounding TTIP during April, May and early-June 2013 primarily involved civil society stakeholders (e.g. organized labor, industry associations/coalitions) establishing desired negotiating outcomes in their respective areas, and these stakeholders submitting such desired outcomes to US trade officials for consideration, e.g. the Office of the United States Trade Representative, which operates within and at the behest of the Executive Office of the President. The February 2013 EU-US High-Level Working Group's (HLWG's) recommendations<sup>32</sup> first provided these stakeholders a broad framework within which to formulate their respective desired negotiating outcomes, but subsequent US stakeholder input over the second quarter of 2013 responded less to the HLWG's recommendations and more to reports on individual EU Member State positions in regard to specific areas in the draft EU negotiating mandate.

Following the 14 June adoption of the EU negotiating mandate and the subsequent 17 June announcement by President Obama and EU leaders that the parties would launch TTIP negotiations in early-July 2013, US activity surrounding TTIP has seen greater public involvement of US trade officials, particularly in regard to the operational aspects of holding negotiations, e.g. working with EU trade officials to establish and define the scope of working groups, appointing US negotiators for chapter areas, etc. However, despite greater recent public involvement in TTIP activities of US trade officials, US civil society stakeholders continue to submit to these officials input on desired negotiating outcomes in their respective areas.

This civil society stakeholder input has reached Congress as well since the announcement on the launch of negotiations, as key US lawmakers have increasingly voiced their concern in regard to specific negotiating areas. The US negotiating mandate (i.e. Trade Promotion authority (TPA)) expired in 2007 and lawmakers are currently working to craft a renewal mandate. As the US Constitution affords to Congress the authority to regulate foreign commerce but, in practice, the United States Trade Representative (USTR) negotiates FTAs, US TPAs typically include language delegating Congress' authority on foreign trade to USTR, and prescribing to USTR Congress' priorities for FTA negotiations. The lack of a current TPA in the context of USTR having already begun negotiating TTIP with EU officials provides impetus for US lawmakers to provide USTR with frequent input; this input often reflects comments which civil society stakeholders in these lawmakers' respective congressional constituencies have already submitted to USTR. In this regard, USTR negotiators now perceive pressure in regard to desired negotiating outcomes from both civil society stakeholders and US lawmakers.

The June 2013 reports that US spy programs targeted EU persons have added a layer of difficulty to the already complex EU-US TTIP discussions. In the wake of these reports, US officials have made attempts to allay concerns among EU officials and stakeholders in

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<sup>32</sup> See <http://www.ustr.gov/about-us/press-office/reports-and-publications/2013/final-report-us-eu-hlwg>.

regard to such US spy programs in an attempt to avoid a disruption in the newly launched EU-US TTIP negotiations.

We provide below information about and analysis of civil society stakeholder input and US officials' actions in regard to TTIP during April, May and June 2013.

## **TTIP – Key monthly developments**

### **i) April 2013**

On 10 April 2013, Deputy US Trade Representative Miriam Sapiro addressed<sup>33</sup> an audience of American and European government officials, in addition to stakeholders representing such sectors as manufacturing, agriculture, pharmaceuticals, services, medical devices, cosmetics, chemicals and automobiles. DUSTR Sapiro discussed with the attendees **how TTIP may reduce costs associated with regulatory differences** that impede trade.

On 10 April 2013, the **Business Coalition for Transatlantic Trade (BCTT)**, a coalition of large US firms and industry organizations advocating the creation of a trade and investment agreement between the United States and the EU, issued a **press release**<sup>34</sup> to demonstrate **strong support** for the TTIP. The BCTT press release featured remarks from General Electric, IBM, UPS, Ford Motor Company, and Intel representatives emphasizing the importance of seeking ambitious, comprehensive and high-standard outcomes in such areas as trade in goods (e.g. tariff elimination) and services (e.g. liberalization of digital trade), regulatory harmonization, intellectual property rights (IPR) protection, cross-border data flows, and the targeting of local content mandates. Based on BCTT's high-profile and influential membership, the recently-formed BCTT will likely remain at the forefront of business coalitions advocating trade- and investment-opening provisions in TTIP throughout the negotiations.

Also on 10 April 2013, the **American Soybean Association (ASA)** held a **presentation**<sup>35</sup> highlighting its **concern over the EU requirements that food products** derived from agricultural biotechnology enhancement be labeled, and the EU's allegedly discriminatory policies on biofuel feedstocks under its Renewable Energy Directive (RED). ASA recommends that USTR work with its EU counterpart in the context of TTIP negotiations to: (i) "correct" the EU approval process for new biotech enhancement traits such that approvals are subject to deadlines and based only on scientific criteria; (ii) establish commercially-feasible international standards for the Low Level Presence of unapproved biotech traits in commodity shipments; and (iii) address the "unlawful" practice of prohibiting imports of EU approved "biotech-enhanced" commodities. ASA represents over 21,000 US soybean producers, and typically adopts free trade-favorable positions. Its focus in regard to international trade matters is to increase foreign market access for US soybean exports.

On 11 April 2013, further **press releases** were issued by the **medical technology industry** (represented by AdvaMed, COCIR, Eucomed, EDMA and MITA)<sup>36</sup> and the **American Automotive Policy Council (AAPC)**, in conjunction with the European Automobile

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<sup>33</sup> See <http://www.ustr.gov/about-us/press-office/blog/2013/april/amb-sapiro-USEU-HLRCF>.

<sup>34</sup> See [https://www.usaita.com/pdf\\_files/BCTT-Announcement.pdf](https://www.usaita.com/pdf_files/BCTT-Announcement.pdf).

<sup>35</sup> See <http://soygrowers.com/eu-trade-talks-top-of-mind-for-asa-at-u-s-chamber-forum/>.

<sup>36</sup> See <http://advamed.org/news/38/medical-technology-industry-calls-for-regulatory-convergence-in-u-s-e-u-trade-deal>.

Manufacturers' Association (ACEA)).<sup>37</sup> While the medical technology industry is urging US and EU trade officials engaged in TTIP discussions to consider **regulatory convergence** for medical technology, auto manufacturers are seeking the same results for the automotive sector "while respecting U.S. and EU sovereignty and without sacrificing vehicle safety or environmental performance". Specifically, the medical technology industry companies expressed the following desired outcomes: (i) mutual recognition of ISO 13485; (ii) a single audit process; (iii) harmonized format for product registration submission; and (iv) a common way to trace products through a single unique device identification (UDI) process with interoperable databases. AAPC actively works with Chrysler, GM and Ford to promote policies supportive of the US automotive industry, and generally urges USTR to negotiate automotive-related provisions in free trade agreements that would effectively shield the US domestic market (e.g., long tariff phase-out periods, tariff snap-backs, etc.), while securing foreign market access for US automobile exports. However, AAPC generally acquiesces to liberal automotive-specific rules of origin (ROOs) regimes, recognizing the global supply chains of Chrysler, GM and Ford.

On 15 April 2013, the **Congressional Research Service** (CRS) issued a **report** titled "International Trade and Finance: Key Policy Issues for the 113th Congress."<sup>38</sup> The CRS report includes a section explaining to US lawmakers **issues of concern on which EU and US officials will engage in the context of TTIP negotiations**, including: (i) tariff reduction and elimination; (ii) regulatory compatibility and standards; (iii) improved market access for services; (iv) investment protection; (v) enhanced government procurement opportunities; (vi) IPR protection and enforcement; (vii) greater agricultural market access; (viii) trade facilitation; (ix) state-owned enterprises (SOEs); (x) digital trade; and (xi) supply chains. CRS is a non-partisan US government body which regularly provides lawmakers with explanatory analysis on a wide range of issues in order for such lawmakers to exercise their vote with better, more detailed information on the matter at hand.

On 17 April 2013, Atlantic Council and the Bertelsmann Foundation released the results<sup>39</sup> of a **survey of 120 TTIP stakeholders** (consisting of trade policy experts from both the public and private sectors), revealing that 88 percent believe the United States and the European Union (EU) will come to an agreement on expanding their economic ties, but only 37 percent foresee a "broad" agreement, and 55 percent forecast a less comprehensive "moderate" pact. The survey's respondents noted that the most important issues TTIP should address are (i) convergence in the transatlantic regulatory policymaking process, (ii) regulatory convergence in manufacturing goods, (iii) sanitary and phytosanitary (SPS) measures, (iv) the reduction or elimination of transatlantic tariff barriers, and (v) mutual recognition or convergence of financial services. The respondents similarly noted that the most difficult issues to address are likely: (i) market access for genetically modified organisms (GMOs) and hormone treated agricultural products, (ii) convergence in the regulatory approach, (iii) data protection and privacy, and (iv) market access to government procurement markets.

On 19 April 2013, the **Manufacturers Alliance for Productivity and Innovation** (MAPI) issued a **report**<sup>40</sup> touting the potential **benefits for the United States** of entering into a trade in investment partnership with the European Union. In the report, MAPI outlines, , a negotiating strategy and key objectives, specifically in regard to: (i) agriculture and scientific

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<sup>37</sup> See <http://s3.amazonaws.com/assets.clients/aapc/aapc/media/821/AAPC%20Advocates%20for%20U.S.-EU%20Trade%20Partnership%20at%20Key%20Forum.pdf?1365693914>.

<sup>38</sup> See <http://www.fas.org/sqp/crs/misc/R41553.pdf>.

<sup>39</sup> See [http://www.acus.org/files/publication\\_pdfs/403/TTIPReport\\_web.pdf](http://www.acus.org/files/publication_pdfs/403/TTIPReport_web.pdf).

<sup>40</sup> See [http://www.mapi.net/system/files/PA-120\\_1.pdf](http://www.mapi.net/system/files/PA-120_1.pdf).

basis for import measures, e.g. on genetically modified (GMO) crops, feedstock additives, food safety standards; (ii) energy, e.g. ending US restrictions on natural gas exports. The report also asserts that President Obama lacks credibility in the context of TTIP negotiations without a renewed TPA. Most congressional Republicans and many high-profile congressional Democrats have long urged President Obama to seek passage of TPA, noting that US trading partners would have greater faith in the positions USTR puts forth at the negotiating table if they knew that such positions reflected the view of lawmakers who must eventually ratify any trade agreement concluded. President Obama has long delayed asking Congress to craft and pass TPA legislation because Obama Administration officials have yet to establish what the TPA renewal should encompass, e.g., whether the new TPA should (i) be time period- or trade agreement-specific, (ii) address such emerging issues as forced localization requirements and SOEs, and (iii) prescribe enforceability of such previously unenforceable provisions under past US FTAs as certain SPS measures. The Obama Administration and House and Senate lawmakers, particularly from the House Ways and Means and the Senate Finance Committees, are currently discussing the shape, nature and contents of such TPA renewal bill, but progress remains slow.

On 22 April 2013, the **Center for Strategic and International Studies (CSIS)** issued a **report**,<sup>41</sup> labeling TTIP “ambitious” in regard to scope but “problematic” in regard to the complexity of negotiations, the difficulty of the current EU-US economic context, and low prospects for a timely conclusion of TTIP negotiations. The CSIS report urges the Obama Administration to lead on scope, ambition and timing, e.g., through substantial collaboration with Congress, mobilization of resources in multiple agencies, and action to resolve inevitable disputes within and between executive agencies. Additionally, the CSIS report urges US negotiators to concede on so-called “trade-offs” only within – and not between–industries, i.e. US negotiators should craft provisions which incentivize an industry to modernize to the point where individual firms no longer need trade protection.

On 22 April 2013, **Secretary of State Kerry** gave **remarks**<sup>42</sup> in Brussels on the importance of the US-EU relationship, particularly in the context of the potential TTIP agreement. He noted in his remarks that negotiating an FTA with Turkey in parallel to TTIP negotiations with the European Union is a “very real” possibility, although he provided no greater detail in this regard.<sup>43</sup> In separate remarks given on the same day, Kerry emphasized the importance of the US and EU officials agreeing on common standards for internet interoperability, data transmission and privacy.<sup>44</sup> Perhaps due to continued political instability in Turkey, US officials have since downplayed the possibility of holding trade agreement negotiations with Turkey parallel to TTIP negotiations.

On 23 April 2013, **Under Secretary of State for Economic Growth, Energy and the Environment Hormats** gave **remarks**<sup>45</sup> in Washington, highlighting the benefits of the potential TTIP. He specifically noted the importance of US negotiators seeking ambitious outcomes on: (i) agricultural market access; (ii) risk assessments; (iii) management of SPS measures; (iv) technical barriers to trade (TBTs); and (v) various other non-tariff barriers

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<sup>41</sup> See [http://csis.org/files/publication/130409\\_Schollchairnewsletter.pdf](http://csis.org/files/publication/130409_Schollchairnewsletter.pdf).

<sup>42</sup> See <http://www.state.gov/secretary/remarks/2013/04/207844.htm>.

<sup>43</sup> A CRS report issued on 23 April titled “Turkey: Background and US Relations” asserts that “analysts and advocates have called for Turkey to be included in” TTIP negotiations, but this report provides no greater detail in regard to where US-Turkey discussion stands on inclusion in TTIP. See <https://www.hsdl.org/?view&did=735454>.

<sup>44</sup> See <http://www.state.gov/secretary/remarks/2013/04/207849.htm>.

<sup>45</sup> See <http://www.state.gov/e/rls/rmk/207997.htm>.

(NTBs). Under Secretary Hormats asserted that EU and US officials could overcome these hurdles through equivalence and/or mutual recognition of each party's respective regulations, holding transparent and evidence-based consultations, cooperation and dialogue, and adopting international standards. Under Secretary Hormat's remarks on the several ways in which the United States and the EU could overcome trade barriers stemming from burdensome, inconsistent and/or confusing regulations and standards reflects the narrative most US officials are providing in regard to the ongoing TTIP negotiations, i.e. US officials see the opportunity for regulatory harmonization, convergence and equivalence on a sector-by-sector basis through myriad tools, mechanisms and vehicles, and view the recognition of internationally-accepted technical standards, where they exist, as an optimal outcome.

## ii) **May 2013**

On 10 May 2013, the comment period closed for civil society stakeholders to provide **input to the USTR** on TTIP. USTR received 369 submissions<sup>46</sup> in response to the request for comments. USTR also heard oral testimony from civil society stakeholders on 29-30 May 2013. In regard to the purpose of such comment period, USTR typically weighs positions contemplated in written submissions and oral testimony, and considers which positions expressed are consistent with provisions to which USTR has agreed in previous trade agreements. Where USTR sees that constructive input provided by US industry and civil society stakeholders departs from past US negotiating objectives, USTR will usually engage relevant commenters to determine whether to modify such US negotiating objectives. As such, USTR will leverage input provided during this comment period, particularly at the outset of negotiations, to craft general positions and specific proposals. Thereafter, USTR will increasingly rely on so-called cleared advisors to inform US negotiators.<sup>47</sup>

On 16 May 2013, the **Obama Administration released a fact sheet**<sup>48</sup> on the partnership between the United States and the Republic of **Turkey**, in which the Obama Administration announced its establishment of a bilateral High-Level Committee led by the Ministry of Economy of Turkey and the Office of the USTR. According to the fact sheet, that Turkey holds a Customs Union with the EU plays a factor in the TTIP negotiations, e.g. several US experts note that such customs union could suppose Turkish market access for US exports under TTIP, although this remains uncertain.

On 16 May 2013, the **House Ways and Means Trade Subcommittee** held an **open hearing on TTIP** to receive input from members of the private sector.<sup>49</sup> The witnesses included Stuart Eizenstat of the Transatlantic Business Coalition, Inga Carus of Carus Corporation, James Grueff of Decision Leaders, and Greg Slater of Business Coalition for Transatlantic Trade/Coalition of Services Industries. Testimony centered on such issues as (i) goods market access, (ii) regulatory convergence/harmonization/cooperation, (iii) agricultural issues, (iv) services, (v) competition and SOEs, (vi) labor mobility, (vii) financial services, (viii) IPR protection, (ix) bioscience R&D, (x) NTBs, (xi) investment protections, (xii) localization barriers, (xiii) trade facilitation, (xiv) digital goods trade, (xv) e-commerce, and (xvi) data security and privacy. The House Ways and Means Committee is the House

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<sup>46</sup> See <http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=PS;D=USTR-2013-0019>.

<sup>47</sup> See <http://www.ustr.gov/about-us/intergovernmental-affairs/advisory-committees>.

<sup>48</sup> See <http://www.whitehouse.gov/the-press-office/2013/05/16/fact-sheet-us-turkey-partnership>.

<sup>49</sup> See <http://waysandmeans.house.gov/calendar/eventsingle.aspx?EventID=333264>.

committee of jurisdiction for tax- and public revenue-related matters, e.g. import tariffs.<sup>50</sup> The full Committee and its Trade Subcommittee, in addition to the Finance Committee in the Senate, frequently hold hearings in which Executive Branch officials (e.g. from the Obama Administration) and private sector representatives give testimony on current international trade-, investment- and customs-related issues. Common reasons for which House Ways and Means and Senate Finance Committee leadership commonly calls such hearings are to (i) learn about the progress of ongoing or forthcoming trade agreement negotiations, (ii) push Administration officials to accelerate, modulate or adopt certain positions in such negotiations, and/or (iii) highlight important US industry positions in regard to certain areas contemplated under the agreement at hand.

On 20 May 2013, **47 US food and agriculture groups** (including industry associations and individual companies) sent a **letter**<sup>51</sup> to then Deputy National Security Advisor for International Economic Affairs Michael Froman.<sup>52</sup> The 47 groups expressed their discontent with respect to the pending TTIP negotiations regarding **the EU's precautionary measures** of not allowing possible genetically modified beef to be imported from the United States. The groups argue that "‘Precaution’ in the EU has become a pretext for import protectionism under the pretense of consumer safety [and] [a]s a result, [US] exports have repeatedly paid the price." US agricultural industry actors, US lawmakers and USTR have increased pressure on US trading partners in recent years to base SPS measures, e.g. those applied at the border, on science. While not theoretically in conflict with the science-based SPS approach most US official and civil society stakeholders seek, such US stakeholders believe that the EU SPS approach based on the precautionary principle does allow EU authorities to implement trade restrictions on several US agricultural exports that are not based on science.

On 22 May 2013, **four House Lawmakers** within the financial services and agriculture committees sent a **letter**<sup>53</sup> to President Obama regarding **regulatory discrepancies** between the United States and EU while arguing that inconsistent regulations have already negatively affected the US economy. The lawmakers wrote that an "adverse impact on transatlantic commerce on non-tariff barriers must be a significant focus of the [TTIP] negotiations." Financial sector reform in the United States, as prescribed in the post-2008 financial crisis Dodd–Frank Wall Street Reform and Consumer Protection Act,<sup>54</sup> is a sensitive issue among those US stakeholders who believe that future TTIP commitments on financial services could dilute consumer protections and economy-wide safeguards put in place to prevent a repeat of the 2008 financial crisis.

On 28 May 2013, President Richard Trumka of the **American Federation of Labor and Congress of Industrial Organizations** (AFL-CIO) and General Secretary Bernadette Ségol of the **European Trade Union Confederation** (ETUC) met to discuss the TTIP. The joint **press release**<sup>55</sup> expressed the two sides' willingness to agree that "the goals of the TTIP

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<sup>50</sup> Similar to the Ways and Means Committee in the House of Representatives, the Finance Committee is the tax and public revenue committee of jurisdiction in the Senate.

<sup>51</sup> See <http://www.nasda.org/File.aspx?id=19847>.

<sup>52</sup> Michael Froman now serves as the US Trade Representative, for which he was sworn in on 21 June 2013 (see <http://www.ustr.gov/about-us/biographies-key-officials/united-states-trade-representative-michael-froman>).

<sup>53</sup> See <http://washpost.bloomberg.com/Story?docId=1376-MMW9O20YHQX01-624OA4OCIES8LA5QMMQ7DTATDG>.

<sup>54</sup> See <http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm>.

<sup>55</sup> See <http://www.aflcio.org/Press-Room/Press-Releases/AFL-CIO-President-Richard-Trumka-and-ETUC-General-Secretary-Bernadette-Segol-Discuss-a-Trans-Atlantic-Trade-and-Investment-Partnership-to-Benefit-Working-Families-Globally>.

should include full employment, decent work, and rising standards of living for all – not the enshrinement of destructive austerity, de-regulation, or other neoliberal ideas prominent in recent years.” On the same day, **House lawmakers for California** sent a **letter**<sup>56</sup> to Acting USTR Miriam Sapiro, drawing her attention to a recent steep increase in EU tariffs on denim trousers. The letter urged the inclusion of a fair market access provision for **US apparel manufacturers** in the TTIP. US organized labor organizations such as the AFL-CIO are typically free trade-skeptic, expressing concern over – if not outright opposition to – US involvement in free trade agreement negotiations. This position is not unexpected, as such agreements have a transformative effect on domestic industry, and can potentially erode organized labor’s base of dues-paying members. In prior instances in which USTR has entered into free trade agreement negotiations, upon seeing the inevitability of the parties concluding an agreement, US organized labor has attempted to push US negotiators to seek results-based, managed trade-like provisions (e.g. the United States will only eliminate US import duties on automobiles once US exports of such goods increase significantly). US organized labor has, in the past, obtained mixed results from these lobbying efforts, involving for example automotive-related provisions contemplated under the US-Korea FTA.

On 29 May 2013, **Maine Representative Sharon Treat testified**<sup>57</sup> before USTR and outlined her position on the TTIP, stating that while she supported free trade, she opposes any provisions in the agreement that would “undermine Maine’s constitutionally guaranteed authority to protect the public health, safety and welfare.” Citing the example of NAFTA, she alleged that “the new US-EU treaty would ‘harmonize’ laws and regulations to the least restrictive standard” and, referring to arbitration panels, would “allow companies to challenge legitimate public health measures on the other side of the Atlantic as being too burdensome, seeking payment for damages and circumventing US constitutional standards.” Among free-trade skeptic stakeholders in the United States, citing “NAFTA” or “NAFTA-like agreements” is synonymous with deindustrialization of, offshoring from and job losses in the United States, in addition to the forfeiting of US sovereign authority in such areas as public health and environmental protection. It is for this reason that observers should be aware of the likely anti-free trade position of stakeholders employing language (e.g. in letters and press releases) containing any iteration of “NAFTA.”

### iii) **June 2013**

From 31 May to 1 June 2013, **legislators from the European Parliament and U.S. House of Representatives met in Dublin**, Ireland to discuss numerous bilateral US-EU issues, including the TTIP. On the TTIP, the US-EU press release<sup>58</sup> stated that the two sides support an agreement that allows for “true” free trade, without compromising consumer, labor or environmental standards. The parties emphasized the particular importance of: (i) removing non-tariff barriers and (ii) strengthening regulatory cooperation. Specifically, the legislators called for cooperation between the business community and standards agencies. They also stressed the importance of including legislatures in the negotiations and pledged further engagement.

On 7 June 2013, Acting USTR Miriam Sapiro and Secretary of Agriculture Tom Vilsack met with members of the **Agricultural Policy Advisory Committee** (APAC) and **Agricultural Technical Advisory Committees** (ATACs) to discuss the Obama Administration’s trade

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<sup>56</sup> See <http://roybal-allard.house.gov/news/documentsingle.aspx?DocumentID=335738>.

<sup>57</sup> See <http://www.maine.gov/tools/whatsnew/index.php?topic=HouseDems+News&id=531913&v=Article>.

<sup>58</sup> See [http://www.europarl.ie/resource/static/files/Events/2013\\_6-tld-dublin-joint-statement.pdf](http://www.europarl.ie/resource/static/files/Events/2013_6-tld-dublin-joint-statement.pdf).

agenda, including the TTIP.<sup>59</sup> The APAC and the ATACs, citing the precedents of FTAs with South Korea, Panama and Colombia, pointed especially to the large potential growth in the agricultural sector that the TTIP could bring. APAC and the ATACs, as authorized under the Trade Act of 1974,<sup>60</sup> aim to ensure that representative elements of the private sector have an opportunity to provide their views on trade and trade policy matters to the US government, providing the formal mechanism through which the US government may seek advice and information from the private sector. The Committees advise the Agriculture Secretary and USTR in regard to the following: (i) negotiating objectives and bargaining positions before entering into a trade agreement; (ii) the operation of an agreement once entered into; and (iii) other matters arising in connection with the administration of the trade policy of the United States.

On 13 June 2013, Acting USTR Miriam Sapiro sent a letter<sup>61</sup> to Chairman Irving Williamson of the US International Trade Commission (ITC) in which she **requested the ITC provide a report on the impact of EU regulations on US small and medium enterprises (SMEs)**. Specifically, she requested that the report elucidate whether EU regulations impact SMEs disproportionately relative to their impact on larger US firms. She requested the report be completed by 31 January 2014. The ITC regularly provides USTR and Congress with qualitative and quantitative analysis relating to the probable effects on the US economy of free trade agreements into which the United States enters or plans to enter.<sup>62</sup>

On the day of the launch of TTIP negotiations, 17 June 2013, several important developments occurred from a U.S. perspective:

- In the **joint TTIP statement** given by US President Obama along with UK Prime Minister Cameron, European Commission President Barroso and European Council President Van Rompuy at the G8 summit in Northern Ireland, **President Obama enumerated the potential benefits** of the TTIP.<sup>63</sup> He drew special attention to the potential obstacles to ratification, and called on both sides to overcome them without compromising on the scope or quality of any final agreement.
- The **Obama administration released a fact sheet**,<sup>64</sup> in which it detailed its vision for the TTIP. The fact sheet calls for an “ambitious, comprehensive and high-standard” FTA, while setting out specific goals for the TTIP: (i) further open EU markets, (ii) strengthen rules-based investment, (iii) eliminate all tariffs, (iv) tackle “behind the border” non-tariff barriers, (v) obtain improved market access on trade in services, (vi) promote greater compatibility in regulations and standards while maintaining a high level of health, safety and environmental protection, (vii) promote global competitiveness of small- and medium-sized enterprises and (viii) develop new rules and standards on other issues of

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<sup>59</sup> See <http://www.ustr.gov/about-us/press-office/blog/2013/june/ustr-usda-apac-atac>.

<sup>60</sup> See <http://uscode.house.gov/download/pls/19c12.txt>.

<sup>61</sup> See [http://www.usitc.gov/research\\_and\\_analysis/documents/USTR\\_Request\\_Letter-EU\\_SMEs.pdf](http://www.usitc.gov/research_and_analysis/documents/USTR_Request_Letter-EU_SMEs.pdf).

<sup>62</sup> Examples of previous ITC reports are “Actual Effects of The Free Trade Agreements with Chile, Australia, and Singapore” (see [http://www.usitc.gov/secretary/fed\\_reg\\_notices/332/332\\_515\\_notice05132010sgl.pdf](http://www.usitc.gov/secretary/fed_reg_notices/332/332_515_notice05132010sgl.pdf)) and “U.S.-EU Transatlantic Trade and Investment Partnership Agreement: Advice on the Probable Economic Effect of Providing Duty-Free Treatment for Imports” (see [http://www.usitc.gov/press\\_room/news\\_release/2013/er0418II1.htm](http://www.usitc.gov/press_room/news_release/2013/er0418II1.htm)).

<sup>63</sup> See <http://www.whitehouse.gov/the-press-office/2013/06/17/remarks-president-obama-uk-prime-minister-cameron-european-commission-pr>.

<sup>64</sup> See <http://www.whitehouse.gov/the-press-office/2013/06/17/fact-sheet-transatlantic-trade-and-investment-partnership-t-tip>.

global concern including, , intellectual property, state-owned enterprises and discriminatory localization barriers.

- Various US lawmakers issued statements on the launch of TTIP negotiations. **Senate Finance Committee Chairman Max Baucus** (D-MT)<sup>65</sup> praised the announcement of the opening of the TTIP talks while emphasizing the need for the talks to remove long-standing barriers to US agriculture exports to the European Union, stating that “[US] trading partners need to drop unscientific barriers to the products [US] ranchers and farmers produce, which are top-notch and completely safe.”<sup>66</sup> **Senate Finance Committee Ranking Member Orrin Hatch** (R-UT)<sup>67</sup> emphasized the great potential economic growth that a successful TTIP would provide. He also called on President Obama to renew the Trade Promotion Authority (TPA), arguing that without it the USTR lacks effective authority to negotiate trade and investment agreements. **House Ways and Means Committee Chairman Camp** (R-MI) and **Ranking Member Levin** (D-MI),<sup>68</sup> and **House Ways and Means Trade Subcommittee Chairman Nunes** (R-CA) and **Ranking Member Rangel** (D-NY),<sup>69</sup> all issued statements on the TTIP. Rep. Levin described the TTIP as a great opportunity to remove barriers to US exports to Europe and thus strengthen the US economy, while also stressing the need to strengthen protections for consumers and the environment. Rep. Rangel emphasized the need for ambitious goals as well as high standards for the TTIP. Rep. Camp expressed his strong support for a “comprehensive and ambitious trade and investment agreement” and called for bipartisan support to renewing the TPA in order to ensure the success of the TTIP negotiations. Rep. Nunes emphasized the opportunity provided by the TTIP to “solidify a dominant economic alliance focused on free trade and open markets” while condemning “unscientific” EU barriers to US agricultural exports.
- The **US Chamber of Commerce released a statement**<sup>70</sup> in which it applauded the announcement of the TTIP talks. It called the announcement a “major step forward”. It further stated that the Chamber of Commerce looked forward to cooperating with both governments to create a successful agreement. The US Chamber of Commerce speaks for upward of 3 million small-, medium- and large-sized US firms, across nearly every sector and region in the United States. The US Chamber of Commerce generally leans in favor of free trade agreements, although its large and varied membership often limits the specificity of the proposals it puts forth.
- Bob Stallman, President of the **American Farm Bureau Federation (AFBF)** released a **statement**<sup>71</sup> commenting on the announcement of the opening of the TTIP negotiations. He expressed frustration that EU countries have imposed numerous restrictions to US agricultural exports, through both tariffs and non-tariff barriers. He expressed cautious optimism about the ability of the TTIP to remove EU barriers to US agricultural exports.

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<sup>65</sup> See <http://www.finance.senate.gov/newsroom/chairman/release/?id=96b42849-ba1b-427b-833a-ce70e778c778>.

<sup>66</sup> Sen. Baucus is one of two US Senators for Montana, which is a livestock-intensive US state, particularly for cattle. In this regard and stemming from his role as Senate Finance Committee Chairman, Sen. Baucus is often at the forefront of initiatives to secure the implementation by US trading partners of science-based SPS measures.

<sup>67</sup> See <http://www.finance.senate.gov/newsroom/ranking/release/?id=2d7a7fe0-f965-46fe-9c6f-c281785b6e85>.

<sup>68</sup> See <http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=339284>.

<sup>69</sup> See <http://democrats.waysandmeans.house.gov/press-release/levin-rangel-statements-announced-launch-us-e2%80%93-eu-trade-agreement-negotiations>.

<sup>70</sup> See <https://www.uschamber.com/press/releases/2013/june/us-chamber-applauds-launch-transatlantic-trade-talks>.

<sup>71</sup> See <http://www.fb.org/index.php?action=newsroom.news&year=2013&file=nr0617.html>.

AFBF is the largest advocacy group for US farms, and its position on free trade agreements typically centers on opening foreign markets to US agricultural goods through the elimination of tariff and non-tariff barriers, e.g. SPS measures.

- The **National Association of Manufacturers** (NAM) released a **statement**<sup>72</sup> expressing strong support for the TTIP, while emphasizing the current impediments to transatlantic trade that current regulatory barriers and differences impose. NAM also expressed concern with exclusions included in the EU draft mandate, stating that it sets a worrying precedent and impedes the negotiation of a truly comprehensive agreement. NAM speaks for a large share of US manufacturers who are in favor of opening foreign markets to US manufactured goods through trade agreements, particularly those manufacturers in the high-end/high-tech industries in which the United States retains a competitive advantage over most of its trading partners. NAM's free trade-favorable position falls in deep contrast to the typically free trade-skeptic Alliance for American Manufacturing (AAM).
- The **National Foreign Trade Council** issued a **statement**<sup>73</sup> in which they welcomed the announcement of the imminent TTIP talks. They especially put forward the ability of the TTIP to create US jobs and grow both the EU and US economies. NFTC is an influential Washington-based think tank with a largely corporate membership, which advocates policies that, according to its website, fosters "an open international trade and investment climate."<sup>74</sup>
- The **Sierra Club**, the largest US environmental advocacy group, released a **statement**<sup>75</sup> commenting on the imminent launch of TTIP negotiations. They expressed concern about the TTIP's regulatory harmonization, stating that "safeguards for the environment, [...] climate, [...] food and chemicals must not be sacrificed for corporate profits" and that "no trade pact is better than a bad trade pact." This release coincides with the release of Sierra Club report,<sup>76</sup> which outlines the risks posed to regulations in areas of: (i) environmental protection, (ii) food safety and (iii) chemical regulation of a poorly crafted TTIP agreement. While not inherently anti-free trade, the Sierra Club has long expressed skepticism toward such provisions typically found under US trade agreements as the investor-state dispute settlement mechanism, noting that it undermines governments' sovereign rights to implement measures to protect the environment.

On 18 June 2013, **Public Citizen**, a typically trade-skeptic advocacy group in Washington, DC, issued a **statement**<sup>77</sup> **condemning the TTIP negotiations** in no uncertain terms. Their critique centered on four elements: (i) alleging that eliminating non-tariff barriers has no real effect on promoting economic growth and conflating regulatory regularization with deregulation, (ii) claiming that harmonization will hit a dead end in the agricultural sector, as EU producers and consumers are averse to US genetically modified organisms (GMOs), (iii) alleging that recent revelations of US spying will remove any possible negotiation of the telecommunications sector, and (iv) strongly criticizing proposed investor-state arbitration

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<sup>72</sup> See <http://www.shopfloor.org/2013/06/first-round-of-transatlantic-trade-and-investment-partnership-negotiations-to-take-place-in-dc-next-month/29052>.

<sup>73</sup> See <http://www.nftc.org/newsflash/newsflash.asp?Mode=View&id=236&articleid=3679&category=All>.

<sup>74</sup> See <http://www.nftc.org/default/general%20information/2013NFTCgoalsandprioritiesPV.pdf>.

<sup>75</sup> See <https://content.sierraclub.org/press-releases/2013/06/new-sierra-club-report-newly-launched-transatlantic-trade-pact-could-pose>.

<sup>76</sup> See [http://action.sierraclub.org/site/DocServer/TTIP\\_Report.pdf?docID=13541](http://action.sierraclub.org/site/DocServer/TTIP_Report.pdf?docID=13541).

<sup>77</sup> See <http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=3919>.

tribunals as they would “empower foreign corporations to skirt US legal systems and directly challenge domestic health, environmental and other public interest policies before extrajudicial foreign tribunals authorized to order taxpayer compensation.” Public Citizen’s Global Trade Watch arm claims to seek for the United States “economic security, a clean environment, safe food, medicines and products, access to quality affordable services such as health care and the exercise of democratic decision-making in matters that affect them and their communities.”<sup>78</sup> While its goals appear harmless and good-natured, Public Citizen is one of the most vociferous opponents of the United States engaging in any negotiations toward free trade agreements, often complementing the free trade-skeptic position US organized labor ordinarily assumes before such negotiations.

On 18 June 2013, the **New Democratic Coalition**, a group of pro-market Democratic lawmakers, released a **statement**,<sup>79</sup> lauding the TTIP launch announcement. They emphasized the TTIP’s potential to provide new jobs and growth to the United States, and urged the TTIP’s successful conclusion “without delay.”

On 21 June 2013, the **American Cancer Society** sent an **open letter**<sup>80</sup> to newly appointed USTR Froman, pushing him to **include a tobacco products exception** in any final TTIP agreement, i.e. to preserve US public health policymakers’ prerogative to craft and implement regulations to combat tobacco use. They also condemned the tobacco industry’s alleged policy of using trade agreements to subvert countries’ tobacco control measures in the name of free trade.

On 24 June 2013, the **Institute for Agriculture and Trade Policy** sent a **public letter**<sup>81</sup> to USTR Michael Froman and EU Trade Commissioner Karel de Gucht, outlining their **opposition to any weakening of the legitimacy of the “precautionary principle”** in food and drug safety regulation. They also condemned the secretive nature of the TTIP negotiations and called for negotiations, mandates and agreements to be released to the public in real time. They stated their concern that the TTIP could lead to a weakening of food and drug safety standards and cited several examples of weaker standards that could be generalized in both economies unless action is taken: (i) the US FDA’s imminent approval of GM salmon for human consumption, (ii) US approval of the use of ractopamine, banned in the European Union, as a feed additive for US beef and pork products, (iii) an EU attempt to lift the US ban on beef imports, as the US has more stringent requirements in place to prevent the spread of bovine spongiform encephalitis, i.e. mad cow disease, and (iv) an EU attempt to erode very stringent US standards on meat, especially a zero tolerance policy for certain pathogens which the EU lacks. The Institute for Agriculture and Trade Policy serves as a counterpoint to the AFBF and its focus on opening foreign markets to US agricultural exports (see above), by advocating for the sustainability of farms and food production.

On 26 June 2013, US Representatives Erik Paulsen (R-MN) and Richard Neal (D-MA) wrote an **open letter**<sup>82</sup> to USTR Froman, stressing the **importance of including financial sector regulations** in the TTIP negotiations. According to the letter, if the United States insists on excluding financial services, it will leave a window open for the EU to request further exclusions. The ongoing implementation in the United States of regulations stemming from

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<sup>78</sup> See <http://www.citizen.org/Page.aspx?pid=1328>.

<sup>79</sup> See <http://meeks.house.gov/press-release/new-dems-applaud-start-us-eu-trade-and-investment-negotiations>.

<sup>80</sup> PDF copy of open letter on file with White & Case – available upon request.

<sup>81</sup> See [http://www.iatp.org/files/2013\\_06\\_25\\_US\\_EU\\_letter.pdf](http://www.iatp.org/files/2013_06_25_US_EU_letter.pdf).

<sup>82</sup> PDF copy of open letter on file with White & Case – available upon request.

the post-2008 financial crisis Dodd–Frank Wall Street Reform and Consumer Protection Act – and the highly sensitive nature of financial sector rules during a delicate US economic recovery from said financial crisis – is generally known to make difficult the harmonization, convergence and/or equivalence of US and EU financial sector regulations.

On 27 June 2013, a group of **35 US Representatives** sent a **letter**<sup>83</sup> to USTR Froman, emphasizing their **support for international trade**, particularly for TTIP. They further pledged their support for a swift renewal of the TPA, and promised to continue building support for international trade within the House. While such letters are historically not uncommon throughout the duration of US FTA negotiations, that the Obama Administration has not sought TPA from Congress has pushed lawmakers to increase the frequency of such letters in order to remind President Obama of Congress' constitutionally-afforded authority to regulate foreign trade.<sup>84</sup>

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<sup>83</sup> See <http://rodneydavis.house.gov/media-center/press-releases/rep-davis-leads-letter-calling-for-expansion-of-trade>.

<sup>84</sup> See Article I, Section 8 of the U.S. Constitution (see [http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html)).

## OTHER EU FTA DEVELOPMENTS

### ONGOING EU FTA NEGOTIATIONS

- First and second negotiation rounds of the EU-Japan FTA
- Recent EU FTA developments relating to Singapore, Thailand, India, Malaysia, Canada, Ukraine, Central America, and first EU steps towards a possible investment agreement with China

### IMPLEMENTATION OF EXISTING EU FTAs

- Ongoing EU work aimed at updating EU-Korea and EU-Mexico FTAs

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## Ongoing EU FTA negotiations

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### Introduction

During the past few months, the EU was involved in a series of negotiation rounds for many of its on-going FTA negotiations; while significant progress was achieved for some, others appear to be in a stalemate.

Below, we discuss the key developments in EU FTA negotiations with Japan, Singapore, Thailand, India, Malaysia, Canada, Ukraine, Central America, as well as with respect to a possible investment agreement with China, in April, May and June 2013.

### EU-Japan FTA

Following the official launch of EU-Japan FTA negotiations on 25 March 2013, the **first two negotiation rounds** were held in April and June 2013. The European Commission's general aim has been to push for early results in the FTA negotiations as the EU negotiating mandate has been reported to foresee a parallelism between the elimination of EU duties and of non-tariff barriers (NTBs) in Japan, and authorizes the Commission to consider suspending negotiations after one year (i.e. in April 2014) if it would find that Japan does not live up to its prior commitments on NTB removal. The next round is scheduled for 21-25 October 2013, and it is generally expected that the FTA Parties will organize four to five negotiation rounds per year.<sup>85</sup>

#### **i) First round**

The first round of negotiations on the EU-Japan FTA was held in Brussels on 15-19 April 2013. The EU described the round as involving "success" and stated it was confident that good progress could be achieved in the negotiations.<sup>86</sup>

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<sup>85</sup> See <http://www.europolitics.info/eu-japan-trade-talks-begins-artr350298-42.html>.

<sup>86</sup> See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=887>.

After the first round of negotiations, the **TPC (Deputy level)** was briefed by the Commission negotiators on 26 April 2013.<sup>87</sup>

## ii) **Second round**

In preparation for the second round of negotiations on the EU-Japan FTA, discussions took place again in the **TPC (Deputy level) meeting** of 7 June 2013.<sup>88</sup>

During the second round of EU-Japan FTA negotiations held on 24-28 June 2013 in Tokyo, the Parties were expected to discuss the elimination of tariffs and NTBs, with the aim of preparing the ground work for expected exchange of market access offers in the upcoming third round. After the second round, the EU released an official statement confirming that good progress was made.<sup>89</sup>

## Other pending EU FTA negotiations

### i) **Singapore**

While the EU-Singapore FTA negotiations were concluded in December 2012, separate negotiations on investment protection provisions (*which the EU intends to incorporate into the FTA once investment negotiations have been completed*) continued in the past few months. With respect to the negotiated FTA draft text, legal “scrubbing” has also continued on the EU side. The current EU aim is to complete the legal review and initial the Agreement by the early Autumn (following which it is expected that the FTA text will be released to the public).

### ii) **Thailand**

Following the official launch of EU-Thailand FTA negotiations in March 2013, the first round of negotiations took place on 27-31 May 2013.<sup>90</sup> Initial discussions were held on a wide range of topics, including trade in goods, rules of origin, intellectual property rights, customs and trade facilitation, technical barriers to trade, public procurement, animal and plant health standards, sustainable development, services and investment protection.

### iii) **India**

EU-India FTA negotiations have recently, in addition to a meeting between Indian Commerce Minister Anand Sharma and EU Trade Commissioner De Gucht on 15 April 2013, mainly involved technical meetings with the aim of finding solutions on key outstanding issues (including on financial and retail services, market access for cars and intellectual property rights) by the second half of 2013. This was to enable conclusion of the negotiations and initialing of an agreement before India’s general elections in 2014, which is appearing more and more unlikely.

### iv) **Malaysia**

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<sup>87</sup> See <http://register.consilium.europa.eu/pdf/en/13/cm02/cm02537-re01.en13.pdf>.

<sup>88</sup> See <http://register.consilium.europa.eu/pdf/en/13/cm03/cm03130-re01.en13.pdf>.

<sup>89</sup> See [http://europa.eu/rapid/press-release\\_IP-13-645\\_en.htm](http://europa.eu/rapid/press-release_IP-13-645_en.htm).

<sup>90</sup> See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=908>.

Following several negotiation rounds and working group meetings held in 2010-2012, EU-Malaysia FTA negotiations have been on hold pending Malaysia's general elections on 5 May 2013.

#### **v) Canada**

While the negotiations for an EU-Canada Comprehensive Economic and Trade Agreement (CETA) have been in the final stages for quite some time,<sup>91</sup> the current EU aim is to conclude CETA negotiations in the second half of 2013. Accordingly, negotiation teams have continued to hold regular meetings in the recent past in an attempt to finalize the deal. Key outstanding issues include agricultural market access (tariff rate quotas and geographical indications), public procurement and rules of origin.

#### **vi) Ukraine**

Following initialing of an EU-Ukraine FTA in 30 March 2012, the signing of the Agreement was delayed in recent months, mainly for political reasons. This is because the EU has requested that Ukraine first shows tangible progress in the area of elections, selective justice and other reforms. However, on 15 May 2013, the Commission issued a proposal for a Council Decision authorizing the signing and provisional application, and the subsequent conclusion of the Agreement.<sup>92</sup>

The current EU aim is to sign the FTA at the Eastern Partnership Summit in Vilnius in November 2013.

#### **vii) Central America**

While the EU-Central America (Costa Rica, Honduras, Nicaragua, Panama, Guatemala and El Salvador) FTA was signed in June 2012, recent institutional EU discussions have focused on possible provisional application of the Agreement. To allow provisional application of the FTA, the Central American countries must fulfill two requirements: 1) Ratification of the Agreement, and 2) implementation of sufficient domestic mechanisms to ensure protection of Geographical Indications (GIs).

#### **viii) China**

On 23 May 2013, the Commission presented a proposed negotiating mandate for a stand-alone investment agreement with China.<sup>93</sup> Such a bilateral agreement would streamline existing bilateral investment protection agreements currently held between individual EU Member States and China into a single, comprehensive text. The EU aim with an investment agreement with China would be to ensure liberalization of the Chinese investment market and fair treatment of EU investors and their assets, including key technologies and intellectual property rights. Discussions are currently ongoing within the Council with the aim of adopting the negotiating mandate in the near future.

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<sup>91</sup> The most recent Commission press release regarding finalization of EU-Canada CETA negotiations from November 2012 can be found here: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=844>.

<sup>92</sup> See [http://europa.eu/rapid/press-release\\_IP-13-436\\_en.htm](http://europa.eu/rapid/press-release_IP-13-436_en.htm).

<sup>93</sup> See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=900>.