

EU FTA Policy Developments

November 2013 Report (covering developments in October 2013)

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

- Commissioner speech and European Parliament hearing on regulatory pillar
- Spying allegations and reactions
- Stakeholder input

US PERSPECTIVES

- Government shutdown
- Senate Finance Committee hearing
- Stakeholder input

EU perspectives

Introduction

Below, we discuss the key TTIP developments during October 2013 from an EU perspective. As mentioned in our previous report, the second round of TTIP negotiations that was scheduled to take place on 7-11 October 2013 was cancelled last-minute due to the US government shutdown. Nevertheless, the dialogue between both parties continued in October, focusing mainly on regulatory issues. Negotiators are organising a series of videoconferences and a so-called 'mini' second round of negotiations in Brussels on 11-15 November 2013.¹ A stakeholder briefing will take place on 15 November 2013.

In October, TTIP talks remained in the exploratory mode. No text has been exchanged between the parties. In the meantime, many concerns continue to exist in the EU related to the NSA surveillance scandal and its impact on TTIP negotiations.

TTIP – Key developments

On 3 October 2013, the European Commission criticised US rules on the registration of swap execution facilities (SEFs) which entered into force on 2 October. This registration was considered a key element of the road map towards achieving equivalence of US and EU rules for **derivatives trading**, agreed upon in July 2013. As a consequence of SEF registration, European financial institutions have to comply with Commodity Futures Trading Commission (CFTC) rules on derivatives despite also being subject to EU rules. EU Internal Market Commissioner Barnier warned that the failure to reach an agreement on the mutual recognition of each other's rules could hinder progress in TTIP negotiations and was a bad sign. Barnier also linked the time frame for reaching an agreement on derivatives to the end-

¹ See http://europa.eu/rapid/press-release_IP-13-1032_en.htm.

of-the-year deadline set by France and Germany for reaching an agreement on a 'no-spying' pact (see below).²

Also on 3 October 2013, a panel debate took place at the European Health Forum on the future of the EU's **healthcare** systems. A policy analyst of the Commission's Health and Consumers Directorate stated on that occasion that the EU would be weaker than the US in TTIP negotiations regarding the healthcare sector due to the many differences between Member States' healthcare and health services. He also noted that competence of the EU in this area is limited.³

On 4 October 2013, the **Bertelsmann Stiftung** issued a report on **who will benefit in Germany from TTIP**, noting that TTIP could create 160,000 new German jobs.⁴ In Germany, the food and metal sectors would be the big winners in term of being able to increase their exports, while the textile sector is likely to suffer on exports. Meanwhile, a **report by the Confederation of Danish Industries** estimates that TTIP could create 2.5 million new jobs in the EU and the US (of which 15,000 in Denmark).⁵

On 4 October 2013, USTR Froman informed EU Trade Commissioner De Gucht that due to the US Government Shutdown, the US Administration would not be able to send officials from USTR and US Government agencies to Brussels for the second round of TTIP negotiations.⁶ As a result, the second round of negotiations scheduled to take place on 7-11 October 2013 to focus on regulatory aspects was cancelled. De Gucht issued a statement emphasising that the **cancellation** would not distract parties from reaching an agreement.⁷

In the run-up to the second negotiating round, it became apparent that the EU's and the US's expectations for these **regulatory talks** are in sharp **contrast**. The US hinted several times that it was aiming for harmonisation of horizontal rules (i.e. process related issues that would apply to all rule-making, such as transparency rules), but not sector-specific regulations. The EU on the other hand wants to make existing regulations more compatible (i.e. focusing on sector-specific regulations involving the automotive sector, chemicals, pharmaceuticals, and medical devices).

It was also reported that the European Committee for Standardization (CEN) the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunications Standards Institute (ETSI) (the three main EU **standardisation bodies**) and the American National Standards Institute (ANSI) are negotiating an **information sharing deal** that could help the EU-US regulatory cooperation efforts under TTIP. The negotiations started in early 2013 and a further round of negotiations is scheduled to take place on 21-22 January 2014. CEN-CENELEC and ANSI also aim to draft a

² See <http://uk.reuters.com/article/2013/10/29/uk-eu-us-regulation-idUKBRE99S0G220131029>.

³ See <http://www.euractiv.com/specialreport-resilient-innovati/us-trade-negotiations-damage-con-news-530879>.

⁴ See http://www.bertelsmann-stiftung.de/cps/rde/xbcr/SID-4BABA356-46DA8640/bst_engl/xcms_bst_dms_38864_38868_2.pdf.

⁵ See <http://insidetrade.com/201310032448790/WTO-Documents/Text-Document/danish-businesses-say-ttip-will-create-25-million-jobs-ntbs-raise-costs-on-both-sides/menu-id-174.html>.

⁶ See <http://www.ustr.gov/about-us/press-office/press-releases/2013/October/Readout-Froman-DeGucht-call>.

⁷ See http://europa.eu/rapid/press-release_MEMO-13-855_en.htm.

separate **'road map'** to evaluate how standards in specific sectors could be aligned. However, that work has been delayed due to the cancellation of the second round of negotiations, following which these organisations were expecting to receive guidance from the negotiators on the sectors to focus on.⁸

CEN-CENELEC, supported by ANSI,⁹ also reacted against criticism from USTR Froman that the EU's standard-setting process favours domestic companies and is not open to experts from third countries. CEN-CENELEC stated that foreign companies can participate in national standard-setting bodies who in turn contribute to the efforts of CEN-CENELEC.¹⁰

In early October, Jonathan Faull, Director General at DG Internal Market, met his American counterparts to plead for the inclusion of a **financial services** chapter in TTIP.¹¹

On 10 October 2013, EU Trade Commissioner De Gucht gave a presentation to the Aspen Institute in Prague.¹² He stated that the **regulatory aspects of the TTIP** should focus on **3 key elements**:

- (i) cooperation on future regulations to avoid unnecessary trade barriers;
- (ii) ways to make existing regulations more compatible; and
- (iii) supporting this work with the establishment of a 'Regulatory Cooperation Council'.¹³

This **Regulatory Cooperation Council** would consist of the heads of the key EU and US regulatory agencies. Its task would be to monitor the implementation of commitments made under TTIP and to consider new priorities for regulatory cooperation. The EU also proposed that the Regulatory Cooperation Council should be able to ask regulators or standards bodies to develop regulations jointly that could then potentially become international standards. Such an approach would mean that not all the issues that have been put on the negotiating table would be resolved as part of the core agreement. De Gucht wants TTIP to include provisions on a number of regulations that will be mutually accepted, but the creation of a Regulatory Cooperation Council would also allow TTIP to be a **'living agreement'** that will seek to tackle regulatory issues after the core negotiations are concluded.

In Prague, De Gucht also reiterated that TTIP will not endanger the EU's precautionary principle, as this principle is part of the EU's Lisbon Treaty.

⁸ See <http://insidetrade.com/201310082449142/WTO-Daily-News/Daily-News/cen-cenelec-ansi-negotiate-deal-that-could-aid-ttip-regulatory-effort/menu-id-948.html> and <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-10/11/2013/eu-us-standards-setters-look-for-deal-but-have-different-ttip-objectives/menu-id-172.html>.

⁹ See http://www.ansi.org/news_publications/news_story.aspx?menuid=7&articleid=3754.

¹⁰ See <ftp://ftp.cencenelec.eu/EN/News/Letters/CEN-CENELEC-Open-Letter-20131004.pdf>.

¹¹ See <http://www.garp.org/risk-news-and-resources/risk-headlines/story.aspx?newsId=67389>.

¹² See http://trade.ec.europa.eu/doclib/docs/2013/october/tradoc_151822.pdf.

¹³ See e.g. <http://insidetrade.com/201310092449347/WTO-Daily-News/Daily-News/de-gucht-proposal-for-ttip-regulatory-effort-contrasts-with-fromans/menu-id-948.html>.

In comments made after his speech, he stressed the need to complete the negotiations quickly because it would be difficult to sustain current political oversight at the highest level (involving the US Congress, the European Parliament, the EU Member States, etc.) for a long period of time.¹⁴

It was further reported that some of the EU's regulatory ideas stem from a 2012 joint proposal from the US Chamber of Commerce and BusinessEurope. In this proposal, the groups called for a 'formal consultative role between the US and the EU for select regulations' and for a 'Regulatory Compatibility Analysis' to avoid unnecessary divergence among new regulations.¹⁵

The Japanese Ambassador to the EU, also present at the debate at the Aspen Institute, stated that TTIP could serve as a global economic model and called for a link between TTIP with the future EU-Japan FTA.

The EU made clear in the first half of October that it would try to avoid negotiations on **Pharmaceutical Intellectual Property Rights (IPR) protection** and that the TTIP will only address selected IPR issues. While both Parties still appear to be deciding which IPR issues to cover in the TTIP, EU officials have indicated that the alignment of IPR protection for pharmaceuticals would not result in much economic gain.¹⁶

On 14 October 2013, the **International Trade (INTA) Committee of the European Parliament** organised a **public hearing on the regulatory pillar of the TTIP negotiations**.¹⁷ Dan Mullaney, the Assistant USTR, had to cancel his participation due to the government shutdown. The INTA Committee did hear Mr Garcia Bercero, the EU's chief TTIP negotiator, who reiterated that the present level of protection will not be lowered and that the EU will maintain the right to regulate to seek a high level of protection. Referring to De Gucht's Aspen speech of 10 October (see above), Bercero further noted that 'sectoral' rules are of equal importance as horizontal provisions on rule making.¹⁸

Mr Bercero said that no sector should be excluded from regulatory coherence efforts. At the same time, he acknowledged -- and other Commission officials explained -- that there is no 'one size fits all' as regards sectoral rules, but that different levels of cooperation/regulation were possible depending on the sector involved. In the area of **automobiles**, for example, the EU believes it would be feasible to achieve mutual recognition with respect to safety issues. Regarding **pharmaceuticals and medical devices** however, the EU aims for progressive recognition of, and reliance on, each other's systems and audits to avoid double inspections. For **cosmetics**, the EU hopes to achieve mutual recognition of a list of

¹⁴ See <http://insidetrade.com/201310112449689/WTO-Daily-News/Daily-News/de-gucht-says-ttip-must-be-done-quickly-to-allow-high-level-political-involvement/menu-id-948.html>.

¹⁵ See http://ec.europa.eu/enterprise/policies/international/cooperating-governments/usa/jobs-growth/files/consultation/regulation/9-business-europe-us-chamber_en.pdf and <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-10/11/2013/eu-seeks-to-create-early-warning-system-for-regulators-through-ttip/menu-id-172.html>.

¹⁶ See http://insidetrade.com/201310162449881/WTO-Daily-News/Daily-News/official-signals-eu-opposed-to-harmonizing-certain-drug-rules-in-ttip-talks/menu-id-948.html?utm_medium=twitter&utm_source=twitterfeed.

¹⁷ See <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20131014-1500-COMMITTEE-INTA>

¹⁸ See <http://www.europarl.europa.eu/document/activities/cont/201310/20131023ATT73264/20131023ATT73264EN.pdf>.

substances that can be used in cosmetic products (positive list) and a list of substances that are prohibited or restricted in cosmetic products (negative list). For **chemicals**, the EU believes that full harmonisation or mutual recognition will probably not be possible, and would instead prefer to try to cooperate more closely with the US on prioritisation of chemicals for assessment, classification and labelling, and promote alignment with the relevant UN system. It was also reiterated that a transparent cooperation process should be established in the area of **financial services**, leading to mutual reliance on each other's regulatory regimes.

Mr Bercero also stated that the EU supports the negotiations between the EU and US standard-setting organisations to facilitate regulatory cooperation. The other speakers at the INTA hearing included EU and US academics, and representatives from BusinessEurope, the European Consumers' Organisation (BEUC), and the European Trade Union Confederation. Stakeholders and INTA members raised concerns including: the differences between the EU and US certification systems; the precautionary principle and other principles of decision making in the EU; challenges posed by multi-level governance in the US; transparency in the negotiating process; access to documents; investor-to-state dispute settlement; and public health.

Following a question raised by a Polish Member of the European Parliament (EP), Commissioner De Gucht reiterated on 14 October 2013 that the European Commission is fully aware of certain sensitivities in some **agricultural sectors** with respect to trade liberalisation between the EU and the US, and will take these into account during the negotiations.¹⁹ On 20 October 2013, the French minister for agriculture stated that **France** will keep pressuring EU TTIP negotiators to maintain a hard line on key agricultural issues, including imports of genetically modified crops, hormones in meat, chemically-cleansed meat and cloned animals.²⁰

On 16 October 2013, the **European Trade Union Confederation (ETUC)** repeated its concerns over TTIP in a presentation to a meeting of the European Parliament's Social and Democrat Group.²¹ ETUC's concerns relate to the fear of stagnant or falling wages across the EU, the absence of job creation guarantees (as opposed to a focus on profits paid to shareholders), and the risk of lowering job quality following the abolition of regulatory barriers related to labour, health and safety and employment protection.

On 17 October 2013, it was reported that the US asked the EU to approve the use of peroxyacid to clean **poultry** after slaughter. This US request comes in the context of an EU-US exercise to resolve 'unscientific' trade barriers applicable to agricultural products, taking place in parallel to the FTA negotiations. The EU currently only allows hot water as an antimicrobial treatment for poultry. The US has already challenged the EU's restrictions in that area before the WTO's Dispute Settlement Body and requested the establishment of a Panel, but has never pushed for the actual formation of that Panel. According to the US

¹⁹ See <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=P-2013-009887&language=EN>.

²⁰ See <http://www.ft.com/intl/cms/s/0/5e39ef26-3709-11e3-b42e-00144feab7de.html?siteedition=intl&siteedition=intl>.

²¹ See http://www.etuc.org/IMG/pdf/16102013_speech_Judith.pdf.

poultry industry, it is unclear how the TTIP would be of value to poultry producers and other meat industry groups, if no agreement can be reached on the antimicrobial wash issue.²²

Also on 17 October, it was reported that EU Member States have diverging positions on how and whether TTIP should include rules on **investment protection**, especially on an investor-state dispute settlement (ISDS) mechanism. The Member States have accepted the inclusion of investment protections and an ISDS in TTIP in the Commission's negotiating mandate. However, some Member States (including Greece and Hungary) are opposed to including ISDS, claiming that existing EU and US legal systems are sufficiently strong. They also fear increased litigation. Meanwhile, other Member States (such as the Netherlands and Germany) are concerned that the general investor protection obligations in TTIP would not be sufficiently broad compared to some of the Bilateral Investment Treaties (BITs) already concluded with the US. Member States that support the inclusion of investor protections and ISDS in TTIP include the Czech Republic, Poland and Slovakia.²³

During a meeting on 17 October 2013 between the Swiss Minister for the Economy and EU Trade Commissioner De Gucht, Switzerland's concerns about the potential impact of TTIP on the Swiss economy were discussed. Switzerland fears that TTIP could spur Swiss companies into moving their activities to the EU, for example in the processed food, pharmaceutical and chemicals sectors. A ministerial working group was set up in Berne in early 2013 to study, among other things, the option of negotiating an FTA with the US or complementary agreements with the EU.²⁴

It was also reported that EU and US associations representing **both brand-name and generic drug makers are urging EU and US regulators to cooperate** in carrying out inspections to partially determine whether companies can sell medicine in either market.²⁵

During a closed meeting of the Trade Council²⁶ on 18 October 2013, the **EU Member States decided not to accept France's request to publish the Commission's TTIP negotiating mandate**. It was reported that a number of Member States, felt that such publication would set a precedent under which the Council would feel obliged to publish negotiating mandates for all other trade negotiations conducted by the European Commission.²⁷

²² See http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-10/18/2013/alongside-ttip-talks-us-reopens-fight-with-eu-over-poultry-washes/menu-id-172.html?utm_medium=twitter&utm_source=twitterfeed.

²³ See http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-10/18/2013/european-commission-faces-serious-debate-over-ttip-investment-rules/menu-id-172.html?utm_medium=twitter&utm_source=twitterfeed.

²⁴ See <http://www.europolitics.info/external-policies/berne-concerned-over-ttip-s-impact-on-swiss-economy-art355975-46.html>.

²⁵ See <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-10/18/2013/brand-name-generic-drug-groups-align-on-ttip-regulatory-cooperation/menu-id-172.html>.

²⁶ See <http://register.consilium.europa.eu/pdf/en/13/st14/st14845.en13.pdf>.

²⁷ See <http://www.europolitics.info/external-policies/member-states-refuse-to-publish-ttip-mandate-art356040-46.html>.

On 22 October 2013, the **European Commission** published its **Work Programme for 2014**, identifying TTIP negotiations as a key area in terms of external action.²⁸

Reacting to recent **spying allegations**, the **European Parliament (EP)** adopted a non-binding resolution on 23 October 2013, **recommending the suspension of the Terrorist Finance Tracking Program (TFTP) agreement** with the US.²⁹ This resolution follows recent press reports that the NSA breached the TFTP agreement by tapping into EU citizens' personal financial data handled by the Belgian company SWIFT. The EP's Committee on Civil Liberties, Justice and Home Affairs (LIBE) held further meetings in its Enquiry on Electronic Mass Surveillance of EU Citizens on 3, 7, and 14 October 2013.

In response to the EP's resolution, EU Home Affairs Commissioner Malmström stated that **consultations with the US on the alleged access to financial messaging data** in violation of the TFTP agreement had already started. At that point in time, the Commission had not received any indications of a violation of the Agreement, but was still waiting for additional written assurances from the US.³⁰

On 23 October 2013, the **National Association of Manufacturers (NAM), Transatlantic Business Council, and BusinessEurope** issued a joint letter to the Obama Administration urging a coordinated effort through TTIP to develop a 'gold standard **trade secret protection** approach.' The business groups further suggested that such an agreement could provide a model for other countries looking to strengthen their respective trade secret laws. The letter laments that trade secrets remain highly vulnerable compared to other intangible business assets, calling for its explicit recognition as intellectual property in line with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) Articles 1.2 and 39.³¹

In response to the **recent allegations of US spying on European leaders** (including German Chancellor Merkel), EP President Martin Schulz stated on 24 October 2013 that the EU should reconsider holding TTIP negotiations if these allegations were confirmed. According to Schulz, the EU should reconsider whether negotiations are appropriate if the other side plays with an advantage.³² Commissioner De Gucht and Chancellor Merkel, on the other hand, stated that the trade negotiations will not be suspended, despite the NSA affair. Germany and France instead called for bilateral talks with the US to find an understanding on mutual relations in the area of intelligence gathering by the end of 2013.³³ During the European Council of 24 October 2013, the alleged tapping of Merkel's mobile

²⁸ See http://ec.europa.eu/atwork/pdf/cwp_2014_en.pdf and http://europa.eu/rapid/press-release_IP-13-978_en.htm.

²⁹ See <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0449+0+DOC+XML+V0//EN&language=EN>.

³⁰ See [http://europa.eu/rapid/press-release MEMO-13-928_en.htm](http://europa.eu/rapid/press-release_MEMO-13-928_en.htm).

³¹ See <http://www.buinesseurope.eu/content/default.asp?PageID=568&DocID=32257>.

³² See <http://www.euractiv.com/video/schulz-eu-reconsider-free-trade-531296>.

³³ See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/139197.pdf.

phone by the NSA was discussed and the Summit Conclusions³⁴ took note of these concerns, observing that other EU countries could join in the Franco-German initiative.

On 28-30 October 2013, delegates from the **EP's LIBE Committee met with their US counterparts and the US administration** to discuss the recent spying allegations and their potential consequences for the Safe Harbor Agreement (which under certain conditions allows certain US firms to transfer data on EU citizens outside of EU jurisdiction), the Terrorist Finance Tracking Program (TFTP) and the Passenger Name Record Agreement. EU Commission Vice President Reding stated in that context that she had no intention of cancelling the Safe Harbor Agreement, but that talks were on-going with the US to see how the agreement could be amended to better protect EU citizens' data. Reding also reiterated that, while the EU is willing to discuss data flows in TTIP talks (as requested by the US), data protection rules as such will be excluded from negotiations as this issue could easily derail the TTIP talks.³⁵

On 29 October 2013, a multi-stakeholder conference organised by the **Transatlantic Consumer Dialogue** (TACD) took place to discuss what is at stake for consumers in the framework of TTIP negotiations. In the area of IPR, various consumer organisations were extremely defensive and called for the exclusion of IPR from the scope of the agreement.

At the end of October, the **European Parliament (EP) issued a study on the legal implications of TTIP in the areas of the environment and food safety**. The study discusses the legal effect of trade and investment agreements and their dispute resolution mechanisms on the EU legal order. It also identifies regulatory issues that are substantially different in the EU and the US, such as Genetically Modified Organisms (GMOs), chemical regulations, poultry pathogen reduction treatments (PRTs), and aviation emissions. The study recommends that the EP carefully examine the precise wording of TTIP provisions on the environment, food safety and investment, and ensure that both parties can maintain the environmental and consumer protection standards they deem appropriate.³⁶

US perspectives

Introduction

Activity on TTIP in the United States featured mostly private sector engagement during the first half of October 2013, largely due to the US federal government shutdown at that time. US officials resumed TTIP-related activities when the federal government reopened by mid-November. October 2013 TTIP-related activity on the part of US civil society stakeholders and officials focused on: (i) negotiating round scheduling; (ii) criticism of the projected

³⁴ See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/139197.pdf.

³⁵ See http://insidetrade.com/201310302451343/WTO-Daily-News/Daily-News/us-eu-officials-spar-over-safe-harbor-but-no-sign-deal-is-in-danger/menu-id-948.html?utm_medium=twitter&utm_source=twitterfeed and http://europa.eu/rapid/press-release_SPEECH-13-867_en.htm.

³⁶ See <http://www.ecologic.eu/files/publications/2013/Gerstetter-2013-Legal-Implications-of-TTIP-for-the-AC-and-the-ENVI-Relevant-Sectors.pdf>.

benefits of the TTIP; (iii) US-EU regulatory coherence, including on standards and conformity assessments and on financial services; (iv) EU and US rules for conflict minerals; (v) the single undertaking approach for TTIP; (vi) intellectual property rights (IPR); (vii) implications of the NSA spying allegations; and (viii) Trade Promotion Authority (TPA).

TTIP – Key developments

On 4 October 2013, US Trade Representative (USTR) Michael Froman informed European Union Trade Commissioner Karel De Gucht that the USTR office would not be able to participate in the 2nd round of Transatlantic Trade and Investment Partnership (TTIP) negotiations due to ‘financial and staffing constraints related to the **shutdown**’.³⁷

On 4 October 2013, the Chairmen of the **House Financial Services Committee and the Monetary Policy and Trade Subcommittee** sent a letter to President Obama, calling for cooperation and regulatory coordination with the EU to avoid discrepancies that will result in higher costs for US consumers and investors.³⁸

On 4 October 2013, the **Seattle to Brussels Network** (S2B) published a report on governments participating in TTIP misinforming the public with ‘exaggerated benefits and downplayed risks.’³⁹ The report, entitled ‘A Brave New Transatlantic Partnership,’ observes that TTIP would realistically create a ‘trivial’ 0.1 per cent GDP growth. S2B argues that socio-economic and environmental risks associated with such prospects are therefore disproportionate.

On 7 October 2013, **NATO Secretary General Anders Fogh Rasmussen** expressed strong support for TTIP in a speech to the Conference of Danish Industry.⁴⁰ Mr Rasmussen argued that the TTIP agreement would allow the US and the EU to introduce greater coherence and transparency to technical regulations, standards, and certification. Such harmonisation measures could boost US-EU exports by more than USD 150 billion and generate 80 per cent of overall potential wealth gains.

On 9 October 2013, **29 US business groups issued a letter to Secretary of State John Kerry, Commerce Secretary Penny Pritzker, and USTR Froman** urging dialogue with EU lawmakers to align an imminent conflict minerals initiative with harmonisation goals of the TTIP.⁴¹ The planned EU legislation aims to mandate responsible sourcing of minerals coming from conflict-affected and high-risk areas. The US business groups expressed concern that the EU’s proposal may be broader than the Security and Exchange Commission’s (SEC) similar rule under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, thus imposing higher compliance costs. The letter also warns

³⁷ See <http://www.ustr.gov/about-us/press-office/press-releases/2013/October/Readout-Froman-DeGucht-call>.

³⁸ See <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-10/11/2013/financial-services-committee-leaders-push-for-us-eu-regulatory-cooperation/menu-id-710.html>.

³⁹ See http://corporateeurope.org/sites/default/files/attachments/brave_new_transatlantic_partnership.pdf.

⁴⁰ See http://www.nato.int/cps/en/natolive/opinions_103863.htm?selectedLocale=en.

⁴¹ See <http://www.paint.org/news/industry-news/item/1332-aca-addresses-concerns-about-european-commission%E2%80%99s-proposed-conflict-minerals-initiative-to-us-secretaries-of-state-and-commerce.html?tmpl=component&print=1>.

of 'differential and discriminatory' reporting requirements for products originating outside the EU.

On 11 October 2013, the American National Standards Institute (ANSI) affirmed its support for a cooperative dialogue on standards and conformity assessment with European standards organisations in support of TTIP.⁴²

Cato Institute Director Daniel Ikenson wrote in a 14 October 2013 brief that the TTIP negotiations should be broken into **three successive biennial agreements** instead of a single undertaking.⁴³ Mr Ikenson argues that 'taking small, digestible bites is key to TTIP success,' which could take the form of a multi-tiered agreement that yields specific harvests every two years. The paper further highlights an April 2013 matrix by the Atlantic Council and the Bertelsmann Foundation that ranks issues by their significance and difficulty to resolve, which Ikenson suggests could serve as a reference point for negotiators to create a timetable for how to proceed.

On 15 October 2013, the **American National Standards Institute (ANSI) and the German Institute for Standardization (DIN)** conducted a US-German Standards Panel in Washington, DC, to discuss the significance of regulatory harmonisation in TTIP and how both organisations could advance mutual priorities.⁴⁴ According to the ANSI press release, attendees noted that, while US and European regulations are structured differently, the TTIP presents an opportunity to minimise differences and resolve barriers to trade.

On 17 October 2013, in a **joint press address with President Obama, Italian Prime Minister Enrico Letta** declared his 'dream' to sign the TTIP agreement by the end of 2014, during Italy's Presidency of the EU.⁴⁵ Citing such mutual policy challenges as stemming protectionism abroad and creating growth, Prime Minister Letta supported the TTIP agreement as a principal solution.

On 22 October 2013, **Romanian Prime Minister Victor Ponta met with Vice President Biden**. According to the White House press release, they welcomed the TTIP's potential contributions to the 'already substantial' number of jobs supported by US-EU commerce.⁴⁶ Prime Minister Ponta also stressed the need for closer US-Romania cooperation, including in such areas as mineral resources exploration.

Peterson Institute for International Economics (PIIE) scholars Simon Johnson and Jeffrey Schott argued in an October 2013 policy brief that a TTIP **permanent committee on financial services** could serve as a clearing house for information on new regulations.⁴⁷

⁴² See http://www.ansi.org/news_publications/news_story.aspx?menuid=7&articleid=3754.

⁴³ See <http://www.cato.org/publications/free-trade-bulletin/transatlantic-trade-investment-partnership-roadmap-success>.

⁴⁴ See http://www.ansi.org/news_publications/news_story.aspx?menuid=7&articleid=3766.

⁴⁵ See <http://www.whitehouse.gov/photos-and-video/video/2013/10/17/president-obamas-bilateral-meeting-prime-minister-letta-italy>.

⁴⁶ See <http://www.whitehouse.gov/the-press-office/2013/10/22/readout-vice-president-biden-s-meeting-prime-minister-victor-ponta-roman>.

⁴⁷ See <http://www.piie.com/publications/pb/pb13-26.pdf>.

The authors argued that such a structure could complement existing efforts to tighten regulation, while overcoming the perennial issue that 'both sides agree on the need to reduce unnecessary transaction costs for financial institutions but differ over what constitutes necessary regulation.' Nevertheless, the authors argue that regulations should be tailored to national needs, and that national regulators should therefore retain broad discretion to impose prudential measures as set out in the Korea-US FTA.

On 24 October 2013, the Obama Administration emphasised in a White House press briefing that TTIP is 'vitally important' to the US and the EU, following revelations about the **NSA allegedly monitoring German Chancellor Angela Merkel's** mobile phone.⁴⁸ The Obama Administration did not venture to say whether the NSA spying allegations would drive EU governments to seek stronger discipline on data privacy in the TTIP. CDU/CSU Parliamentary Group Chairman Volker Kauder, a member of Merkel's party, called it a 'grave breach of trust,' but stopped short of calling for a suspension of TTIP negotiations.

On 24 October 2013, **Secretary of State Kerry asserted in a speech to the Center for American Progress** that the government shutdown damaged US credibility by causing the USTR to postpone the 2nd round of TTIP negotiations.⁴⁹

On 30 October 2013, the **Senate Finance Committee held a hearing on the TTIP**.⁵⁰ Statements supporting TTIP were made by Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT), as well as private sector testimonies from FedEx Executive Vice President and COO Michael L. Ducker, Montana Grain Growers Association President Ryan McCormick, Eli Lilly and Company Senior Vice President Dave Ricks, and National Chicken Council Senior Vice President William Roenigk in support of TTIP. All testimonies agreed on the need for pursuing such policy priorities as regulatory coherence, elimination of tariff and non-tariff barriers to trade, and intellectual property (IP) protection. It was noted that the recent EU-Canada FTA will put US businesses at a disadvantage to Canadian companies. At the hearing, Sen. Baucus also emphasised the need for Trade Promotion Authority (TPA), stressing that 'Congress needs to be a full partner in the development and execution of this agenda, and the best way to do that is to pass [TPA] – and to do it soon.' Sen. Hatch noted that he is preparing legislation to renew TPA, which expired in 2007. However, sources within the Senate Finance and House Ways and Means Committee staff note that Sen. Hatch's demands for strong IP protection for drugs remain a factor in slowing down consensus on TPA legislation.

⁴⁸ See <http://www.whitehouse.gov/the-press-office/2013/10/25/press-briefing-press-secretary-jay-carney-10242013>.

⁴⁹ See <http://www.state.gov/secretary/remarks/2013/10/215852.htm>.

⁵⁰ See <http://www.finance.senate.gov/newsroom/chairman/release/?id=21cdb980-976e-47b2-8a7f-ed73169ebc6f>.

OTHER EU FTA DEVELOPMENTS

ONGOING EU FTA NEGOTIATIONS

- Third round of EU-Japan negotiations
- Recent EU FTA developments relating to Canada, China, Ukraine, and India

IMPLEMENTATION OF EXISTING EU FTAs

- EU-Korea FTA

Ongoing EU FTA negotiations

Introduction

In October, the EU reached political agreement with Canada on the conclusion of a Comprehensive Economic and Trade Agreement, and approved the Commission's mandate for negotiations with China on an investment agreement. The third round of EU-Japan FTA negotiations also took place. The EU Member States have not yet managed to decide whether or not the Association Agreement with Ukraine should be signed at the November 2013 Eastern Partnership Summit.

Below, we discuss the key developments in EU FTA negotiations with Japan, Canada, China, Ukraine, and India.

EU-Japan FTA

The third round of EU-Japan FTA negotiations took place in Brussels on 21-25 October 2013. The subsequent statement⁵¹ by the EU confirmed that progress was made and that discussions took place in 13 working groups covering: Trade in Goods (including Market Access, General Rules, Trade Remedies), TBT and NTBs, Rules of Origin, Customs and Trade Facilitations, SPS, Trade in Services, Investment, Procurement, IP, Competition Policy, Trade and Sustainable Development, and other issues (including General and Regulatory Cooperation, Corporate Governance and Business Environment, Electronic Commerce, Animal Welfare) and Dispute Settlement.

The fourth round of FTA negotiations is expected to take place in early 2014. An EU-Japan Summit is also scheduled for 19 November 2013.

Other pending EU FTA negotiations

i) **Canada**

⁵¹ See http://europa.eu/rapid/press-release_IP-13-998_en.htm.

On 18 October, the EU and Canada reached political agreement on their Comprehensive and Economic Trade Agreement (CETA). While certain technical issues remain to be settled, the Commission has issued a summary of the key elements.⁵²

Tariffs will be eliminated for all industrial goods (most at entry into force, the rest gradually and in a linear fashion, over a period of maximum 7 years) and fisheries products. Most agricultural tariffs will also be eliminated at entry into force, but for certain sensitive agricultural products (dairy for Canada and beef, pork, and sweet corn for the EU) new market access will be granted in the form of tariff rate quotas.

The agreement's chapter on Technical Barriers to Trade contains provisions to improve transparency and contacts in the field of technical regulations and between the parties' standard-setting bodies. Canada will also recognise certain EU car standards and examine the mutual recognition of further ones.

The Sanitary and Phyto-sanitary chapter consolidates an existing bilateral veterinary agreement and creates a predictable framework for plants and plant products.

In the area of services, the parties agreed to grant each other market access in key sectors such as financial services, telecommunications, energy and maritime transport.

The agreement also contains a comprehensive investment chapter and rules on public procurement, applicable to all sub-federal levels of the Canadian government.

While CETA will include the usual prohibition of export restrictions, an exception has apparently been made with respect to logs.

In the area of intellectual property rights, the EU has managed to obtain protection of Geographical Indications (GIs) in Canada, but special concessions have been made allowing the continued use in Canada of a handful of cheese names (which are protected GIs in the EU), and to allow new cheese names in Canada using these GI names but with the words '-style' or '-type' added, as well as a clear indication of the origin of such cheeses.

There is no explicit linkage with TTIP (e.g. there is no general clause requiring review after TTIP is concluded). During a press conference on 18 October 2013, Commissioner de Gucht also noted that CETA 'will influence the negotiations with the US'.

The text of the CETA will now undergo legal scrubbing. Accordingly, CETA is unlikely to apply until sometime in 2015 at the earliest (assuming provisional application of the trade section), following initialling, signature, and finally (after the consent of the European Parliament and Member State ratification) conclusion.

ii) China

On 18 October 2013, the EU Council adopted the Commission's negotiating mandate for EU-China investment negotiations. It is expected that these negotiations will officially be launched during the EU-China Summit to be held on 21 November 2013. As 27 EU Member States have already concluded bilateral investment agreements (BIT) with China, the aim of this EU-China agreement would be to consolidate those agreements into one overall

⁵² See [http://europa.eu/rapid/press-release MEMO-13-911_en.htm](http://europa.eu/rapid/press-release_MEMO-13-911_en.htm).

agreement while enhancing investment protection and legal certainty. Asked during the press conference following the Council meeting whether the EU was envisaging an EU-China FTA, Commissioner de Gucht said that the outcome on the investment agreement would be a good start and 'very telling' for further possibilities (including China's position on subsidies, export credits, etc.).

iii) Ukraine

On 25 October 2013, the EU Council did not want to take a decision on whether or not the EU will sign the Association Agreement with Ukraine, which includes a Deep and Comprehensive Free Trade Area (DCFTA), at the Eastern Partnership Summit on 28-29 November 2013. This decision may not be made until just before the Eastern Partnership Summit.

In February 2008, the EU began negotiations for a DCFTA as part of the Association Agreement. The negotiations were concluded at the end of 2011 and the agreement is currently awaiting signature. Following conclusion of the DCFTA negotiations, the chief negotiators of the EU and Ukraine initialled the text of the Association Agreement to mark the end of negotiations on 30 March 2012 (except for the DCFTA part, which was initialled on 19 July 2012). The actual signing of the Association Agreement has however been delayed, mainly for political reasons. Ukraine first needs to show tangible progress in the area of home affairs and the protection of human rights, and address the problem of 'selective justice' (largely a reference to the imprisonment of former Prime Minister Yulia Tymoshenko). The EU's monitoring of progress on these conditions is still on-going. Ukraine is under great pressure from Russia not to sign the DCFTA.

iv) India

The International Trade Committee of the European Parliament has recently published a summary of the workshop of 24 September on the EU-India free trade negotiations.⁵³ During this workshop, the European Commission identified public procurement as an area where negotiations are taking much longer than expected despite progress being made in India to reform procurement rules at the central level. Other areas identified as outstanding include the movement of natural persons (Mode 4), tariff reductions for certain products, and sustainable development.

⁵³ See

<http://www.europarl.europa.eu/document/activities/cont/201310/20131023ATT73262/20131023ATT73262EN.pdf>.

Implementation of existing EU FTAs

EU-Korea FTA

On 15 October 2013, EU Trade Commissioner De Gucht and the Korean Minister in charge of Trade, Industry and Energy, Yoon Sang-jick, conducted an annual review of the progress made in implementing the EU-South Korea FTA in Seoul. The EU raised concerns regarding the implementation of Korea's commitments for financial services. Korea recently published guidelines on the transfer of financial data outside the country, which the EU considers to be 'too vague'. The Commissioner also criticised a requirement for banks to obtain customer consent to transfer data outside Korea. The EU further expressed concern about non-tariff barriers in the Korean automotive sector, including Korea's refusal to accept European certification for imported car parts.

The parties also discussed the extension of FTA tariff preferences to Croatia, which became a member of the EU on 1 July 2013. Contrary to the EU's expectations, South Korea did not automatically grant such extension, and the EU will therefore have to give something in return for it. It was reported that Korea may be looking for EU concessions in the form of trade preferences for products coming from the Kaesong industrial complex in North Korea.