

EU FTA Policy Developments

for JETRO

January 2014 Report (covering developments in December 2013)

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TTIP NEGOTIATIONS

EU PERSPECTIVES

- Third round of negotiations
- Controversy and discussions on inclusion of ISDS provisions
- Leaked position paper on regulatory cooperation

US PERSPECTIVES

- Third round of negotiations
- Stakeholder input

EU perspectives

Introduction

This section discusses key TTIP developments during December 2013 from an EU perspective. The third round of negotiations took place on 16-20 December 2013 in Washington, DC. This third round completed the first phase of the TTIP negotiation process, where parties outlined their expectations for these negotiations and explained their respective regimes. In the aftermath of the third round, further preparations were made towards exchanging offers on tariffs, services, and public procurement. Tariff offers and goods market access should be discussed at the fourth round of negotiations, which is expected to take place in March. A political stock-taking meeting will also take place in January or February 2014. In December 2013, the TTIP debate focused on the inclusion of investor-to-state (ISDS) provisions in the agreement and a leaked Commission position paper on regulatory cooperation.

TTIP – Key developments

In early December, it became clear that the European Commission and the EU Member States will not find a compromise to adopt the new EU-wide rules on **data protection** in the first half of 2014.¹ It is currently unclear if and how this delay could affect data protection discussions in the context of TTIP negotiations. However, officially, the EU has stated that discussion of data privacy is outside the scope of TTIP, while it is possible that some data flow provisions may be included.

On 3 December 2013, the Secretary-General of Copa-Cogeca, the association of European farmers and agri-cooperatives, identified the most contentious issues for the **EU agricultural sector** in TTIP negotiations. The concerns on the EU side mostly relate to EU farmers/slaughterhouses being put at a competitive disadvantage vis-à-vis their US

¹ See http://europa.eu/rapid/press-release_SPEECH-13-1029_en.htm.

counterparts, who are allowed to apply microbial treatment to carcasses, and to use growth promoters (in particular, ractopamine). A priority is to maintain the WTO-blessed import quota for non-treated, non-hormone meat. The asymmetric approval process between the EU and US as regards GMOs is also flagged as an important issue.² Copa-Cogeca does not see the EU's recent agreement with Canada (CETA) as a template for TTIP. While Canada is the first major agricultural partner with which the EU has negotiated an FTA, Canada's agricultural interests are not the same as those of the US. For example, eggs and poultry were not an issue with Canada, but they will be with the US. Copa-Cogeca welcomed the results achieved in CETA on Geographical Indications, but is worried about the beef and pigmeat quotas granted to Canada.

On 4-5 December 2013, the **Transatlantic Legislators Dialogue** (TLD), a biannual meeting of Members of the European Parliament (MEPs) and the US Congress, took place in Washington, DC. A British liberal MEP explained that discussions focussed on the TTIP negotiations and more specifically the regulatory cooperation chapter, as well as the need to avoid TTIP becoming sabotaged by anti-free traders. This MEP further stated that data protection would form part of the broader political context of TTIP negotiations, even if data protection rules would not be included in the agreement itself.

On 9 December 2013, Commission Vice-President **Reding** informed the European Parliament's (EP) Civil Liberties Committee during its hearing on **data protection** and US mass surveillance about the Commission's steps to address EU concerns about US spying allegations. Reding partly criticised the findings of the EU-US ad hoc working group³ by stating that the US was not clear on the legal bases for data collection, the existence of other surveillance programmes, and the limitations applicable to these programmes. She also noted that the conditions and safeguards for data collection in the US apply discriminatorily and only protect EU citizens to a limited extent, and criticised the lack of judicial oversight. Reding further explained that the EU had made 13 recommendations to **improve the functioning of the Safe Harbour Agreement** in late November.⁴ The EU expects the US to implement these by the summer of 2014. Reding insisted that the umbrella agreement on data protection should be concluded as soon as possible, and that the on-going US reform process should address the European concerns.⁵ The US has welcomed the Commission's decision to keep the **Safe Harbour Agreement** in place.

A report from the Atlantic Council think tank on transatlantic **financial reform** was issued on 10 December 2013. It identifies sharp differences between the EU and US on issues such as the resolution of insolvent banks, derivatives, data privacy and accounting standards. This report urges the EU and US to 'reenergize the G20 as the pre-eminent global forum on

² See <http://www.euractiv.com/cap/farming-boss-rock-boat-transatla-interview-531757>.

³ See our December Report.

⁴ The Safe Harbour Agreement was adopted in 2000 and allows personal information to be transferred between the EU and US if companies voluntarily agree to a set of data protection principles. US companies following these principles are presumed to be complying with the criteria of the EU's Data Protection Directive.

⁵ See http://europa.eu/rapid/press-release_SPEECH-13-1048_en.htm.

financial reform'. But also in the area of bilateral cooperation, the report indicates that discrete chapters on financial regulation should be included in the TTIP.⁶

On 12 December 2013, the European Trade Union Confederation (ETUC), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the International Trade Union Confederation (ITUC) issued a joint letter expressing concern that the **possible inclusion of US proposals on drug and device pricing** in TTIP would increase costs borne by patients and burden national health systems. This letter follows recent reports that the US intends to propose a mechanism (similar to the approach followed in the KORUS agreement) for the pricing of medical devices and pharmaceuticals that would guarantee input from producers at multiple stages of a government's formulary and pricing decision process, which they allege give excessive protection to manufacturers, while failing to assess whether a new product offers real improvements compared to existing products. There is also a sense that the views of patients, medical professionals and public health advocates are not taken into account.⁷

Also on that same day, EU Trade Commissioner De Gucht explained in a reply to a written question from an MEP that the Commission aims to agree with the US on measures allowing easier **mobility of service providers** and that temporary transfers of key staff to foreign affiliates 'would be an important component' of the TTIP agreement.⁸

On 16 December 2013, the EP's International Trade (INTA) Committee held an exchange of views with the Commission on **investment protection and ISDS** in FTAs, focusing on the TTIP negotiations:

- The Commission highlighted that the inclusion of ISDS in FTAs is based on a Commission Communication endorsed by the EP and the Council. The Commission reiterated that ISDS is not new and this mechanism is already included in most Bilateral Investment Treaties (BITs) concluded by EU Member States. Furthermore, EU companies are in fact the biggest users of the ISDS system worldwide. The Commission further emphasised that not all provisions of the TTIP will be subject to ISDS, but that the application of the **ISDS mechanism will be limited to four basic rights**: (i) post-establishment non-discrimination; (ii) the prohibition of expropriation without compensation; (iii) the transfer of capital to invest; and (iv) fair and equitable treatment. The Commission further explained that it wishes to introduce certain **procedural rules** related to transparency, the selection of arbitrators, and the avoidance of parallel proceedings.
- In reaction to the Commission's explanations, most **MEPs questioned whether an investment protection and ISDS chapter would really be necessary vis-à-vis the US**. Conversely, other MEPs stated that there could be a consistency issue if the EU did not negotiate such a chapter with the US, while insisting on the conclusion of such rules with others, such as China. The Commission replied that ISDS provisions are also necessary in TTIP, since the US does not have a basic rule prohibiting

⁶ See http://www.atlanticcouncil.org/images/publications/Danger_of_Divergence_Transatlantic_Financial_Reform_the_G20_Agenda.pdf.

⁷ See http://www.etuc.org/IMG/pdf/TTIP_TPP_drug_pricing_letter_120513_w_3_logos_updated.pdf.

⁸ See <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-012249&language=EN>.

discrimination of investors, and international treaties are not enforceable in the US legal system. MEPs also insisted that ISDS and investment protection provisions in TTIP should not result in a discrimination of domestic investors vis-à-vis their foreign competitors.⁹

On that same day, a large group of European, American, African, Asian, Latin American and global **NGOs** addressed a letter to USTR Froman and EU Trade Commissioner De Gucht expressing their **opposition to the inclusion of ISDS** in the TTIP. These NGOs allege that ISDS could force governments to use taxpayer money to compensate corporations for measures regarding public health, labour, clean energy, etc., and this undermines democratic decision making. They also argue that the domestic legal systems of the EU and US are capable of handling investment disputes and that ISDS provisions in TTIP would only give corporations a new means to attack domestic policies.¹⁰

Also on 16 December 2013, the lobby group Corporate Europe Observatory (CEO) leaked a **Commission position paper which includes a proposal on transatlantic regulatory cooperation**.

- This paper outlines the Commission's objectives for a Horizontal Chapter on Regulatory Coherence applicable to all sectors and covering any planned and existing regulatory measure of general application with a significant impact on international trade.
- The paper also states that the TTIP should include a commitment to establish a regulatory cooperation mechanism, including a **light governance structure** for that purpose.
- The position paper also foresees **biannual updates on regulatory and legislative initiatives** as of the planning stage. On the EU side, the Commission should inform the US administration of upcoming 'primary' legislation (i.e. directives or regulations) and delegated acts. The US would have to inform the Commission about bills pending in Congress that have been 'marked up for debate in the respective committee or subcommittee' and upcoming rules drafted by Federal Agencies. The chapter on regulatory cooperation would also include an obligation to enter into a **dialogue** with, and to react to written comments from, the other side.
- The Commission further proposes that **impact assessments or cost benefit analysis** on proposed regulatory measures should assess the impact of such measures on international and in particular transatlantic trade.
- Each party should also undertake **stakeholder consultations** on regulatory and legislative measures.
- The position paper finally also proposes the establishment of a **Regulatory Cooperation Council**¹¹ through the TTIP that would involve senior-level officials from regulatory agencies, as well as the Commission's Secretariat General and the

⁹ See <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20131216-1500-COMMITTEE-INTA>.

¹⁰ See http://corporateeurope.org/sites/default/files/attachments/ttip_investment_letter_final.pdf.

¹¹ See our November Report covering Commissioner De Gucht's speech to the Aspen Institute.

US Office for Information and Regulatory Affairs. This Council should meet twice a year and should be assisted by sectoral and ad hoc working groups. These working groups would have to interact with both legislators and stakeholders. For that purpose, the Commission also proposes the establishment of an **EU-US multi-stakeholder advisory committee** or a similar body. The relationship between the Regulatory Cooperation Council and decision-making bodies under TTIP will only be considered at a later stage.¹²

The **European Commission immediately reacted** to this leaked position paper by stating that the paper in fact confirms that a TTIP will reaffirm the parties' sovereign rights to adopt new measures.¹³ The Commission also argued that the majority of the position paper reflects the EU's initial position paper, which was made public in July 2013.¹⁴ This in turn led to a further reaction by Corporate Europe Observatory, also denying that CEO was anti-trade per se, and proposing an 'alternative mandate' for trade negotiations.¹⁵

The leaked position paper seems to reflect some of the ideas put forward in a **position paper from BusinessEurope** in 2012, which has been updated on 28 November 2013 to expand on some of the proposals for regulatory cooperation. In that updated paper, BusinessEurope reiterates that the EU and US must commit to cooperate in the regulatory area and consider the potential trade impacts of future regulation, but that such regulatory cooperation does not entail a reduction of health, safety or environmental standards. BusinessEurope further argues that TTIP should include both horizontal regulatory provisions and sectoral annexes. Negotiators should further aim to reduce sectoral barriers to trade upon entry into force of the agreement. The paper also emphasises that strong political support is needed at the highest levels of government and the relevant regulatory authorities. BusinessEurope does not explicitly refer to the types of legislation proposed by Congress or the European Commission that should be covered by the new regulatory cooperation commitments, but instead states that TTIP commitments should result in a 'balanced, reasonable and well defined' coverage of legislative acts and regulatory measures.¹⁶

On 16-20 December 2013, the **third round of TTIP negotiations** started in Washington, DC. 24 negotiating groups met, covering all issues which the EU and the US intend to cover under the TTIP agreement. The 'architecture' of the agreement was also discussed further during this round. The US side reported good progress and optimism about further progress in 2014.¹⁷ The EU press release also expressed satisfaction and confirmed that the negotiations 'remain on track to deliver an ambitious trade and investment agreement'.¹⁸ It is

¹² See <http://corporateeurope.org/sites/default/files/ttip-regulatory-coherence-2-12-2013.pdf>.

¹³ The Commission also stressed the right to regulate in a press statement of 20 December 2013, see http://europa.eu/rapid/press-release_IP-13-1306_en.htm.

¹⁴ See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1001>.

¹⁵ See <http://corporateeurope.org/blog/ttip-unfounded-attack-ceo> and <http://www.alternativetrademandate.org/>.

¹⁶ See <http://www.bussinesseurope.eu/content/default.asp?PageID=568&DocID=32393>.

¹⁷ See <http://www.ustr.gov/about-us/press-office/press-releases/2013/December/Statement-by-Ambassador-Froman-on-Third-Round-TTIP-Negotiations>.

¹⁸ See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1007>.

expected that an exchange of offers on goods, services and procurement will follow shortly in early 2014, while text-based discussions should commence in the next round (currently expected to occur in March 2014).

The Chief US negotiator, Assistant USTR Dan Mullaney, and EU Chief Negotiator, Ignacio Garcia Bercero gave the following update in the **closing joint press conference** following the third round of negotiations¹⁹:

- **Industrial and agricultural goods market access:** Dan Mullaney noted that the US International Trade Commission (ITC) has completed a study on the expected impact on the US economy of tariff elimination under TTIP. This development has allowed the parties to begin discussions on goods market access. Mr Bercero said that no detailed discussions have yet taken place on specific rules of origin, as discussions so far have focussed on horizontal aspects of origin rules.
- **Technical barriers to trade (TBTs) and sanitary and phytosanitary (SPS) measures** (with focus on food safety, regulatory coherence and particular sectors): the Chief Negotiators confirmed that they want to agree on **horizontal and cross-cutting** commitments for regulatory issues in a wide range of sectors, as well as specific commitments for certain **individual sectors**. Bercero listed the following sectors as relevant: automobiles, pharmaceuticals, medical devices, cosmetics, textiles, chemicals, and information and communication technology. Mullaney added that the list of sectors for discussion is not finalised at this stage. The two sides face significant political difficulty with respect to regulatory issues, with many civil society stakeholders alleging that the TTIP agreement will lead to deregulation. Mr Bercero repeated that the goal of TTIP negotiations is to eliminate behind-the-border barriers but without restricting the right to regulate in the public's interest, for example on consumer protection, health, environment, and data privacy. On SPS, Dan Mullaney said the parties had discussed possible ways to include so-called "SPS+" provisions in TTIP on food safety, including consultative mechanisms.
- **Investment and services** (covering telecommunications, e-commerce, cross-border services and financial services): the EU side stressed the importance of ensuring citizens' digital privacy, in particular as regards e-commerce issues and cross-border data flows, but Mr Bercero reiterated that **data privacy** is not part of the TTIP negotiations, as there are other more appropriate fora where such bilateral issues are being discussed. The US and EU Chief Negotiators both re-affirmed their commitment to including an **investor-state dispute settlement (ISDS) mechanism** in TTIP. Certain civil society stakeholders allege that such a mechanism is unnecessary as both the EU and the US have a strong rule of law. Mr Bercero stated that all of the approximately 1,400 investment treaties concluded by EU Member States include ISDS provisions, and that nine EU Member States already have such investment treaties with the US. Mr Mullaney confirmed that all US FTAs include ISDS mechanisms as well. The EU negotiator also noted that no ISDS cases involving EU Member States have so far led to a regulatory measure being successfully challenged. He referred to ISDS provisions included in the recently agreed FTA between the EU and Canada as an example of how frivolous claims can be avoided.

¹⁹ See <http://www.ustr.gov/about-us/press-office/press-releases/2013/December/TTIP-Third-Round-Press-Conference-transcript>.

- **Raw materials and energy:** Mr Bercero said the EU wanted to obtain a ‘clear guarantee of security of access to US resources’. Mr Mullaney commented that an exception to current US Liquefied Natural Gas (LNG) export restrictions under TTIP will depend on whether TTIP will provide ‘for national treatment in national gas area.’ The US position on energy export liberalisation in the context of TTIP negotiations will depend on whether the US Department of Energy and other official US agencies consider such exports to be in the public interest, but the US has normally granted national treatment with respect to LNG exports to its FTA partners. Mr Bercero added that the EU and US will also be discussing common interests in promoting open and transparent trade/investment regimes, but they have not yet decided the best way to include these in the TTIP.
- **Small- and medium-sized enterprises (SMEs):** Mr Bercero reiterated the importance of TTIP bringing real benefits for SMEs. He added that there will be a specific SME Chapter in the TTIP agreement.

Other areas discussed during the round (but on which no comments were made during the joint press conference) included:

- government procurement;
- intellectual property;
- labour and environment;
- competition, e.g., state-owned enterprises; and
- legal/institutional issues.

Dan Mullaney noted that in early 2014,²⁰ a **stocktaking meeting at the political level** will take place between EU Trade Commissioner De Gucht and USTR Michael Froman on the progress made so far, and on what the two sides need to do to move the negotiations forward. The EU and US are also working on the **negotiating round schedule** for 2014. The precise **date for the fourth negotiating round** has not yet been set but, considering the generally ambitious negotiation goals, it should take place in Brussels in the first quarter of the year (March has been mentioned by the EU side in a press statement as the expected month).

On 18 December 2013, US and EU TTIP negotiators held a **stakeholder event** in Washington, DC.²¹ The event started with 10-minute presentations by over 50 civil society stakeholders, followed by a briefing by US Chief TTIP Negotiator Mullaney and EU Chief Negotiator García Bercero, and a Q&A session.

The **stakeholder presentations** were made in 11 time blocks each covering 3 to 5 stakeholder organisations.²² Because the blocks were organised as break-out sessions in 5

²⁰ The European Commission in a press release of 13 December 2013 states that this meeting ‘is currently set for February 2014.’ (see <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1000>).

²¹ See <http://www.ustr.gov/about-us/press-office/press-releases/2013/December/Readout-TTIP-third-round-update>.

²² See <http://www.ustr.gov/sites/default/files/TTIP-Presentation-Schedule-Final.pdf>.

meeting rooms, interested persons could only attend about 11 out of the 53 presentations. We highlight below some of the points (mostly US) stakeholders made, based on our attendance of these presentations:

- The **National Association of Manufacturers (NAM)** urged negotiators to reach an agreement that (i) addresses regulatory differences and barriers, (ii) provides for strong intellectual property rights (IPR) protection, (iii) eliminates all tariffs immediately, (iv) eliminates all non-tariff barriers, (v) expands services trade, (vi) protects trans-Atlantic investment, (vii) addresses emerging digital trade- and e-commerce-related issues, (viii) improves customs facilitation, (ix) enhances supply chains, (x) promotes border security cooperation in regard to the movement of goods and people, and (xi) establishes strong dispute settlement mechanisms.
- The **US Chamber of Commerce Center for Global Regulatory Cooperation** presentation, entitled 'Regulatory Cooperation & TTIP', focussed on five areas of regulatory issues in TTIP, namely (i) SPS measures, (ii) TBTs, (iii) regulatory coherence, (iv) regulatory cooperation, and (v) sector-specific regulations. For SPS and TBTs, the Chamber felt that the priority should be to bridge existing gaps. For regulatory coherence and cooperation, it commented that the negotiators should seek horizontal commitments on the rulemaking process, but it warned against regulatory harmonisation. The Chamber noted that there are approximately 30-40 sectors (including cosmetics) for which, because of the specific nature of their respective issues, the negotiators should pursue a sector-specific approach and depart from applying horizontal commitments.
- The **Personal Care Products Council (PCPC)** urged negotiators to achieve regulatory convergence in the area of cosmetics. PCPC supports the inclusion in TTIP of a cosmetics-specific annex to address relevant areas of regulatory divergence.
- The **American Apparel and Footwear Association (APFA)** promoted an agreement that (i) eliminates all tariff and non-tariff barriers, (ii) uses flexible rules of origin (including cumulation of origin), (iii) preserves the Berry Amendment (which allows the US Department of Defense to give preference in its procurement to US produced clothing and fabrics), (iv) harmonises safety labelling rules, and (v) supports trade facilitation, including in the form of trusted trader programs.
- **Intel's** presentation on 'Setting Global Rules on Innovation' focussed on the importance in TTIP for (i) protecting trade secrets, (ii) eliminating all duties levied on information and communication technology (ICT) goods, (iii) minimising technology mandates that are inconsistent with so-called "technology neutrality" principles, and (iv) promoting the voluntary use of international standards.
- The **US Coalition of Services Industries' (CSI)** presentation, entitled 'Financial Services in the Transatlantic Trade and Investment Partnership,' urged negotiators to reach a TTIP agreement that deals with such digital issues as restrictions on cross-border data flows (CBDFs) and server localisation requirements, and (ii) fosters regulatory cooperation.
- The **Biotechnology Industry Organization's** presentation, 'Biotechnology: An Innovation Leader for the Transatlantic Economy', focussed on the importance in TTIP of (i) achieving sector-focussed outcomes on regulatory cooperation, e.g., mutual recognition agreements, (ii) securing strong IPR protection (for example 12 years of data exclusivity for biologics, patent procedural aspects, confidential commercial information), (iii) opening foreign markets, including regarding

government pricing and reimbursement policies, and (iv) addressing agricultural biotechnology issues and ensuring synchronised approval in the US and the EU of agricultural biotechnology goods.

- The **CATO Institute**, a libertarian think tank, gave a presentation entitled ‘The Challenge of Cooperation: Regulatory Trade Barriers in the Transatlantic Trade and Investment Partnership’. It focussed on costs stemming from regulatory divergence. The Institute urged US and EU negotiators not to ‘overpromise’ on what they can achieve in TTIP negotiations, but instead to strive for achievable goals on bilateral regulatory issues, and to commit to regulatory cooperation over the long term in a manner similar to the US-Canada Regulatory Cooperation Council (RCC). It warned against applying a new layer of regulation over existing EU and US domestic regulations, and called for focus on ongoing regulatory cooperation.
- The **American Fuel & Petrochemical Manufacturers (AFPM)** presented on ‘Energy Exports and the TTIP’. They urged US negotiators to seek a modification or exception from certain provisions of the EU Fuel Quality Directive under TTIP. AFPM asserted that this EU Directive establishes a carbon intensity value for diesel and gasoline produced from oil sands and oil shale different from that for products produced from other crudes. AFPM noted that because certain countries produce more fuel and petrochemicals from oil sands and shale oil than other countries, the EU Fuel Quality Directive may discriminate against imports.
- The **Alliance of Automobile Manufacturers**, the **European Automobile Manufacturers**, and the **American Automotive Policy Council** gave a joint presentation, entitled ‘Proposed Regulatory Equivalency Analysis for Automotive Technical Safety Standards’, which focussed on transatlantic regulatory issues affecting EU-US automotive trade. The three organisations urged the negotiators to (i) seek mutual recognition for existing automotive regulations and for future regulation deemed necessary, and (ii) establish a joint regulatory harmonisation process to facilitate the development and adoption of common future new regulations.
- The **US Chamber of Commerce** also gave a presentation on ‘Cross-Border Data Flows & Digital Trade’, focussing on emerging issues relating to digital protectionism. The Chamber urged US and EU negotiators to (i) develop clear and consistent rules to safeguard cross-border data flows, (ii) avoid forced localisation requirements for data or related infrastructure, and (iii) seek flexible approaches to privacy through enforceable codes of conduct, but not through a one-size-fits-all approach.

The **Sweetener Users Association (SUA)** also provided a testimony regarding the importance of sweetener trade liberalisation in TTIP.²³ To achieve this goal, the SUA suggests that the TTIP should cover all sugar products and lead to commercially significant reductions in both tariff and non-tariff barriers to US sugar market access in the European Union.

The **next TTIP negotiations rounds** will likely take place in March, May and July 2014, but the exact dates of these meetings have not yet been disclosed.

On 17 December 2013, the Lithuanian Deputy Minister for Foreign Affairs delivered a speech before the EP’s INTA Committee to **take stock of the international trade developments during the Lithuanian EU Presidency** (July-December 2013). He noted that the first two rounds of TTIP negotiations had been very productive (despite some

²³ See <http://sugarreform.org/wp-content/uploads/2011/07/Oral-SUA-TTIP-Statement-December-18-2013.pdf>.

'impediments that overshadowed the start of the negotiating process') and had paved the way for the market access talks and text-based discussions. The Deputy Minister also stated that the political stocktaking exercise mentioned above will take place in the first half of February.²⁴

Also on 17 December 2013, it was reported that, in the area of **agriculture**, the EU has been preparing a **list of sensitive products** to be included in its agricultural market access offer. The EU believes that the FTA concluded with Canada should serve as a template for agriculture negotiations with the US. According to some sources, most leading meat-producing Member States, including Ireland, France and Denmark, are opposing large duty-free quotas for meat, in particular beef and pork. Some Member States reportedly fear that the US would demand duty-free quotas that are six times higher than the ones agreed with Canada. It was further reported that the Parties intend to address the most sensitive agricultural issues such as GMOs, hormones or Geographical Indications only at the end of TTIP negotiations.²⁵

On 18 December 2013, the EP's Civil Liberties Committee discussed a **draft (non-binding) resolution** that states that the **EP should approve the TTIP only if it does not contain a reference to data protection**. The resolution also calls for the creation of an EU cloud and judicial redress for EU citizens to protect their data in the US. It further calls for the suspension of the Safe Harbor Agreement and the Terrorist Finance Tracking Programme (TFTP). The draft resolution will be put to a vote by the Civil Liberties Committee at the end of January and will be voted on in the plenary session on 24-27 February 2014.

Also on that day, Trade Commissioner **De Gucht published an opinion article**²⁶ in The Guardian criticising a previous article²⁷ that alleges a lack of **transparency** in TTIP negotiations and raises concerns as regards the possible inclusion of **ISDS** provisions in the agreement. De Gucht notes that all EU investment agreements will explicitly state that legitimate government public policy decisions cannot be overridden.

The European Consumer's Organisation **BEUC** issued a position paper on 18 December 2013 **criticising the European Commission's proposal** issued on that same day **for a ban on cloning animals for food production**. More specifically, BEUC considers that the Commission should also ban the use and sale of goods made from the offspring of cloned animals. BEUC argues that while TTIP talks are on-going, this proposal would safeguard imports from the US, where clone traceability is non-existent. According to BEUC, this shows that the Commission is putting trade relations ahead of the wishes of EU citizens.²⁸

In the area of **investment protection**, the Commission's DG Trade issued a statement on 20 December 2013 arguing that investment protection provisions in TTIP will not give multinationals unlimited rights to challenge any legislation. In this statement (and as

²⁴ See <http://www.europarl.europa.eu/document/activities/cont/201401/20140110ATT77144/20140110ATT77144EN.pdf>.

²⁵ See <http://www.europolitics.info/sectoral-policies/agriculture-ttip-negotiators-face-mounting-lobby-pressure-art358170-11.html>.

²⁶ See <http://www.theguardian.com/commentisfree/2013/dec/18/wrong-george-monbiot-nothing-secret-eu-trade-deal>.

²⁷ See <http://www.theguardian.com/commentisfree/2013/dec/02/transatlantic-free-trade-deal-regulation-by-lawyers-eu-us>.

²⁸ See <http://docshare.beuc.org/Common/GetFile.asp?ID=46030&mfd=off&LogonName=Guesten>.

mentioned above), the Commission argues that ISDS provisions which are sufficiently clear, properly designed, and limited to the specific actions that can concretely affect an investor's daily business operations will not result in legislative powers being undermined by investors. The Commission further reiterated that ISDS provisions in the TTIP are necessary, since the US does not allow companies to use international agreements (like TTIP) as a legal basis in national courts. In other words, European companies would need to use international arbitration systems similar to ISDS to enforce their rights.²⁹

On 20 December 2013, Greek Prime Minister Samaras comments during the European Council on the focus of the **Presidency of the EU** that **Greece** will hold for the first half of 2014. He stated that Greece intends to take action on external trade to **accelerate ongoing FTA talks with the US** and other strategic partners.³⁰

On 23 December 2013, Trade Commissioner De Gucht explained in a written reply to a question from an MEP that the Commission is developing a **communications strategy** regarding the transatlantic negotiations, and had organised in that context a meeting with the press and communications professionals on 22 November. He further emphasised that the INTA Committee receives all the documents that are shared with the Council's Trade Policy Committee and that INTA is briefed before and after each negotiating round.³¹

US perspectives

Introduction

Apart from the third round of TTIP negotiations in Washington, DC, US TTIP developments related to stakeholder input by various organisations, as reported below.

TTIP – Key developments

On 28 November 2013, **economists of the European Commission and U.S. International Trade Commission** together published a paper examining the potential impact of TTIP on multinational companies and intra-firm trade.³² They concluded that intra-firm trade is more sensitive to tariff changes than trade between two independent entities. The paper notes: 'EU-US economic relations go beyond that of traditional trade ties. Multinational companies and their affiliates abroad do not only represent vital elements of each other's domestic economy but are also major determinants of the movement of goods and capital across borders. In the light of the on-going [TTIP] negotiations it becomes increasingly important to consider the impact of a given trade policy change on traditionally overlooked economic variables such as foreign affiliate output, value added and intra-firm trade.'

²⁹ See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1008>.

³⁰ See <http://www.gr2014.eu/news/speeches/prime-minister-samaras%E2%80%99-remarks-european-council>.

³¹ See <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2013-013374&language=EN>.

³² See http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151922.%20November%202013.pdf.

On 3 December 2013, **US Senator Marco Rubio**, during a speech at Chatham House in London, stressed the benefits of TTIP to the United States and Europe.³³ He also emphasised the need to reduce global trade barriers beyond TTIP.

On 5 December 2013, US-based think tank **Heritage Foundation** released an analysis regarding the benefits of TTIP, largely cautioning against overblown optimism about the possible gains.³⁴ The paper also notes that because US and EU economies are both large and relatively open, TTIP talks should focus on dismantling non-tariff barriers to realise the full benefits of US-EU free trade. This should be done by mutual recognition and not by harmonisation, as this would likely force the US to accept EU regulations.

On 11 December 2013, US Senators Sherrod Brown (D-OH) and Rob Portman (R-OH), and US Representatives Marcy Kaptur (D-OH) and Steve Stivers (R-OH) called on USTR to maintain trade protection for Ohio-based **glass tableware makers** from foreign competitors in such potential FTAs as TPP and TTIP.³⁵ Citing the domestic glassware production sector's longstanding categorisation as import-sensitive, the lawmakers ask that tariffs be maintained to protect against foreign imports. The lawmakers want glassware products to fall under the longest possible phase-out periods for US market access commitments.

On 12 December 2013, **US and EU labor unions**, in a **letter to USTR Froman and European Trade Commissioner Karel de Gucht**, expressed their concern that a US proposal on drug and medical device pricing would increase the cost of healthcare if ratified in TPP and TTIP.³⁶ The letter notes that an approach based on provisions in the US-Korea Free Trade Agreement (KORUS), which offers a process that guarantees input from producers at multiple stages of a government's formulary and pricing decision process, would restrain government policy choices on healthcare.

On 13 December 2013, the **Congressional High Tech Caucus** issued a **letter to USTR Froman** to highlight the importance of addressing barriers to **cross-border data flows** in US trade negotiations.³⁷ The letter asserts that EU policies are of particular concern; recent government statements have indicated an interest in such policies as an EU-only cloud and repeal of the US-EU Safe Harbor. The letter urges USTR to prioritise cross-border data flows in negotiations for TTIP, TPP, and other US FTAs.

Also on 13 December 2013, researchers, scholars, and policy specialists from over 40 countries endorsed a **Declaration of Fundamental Public Interest Principles for International Intellectual Property Negotiations** at the Third Global Congress on Intellectual Property.³⁸ The Principles broadly call for an IPR regime that promotes social and economic welfare and preserves the government's ability to modify national IPR laws in

³³ See <http://youtu.be/tNGXOwz-Dig>.

³⁴ See <http://www.heritage.org/research/reports/2013/12/transatlantic-trade-and-investment-partnership-ttip-pitfalls-and-promises>.

³⁵ See <http://www.brown.senate.gov/newsroom/press/release/sens-brown-and-portman-reps-kaptur-and-stivers-urge-us-trade-rep-to-maintain-protections-for-ohio-glass-makers-from-foreign-competition-in-trade-agreements>.

³⁶ See http://www.etic.org/IMG/pdf/TTIP_TPP_drug_pricing_letter_120513_w_3_logos_updated.pdf.

³⁷ See http://matsui.house.gov/uploads/Cross_Border_Data_Flows_in_Trade_Negotiations_Letter_to_USTR.pdf.

³⁸ See <http://infojustice.org/draft-trade-agreement-principles>.

response to technological, social, economic and cultural changes. They want access to medicines to be guaranteed and flexibility on digital rights.

On 16 December 2013, eight major **US technology companies** issued an **open letter to the Obama Administration and Congress** stressing the need to reform practices and laws regulating the surveillance of individuals and access to their information.³⁹ The companies outlined five principles that the US government should adopt to establish intelligence efforts that are rule-bound, narrowly tailored, transparent, and subject to oversight.

On 18 December 2013, the US Food and Drug Administration (FDA) and the European Medicines Agency (EMA) launched a joint initiative to **share information on inspections** of bioequivalence studies submitted in support of generic drug approvals.⁴⁰ This initiative seeks to streamline information sharing on inspections of bioequivalence studies conducted and planned for generic drug applications. Studies submitted for generic drug applications must demonstrate scientifically that a generic drug is “bioequivalent,” i.e. perform in the same manner as the brand name drug.

³⁹ See <http://reformgovernmentsurveillance.com/#>.

⁴⁰ See <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm379031.htm>.

OTHER EU FTA DEVELOPMENTS

ONGOING EU FTA NEGOTIATIONS

- EU-Thailand negotiations
- Recent EU FTA developments relating to Georgia and Moldova, Ukraine, Canada, Mercosur, Singapore and the EU Overseas Countries and Territories (OCTs)

IMPLEMENTATION OF EXISTING EU FTAs

- (no important issues to report this month)

Ongoing EU FTA negotiations

Introduction

In December 2013, the EU and Thailand held their third round of negotiations in Brussels.

Below, we also discuss the key developments in EU FTA negotiations with Georgia and Moldova, Ukraine, Canada, Mercosur, Singapore and the EU OCTs.

EU-Thailand FTA

On 9-13 December 2013, the EU and Thailand held their third round of FTA negotiations in Brussels. During this negotiation round, 13 working groups met to discuss:

- trade in goods;
- rules of origin;
- IPRs;
- customs and trade facilitation;
- technical barriers to trade;
- public procurement;
- animal and plant health standards;
- sustainable development;
- services;
- investment;
- competition;

- dispute settlement; and
- cooperation.

Negotiators reportedly made progress in the area of goods, rules of origin, customs and trade facilitation, SPS, TBTs and NTBs, trade remedies, competition, services and investment, trade and sustainable development and dispute settlement.⁴¹ Sensitive issues include IPR protection and public access to medicines in Thailand.

Because of the current political crisis in Thailand and the dissolution of the Thai Parliament on 9 December, the Thai chief negotiator (President of Thailand Trade Representative Office Olam Chaiprawat) was unable to participate in this round. Due to his absence, the Thai negotiation team requested to postpone negotiations on specific tariff modalities and other sensitive areas to the next rounds, as these were considered to require high-level discussions. Discussions during the third round therefore focused on the exchange of and the preliminary discussion of draft texts. Market access offers for goods are expected to be exchanged during the fourth round of negotiations.

The Thai government is aiming to complete the negotiations by the end of 2014. However, it is expected that the political situation in Thailand could delay conclusion of negotiations. National elections are currently scheduled to take place on 2 February 2014. The fourth round of FTA negotiations is scheduled to take place in March 2014, but it is unlikely that a new Thai government will be appointed by that time.

Other pending EU FTA negotiations

i) Georgia and Moldova

On 12 December 2013, the EP adopted a resolution calling on the Commission to facilitate the implementation of the Association Agreements initialled with Georgia and Moldova.⁴²

On 19-20 December 2013, the European Council stated that the EU is willing to sign the Association Agreements with Georgia and Moldova 'as soon as possible and no later than the end of August 2014'.⁴³ These Association Agreements include Deep and Comprehensive Free Trade Areas, and were initialled at the Eastern Partnership summit that took place on 28-29 November 2013. Following initialling, Moldova has openly voiced its hope to become an EU Member State, but EU officials appeared reluctant to act on Moldova's aspirations.

ii) Ukraine

In the resolution mentioned above, the EP also confirmed its strong support for the signing of the EU-Ukraine Association Agreement (including a Deep and Comprehensive Free Trade

⁴² See <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0595&language=EN&ring=B7-2013-0559>.

⁴³ See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/140245.pdf.

Area), provided that the EU's requirements on human rights and selective justice are met. The EP called on the European Council to send a strong political signal that the EU remains ready to engage with Ukraine.

Also on 19-20 December 2013, the European Council noted that the EU remains ready to sign the Association Agreement that was previously concluded and initialled with Ukraine.⁴⁴ As noted in our previous report, while this Association Agreement should have been signed at the Eastern Partnership summit, the Ukrainian government unexpectedly announced on 21 November 2013 that it was stopping preparations for the signature of the agreement and that it would develop measures to get closer to Russia and other countries in the region.

iii) Canada

On 10 December 2013, the EP adopted a resolution calling for the swift signature of the EU-Canada Comprehensive Economic and Trade Agreement (CETA), on which political agreement was reached in September 2013.⁴⁵

iv) Mercosur

On 12 December 2013, it was reported that the EU and Mercosur had decided to extend the deadline for indicating the limits of their duty-free market access offers, initially set for 31 December 2013, to early 2014.⁴⁶

v) Singapore

Following concerns by an MEP about the inclusion of provisions of the rejected Anti-Counterfeiting Trade Agreement (ACTA) in the EU-Singapore FTA, the European Commission assured the EP that the IP chapter in the EU-Singapore FTA only contains provisions that are aligned with the current EU legal framework and that the IP chapter in the agreement differs substantially from ACTA.⁴⁷

vi) EU Overseas Countries and Territories

On 19 December 2013, the EU published its new so-called Overseas Association Decision,⁴⁸ replacing the previous Decision⁴⁹ that had applied since 2001 and expired on 31 December 2013. This decision establishes the areas of cooperation between the EU and the EU's Overseas Countries and Territories (OCTs) (which include, among others, Greenland, the Falkland Islands, and Bermuda). According to this Decision, the Partnership between the EU and these OCTs is based on: enhancing competitiveness, strengthening resilience and

⁴⁴ See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/140245.pdf.

⁴⁵ See <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0595&language=EN&ring=B7-2013-0559>.

⁴⁶ See <http://www.reuters.com/article/2013/12/12/trade-mercotur-eu-idUSL1N0JR13020131212>.

⁴⁷ See <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-012147&language=EN>.

⁴⁸ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:344:0001:0118:EN:PDF>.

⁴⁹ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2001D0822:20120930:EN:PDF>.

reducing vulnerability and promotion cooperation, and integration between the OCTs and other partners and neighbouring regions.

Implementation of existing EU FTAs

(No important issues to report this month)