

EU FTA Policy Developments

for JETRO

December 2013 Report (covering developments in November 2013)

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TTIP NEGOTIATIONS

EU PERSPECTIVES

- Second round of negotiations
- Data protection/spying
- Separate meeting on financial services

US PERSPECTIVES

- Second round of negotiations
- Speeches by US officials
- Stakeholder input

EU perspectives

(Parts of this section were reported on 22 November 2013, and are included in this report again)

Introduction

This section discusses key TTIP developments during November 2013 from an EU perspective. The EU organized a 'mini' second round of negotiations on 11-15 November 2013 to make up for lost time after the last-minute cancellation of the October round due to the US government shutdown. Parties also organised a series of videoconferences, including on intellectual property, market access, competition policy, labour, environment, SMEs and trade remedies. In addition, a separate meeting took place in late November on the possible inclusion of financial services regulation in the agreement. The European Commission and Member States also discussed the importance of good communications on TTIP to ensure public support.

TTIP – Key developments

On 2 November 2013, the European Commission issued a statement welcoming the **US decision to lift the 1997 ban on imports of beef products**, imposed following a BSE outbreak in Europe. The Commission noted that 'the re-opening is a welcome, albeit late, step to abolish the unjustified ban and to re-establish normal trading conditions'. The Commission further stated that it expects the remaining restrictions in imports of sheep and goat products to be lifted soon as well.¹ The US' decision follows an extension of a Memorandum of Understanding between the EU and the US regarding duty-free access of hormone-treated beef in the EU and an EU decision to lift restrictions on the use of lactic

¹ See http://europa.eu/rapid/press-release_IP-13-1020_en.htm.

acid to disinfect beef carcasses. These developments were part of a general 'trust-building' exercise between the parties in the fringes of TTIP negotiations.

In the area of **data protection**, it was reported on 3 November 2013 that Germany, contrary to its earlier statements (see November report), was pushing the Commission to include safeguards on data protection in TTIP. The proposed safeguards would be specific regulations, rather than catch-all privacy rules. Commission officials responded by stating that a parallel agreement could be sought with the US on data protection, rather than including such rules in the actual TTIP.²

On 7 November 2013, Internal Market Commissioner Barnier stated during a debate on the future of Europe that TTIP should include a chapter on intellectual property rights (IPRs) and financial services regulation. Barnier added that the US must first **rebuild confidence after the Prism revelations**.³

On 11 November 2013, the **second round of TTIP negotiations** started in Brussels. Not all negotiating groups met in person, so this has been referred to as a 'mini-round'.⁴

The first half of the week was devoted to trade in services and investment protection. On 13 November 2013, the negotiating groups on horizontal and sectoral regulatory matters started their meetings. On 14 November 2013, the negotiating groups tackling raw materials/energy and regulatory coherence commenced their talks.⁵

On 15 November 2013, a **stakeholder meeting** attended by nearly 400 participants took place in Brussels **with the EU and US Chief Negotiators**, Ignacio Garcia Bercero and Dan Mullaney. A similar meeting took place during the first round in Washington in July, with about 250 participants. The next stakeholder meeting will take place in early January 2014.

Mullaney and Bercero first gave an overview of the discussions during the second round, followed by a Q&A session. A report of the meeting is expected to be made available by the Commission on its website soon.

The **EU Chief Negotiator** said there was a productive dialogue in a 'very good atmosphere' and that 'good progress' had been made. The two sides were beginning to understand where there is common ground between them. As regards the three topics on the agenda during the second round meetings, Bercero noted as follows:

- (i) **Services and investment:** the negotiators had compared their respective approaches in these areas for other FTAs.
- (ii) **Trade-related aspects of energy and raw materials:** the parties are discussing to what extent this can be covered in TTIP.
- (iii) **Regulatory cooperation and convergence:** both horizontal and sectoral approaches were discussed. The parties have again reiterated that nothing in TTIP will compromise the level of protection in their respective regimes, and that the individual right to regulate will remain. Bercero considered it important that

² See <http://www.ft.com/intl/cms/s/0/e3df8030-4494-11e3-8926-00144feabdc0.html>.

³ See http://europa.eu/rapid/press-release_SPEECH-13-895_en.htm.

⁴ See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=985>.

⁵ See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=987>.

both the EU and US had brought their sectoral regulators to the table, including for **pharmaceuticals, medical devices, cosmetics, chemicals, pesticides, ICT, and the automobile sector**. For the pharmaceutical talks, for example, officials from the Food and Drug Administration (FDA) of the US and the European Commission's Directorate-General for health and consumer affairs ('DG SANCO') were involved in the meetings alongside the trade negotiators.

Bercero further noted that in addition to the mini-round on 11-15 November 2013, a separate meeting had also taken place in October (prior to the US government shutdown) on **public procurement**, and a meeting was planned for 27 November on **financial services regulation**. (During the Q&A session following the joint press conference by the Chief Negotiators – see below – Bercero noted that this is an example of the negotiations taking place in a flexible fashion as the US financial service regulation negotiator was not available during the week of 11 November. It was also noted by Dan Mullaney at that point that the exact composition of the US team still had to be determined. USTR and the Treasury will apparently be on the team, but it was still unclear whether – and if so, which – regulators would also be at the table.) Second round talks in the areas of **SPS, intellectual property rights, competition, sustainable development, SMEs and tariffs** (among other things) were taking place by videoconference. During the future third round (scheduled for the week of 16 December 2013 in Washington), the discussions on all areas of TTIP will be deepened.

Emphasising the importance of the dialogue with civil society and efforts to increase transparency, Bercero observed that the TTIP negotiations are the first EU FTA negotiations on which the stakeholder meetings are being held with chief negotiators from both sides during negotiating rounds. The EU Chief Negotiator also announced that a **special Advisory Group** will be established soon to advise him regularly on matters of relevance to civil society. The plan is to create a relatively small group (with precise numbers not yet revealed) of experts representing business, consumers, labour organisations, etc. The details of how the Group will work are being finalised in the coming weeks.

US Chief Negotiator Dan Mullaney in his opening remarks confirmed that the second round meetings had been excellent and that many of the core issues were covered. During the first round in July, the parties had explored all issues expected to be on the table in TTIP, and that round had been aimed at identifying areas of convergence and divergence. The second round had gone more deeply into discussing and understanding each other's approaches and discussing more specific proposals. The aim of the EU and US is to move 'expeditiously' and the second round was intended to lay the groundwork for the third round.

On **services**, discussions had been held on the parties' approaches on market access for **financial services, telecommunications, electronic commerce** and **cross-border services**. On **investment protection**, Mullaney noted that the EU and US already have a highly integrated investment relationship, and the second round had explored in greater detail their respective investment disciplines in order to reach agreement on shared principles.

The US Chief Negotiator observed that the area of **regulatory cooperation and convergence** held 'significant challenges' but also presented great promise for increased trade and investment. He described the second round's regulatory discussions as focusing on:

- (i) **TBT**: the aim here was to develop disciplines to achieve transparency and convergence.

- (ii) **SPS:** discussions included possible disciplines in TTIP as well as current (unnamed) bilateral issues in this area.
- (iii) **Regulatory coherence:** as regards **horizontal issues**, the joint aim is to achieve less divergence of regulations, and the meetings focussed on transparency, regulatory cooperation, and impact assessments. Ideas on **sectoral rules** were also discussed to look for ways to reduce the cost of compliance and create efficiencies.

Mullaney emphasised that **nothing in TTIP will undermine consumer protection, environmental protection, and health & safety rules**. Instead, he said TTIP would aim to 'undo unnecessary regulations'.

He noted that **upcoming videoconference meetings** would be held during the week of 18 November 2013 between the teams focusing on the following areas: **intellectual property, market access, competition policy, labour, environment, SMEs, and trade remedies**.

The **Q&A session** generated the following comments:

- **Consumer benefits and lowering of standards:** Mullaney listed the benefits TTIP would bring to consumers (including not only the classical benefits of lower prices and more choice resulting from tariff elimination, but also high environmental standards, including for wildlife, timber, and fishing) and enhanced protection against counterfeit goods, which often cause product safety concerns. Bercero emphasised the importance of active consumer engagement on TTIP and repeated that TTIP will neither lower the level of protection laid down in EU rules, nor compromise the right to regulate.
- **Advisory Group:** asked for more details on this new group, Bercero noted that the aim of this initiative was to allow 'more intimate' and detailed discussions with stakeholders on TTIP matters in addition to the continuation of large stakeholder meetings. He added that the members of the Advisory Group will not have access to negotiating documents; only the Member States and certain Members of the European Parliament can see these.
- **Sector gaps in TTIP – cross-sectoral issues:** in light of the fact that EU and US agencies work on the basis of completely different international standards (and the uncertainty of whether all sectors would be covered in TTIP), representatives of the inspection agencies sector requested more information about the TTIP negotiating teams that would deal with such 'gaps' in TTIP. The US Chief Negotiator observed that – in line with the High Level Working Group report – it was clear that cross-cutting issues like these are as important as sectoral rules, and that the TBT teams will be looking at conformity assessment, testing, etc. Bercero added that it was critical to deal with sectoral issues as well, noting that there were 'many complicated issues'. (During the Q&A following a joint press conference the same day, both Bercero and Mullaney noted that sectors other than those discussed during the second round will be discussed in future rounds; the process of looking into sectoral issues and ideas submitted by sector organisations was still ongoing.)
- **Regulatory savings:** Bercero noted that even with promises not to 'negotiate downwards' and to maintain the right to regulate, the EU and US can achieve regulatory savings for both companies and regulators (who can then focus their resources on priorities). For example, despite the EU and US using similar good manufacturing practices, double inspections of pharmaceuticals take place, and the

regulators are now discussing whether they can somehow show confidence in each other's inspections.

- **Food rules:** responding to a comment from the EU dairy sector that very high standards already apply on both sides of the Atlantic, the EU Chief Negotiator said no detailed discussions had taken place during the second round on food rules, but that the FDA and DG SANCO have had many discussions on systems equivalence and will continue to discuss this.
- **Precautionary principle:** the EU Chief Negotiator repeated that the precautionary principle was not up for negotiation. US Chief Negotiator Mullaney said precaution was also an important element in US food safety, but stressed that it was based on risk assessment and detailed science-based discussions.
- **Investment protection:** the European Trade Union Confederation (ETUC) saw a direct conflict between the right to regulate and the investor-to-state dispute settlement (ISDS) mechanism. Both Mullaney and Bercero disagreed and noted that the parties would still be able to pursue legitimate policy objectives in their respective legislation. The EU Chief Negotiator added that ISDS is necessary to achieve a high level of investment protection and that transparency was of the essence here. He added that, given the concern this is causing, the EU will continue its discussion with civil society on this matter. He also indicated that the agreement between the EU and Canada (of which the text is not yet available) contained some novel approaches on ISDS.
- **Services – positive or negative list approach:** the US Chief Negotiator said that in the past the US has favoured a negative list approach (under which service provisions apply to all services except those specifically listed). The EU Chief Negotiator did not comment, but so far, the EU has favoured a positive list approach in service agreements (under which service provisions only apply to listed sectors). No service offers have been exchanged yet, as that would first presumably require a decision on the positive/negative list approach.
- **Financial services discussions:** the EU Chief Negotiator said the aim was to explore opportunities for creating a stronger framework for regulatory cooperation on financial services. In addition, he stressed that TTIP talks should not undermine ongoing dialogues in other fora, either. The US Chief Negotiator added that the US, in its FTAs, tends to include broad provisions on non-discriminatory market access for services and transparency of regulations, and that 'good and steady progress' was being made in the TTIP talks even if they are still at an early stage.
- **Audiovisual services:** the European Broadcasting Union asked if discussions on audiovisual services (which are outside the Commission's negotiating mandate) were likely to take place, for example in parallel to TTIP. EU Chief Negotiator Bercero said the Commission's mandate is 'very clear' and that the negotiating team will therefore 'listen to the US' and report to the Member States. Dan Mullaney said he understands the EU has special measures in place but that transatlantic trade in audiovisual services could be encouraged 'taking into account sensitivities of both sides.'
- **Excluded services (in addition to audiovisual and public services):** the EU Chief Negotiator said that discussions on telecoms, e-commerce and professional services had already started and that other service sectors would follow. US Chief Negotiator Mullaney said 'nothing is off the table' but that some sensitive aspects in certain sectors would not be included in TTIP. While the discussions during the

second round aimed for broad coverage, sensitive sectors include maritime and aviation (with a representative for the water sector calling for it to be excluded during the stakeholder meeting). Financial services discussions are already ongoing and will continue in parallel with TTIP.

- **EU-Canada agreement – lessons learnt:** asked if the CETA agreement between the EU and Canada could somehow guide the TTIP negotiators, Bercero acknowledged that every negotiation is different. He added that CETA was ‘very ambitious’, but he expected ‘even more ambition’ in TTIP. Mullaney observed that the US has not seen the CETA text yet, but that in any event, the US has its own high ambitions (with the result that the US will not just accept CETA as the model for TTIP).
- **Energy – risk of relocation of energy-intensive manufacturing:** asked if and how TTIP could be used to avoid companies relocating to areas with lower energy prices, Bercero said the EU was ‘very aware’ of concern over the differences in energy prices between the EU and the US, an issue to which TTIP will not bring a solution. Instead, TTIP could at least try to ensure that there are no restrictions on trade (e.g. in gas), as US FTA partners have easier access to US licences under current US rules when such FTAs include national treatment provisions.
- **Wines – geographical indications (GIs) – IPR:** the US Chief Negotiator said detailed discussions had taken place on traditional wine names, that a bilateral agreement had been agreed upon, and that discussions on GIs are already long-standing and will continue. The EU Chief Negotiator added that agriculture and IPRs were not discussed during the second round, but will certainly be discussed during the third round as this area is ‘quite challenging.’
- **Chemical sector – rules of origin:** the European chemicals federation (CEFIC) welcomed the opportunity for TTIP to increase efficiencies within the existing regulatory regimes (e.g. REACH and TSCA), but noted the risk that complex rules of origin could hinder full use of trade preferences. CEFIC suggested a radical change of these rules, which are based on 40-year-old models that are no longer in line with today’s global chains. Instead, simple and flexible rules were necessary. Rules under the agreements between the EU and Korea, and between Canada and the US, were too complex and often stopped companies from using trade preferences. Bercero noted that the rules of origin discussions were still at a very early stage, and that no detailed origin-specific origin rules had yet been contemplated. There will be a need to reconcile the US and EU approaches (which are quite different). Mullaney said the US is open to consider a radical change but also stressed that TTIP is a bilateral agreement, and that it is intended to focus on EU and US companies being the beneficiaries of tariff preferences.
- **Labour standards:** a trade union representative asked whether TTIP would include the typical ‘soft’ FTA chapter on labour rights, and called for strong provisions. Bercero said the talks so far had not yet gone into detail in this area. Mullaney added that the approaches of the two sides are different.
- **Conflict minerals:** asked if TTIP talks would try to achieve mutual recognition between planned EU legislation and US rules, Mullaney said conflict minerals were not yet in TTIP, but that international discussions are ongoing.

In a press release issued on 15 November 2013, **EU Trade Commissioner De Gucht** noted that significant progress was made during the second round and that the TTIP negotiations

were fully back on track.⁶ The combination of the Brussels meetings, and separate meetings (including by videoconference) had ensured that Parties fully compensated for the cancellation of the originally-planned second round in October.

The **EU and US Chief Negotiators also gave a joint press conference**,⁷ followed by a Q&A session, which covered many similar questions as those raised during the stakeholder meeting the same day.⁸ Responding to a question on the TTIP **competition chapter**, Bercero noted that video conference discussions had looked into the kind of rules and principles that could be included in TTIP on antitrust and mergers, and state-owned enterprises. He added that the existing bilateral information exchange agreement between the EU and US authorities and whether or not to upgrade that would not be discussed in TTIP, but this is an area the EU and US competition authorities would discuss among themselves.

The **Regulatory Cooperation Council, proposed by EU Commissioner De Gucht** during a speech on 10 October 2013 in Prague, was mentioned neither in the stakeholder meeting nor in the press conference by either Chief Negotiator. However, when asked by a Japanese journalist if the US agreed with this proposal, **Dan Mullaney** said it is too **premature to know the name, the exact composition and procedural rules for the institutional mechanism** envisaged under the High Level Working Group to deal with future regulations. He felt this would depend on the outcome of the ongoing negotiations on TBT, SPS, regulatory coherence and transparency and sectoral issues.

A high-level **political stocktaking meeting** is planned for **January 2014** to give final guidance to the negotiators for further rounds.⁹ The substance of that meeting will depend on the outcome of the third round taking place the week of 16-20 December 2013 in Washington. During this third round, agricultural and SPS issues will be addressed by negotiators.

On 14 November 2013, it was reported that EU Member States were pressing the Commission to share negotiating papers, but that US officials are reluctant to allow for such exchange of negotiating papers between the Commission and the EU Member States. Discussions on **information sharing** by either party are ongoing.

On 15 November 2013, in a speech¹⁰ to a Swiss business audience, EU Commissioner Karel de Gucht again defended TTIP as bringing benefits to other countries, such as Switzerland, as a result of the important regulatory convergence aspects. He said that the EU and the US 'will not automatically set the rules for the rest of the world' and that 'major negotiations with our partners' would be necessary. However, 'given the dominant global role of the European and American regulatory models, reconciling their inconsistencies would be a significant **step forward towards a truly international approach.**'

⁶ See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=988>.

⁷ See <http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I083455> and <http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I083682>.

⁸ See <http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I083683>.

⁹ It has since been announced by the European Commission that this meeting will take place in February 2014.

¹⁰ See http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151889.pdf.

On 18 November 2013, a Justice and Home Affairs Ministerial meeting took place in Washington. EU Commission Vice-President Reding expressed her satisfaction with the 'positive and constructive' meeting. She stated that the two sides had agreed to speed up negotiations on a **data protection** umbrella agreement. The purpose of that agreement would be to introduce basic common standards for data protection into law enforcement cooperation between the EU and the US.¹¹

On that same day, German Chancellor Merkel said before the German parliament that 'the relationship with the US and the negotiation of a transatlantic free trade agreement are currently, without doubt, being put to the test by the accusations that have been aired against the US about the gathering of millions of bits of data.'¹²

The Commission and Member States representatives also discussed how best to **communicate about the TTIP**. The Commission presented a paper (which was later leaked)¹³ explaining how it has already obtained results with its current strategy and what needs to be done to have the agreement ratified. It was reported that the Commission fears that the EU's economic weakness, and division caused by the European Parliament elections, could cause an ACTA-style rejection of the TTIP. The Commission therefore believes that a different communication strategy is needed for TTIP compared to what has been done for previous trade negotiations. Notably, it observed that communications at Member State level are necessary in view of the upcoming EP elections.¹⁴

On 26 November 2013, a debate took place between the EP's Foreign Affairs Committee Chair Elmar Brok, the US Senate's European Affairs Sub-Committee chair Chris Murphy, and two members of the House of Representatives. Brok said that **mutual trust must be restored** to be able to establish a joint economic area under the TTIP. The US side noted that there will be substantial changes in US legislation following the spying revelations, but that on-going TTIP negotiations need not be halted.¹⁵

On 27 November 2013, EU and US negotiators held the abovementioned separate **meeting on financial services regulations**. The meeting had been impossible during the 11-15 November round because of scheduling problems on the US side. As noted in our previous reports, the EU would like to include financial services regulation in the scope of TTIP regulations in the form of high-level general criteria, rather than addressing specific financial services laws and regulations. The US, on the other hand, wants to keep financial services regulation outside the TTIP, and instead discuss these issues in parallel negotiations. During the meeting, the parties discussed a framework proposed by the Commission aimed at ensuring that principles on financial services adopted in international fora are implemented in a compatible way in the EU and the US, and at allowing EU and US supervisory authorities to rely on each other's rules. This goal would be achieved through closer cooperation to strengthen financial stability, assessing equivalence of the other party's

¹¹ See <http://www.euractiv.com/video/eu-commissioner-reding-us-meetin-531789>.

¹² See <http://www.ft.com/intl/cms/s/0/2afa46f4-5079-11e3-befe-00144feabdc0.html>.

¹³ See <http://corporateeurope.org/trade/2013/11/leaked-european-commission-pr-strategy-communicating-ttip>.

¹⁴ See http://www.euractiv.com/trade/leaked-document-shows-eu-interna-news-531936?utm_source=RSS_Feed&utm_medium=RSS&utm_campaign=EurActivRSS.

¹⁵ See <http://www.europarl.europa.eu/news/nl/news-room/content/20131125IPR26144/html/EU-and-US-must-restore-trust-to-help-trade-talks-say-MEPs-and-US-congressmen>.

rules, and avoiding rules with an extraterritorial reach. The Commission also proposes a **joint EU-US financial regulatory forum** to discuss outstanding issues, timelines for the implementation of agreements, and organising periodic reviews and consultations between the EU and the US to discuss regulatory barriers. While this does not appear to be a priority, the Commission also envisages negotiations on specific regulatory differences in the financial services sector in TTIP negotiations. The meeting was more about the Commission presenting its proposed framework, while US officials reportedly remained in listening mode and gave no indication as to whether or not they would be willing to include financial services regulations in TTIP.¹⁶

Also on 27 November 2013, the European Commission posted its **report of the stakeholder meeting of 15 November 2013** (see above) on its website.¹⁷

On that same day, the European Commission issued a **draft strategy paper**¹⁸ **identifying the steps that need to be taken to restore trust in data flows** between the EU and the US. In this strategy paper, the EU calls for action to:

- improve the functioning of the EU-US Safe Harbour Agreement;
- strengthen data protection safeguards in law enforcement;
- use the existing Mutual Legal Assistance and Sectoral agreements to obtain data; and
- address European concerns in the on-going U.S. reform process.

The Commission also published an **analysis of the functioning of the Safe Harbor Agreement** and a **report on the conclusions of the EU-US working group on data protection**.¹⁹ In addition, the Commission presented its review of the existing agreements on Passenger Name Records (PNR)²⁰ and the Terrorist Finance Tracking Programme (TFTP)²¹, which regulate data exchanges in these sectors for law enforcement purposes.

¹⁶ See <http://insidetrade.com/201312092455202/WTO-Daily-News/Daily-News/us-continues-to-resist-eu-demands-on-financial-regulations-in-ttip/menu-id-948.html>.

¹⁷ See http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151920.pdf.

¹⁸ See http://ec.europa.eu/justice/data-protection/files/com_2013_846_en.pdf.

¹⁹ See http://ec.europa.eu/justice/data-protection/files/com_2013_847_en.pdf and <http://ec.europa.eu/justice/data-protection/files/report-findings-of-the-ad-hoc-eu-us-working-group-on-data-protection.pdf>.

²⁰ See http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131127_pnr_report_en.pdf.

²¹ See http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131127_tftp_en.pdf.

US perspectives

Introduction

Apart from the second round of TTIP negotiations held in Brussels, November 2013 saw relatively limited activity from US officials and private sector and civil society stakeholders on TTIP. Most input centered on the continuing debate over how to reconcile EU and US current regulations and future rulemaking. National Security Agency (NSA) spying activities remain a key concern among officials and stakeholders. We provide below a summary of the input from these officials and stakeholders.

TTIP – Key developments

On 31 October 2013, nine US Senators sent a **letter²² to USTR Froman urging TTIP negotiators to address EU regulatory barriers to US agricultural exports**. According to the letter, the EU's precautionary principle results in trade rules that depart from the science-based, cost-benefit analysis approach the US follows. The decline of US apple and pear exports to the EU was given as an example of such barriers. The Senators asked the USTR to push for strong disciplines on sanitary and phytosanitary measures (SPS) and non-tariff barriers (NTBs) in TTIP.

On 4 November 2013, the United States Council for International Business (USCIB) sent a letter²³ to USTR Froman to express its concern over **planned EU legislation on fuel quality** which allegedly discriminates against oil sands and oil shale and fuels derived from these. USCIB considers that the proposed legislation 'beyond its damaging impact on trade, [...] also hampers efforts to promote Trans-Atlantic partnership in the energy and climate change areas.' USCIB is asking Froman to raise this matter with the EU in various fora, including during TTIP negotiations.

On 5 November 2013, **Ambassador-Designate to the European Union, Anthony Gardner, in testimony²⁴ to the Senate** Foreign Relations Committee, observed that **personal data privacy** would be a major challenge to the TTIP negotiations following the revelations of the NSA's spying activities. If confirmed, he pledged to focus on helping EU stakeholders understand how US consumer protection regulators achieve their mandate, with the goal of ensuring both US and EU approaches remain compatible.

Also on 5 November 2013, **US Secretary of State Kerry, at a joint press conference²⁵ with Polish Foreign Minister Radoslaw Sikorski** in Warsaw, observed that the TTIP negotiations should proceed on a separate track from the US-EU consultations over the **NSA's alleged spying activities**. Minister Sikorski added, from an institutional perspective, that the European Commission represents the EU as a whole in the TTIP talks, while the consultations over the NSA's activities exist within an exclusively bilateral framework

²² See http://www.toomey.senate.gov/?p=press_release&id=1178.

²³ See http://insidetrade.com/iwpfile.html?file=nov2013%2Fwto2013_3351a.pdf.

²⁴ See http://www.foreign.senate.gov/imo/media/doc/REVISED_Gardner_Testimony.pdf.

²⁵ See <http://www.state.gov/secretary/remarks/2013/11/216255.htm>.

between each EU Member State and the US. Whereas the European Commission has specific authority to negotiate FTAs on behalf of the EU Member States, national security-related matters remain under the jurisdiction of each respective country.

On 5 November 2013, **US Secretary of State Kerry, in a speech**²⁶ to the American Chamber of Commerce in Warsaw, suggested that the **cosmetics industry** would benefit greatly from US-EU regulatory cooperation under TTIP. Secretary Kerry said that US and EU regulations are 'different enough' to raise production and administrative costs.

Still on 5 November 2013, **USTR Froman, at the Munich Security Conference in Washington, DC**, highlighted²⁷ TTIP's significance to strengthening US-EU trade and investment relations. Specifically, USTR Froman called for bilateral regulatory cooperation and a consensus on principles of trade to address mutual global trade challenges.

On 11 November 2013, **US and EU environmental groups issued a joint letter**²⁸ to leaders listing the following recommendations for TTIP negotiations:

- More transparency in the negotiations;
- No ISDS mechanism;
- Flexibility to set food safety standards beyond agreed international practice, 'even in the face of scientific uncertainty';
- A 'floor' of strong financial regulation;
- Unrestricted access to affordable medicine;
- Policy space for both sides to respond to climate change, including through mandatory performance standards, 'green procurement' policies, and tax policies; and
- Discretion to regulate products using emerging technologies, including nano- and bio-technology.

On 13 November 2013, **Victoria Nuland, Assistant Secretary of the US Department of State Bureau of European and Eurasian Affairs**, in a speech²⁹ at the Atlantic Council in Washington, DC, equated the TTIP's importance to US-EU economic growth to that of NATO to shared transatlantic security. Assistant Secretary Nuland also added that the TTIP is a 'political and strategic bet' of the United States, and commended the Atlantic Council for building public support for the TTIP.

Also on 13 November 2013, **CropLife America (CLA) issued a letter**³⁰ to USTR Froman warning of an EU proposal on **pesticide regulation** that could endanger the TTIP negotiations and prevent 40 percent of current US agricultural exports from entering the EU

²⁶ See <http://www.state.gov/secretary/remarks/2013/11/217190.htm>.

²⁷ See <http://www.ustr.gov/about-us/press-office/blog/2013/November/Froman-Munich-Security-Conference>.

²⁸ See <http://www.citizen.org/documents/public-citizen-letter-to-obama-alerting-to-tafta-concerns.pdf>.

²⁹ See <http://www.state.gov/p/eur/rls/rm/2013/nov/217560.htm>.

³⁰ See <http://www.croplifeamerica.org/sites/default/files/CropLife%20America%20Agriculture%20Trade%20Impact%20on%20TTIP%2011%2013%2013.pdf> and http://www.croplifeamerica.org/sites/default/files/DTB%20Assoc%20Report%20Potential%20Trade%20Effects%20on%20US%20Ag%20Exports%20of%20EU%20Endocrin..._0.pdf.

market. According to CLA, EU Regulation 1107/2009 for Plant Protection Products proposes a new categorisation system for groups of active crop protection substances which will enable the EU to ban certain products from the marketplace based on hazard, not risk. CLA alleges that these regulations run counter to the WTO SPS Agreement, to which the EU is party.

On 15 November 2013, USTR Froman posted a brief **statement on the conclusion of the second TTIP negotiation round** on the USTR website, expressing great satisfaction with that round.³¹

On 20 and 21 November 2013, a delegation from the EFTA countries (Norway, Switzerland, Liechtenstein, and Iceland) held talks with the US government and private sector representatives discussing, among other things, the state of EFTA-US trade relations and TTIP negotiations.³²

On 26 November 2013, the **American Council of Life Insurers (ACLI), Insurance Europe and the American Insurance Association (AIA) issued a statement**³³ supporting the inclusion of insurance regulation in the TTIP negotiations. Observing that insurance is a highly regulated industry, the groups note that regulatory cooperation in TTIP could support existing regulatory dialogue already taking place.

OTHER EU FTA DEVELOPMENTS

ONGOING EU FTA NEGOTIATIONS

- EU-Japan Summit
- Recent EU FTA developments relating to Thailand, China, Vietnam, India, Ukraine, Moldova, Georgia, and Guatemala

IMPLEMENTATION OF EXISTING EU FTAs

- EU-Korea FTA
- EU-Mexico FTA

³¹ See <http://www.ustr.gov/about-us/press-office/press-releases/2013/November/Froman-TTIP-Second-Round-Statement>.

³² See <http://www.efta.int/free-trade/news/efta-meets-us-trade-policy-dialogue-2596>.

³³ See <https://www.acli.com/Newsroom/News%20Releases/Pages/NR13-041.aspx>.

Ongoing EU FTA negotiations

Introduction

In November 2013, the EU discussed the ongoing FTA negotiations with Japan during the EU-Japan Summit. Furthermore, Ukraine halted its preparations for the signature of the EU-Ukraine Association Agreement, while Georgia and Moldova initialled agreements with the EU. A negotiating round took place with Vietnam.

Below, we discuss the key developments in EU FTA negotiations with Japan, Thailand, China, Vietnam, India, Ukraine, Moldova, Georgia, and Guatemala.

EU-Japan FTA

The EU-Japan Summit, which was originally scheduled for March 2013 but was cancelled due to the Cyprus crisis, took place on 19 November 2013. During this Summit, Japanese Prime Minister Abe, European Council President Van Rompuy, and European Commission President Barroso underlined the importance of continued progress in the FTA and Economic Partnership negotiations and instructed negotiators to press forward to achieve the earliest possible conclusion.³⁴ Japan also reportedly assured the EU that its involvement in TPP negotiations would not jeopardise progress in EU-Japan talks.

David O'Sullivan, the Chief Operating Officer of the European External Action Service (EEAS) debriefed the EP's Foreign Affairs Committee after the Summit, on 25 November 2013. He said the EU called on Japan to deliver solid progress on the roadmaps agreed upon during the scoping exercise (particularly in the areas of public procurement and non-tariff barriers) by April 2014 (i.e., the date when the EU can decide to suspend negotiations based on their assessment of whether Japan has made any progress in the elimination of NTBs). The EU underlined that the April assessment will not be a routine matter. During the Summit, Japan reportedly also indicated that it intends to conclude the Strategic Partnership Agreement and the Economic Integration Agreement by the end of 2014. O'Sullivan further stated that Prime Minister Abe expressed Japan's concern about the EU's wish to link the political Economic Partnership Agreement with the FTA through a so-called 'democratic clause' linking the political agreement with the trade agreement, which Japan considers unnecessary between partners with shared fundamental values. Other negotiating partners of the EU (such as Canada) have expressed similar concerns. The EU explained that it intends to include this clause in all its FTAs and does not want to make exceptions, because a consistent approach with respect to this democratic clause would allow the EU to use this as leverage in relations with countries where such a clause is necessary. Furthermore, the Council's mandate insists on the inclusion of such a clause in the FTA. O'Sullivan nevertheless acknowledged that Japan was not convinced by the EU's arguments in that respect. The EU is now investigating how it can 'draft its way out of the problem' by coming up with a clause on which both sides can agree.³⁵

³⁴ See [http://europa.eu/rapid/press-release MEMO-13-1015_en.htm](http://europa.eu/rapid/press-release_MEMO-13-1015_en.htm).

³⁵ See <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20131126-1500-COMMITTEE-AFET>.

The fourth round of FTA negotiations is scheduled to take place in early 2014. Parties also intend to organise a follow-up Summit in the first half of 2014.

Other pending EU FTA negotiations

i) China

On 21 November 2013, the EU and China launched negotiations for an EU-China Investment Agreement at the EU-China Summit. The EU received assurances from China that these negotiations will also cover market access issues. The date of the first round of negotiations has not yet been fixed, but it is generally expected that negotiations will start in early 2014. The idea of starting actual FTA negotiations with China is generally considered to be premature in the EU.

ii) Vietnam

The fifth round of FTA negotiations between the EU and Vietnam was held during the week of 4-8 November 2013. The EU stated that negotiations with Vietnam had entered the 'substantive' phase. Parties discussed all chapters of a future FTA and held in-depth talks on market access for goods and public procurement. They also discussed a so-called 'Green Tech Annex' dedicated to tackling NTBs in the renewable energy sector. The next round of negotiations will take place during the week of 13 January 2014.³⁶ The EU intends to conclude negotiations by the end of 2014.

iii) India

Commissioner De Gucht has stated that the EU and India have nearly reached agreement on FTA topics such as trade in goods, SPS, TBT, competition and rules of origin. However, the EU expects more in the services area (in particular banking and insurance) and on public procurement. The EU also expects India to improve market access for cars/car parts and alcoholic beverages, and considers further negotiations necessary in the area of sustainable development.³⁷ After discussions with Indian Commerce and Industry Minister, Anand Sharma, Commission Vice President Almunia stated on 22 November that the EU is ready to reach a final agreement, but that India still had to resolve a number of issues.

iv) Ukraine

On 21 November 2012, the Ukrainian government decided to stop preparations for the long-awaited signature of the EU-Ukraine Association Agreement (which includes an FTA) and announced that it will develop measures to get closer to Russia and other countries from the Community of Independent States. Ukraine also proposed trilateral discussions between the EU, Russia, and Ukraine to resolve trade issues. The initial reaction of the Lithuanian Presidency of the EU was that the EU's proposal for the Association Agreement remained on the table, but that there was no role for other countries in that process.³⁸ However, in the following days, the EU was said to be considering options. Despite efforts by various EU

³⁶ See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=984>.

³⁷ See <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-011270&language=NL>.

³⁸ See <http://www.eu2013.lt/en/news/statements/statement-of-foreign-minister-of-lithuania-linas-linkevicius-on-decision-of-ukrainian-government>.

leaders to convince Ukrainian President Yanukovich to change his mind, the agreement was not signed at the Vilnius Summit on 28-29 November 2012, but discussions are still ongoing on a possible way forward.

v) **Moldova and Georgia**

At the above mentioned Vilnius Summit, the EU did initial an Association Agreement (which also includes a Deep and Comprehensive Free Trade Area) with Moldova and Georgia. These Agreements cover trade in goods, services and investment, trade facilitation, anti-fraud measures and trade defence, as well as certain regulatory issues. The EU aims to sign these agreements in the course of 2014.³⁹

vi) **Guatemala**

The trade provisions of the EU-Central America FTA will start to apply provisionally for Guatemala as of 1 December 2013.⁴⁰ This means that the trade chapter now applies to all parties to the agreement (i.e. Panama, Costa Rica, El Salvador, Honduras, Guatemala and Nicaragua).

Implementation of existing EU FTAs

EU-Korea FTA

The EU-Korea Summit took place on 8 November 2013. During this Summit, Parties discussed the extension of bilateral trade since the provisional application of the EU-Korea FTA. Korea further stated that the FTA could be improved, e.g. as regards trade barriers in the automotive industry, and said that consultations between both Parties are needed. The EU and Korea are also still discussing the extension of trade preferences to Croatia, which became an EU member on 1 July 2013. According to Korea's Minister of Trade, Industry and Energy, Yoon Sang-Jick, the Parties had already found a landing zone, but agreement still needs to be reached on a final version of the revised FTA text.⁴¹

³⁹ See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=994>.

⁴⁰ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:315:0001:0001:EN:PDF> and http://europa.eu/rapid/press-release_IP-13-1183_en.htm.

⁴¹ See <http://www.europolitics.info/externa-policies/eu-must-restore-its-economic-vitality-art356529-42.html>.