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Transatlantic Trade and Investment Partnership (TTIP) Negotiations

Shayerah Ilias Akhtar

Specialist in International Trade and Finance

Vivian C. Jones

Specialist in International Trade and Finance

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Summary

In February 2013, U.S. and European Union (EU) leaders announced plans to negotiate a comprehensive and high-standard free trade agreement (FTA) between the United States and the EU, referred to as a proposed Transatlantic Trade and Investment Partnership (TTIP). Formal negotiations commenced in July 2013, and three rounds of negotiations have been held to date, and a fourth round is scheduled for March 2014. If concluded as envisioned, TTIP could be the largest FTA in the world in terms of economic size and serve a number of strategic U.S. policy goals.

Congress, which has the constitutional authority to “regulate commerce with foreign nations,” has a direct interest in the TTIP negotiations, both through influencing U.S. trade negotiating objectives and considering implementing legislation for any final TTIP agreement for it to enter into force. Congress also may consider legislation to renew Trade Promotion Authority (TPA), which expired in 2007, to further define U.S. trade negotiating objectives and provide expedited legislative procedures for the consideration of a bill to implement a final TTIP agreement. The TTIP negotiations may raise debates among Members of Congress on the role and direction of U.S. trade policy, as well as the costs and benefits of trade liberalization.

The United States and EU share a large, dynamic, and mutually beneficial trade and economic relationship. The two sides account for nearly half of world gross domestic product and 30% of global trade, and have investments of more than \$3.7 trillion in each other’s economies. Although both partners have relatively open markets, many observers assert that the relationship has not reached its full economic potential. Concerns about slow growth, job creation, and increased competition from emerging markets have prompted calls from stakeholders on both sides of the Atlantic for a renewed focus on addressing remaining barriers to U.S.-EU trade and investment.

TTIP aims to enhance market access through the elimination of barriers to trade and investment in goods, services, and agriculture. Core components of the negotiations include:

- eliminating tariffs between the United States and EU;
- enhancing regulatory cooperation and compatibility;
- opening services and government procurement markets; and
- strengthening and developing new rules in areas such as intellectual property rights (IPR), investment, trade facilitation, labor, the environment, and emerging “21st century” issues (e.g., digital trade, localization barriers to trade in the digital environment, and state-owned enterprises).

Regulatory issues are a primary focus of the negotiations and may be among the most difficult to address. Since the transatlantic foreign direct investment (FDI) relationship is significantly larger than the trade relationship, another key objective of the negotiations is facilitating transatlantic investment flows. The comparable economic size and advanced development of the two trading partners could make the TTIP negotiations distinct from most other FTAs each one has negotiated with other countries.

Prospects for TTIP are heightened because U.S. and EU policymakers and other stakeholders see potentially significant benefits flowing from a successful TTIP, such as:

- strengthening the overall U.S.-EU strategic relationship, including transatlantic economic relations;
- boosting transatlantic economic growth and jobs by reducing costly tariff and non-tariff barriers that decrease the competitiveness of the U.S. and EU economies;
- making progress on rules-based trade liberalization through regional and bilateral FTAs; and
- presenting common approaches for the development of rules in future multilateral trade negotiations in the World Trade Organization (WTO) or with third-country markets, including on new “21st century” trade barriers not adequately addressed in the WTO or previous FTAs.

At the same time, the TTIP negotiations could be challenged by U.S. and EU differences on certain trade and investment issues that have posed longstanding constraints in past efforts to deepen transatlantic economic ties. Potential controversial issues include differing views and/or approaches to regulations and standards; geographical indications (GIs); financial services; labor and the environment; and digital trade. The absence of TPA also may complicate the TTIP negotiations, because the EU could be reluctant to negotiate on sensitive issues without indication of serious congressional support for TTIP through a renewal of TPA. In addition, broader issues in the transatlantic relationship, such as differing approaches to data privacy and the diplomatic fallout from the unauthorized disclosure of classified information related to National Security Agency (NSA) surveillance activity since June 2013, may further complicate the negotiations.

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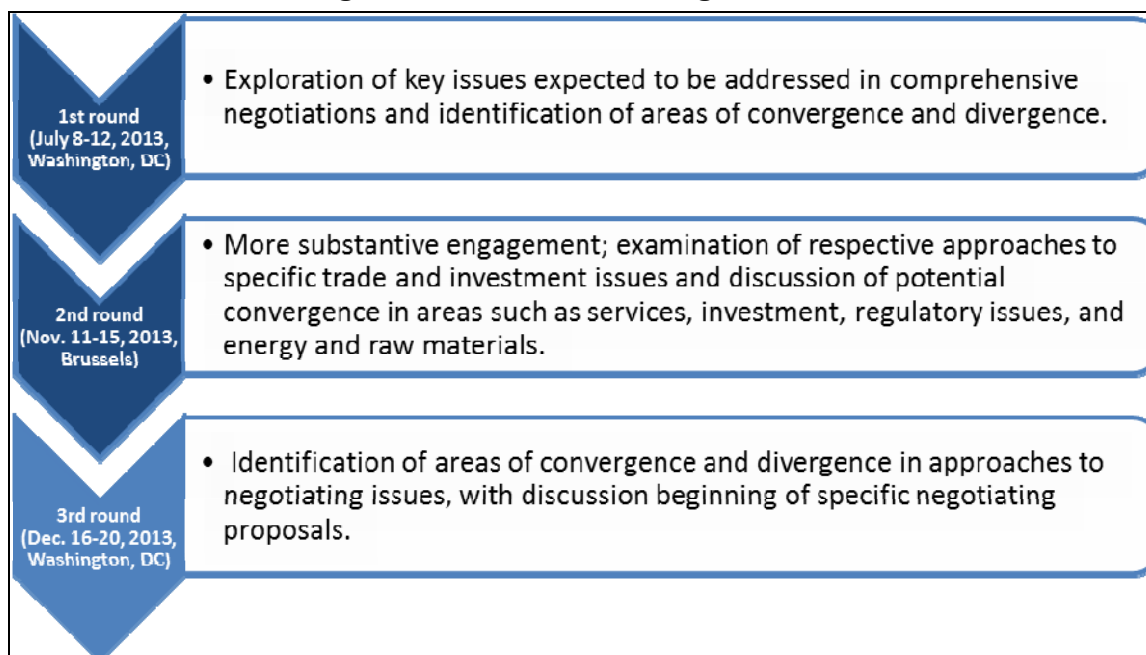
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Introduction

The Transatlantic Trade and Investment Partnership (TTIP) is a proposed “comprehensive and high-standard”¹ free trade agreement (FTA) being negotiated between the United States and the European Union (EU).² On March 20, 2013, the Obama Administration notified Congress of its intent to enter into TTIP negotiations.³ The United States and EU, led respectively by the Office of the U.S. Trade Representative (USTR) and European Commission, have held three rounds of negotiations to date (see **Figure 1**), and a fourth round is scheduled for March 10-14, 2014 in Brussels. Both sides aim to conclude the negotiations in two years from the start of the negotiations, although some trade policy experts question the timeframe’s likelihood due to the complexity of the negotiations.

Figure 1. TTIP Rounds of Negotiations



Source: CRS adaption of information from U.S. and EU official sources.

¹ According to the General Agreement on Tariffs and Trade (GATT) Article XXIV, a “high standard” FTA covers substantially all the trade between the parties, and eliminates duties and other restrictive regulations of commerce on this trade. If the agreement also covers services, the General Agreement on Trade in Services (GATS) describes “high standard” as providing substantial sectoral coverage and absence of substantially all discrimination in national treatment in the sectors covered.

² The European Union consists of 28 member states: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and United Kingdom.

³ In the absence of Trade Promotion Authority (TPA), the Obama Administration is negotiating TTIP based on the 2002 TPA (expired in 2007), which includes a 90-day consultation period with Congress before the Administration can begin negotiations (see Title XXI of P.L. 107-210, the Bipartisan Trade Promotion Authority Trade Act of 2002).

Congress has the constitutional authority to “regulate commerce with foreign nations.” Thus, it has an important legislative, oversight, and advisory role when trade agreements are being negotiated and implemented. Congress has a direct interest in TTIP, both through shaping U.S. trade negotiating objectives and considering implementing legislation for any final TTIP agreement for it to enter into force. In addition, the congressional role includes consulting with U.S. negotiators and conducting oversight of the negotiations.

This report provides: (1) context for the TTIP negotiations; (2) analysis of possible trade and investment issues in the negotiations; and (3) discussion of issues for Congress. The U.S.-EU negotiations on TTIP are not public. The information and analysis in this report on issues in the negotiations are based on publicly available information.

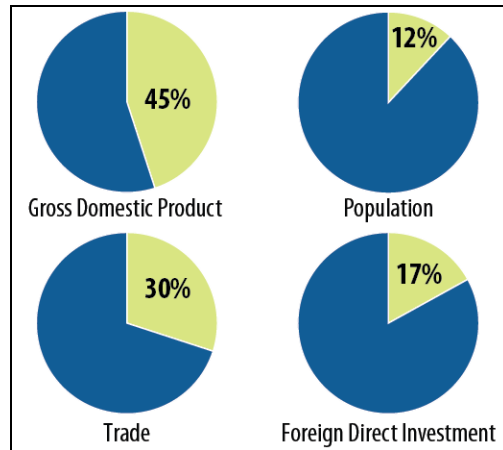
Background

The U.S.-EU trade and investment relationship, what many call the “transatlantic economy,” is a mutually beneficial and globally significant relationship. It is not only the largest in the world, but also arguably the most important because of its sheer size (see **Figure 2**). At the same time, certain challenges remain in the relationship, and many stakeholders assert that it has not reached its full economic potential.

Efforts to deepen the transatlantic relationship through trade and investment liberalization date back many years. For instance, in 1995, there was high-level interest on both sides in negotiating a “Transatlantic Free Trade Agreement” (TAFTA). Certain groups recommended the TAFTA as a complement to the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements, which led to the formation of the World Trade Organization (WTO), and also, in part, to prevent Europe and the United States from drifting apart because they no longer faced a mutual Cold War enemy.⁴ Others expressed concern that TAFTA negotiations could signal a lack of U.S. and EU confidence in the newly-formed WTO multilateral trading system. Critics also questioned the feasibility of addressing politically difficult transatlantic issues, such as agricultural subsidies and regulatory practices. Although the two sides did not take up TAFTA negotiations at that time, the proposal has continued to re-emerge periodically.

The recent Eurozone crisis and slow U.S. economic recovery following the global economic crisis that began in 2008, along with increased competition from emerging market economies,

Figure 2. Combined U.S.-EU Share of Global Economy



Source: U.S. Bureau of Economic Analysis; European Commission; Eurostat; International Monetary Fund; and United Nations Committee on Trade and Development.

Note: Yellow shares reflect U.S.-EU share of global economy; blue shares reflect rest of the world.

⁴ The WTO is the successor to the General Agreement on Tariffs and Trade (GATT), which was established in 1947.

have renewed the interest of policymakers, private stakeholders, and others in reducing remaining U.S.-EU barriers to trade and investment as a way to boost transatlantic economic growth and jobs, a view supported by various studies.⁵ The negotiation of an FTA is particularly compelling for some policymakers as a possible “low-cost” or “deficit-free” tool for supporting economic goals. Others may have specific concerns about the impact of a potential TTIP, for example, on certain sectors of the U.S. economy that are import-sensitive or on governments’ ability to protect health, environmental, and labor interests. While trade liberalization can lead to economy-wide gains, the costs can be highly concentrated on particular groups or economic sectors.⁶

High-Level Working Group on Jobs and Growth’s Final Report

The decision to launch the TTIP negotiations followed recommendations of the U.S.-EU High-Level Working Group (HLWG) on Jobs and Growth. Established by U.S. and EU leaders during the November 2011 U.S.-EU Summit Meeting under the auspices of the Transatlantic Economic Council (TEC),⁷ the HLWG was tasked with identifying ways to increase transatlantic trade and investment to support jobs, economic growth, and international competitiveness. On February 11, 2013, the HLWG issued a final report to the U.S. and EU leadership recommending that the United States and EU launch negotiations on a comprehensive bilateral trade and investment agreement, referred to by both sides now as TTIP. The HLWG concluded that “a comprehensive agreement that addresses a broad range of bilateral trade and investment issues, including regulatory issues, and contributes to the development of global rules would provide the most significant mutual benefit of the various options...considered.”⁸ It recommended that the negotiations aim to achieve “ambitious” outcomes in three broad areas:

- elimination or reduction of market access barriers, including barriers related to trade in goods, services, and investment, including tariff and non-tariff barriers to trade;
- enhanced compatibility of regulations and standards; and
- cooperation for developing rules on global issues of common concern in areas such as intellectual property rights, the environment and labor, as well as in other globally relevant trade-related areas (e.g., state-owned enterprises, localization barriers to trade, trade facilitation, raw materials and energy, small- and medium-sized enterprises, and transparency).

The HLWG’s final report did not specifically mention agriculture as a negotiating topic, but there is a general expectation that agriculture will be discussed in the TTIP negotiations. On the basis

⁵ Organisation for Economic Co-operation and Development (OECD), Working Paper No. 432, *On the Benefits of Liberalizing Product Markets and Reducing Barriers to International Trade and Investment: The Case of the United States and European Union*, May 26, 2005.

⁶ See CRS Report RL33944, *Trade Primer: Qs and As on Trade Concepts, Performance, and Policy*, coordinated by Wayne M. Morrison.

⁷ The Transatlantic Economic Council (TEC), established at the EU-U.S. Summit meeting on April 30, 2007, is a primary vehicle for current transatlantic government-to-government economic cooperation. The TEC was directed to advance bilateral regulatory cooperation and reduction of non-tariff barriers through a focus on differences in regulatory approaches, as well as specific barriers and disputes. Progress under the TEC has been uneven, in part, because of the complexities of the transatlantic regulatory issues of interest.

⁸ Office of the U.S. Trade Representative (USTR), “Final Report of the U.S.-EU High Level Working Group on Jobs and Growth,” February 11, 2013, <http://www.ustr.gov/> (hereinafter, “HLWG Final Report”).

of the HWLG's recommendations, U.S. and EU leaders undertook the internal procedures necessary to launch the TTIP negotiations (see **text box**).⁹

Key Developments in the Launch of the TTIP Negotiations

U.S. Domestic Procedures

The Office of the U.S. Trade Representative (USTR) leads and coordinates the negotiation of U.S. trade agreements. Congress retains the constitutional authority to "regulate commerce with foreign nations," and congressional involvement includes consultations with U.S. negotiators, oversight of the negotiations, and consideration of implementing legislation for any final agreement.

- On March 20, 2013, the USTR notified Congress in writing of the President's intent to enter into the TTIP negotiations, thus triggering a 90-day consultation period with Congress under the procedures of the expired 2002 Trade Promotion Authority (TPA).
- Several congressional committees have held oversight hearings related to the TTIP and U.S.-EU relations, including the House Ways and Means Subcommittee on Trade (May 16, 2013); Senate Foreign Relations Committee (May 23, 2013); House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade (July 24, 2013); and Senate Finance Committee (October 30, 2013).

EU Domestic Procedures

The European Commission (the "Commission") has competency to negotiate international trade agreements on behalf of the EU. It negotiates these on the basis of "negotiating directives" (sometimes referred to as the "negotiating mandate"), which set overall objectives for future agreements. The directives are submitted to the Council of the EU (also known as the "Council of Ministers"), which represents the member states, for its approval, and shared with the European Parliament (EP). Although the EP does not have a formal role in approving the negotiating mandate, it can convey its input in a number of ways, including through adopting formal resolutions. Provided the Council approves the negotiating directives, the Commission then launches formal negotiations. The EP (by a simple majority) and the Council must both approve any final agreement. The EP's role in EU trade policymaking and the conclusion of international agreements has increased since the entry into force of the Lisbon Treaty in December 2009. (For additional information, see CRS Report RS21372, *The European Union: Questions and Answers*, by Kristin Archick.)

- On March 12, 2013, the European Commission agreed to a draft mandate for the TTIP negotiations, which was transmitted to the Council of Ministers for approval.
- Although not formally required to do so, on May 23, 2013, the EP passed a resolution supporting a "deep and comprehensive" and "ambitious and binding" TTIP agreement, while noting certain sensitivities.
- On June 14, 2013, the European Council approved a mandate for the Commission to negotiate TTIP. The mandate anticipates an agreement to consist of commitments in market access, regulatory issues and non-tariff barriers, and rules.

Legislative and Stakeholder Consultations

Both sides are consulting with their respective legislative bodies and stakeholders, as well as conducting studies of TTIP's possible impacts. For example, the USTR requested comments from the public and held TTIP hearings in May 2013. In addition, at the USTR's request, the U.S. International Trade Commission (ITC) investigated the probable economic effects of TTIP, and submitted a confidential report on its findings to USTR on September 26, 2013. Likewise, the European Commission released an impact assessment on the future of the transatlantic trade relationship, and commissioned a publicly available report on reducing U.S.-EU trade and investment barriers.

Sources: Official U.S. and EU government documents, such as notifications from then-Ambassador Demetrios Marantis, Acting United States Trade Representative, to The Honorable John Boehner, Speaker of the United States House of Representatives, March 20, 2013. For more information on the ITC study, see ITC, "Probable Economic Effect of Duty-Free Imports Under a U.S.-EU Transatlantic Trade and Investment Partnership Agreement will be Focus of New USITC Investigations," press release, April 18, 2013. To access the European Commission studies, see TTIP "Resources," <http://ec.europa.eu/trade/policy/in-focus/ttip/resources/>.

⁹ European Commission, "Statement from United States President Barack Obama, European Council President Herman Van Rompuy and European Commission President José Manuel Barroso," press release, February 13, 2013.

Strategic Implications of the Proposed TTIP

U.S. Trade Policy

The TTIP negotiations serve a number of U.S. trade policy goals as part of broader U.S. trade policy objectives to open markets and advance rules-based trade and investment liberalization through the negotiation of bilateral and regional FTAs and multilateral trade agreements in the World Trade Organization (WTO). To date, the United States has entered into 14 FTAs with 20 countries, most recently with Colombia, Panama, Peru, and South Korea. In addition to the TTIP negotiations, the United States is currently negotiating the Trans-Pacific Partnership (TPP) trade agreement, a regional FTA with 11 other countries in the Asia-Pacific region.¹⁰ Like TTIP, the Administration aims to negotiate TPP as a comprehensive and high-standard FTA. Separately, the United States is engaged in other trade liberalization negotiations, including on a plurilateral Trade in International Services Agreement (TISA).¹¹ The United States also has been involved in efforts to reach consensus on issues in the WTO Doha Round of multilateral trade negotiations,¹² including the “Bali agreement” concluded in December 2013 on trade facilitation, development, and agriculture.¹³

Beyond serving as an opportunity for greater liberalization of the U.S.-EU market, the TTIP also could strengthen U.S.-EU cooperation on trade policy issues of mutual interest regarding third countries, such as emerging economies. Such cooperation could lead to new globally-relevant disciplines on trade policy issues either not currently, or fully, addressed in existing trade agreements, such as regulatory compatibility, state-owned enterprises, and discriminatory localization barriers to trade in the digital environment. In addition, given the size of the transatlantic economic relationship, agreement between the United States and EU on key trade and investment issues could help to bridge the impasse in remaining issues in WTO multilateral trade negotiations. The United States and EU historically have led in setting international rules for global trade and investment, and the two trading partners can have significant influence in shaping the rules of the global trading system when they work together. Others contend that regional and bilateral FTA negotiations, like TTIP and TPP, could detract from the focus on making progress at the multilateral level.

Transatlantic Relationship

TTIP represents the first time the two largest advanced economies in the world are negotiating a FTA with each other. It is significant for the U.S.-EU relationship in a number of ways. First, from an economic perspective, TTIP is an opportunity for the United States and EU to strengthen

¹⁰ Other Trans-Pacific Partnership (TPP) countries are Australia, Brunei, Chile, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. See CRS Report R42344, *Trans-Pacific Partnership (TPP) Countries: Comparative Trade and Economic Analysis*, by Brock R. Williams; and CRS Report R42694, *The Trans-Pacific Partnership (TPP) Negotiations and Issues for Congress*, coordinated by Ian F. Fergusson.

¹¹ CRS Report R43291, *U.S. Foreign Trade in Services: Trends and U.S. Policy Challenges*, by William H. Cooper.

¹² The Doha Round has been characterized by persistent differences among the United States, the EU, and developing countries on major issues, such as agriculture, industrial tariff and non-tariff barriers, and services. See CRS Report RL32060, *World Trade Organization Negotiations: The Doha Development Agenda*, by Ian F. Fergusson.

¹³ The WTO “Bali Agreement” was approved at the 9th WTO Ministerial Conference in Bali in early December, 2013. See WTO, “Days 3, 4, and 5: Round-the-Clock Consultations Produce ‘Bali Package’,” press release, December 7, 2013.

their already extensive trade and economic relationship. TTIP is particularly significant as an opportunity for both sides to gain strategic market access to each other's economies. Although they have longstanding trade and economic ties, the United States and EU also are competitors in the trade arena. They increasingly run the risk of being disadvantaged in each other's market in the absence of their own bilateral FTA and with the growing number of FTAs that each side has with other countries. For instance, shortly after Japan announced plans to join the TPP negotiations, the EU and Japan stated their intent to negotiate a bilateral FTA. The EU-Canada Comprehensive Economic and Trade Agreement (CETA), reached in October 2013, makes the absence of a U.S.-EU FTA all the more notable, as now both the United States and EU separately have FTAs with Canada and Mexico.¹⁴

Second, the extensive and mature nature of the U.S.-EU economic relationship distinguishes the dynamics of the TTIP negotiations. Beyond addressing "traditional" trade issues, TTIP serves as a strategic opportunity for the United States and EU to develop new or expanded globally-relevant commitments in emerging and complex areas (see earlier discussion). In certain areas, notably regulatory compatibility, longstanding U.S.-EU differences in approaches could constrain such efforts. Should the two sides reach consensus, they could bring to bear considerable influence in the global economy in these areas. In terms of *how* the United States and EU negotiate, the comparable economic size of the two trading partners means that neither side will be able to dominate the negotiations. To reach consensus, they may need to be more flexible than they have been in other FTA negotiations, which generally have been with countries of lower levels of development and economic clout.¹⁵

Third, the TTIP could strengthen and deepen the U.S.-EU political relationship. Some questions have emerged about the U.S. commitment to the transatlantic relationship in light of the Obama Administration's "rebalancing" of U.S. resources toward the Asia-Pacific region.¹⁶ Some observers have raised concerns that the "rebalancing," combined with U.S. participation in the TPP negotiations, signifies a "pivot away" from Europe and key institutions, such as the North Atlantic Treaty Organization (NATO) and EU. Administration officials have rejected such claims, asserting that a U.S. focus on the Asia-Pacific is not at the expense of the transatlantic relationship.¹⁷ On one hand, a successful TTIP could reinforce the United States' commitment to Europe in general and especially to the EU's role as a critical U.S. partner in the international community. On the other hand, any outcome that falls short of a comprehensive and high-standard FTA could raise questions about the strength of the transatlantic relationship.

¹⁴ The United States has FTAs with Canada and Mexico through the North American Free Trade Agreement (NAFTA), which entered into force in January 1994. NAFTA superseded the U.S.-Canada FTA, which entered into force in January 1989. The EU-Mexico FTA entered into force in October 2000 for the part related to trade in goods and in February 2001 for the part related to trade in services. See CRS Report R42965, *NAFTA at 20: Overview and Trade Effects*, by M. Angeles Villarreal and Ian F. Fergusson; and European Commission, "Declaration by the President of the European Commission and the Prime Minister of Canada: A new era in EU-Canada relations," press release, October 18, 2013.

¹⁵ Maya Rostowska, *The EU-U.S. Free Trade Agreement: Lessons from the Single European Act*, The Polish Institute of International Affairs, Bulletin No. 34 (487), April 3, 2013, http://www.pism.pl/files/?id_plik=13307.

¹⁶ CRS Report R42448, *Pivot to the Pacific? The Obama Administration's "Rebalancing" Toward Asia*, coordinated by Mark E. Manyin.

¹⁷ See Brookings Institution, "The Transatlantic Partnership: A Statesman's Forum with Secretary of State Hillary Clinton," November 29, 2012, <http://www.brookings.edu/>; and Department of State, "Remarks at Youth Connect: Berlin" by Secretary of State Kerry, press release, February 26, 2013, <http://www.state.gov/>.

U.S. Free Trade Agreements and TTIP¹⁸

The potential economic benefits of TTIP are expected to exceed the gains from prior U.S. FTAs, given the size and the advanced nature of the U.S. and EU economies. In 2012, the United States and EU produced about 45% of the world's gross domestic product (GDP) and collectively accounted for about 12% of the total global population. The economic area covered under the proposed TTIP, in terms of GDP and population, would far exceed that covered by existing U.S. FTAs, as well as the proposed TPP (see **Table 1**).

Table 1. Largest U.S. Free Trade Agreements (FTAs): Economic Area, 2012

FTAs	GDP (billions of current U.S. dollars)	% World GDP	Population (millions)	% World Population
U.S.-South Korea FTA	\$16,841	23%	364	5%
North American Free Trade Agreement	\$18,681	26%	464	7%
Trans-Pacific Partnership*	\$27,558	36%	792	11%
Transatlantic Trade and Investment Partnership*	\$32,269	45%	817	12%

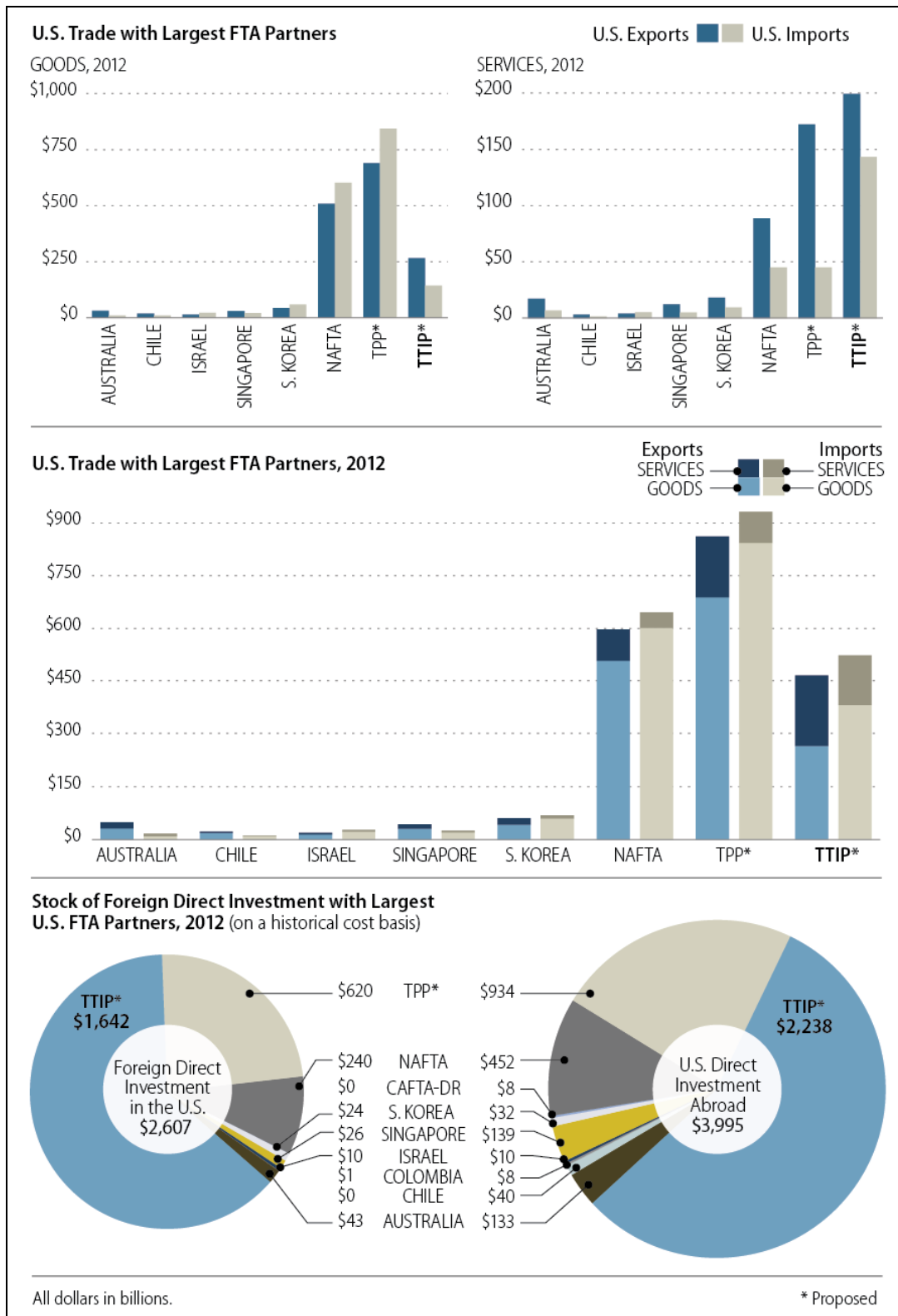
Sources: CRS analysis of data from International Monetary Fund, *World Economic Outlook*, April 2013; and European Commission, Eurostat.

Notes: *Proposed FTAs.

In terms of goods trade, TTIP would be the third largest U.S. FTA, after U.S. trade with prospective TPP partners and U.S. trade with NAFTA partners (see **Figure 3**). In terms of services trade, TTIP would be the largest U.S. FTA, surpassing U.S. trade with prospective TPP partners. When taking *both* goods and services into account, TTIP would be the third largest FTA after the proposed TPP and NAFTA. Although the transatlantic services relationship is significant, the larger volume of U.S. trade in goods with TPP countries outweighs U.S.-EU trade in services. In contrast, it is with respect to investment that TTIP would far exceed existing U.S. FTAs and the proposed TPP. U.S.-EU direct investment is nearly six times that between the United States and the NAFTA countries, and about 2.5 times that between the United States and the TPP countries.

¹⁸ Unless otherwise specified, TTIP data in this section do not include Croatia, which joined the EU as its 28th member state on July 1, 2013.

Figure 3. U.S. Trade and Investment with Free Trade Agreement (FTA) Partners

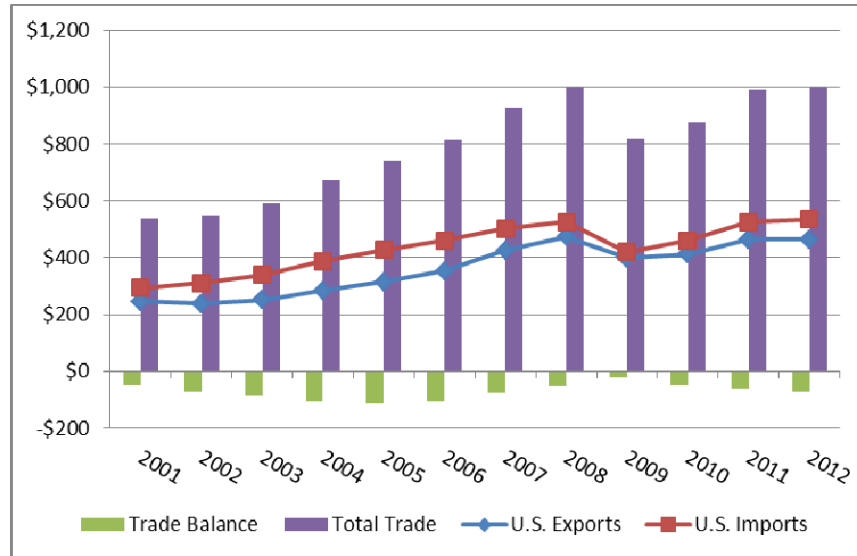


Source: CRS analysis of data from U.S. International Trade Commission and U.S. Bureau of Economic Analysis.

U.S.-EU Trade and Investment Relationship¹⁹

Despite the growing role of China and other emerging markets in the global economy, as well as current U.S. and EU economic challenges, the United States and the EU (as a bloc) remain each other's largest trade and investment partners. Total U.S.-EU trade in goods and services amounted to \$998 billion in 2012, leading to an overall U.S. trade deficit of \$71 billion with the EU (see **Figure 4**). U.S.-EU trade is heavily weighted toward trade in advanced products. The flows of merchandise trade, services trade, and income across the Atlantic, totaling \$1.5 trillion in 2012, reflect an active, integrated, and dynamic economic relationship. Transatlantic merchandise trade accounts for nearly half of all world merchandise trade, and transatlantic trade flows in goods and services combined account for over 30% of total world trade.²⁰

Figure 4. U.S. Trade in Goods and Services with the European Union, 2001-2012
(Billions of U.S. dollars)



Source: CRS analysis of data from U.S. Department of Commerce, Bureau of Economic Analysis.

Notes: Goods data are on a balance of payments basis, which includes adjustments for valuation, coverage, and timing, and excludes military transactions. Data for 2012 are preliminary, and subject to revision. Total trade is the sum of the value of exports and imports. The trade balance is the difference between the value of exports and imports.

With globalization, new patterns of production, based on complex cross-border value chains, are a major element of U.S.-EU economic ties. Intra-industry trade dominates the transatlantic relationship, i.e., trade in similar products exported across borders. Intra-firm trade (“related-party trade”), which is cross-border trade between multinational companies and their affiliates, is also prevalent. Intra-firm trade occurs, for example, when Volkswagen of Germany sends parts to Volkswagen of Tennessee and vice versa. By some estimates, one-third of transatlantic trade is

¹⁹ See CRS Report RL30608, *EU-U.S. Economic Ties: Framework, Scope, and Magnitude*, by William H. Cooper. Certain language in this section draws from prior work by Raymond J. Ahearn, Specialist in International Trade and Finance at CRS.

²⁰ CRS analysis of U.S. Department of Commerce, Bureau of Economic Analysis (BEA), U.S. International Transactions data.

comprised of intra-firm trade.²¹ It is estimated that, in 2010, intra-firm trade accounted for 60% of all imports to the United States from the EU and 30% of U.S. exports to the EU.²²

Although transatlantic trade flows are sizeable, the importance of the U.S.-EU relationship is even greater from the foreign direct investment (FDI) perspective. The United States and EU are each other's largest investors, and FDI often serves as a major driver of transatlantic trade flows. In 2012, EU companies accounted for \$1.6 trillion (or 62%) of total FDI in the United States, while U.S. companies accounted for \$2.2 trillion (or 50%) of total foreign investment in Europe. Thus, U.S. and EU investors collectively owned about \$3.8 trillion in stock of direct investment in each other's economy in 2012, nearly one-fifth of the stock of global FDI in that year.²³ These investments span manufacturing, banking, financial services, and other sectors.

Congressional and Stakeholder Views

Congress has shown a strong interest in the TTIP negotiations, including holding oversight hearings and weighing in on negotiating positions through letters to the Administration. Some Members have expressed their support for the U.S. negotiation of a comprehensive and high-standard FTA with the EU, highlighting its potential economic benefits. While broadly supportive, some also underscore the importance and difficulties of reaching agreement on longstanding areas of difference in transatlantic trade and investment relations (see discussion in subsequent sections).²⁴ Other Members remain skeptical of trade negotiations, and express concern about the potential adverse effect of trade liberalization on certain stakeholders, including those in "import-sensitive" sectors of the U.S. economy.

Thus far, stakeholder support for TTIP appears to be fairly high on both sides of the Atlantic. Industry support is reflected, for example, in joint submissions by U.S. and EU business coalitions in response to government requests for stakeholder input on a possible U.S.-EU FTA.²⁵ Public opinion polls also express backing for deeper U.S. and EU trade and investment ties.²⁶ In addition, given that both economies are highly developed, the labor and environmental concerns that generally have emerged in past U.S. FTA negotiations do not appear to be as pronounced.²⁷ Still, some groups have expressed concern with the treatment of particular issues in the TTIP negotiations. For instance, some civil society groups from both sides of the Atlantic oppose

²¹ European Commission, "Trade: United States," <http://ec.europa.eu/>.

²² Daniel S. Hamilton and Joseph P. Quinlan, *The Transatlantic Economic 2012*, Center for Transatlantic Relations, Volume 1: Headline Trends, 2012, http://transatlantic.sais-jhu.edu/publications/books/Transatlantic_Economy_2012/120321_TAE_2012_vol1_final.pdf.

²³ CRS analysis based on data from the U.S. government and United Nations Conference on Trade and Development (UNCTAD).

²⁴ For example, see Senate Committee on Finance, "Baucus, Hatch Outline Priorities for Potential U.S.-EU Trade Agreement," press release, February 12, 2013; and House Committee on Ways and Means, "Camp, Nunes Statements on U.S. - EU Trade and Investment Negotiations," press release, February 13, 2013.

²⁵ For example, see joint industry submissions by the Business Roundtable, Transatlantic Business Dialogue, and European Round Table of Industrialists, in response to USTR request for comments on a possible EU-U.S. FTA. See also U.S. Chamber of Commerce, "U.S. Chamber, BUSINESSEUROPE Welcome U.S., EU Nod for Trade Agreement," press release, February 13, 2013, <http://www.uschamber.com>.

²⁶ Bruce Stokes, *The Public Supports a Transatlantic Trade Pact – For Now*, Pew Research, Global Attitudes Project, February 19, 2013, <http://www.pewglobal.org/2013/02/19/the-public-supports-a-transatlantic-trade-pact-for-now-2/>.

²⁷ Nicholas Kulish and Jackie Calmes, "Obama Bid for Europe Trade Pact Stirs Hope on Both Sides," *The New York Times*, February 13, 2013.

including intellectual property rights provisions in TTIP out of concern that they may limit free speech and weaken regulatory standards.²⁸ Some also have raised broad concerns about regulatory issues and their possible impact on consumer interests, worker rights, and the environment.²⁹

Negotiating Issues

U.S. trade negotiations seek to reduce and eliminate tariff and non-tariff barriers to trade and investment in goods, services, and agriculture. Issues discussed in the TTIP negotiations (see **text box**) to reduce these barriers can be grouped into three broad categories: (1) market access for goods, services, and agriculture, which involves seeking new competitive export opportunities through the reduction and elimination of tariff and non-tariff barriers and often forms the foundation of FTA negotiations; (2) regulatory non-tariff barriers, which relate to the standards, testing, and certification procedures that both sides use to govern their goods, services, and agricultural markets; and (3) trade-related rules and disciplines in areas such as foreign direct investment, intellectual property rights, trade facilitation, labor and the environment, state-owned enterprises, and “forced” localization barriers to trade (particularly in the digital environment).

TTIP Negotiations in a Nutshell

Market access: Some “traditional” market access issues may play a lesser role in the TTIP context than they have in other trade negotiations. U.S. and EU tariffs are already quite low, though given the magnitude of the transatlantic relations, further elimination and reduction of tariffs could yield significant economic gains. Commitments in other areas, such as further opening of government procurement markets, could also lead to greater market access.

Regulations: Divergent regulations that may serve as non-tariff barriers and regulatory issues are widely regarded by stakeholders as a core component of the TTIP negotiations. Economic gains from greater regulatory cooperation and compatibility could be significant. At the same time, there is skepticism about whether a comprehensive transatlantic agreement on regulatory issues can be reached.

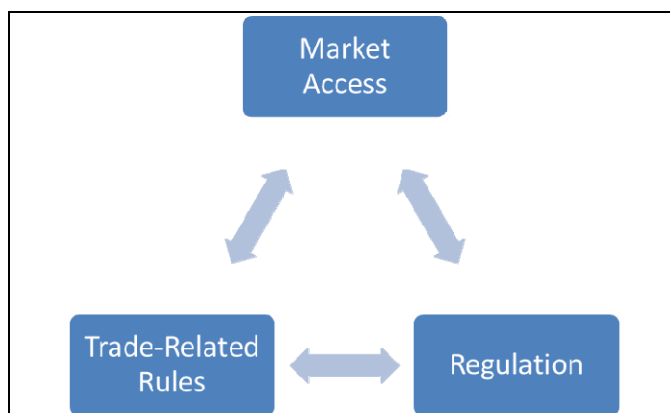
Rules: TTIP negotiations in trade-related rules, such as intellectual property rights (IPR), could build on the rules contained in the WTO agreements. Many of these areas, while not addressed in the WTO, have become a standard part of U.S. and EU FTAs with other countries; these include investment, IPR, labor, and the environment. The negotiations also could break new ground on other issues that are modestly treated, or not at all, in prior U.S. FTAs and multilateral agreements.

In their approaches to these issues, the United States and EU generally are regarded as having more commonalities than differences. For instance, both sides have strong commitments to protecting consumer health and safety through regulations and maintaining strong overall protections for investment, IPR, labor, and the environment. Nevertheless, certain areas—such as regulations related to genetically modified organisms or rules for cultural exceptions for the audiovisual sector and geographical indications—could be contested areas. To the extent that TTIP is used to advance multilateral trade liberalization, debates about the impact of certain regulations, standards, and rules on third countries may be heightened.

The categorization of these issues can be complex, as the issues often overlap and addressing one issue can help to address another (see **Figure 5**). For example, regulatory cooperation to eliminate non-tariff barriers can enhance market access for goods, services, and agriculture.

²⁸ Public Citizen, *IP Out of TAFTA: Civil Society Declaration*, <http://www.citizen.org/>.

²⁹ Letter signed by 63 groups regarding a Transatlantic Free Trade Agreement to Presidents Barack Obama, Juan Manuel Barroso, and Herman Van Rompuy, July 8, 2013.

Figure 5. TTIP Negotiations: Key Areas

Source: CRS adaption.

Tariffs for Goods and Agriculture

As with past U.S. FTAs, TTIP aims to eliminate duties on bilateral trade in goods, with a goal of substantial elimination of tariffs upon entry into force of the proposed agreement and a phase out of all but the most sensitive tariffs in a short time frame.³⁰ However, in the TTIP context, tariff issues may play a lesser role in the negotiations, as average U.S. and EU tariffs are already quite low. Given the magnitude of the transatlantic economic relationship, however, further tariff elimination or reduction could yield to significant economic gains to both sides of the Atlantic (see **text box**). While most observers generally view tariffs as a “low-hanging fruit” in the TTIP, tariff elimination may be controversial for certain products of import-sensitive industries.

At present, EU and U.S. imports of each other’s products are assessed at the most-favored-nation or normal trade relations (NTR) rate.³¹ According to WTO statistics, the U.S. simple average applied tariff rate³² in 2012 was 3.5% *ad valorem*,³³ in contrast to the EU rate of 5.5%. Although U.S. and applied tariff rates are relatively modest, tariffs are higher (known as “tariff peaks”) in certain product import-sensitive categories such as dairy products, sugar and confectionery, beverages and tobacco, fish and fish products, and textiles and apparel (see the **Appendix**).³⁴ EU tariff peaks are similar to U.S. ones, except that EU tariffs on U.S. agricultural imports (simple average tariff of 13.7%; trade-weighted average of 8.6%) overall are much higher than U.S. tariffs on EU imports (4.7% simple average tariff rate; trade-weighted average of 2.1%).³⁵ By one estimate, U.S. firms pay about \$6.4 billion tariffs to the EU.³⁶

³⁰ HLWG Final Report.

³¹ Normal Trade Relations (NTR) was enacted in U.S. law on July 22, 1998 (P.L. 105-206) to replace the term “most-favored nation” (MFN), then in use to denote the fundamental trade principle of nondiscriminatory treatment. MFN is still used in international agreements.

³² The applied tariff rate is the rate that is actually charged on imports. Applied tariffs may be equal to or lower than the bound rate, which is the WTO bound commitment.

³³ Tariff rate charged as a percentage of the value of the product.

³⁴ WTO Tariff Download Facility, <http://tariffdata.wto.org/Default.aspx?culture=en-US>.

³⁵ *Ibid.*

³⁶ Ken Monahan, *U.S. Exports Would Avoid \$6 Billion a Year in Tariffs in a U.S.-EU Trade Deal*, Bloomberg Government, Bloomberg Government Study, November 2, 2012.

Tariffs also play a significant role in intra-company trade for U.S. and EU firms. According to an estimate, in 2011, U.S. companies faced about \$2.4 billion in duties on intra-firm imports from the EU. U.S.-based sectors that paid the most in terms of intra-firm import duties included automobiles, machinery, and chemicals.³⁷ Given that much of U.S.-EU trade is conducted by multinational firms with affiliates on each side of the Atlantic, these are sometimes called “nuisance tariffs,” because they are viewed as adding unnecessary costs to intra-firm trade.

TTIP’s Potential Economic Impact

Various studies have estimated the potential impact of the elimination of tariffs in a transatlantic FTA agreement. For example:

- One study suggested that the elimination of tariffs would benefit the United States slightly more than the EU because the tariffs that U.S. goods are assessed in the EU market are somewhat higher than those assessed on EU goods in the U.S. market. According to the study, the increased welfare gains from a tariff-only agreement could be as much as \$3 billion for the EU, and \$4.5 billion for the United States. Given that the U.S. GDP in 2012 was \$15.6 trillion and the EU’s was \$16.6 trillion for the same time period, these gains would be relatively small. However, the study also estimated that the “dynamic” welfare gains from eliminating tariffs would be much more substantial. These dynamic gains purported to take into account the administrative costs of tariffs that accrue from intra-firm trade, increased productivity, and efficiency due to competition between firms, among other factors.
- Another study concluded that eliminating tariffs would only lead to relatively small increases in GDP for both the United States and EU. This study forecast that the EU would fare slightly better, with a 0.10% increase, while U.S. GDP would increase by 0.01% to 0.04%. The study estimated that EU exports to the United States would increase by 1.18%, and imports by 1.00%, while U.S. exports would increase by 1.91% and imports by 1.13%. Although these estimated increases to overall GDP levels may be relatively small, tariff elimination could have a significant impact for specific firms and economic sectors.
- On March 25, 2013, the USTR requested that the U.S. International Trade Commission (ITC) conduct an investigation on the potential economic effects of providing duty-free treatment for U.S. imports from the EU, pursuant to Section 131 of the Trade Act of 1974 (19 U.S.C. 2151) and Section 2104(b)(2) of the Trade Act of 2002 (19 U.S.C. 3804(b)(2)). Such USITC investigations assist the President in determining whether to enter into trade agreements or how to develop trade policy and priorities. The ITC submitted a confidential report on its findings to USTR on September 26, 2013.

In considering such studies, it is important to note that estimating economic effects of trade agreements can be highly complex and challenging. Economic analyses can be constrained by a lack of data and other theoretical and practical issues associated with econometric analyses. In addition, estimates of economic effects of FTAs are often imprecise and highly sensitive to the assumptions that are used. Moreover, a range of factors beyond trade policy can affect U.S. economic performance, including global economic growth and exchange rates. For more information, see CRS Report R41660, *U.S.-South Korea Free Trade Agreement and Potential Employment Effects: Analysis of Studies*, by Mary Jane Bolle and James K. Jackson.

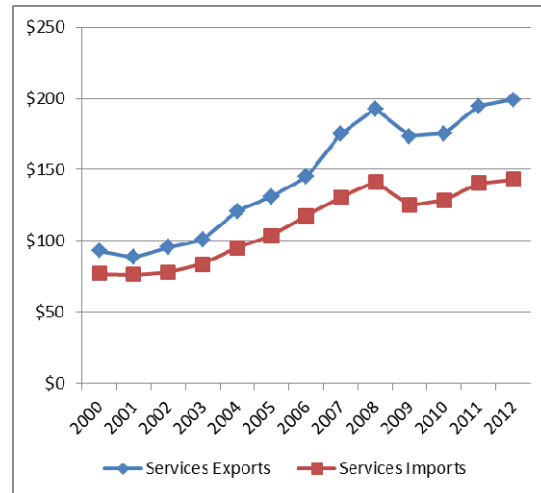
Sources: Fredrik Erixon and Matthias Bauer, *A Transatlantic Zero Agreement: Estimating the Gains from Transatlantic Free Trade in Goods*, European Center for International Political Economy (ECIPE), ECIPE Occasional Paper No. 4/2010, 2010. Joseph Francois, Miriam Manchin, and Hanna Norberg, et al., *Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment*, Centre for Economic Policy Research, Final Project Report, March 2013, p. 33. Both of these studies used a compatible general equilibrium (CGE) model using the Global Trade Analysis Project (GTAP) database. USITC, “Probably Economic Effect of Duty-Free Imports Under a U.S.-EU Transatlantic Trade and Investment Partnership Agreement Will Be Focus of New USITC Investigations,” press release, April 18, 2013.

³⁷ Ken Monahan, *U.S.-EU Investment Drives \$4.6 Trillion Economic Relationship*, Bloomberg Government, Bloomberg Government Study, May 21, 2013.

Services

The services sector includes economic activities such as accounting, banking, insurance, retail, education, legal, transportation, e-commerce, express delivery, tourism, and telecommunications. Services represent a large and ever-widening range of economic activities and employment, and constitute nearly 70% of U.S. GDP. The products of services providers are generally intangible in nature, and deliver some form of human value-added endeavor, such as labor, training, research and development, or design support.³⁸ The EU is an important services market for the United States, representing about one-third of annual U.S. services exports worldwide in 2012. The United States also holds a services trade surplus with the EU, with exports of \$199 billion and imports of \$143 billion in 2012 (see **Figure 6**).³⁹ The United Kingdom (UK) is both the largest destination for U.S. exports and the largest EU source of U.S. services imports. The United States exported \$58 billion in services to the UK in 2012, followed by Ireland (\$28 billion); Germany (\$27 billion); and France (\$19 billion). Likewise, in 2012, U.S. imports of services from the UK totaled \$46 billion, followed by Germany (\$27 billion); France (\$15 billion); and Ireland (\$12 billion).⁴⁰

Figure 6. U.S. Trade in Services with the EU, 2000-2012
(Billions of U.S. dollars)



Source: U.S. Bureau of Economic Analysis.

Firms that produce services are often discussed in contrast with manufacturers that produce tangible goods. However, a recent study linking 2008 data on international services trade with statistics on the operations of multinational companies (MNCs) shows that firms typically associated with the production or sales of goods are also among the largest importers and exporters of services.⁴¹ For example, manufacturing firms might export intellectual property that they hold in exchange for royalties and licensing fees and import or export design support, research and development, or product testing.⁴² This is especially important in terms of U.S.-EU services trade given the number of firms that operate on both sides of the Atlantic.⁴³

³⁸ CRS Report R43291, *U.S. Foreign Trade in Services: Trends and U.S. Policy Challenges*, by William H. Cooper.

³⁹ OECD Dataset, *Trade in Services – EBOPS 2002*.

⁴⁰ BEA, *Table 2. Private Services Trade by Area and Country, 1992-2012*, <http://www.bea.gov>.

⁴¹ Kevin Barefoot and Jennifer Koncz-Bruner, “A Profile of U.S. Exporters and Importers of Services: Evidence from New Linked Data on International Trade in Services and Operations of Multinational Companies,” *Survey of Current Business*, June 2012, p. 66.

⁴² *Ibid.*, p. 68.

⁴³ Daniel S. Hamilton and Joseph P. Quinlan, *The Transatlantic Economy 2012: Annual Survey of Jobs, Trade, and Investment*, Center for Transatlantic Relations, Paul H. Nitze School of Advanced International Studies, John Hopkins University, Volume I: Headline Trends, 2012, p. 14ff.

The United States and EU are both signatories to the WTO's General Agreement on Trade in Services (GATS), a multilateral agreement setting rules removing trade barriers to international trade in services. The GATS consists of: (1) a main text containing general obligations and disciplines; (2) annexes containing rules for specific sectors; and (3) specific commitments of signatories to provide market access.⁴⁴

The HLWG report recommended that U.S.-EU negotiations in services seek to achieve new market access "on a comprehensive basis" by dealing with longstanding barriers between the two; improve regulatory cooperation "where appropriate"; and include binding commitments to provide transparency, impartiality, and due process with regard to licensing and qualification requirements and procedures.⁴⁵

What follows is a discussion of certain issues in transatlantic services trade identified by both sides that are likely to be addressed in the TTIP context.

Financial Services

Financial services are an important component of the transatlantic economic relationship, and market access issues with respect to financial services are expected to be a part of the TTIP negotiations. However, debate has emerged about whether the scope of regulatory issues discussed in the negotiations should include financial services. Much attention has been focused on this topic given the reforms to the U.S. and EU financial systems currently underway in response to the global financial crisis of 2008-2009. Questions have arisen about the coherence of the regulatory reforms and whether differences in regulations affect the competitiveness of domestic financial services firms.

Certain Members of Congress, European officials, and business groups on both sides of the Atlantic have expressed support for the inclusion of financial services regulatory issues in the TTIP negotiations. Some Members have called on the Administration to address regulatory discrepancies between the U.S. and EU financial systems in the negotiations, stating "[c]onfusion caused by inconsistent and conflicting regulations have already spilled over into the broader economy, reducing investment, creating higher compliance costs, lowering employment, and hindering economic growth."⁴⁶ Other Members and stakeholders have expressed concern that the inclusion of financial services regulatory issues in the negotiations could lower financial regulatory standards, such as reducing consumer protections included in the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203).⁴⁷

U.S. Administration officials continue to resist calls for including financial regulatory cooperation in the TTIP negotiations, in part, because of concern that it may interfere with ongoing

⁴⁴ WTO, "Services: Rules for Growth and Investment," http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm.

⁴⁵ HLWG Final Report, p. 3.

⁴⁶ For example, see Letter from Jeb Hensarling, Chairman of the House Committee on Financial Services, et al. to President Barack Obama, May 22, 2013; and U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Testimony by Greg S. Slater, Director, Trade and Competition Policy, Intel Corporation, on Behalf of the Coalition of Services Industries and the Business Coalition for Transatlantic Trade*, "U.S.-EU Trade and Investment Negotiations," 1st sess., May 16, 2013.

⁴⁷ For example, see Consumer Federation of America's comments on the TTIP, Document Number USTR-2013-0019, May 9, 2013.

discussions and proposals in larger dialogues, such as the G-20 and the Financial Stability Board (FSB).⁴⁸ For instance, during his nomination hearing, U.S. Trade Representative Froman stated that, with respect to financial services, market access issues should be included in the negotiations, while regulatory issues should continue to be addressed in parallel alongside, but outside, the TTIP negotiations.⁴⁹ More recent USTR statements have echoed the same position.⁵⁰

Audiovisual Services

The treatment of the audiovisual services sector, particularly with respect to “cultural exceptions,” has emerged as a controversial topic.⁵¹ Through cultural exceptions, countries provide special support to domestic industries they consider culturally sensitive, such as through broadcasting quotas, subsidies, and local content requirements. These measures can limit market access to such industries for foreigners. For example, France maintains cultural exceptions for its film and television industries. Led by France, some EU member states have called for the exclusion of the audiovisual services sector from the TTIP negotiations.⁵² In its approval of the European Commission’s “negotiating mandate,” the Council of Ministers agreed that audiovisual services would not be covered in the mandate, but the European Commission could make additional recommendations that it be included in the mandate at a later time. While this decision may assuage France’s concerns about TTIP, some observers contend that it could set a precedent for carving out other sensitive sectors from the negotiations.

Treatment of Service Providers

The treatment of services providers could be another area of focus in the TTIP negotiations. One issue that the TTIP could address is the licensing and certification of professional services providers. Appropriate credentials are required on both sides of the Atlantic in many fields such as medicine, insurance, education, and law. In the EU, such services are regulated by the member states, and, in the United States, at the state level. Thus, providing cross-border services could be challenging for services firms, because even if a services employee is qualified in one state or EU country, the certification may not be recognized elsewhere.⁵³

Another issue that the TTIP could address is the delivery of certain services through physically sending service providers across international borders. How the delivery of services in this

⁴⁸ The FSB, created at the G-20 London Summit in April 2009, coordinates and monitors the work of national financial authorities and international standard-setting bodies, in the interest of international financial stability. See also CRS Report R42961, *Comparing G-20 Reform of the Over-the-Counter Derivatives Markets*, by James K. Jackson and Rena S. Miller.

⁴⁹ Congressional Quarterly (CQ), *Senate Finance Committee Holds Confirmation Hearing on the Nomination of Michael Froman to be U.S. Trade Representative*, CQ Congressional Transcripts, June 6, 2013.

⁵⁰ “Mullaney Says USTR Examining Value of Financial Services Regs in TTIP,” *Inside U.S. Trade’s World Trade Online*, July 25, 2013; and “U.S. Continues to Resist EU Demands on Financial Regulations in the TTIP,” *Inside U.S. Trade’s World Trade Online*, December 12, 2013.

⁵¹ “EU Investment Policy Causes Friction with Parliament, Member States,” *Inside U.S. Trade*, September 23, 2010.

⁵² For example, the culture ministers of a number of European countries (Austria, Belgium, Bulgaria, Cyprus, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Slovenia, Slovakia, and Spain) reportedly have signed on to a letter addressed to the Irish EU presidency and to the European Commission calling for the continued exclusion of audiovisual services from the commitments to trade liberalization. France in the United States, “The Cultural Exception: Communiqué issued by the Ministry of Culture,” May 14, 2013.

⁵³ Discussion with U.S. Chamber of Commerce officials, March 13, 2013.

manner (known as “Mode 4” in the GATS) is regulated is an evolving issue.⁵⁴ Potential changes in Mode 4 could be made in streamlining the temporary movement of business personnel. However, the inclusion of Mode 4 services in trade agreements can be sensitive, in part because of issues of congressional jurisdiction. The temporary movement of business personnel across borders has emerged in recent trade negotiations, however, and may surface in the TTIP. For example, the EU-Canada Comprehensive Economic and Trade Agreement (CETA) includes provisions intended to make it easier for firms to move certain business professionals between the EU and Canada, such as to deliver services, perform after-sales maintenance, and monitor service commitments.⁵⁵ In addition, the current plurilateral Trade in Services Agreement (TISA) negotiations include discussions of Mode 4 services.⁵⁶

Digital Trade and E-Commerce

The Obama Administration’s letter formally notifying Congress of the U.S. intent to enter into trade negotiations with the EU contained specific objectives for negotiations in electronic commerce and communication technology services, including “the development of appropriate provisions to facilitate the use of electronic commerce to support goods and services trade,” and to “facilitate the movement of cross-border data flows.”⁵⁷

The Internet is a major delivery platform for trade, as well as an important services sector. The Internet has also become an essential key asset for businesses, serving as a tool for internal organization (i.e., communicating with employees; receiving orders), external integration of business processes (i.e., supply chain management; invoicing), and conduct of business transactions worldwide.⁵⁸ For example, a recent study of the online marketplace eBay Inc., proposed that Internet commerce is much more effective than offline channels at reducing international trade costs and overcoming traditional trade impediments; for example, distances between countries, exporting goods to foreign markets, differences in legal systems, and foreign language barriers.⁵⁹ Online commerce also facilitates exports by small- and medium-sized businesses. For example, 97% of commercial sellers on eBay are engaged in selling overseas to one or more countries.⁶⁰ The Internet has made it possible for financial firms to provide account

⁵⁴ The GATS provides rules applying to four “modes” of delivery of services: mode 1 – cross-border supply (e.g., export of services); mode 2 – consumption abroad (e.g., consumer, such as a tourist or patient, goes to another country to obtain a service); mode 3 – commercial presence (e.g., service supplier establishes a presence in another country to provide a service); and mode 4 – presence of natural persons (e.g., person entering another country to supply a service). For information, see CRS Report R43291, *U.S. Foreign Trade in Services: Trends and U.S. Policy Challenges*, by William H. Cooper.

⁵⁵ Government of Canada, *Opening New Markets in Europe: Creating Jobs and Opportunities for Canadians: An Overview*, Canada-European Union Comprehensive Economic and Trade Agreement, <http://actionplan.gc.ca/sites/default/files/pdfs/overview.pdf>; and European Commission, “Facts and figures of the EU-Canada Free Trade deal,” press release, October 18, 2013, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=974>.

⁵⁶ See CRS Report R43291, *U.S. Foreign Trade in Services: Trends and U.S. Policy Challenges*, by William H. Cooper.

⁵⁷ Letter from Demetrios Marantis, Acting United States Trade Representative, to John Boehner, Speaker, United States House of Representatives, March 20, 2013, <http://www.ustr.gov/>.

⁵⁸ OECD, *OECD Internet Economy 2012*, p. 132.

⁵⁹ eBay, Inc., *Enabling Traders to Enter and Grow on the Global Stage*, An eBay-commissioned report conducted by Sidley Austin LLP, Washington, DC, http://www.ebaymainstreet.com/sites/default/files/eBay_Enabling-Traders-to-Enter-and-Grow-on-the-Global-Stage.pdf.

⁶⁰ Ibid.

information and transactions online, for electronic medical records to be sent across borders for analysis, and for rural communities to access real-time information on agricultural prices, to name only a few services delivery possibilities.

Digital Data Flows

The opportunities that the Internet offers individuals and businesses to connect, share information, and exchange ideas is sometimes limited by national governments that seek to regulate the flow of data across borders. In some cases, the motivation of officials is viewed as legitimate—to regulate and curtail illegal behavior, such as identity theft, child pornography, and other illicit activities. Rule of law issues such as dispute settlement and contract enforcement have also become reasons for government concern as the Internet expands as a business platform.⁶¹ In other cases, motivations for the regulation of data flows can be questionable, particularly if the measures appear discriminatory. For instance, some countries have introduced measures that would compel some financial service providers to process data on-shore, or require online service providers to locate physical infrastructure (i.e., servers) within the country's borders—a type of localization barrier to trade. Others have proposed conditioning market access on the basis of where certain intellectual property has been developed or registered.⁶² The final report of the HLWG recommended establishing bilateral disciplines in localization barriers to trade with a view toward addressing the issue on a global scale.⁶³

Data Privacy

Many Europeans, including members of the European Parliament and some European data protection authorities, have concerns about the adequacy of U.S. privacy laws and the volume of data the United States collects under its various counterterrorism programs. Such concerns have been heightened by the unauthorized disclosure of classified information related to National Security Agency (NSA) surveillance activity since June 2013, and may complicate data privacy issues in the negotiations or, at a minimum, elevate their prominence. As a result of the NSA surveillance leaks, the United States and EU, led by the Department of Justice and the European Commission, have established a joint U.S.-EU expert group on intelligence and data privacy, and EU officials have asserted that any potential measures agreed upon as part of TTIP must not undermine EU data protection standards.⁶⁴ U.S. companies have expressed concern that the NSA disclosures could lead to European demands for restrictions on cross border data flows and localization barriers (e.g., requiring that servers be located in the EU for data privacy reasons) in any eventual TTIP agreement.

In part due to the NSA leaks, the European Commission also reportedly is considering limiting or revoking “the U.S.-EU Safe Harbor Framework,” under which participating U.S. businesses self-

⁶¹ Joshua Meltzer, “The Internet, Cross-Border Data Flows, and International Trade,” Center for Technology Innovation at Brookings, *Issues in Technology Innovation*, Number 22, February 2013, p. 5, <http://www.brookings.edu/>.

⁶² National Foreign Trade Council, *Promoting Cross-Border Data Flows: Priorities for the Business Community*, <http://www.nftc.org/>.

⁶³ HLWG Final Report.

⁶⁴ Associated Press, “NSA Activities to be Discussed During Talks Between EU and U.S.,” *The Washington Post*, July 5, 2013; and Department of Justice, “Justice Department Statement on Meeting with European Union,” press release, July 8, 2013, <http://www.justice.gov/opa/pr/2013/July/13-opa-767.html>.

certify to the U.S. Department of Commerce that they provide “adequate” privacy protection (i.e., comply with EU standards), as defined by the EC’s Directive on Data Protection of October 1998.⁶⁵ The framework allows U.S. businesses with operations in the EU to transfer data to the United States. Many U.S. businesses favor the Safe Harbor framework as a way of making compliance requirements more streamlined while ensuring EU-compliant data privacy protection.⁶⁶

Negotiations on a U.S.-EU Data Privacy and Protection Agreement (DPPA) began in March 2011 in an effort to establish a set of common data protection principles for future information exchanges and agreements, and it is possible that these negotiations could re-emerge in the context of TTIP. The goal of the DPPA is to provide “mutual recognition of the U.S. and EU legal frameworks for privacy, and establish in a binding agreement 12 core privacy principles common to both systems.” DPPA negotiations remain difficult, largely due to structural and legal differences in U.S. and EU approaches to privacy. The chief U.S. negotiator reportedly would like to negotiate similar rules that would help ease the flow of data across the Atlantic. However, the chief EU negotiator has said that while the EU team is willing to discuss data privacy issues, they will not agree to anything that would weaken EU privacy protections.⁶⁷

Another possible source of concern to U.S. technology firms is a 2012 European Commission legislative proposal seeking to modernize the EU’s data protection laws (which date from 1995) to better account for the widespread use of the Internet.⁶⁸ In late October 2013, a key European Parliament committee approved several changes to the Commission’s draft proposals that would essentially require U.S.-based Internet and social media companies (such as Google and Facebook) to obtain the approval of European officials before complying with any U.S. warrants for the personal data of EU citizens; significant monetary fines would be imposed should companies fail to comply.⁶⁹ U.S. firms assert that the changes would block many types of online web tracking and targeted advertising.⁷⁰ These firms contend that, if implemented, the privacy controls could injure the U.S. technology industry in Europe, which could have implications for U.S. e-commerce in other parts of the world.⁷¹ U.S. negotiators have raised concerns about the issue with the EU, asserting that some elements of the proposal could lead to high compliance costs and impede international data flows, which could negatively affect growth and innovation. U.S. officials have also raised concerns that such provisions could also impede long-standing U.S.-EU law enforcement cooperation efforts.

⁶⁵ The U.S. Federal Trade Commission enforces the promise that companies make when they certify that they participate in the Safe Harbor Framework.

⁶⁶ “U.S.-EU Safe Harbor Overview,” http://export.gov/safeharbor/eu/eg_main_018476.asp.

⁶⁷ “U.S. Will Push for Rules Governing Data Flows in Trans-Atlantic Deal,” *Inside U.S. Trade*, July 12, 2013.

⁶⁸ European Commission, *Proposal for a Regulation of the European Parliament and the Council On the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation)*, COM(2012) 11 Final, 2012/0011 COD, January 25, 2013. This draft regulation updating the EU’s 1995 data protection laws seeks to keep pace with the major changes in data processing brought about by the Internet and covers the bulk of personal data processing in both the public and private sectors. All EU legislation must be approved by the European Parliament and the EU Council of Ministers.

⁶⁹ See Nikolaj Nielsen, “Leading EU Party Wants to Ditch U.S.-EU Data Protection Agreement,” *EUObserver.com*, October 29, 2013.

⁷⁰ Kevin J. O’Brien, “Silicon Valley Companies Lobbying Against Europe’s Privacy Proposals,” *New York Times*, January 25, 2013, online edition.

⁷¹ *Ibid.*

Government Procurement

Government procurement is the public purchase of goods and services for use in governmental activities. These activities include buying equipment, computers, paper, and supplies for employees; providing water treatment services; or building roads or buildings for the public.⁷² In the United States and EU, the government procurement market is the equivalent of about 15% - 20% of each of their respective GDPs. As such, further market access in the sector could be of significant benefit to both partners.⁷³ The HLWG final report recommended that TTIP aim to substantially improve access to government procurement opportunities at all levels of government.⁷⁴

The United States and EU are parties to the WTO Agreement on Government Procurement (GPA), a plurilateral agreement that sets forth legally-binding rules and obligations concerning governing procurement. The GPA provides the 28 contracting parties with limited market access to some government entities (as specified in Appendix I of the GPA for each signatory); and to contracts worth more than a specified threshold value. Thus, not all government procurement opportunities are open to GPA partner countries.

According to the USTR, gauging the current level of U.S. participation in the EU government procurement market is difficult because the EU does not keep statistics on government purchases of goods and services with the level of precision necessary.⁷⁵ The USTR also states that an EU directive on procurement of utilities⁷⁶ covering purchases in the water, energy, urban transport, and postal services discriminates against bids with less than 50% EU content that are not covered by an international or reciprocal bilateral agreement.⁷⁷ In contract competitions conducted by EU member state governments, U.S. firms point to concerns ranging from the lack of transparency in contract awards to EU bias in government contract awards.⁷⁸ In TTIP, U.S. negotiators are seeking to expand market access opportunities in goods and services in the EU and EU member states' government procurement markets, and to ensure "fair, transparent, and predictable" rules for government procurement, as well as favorable, nondiscriminatory treatment for U.S. suppliers.⁷⁹

EU negotiators assert that the TTIP negotiations present an important opportunity to develop some bilateral "GPA-plus" elements that could inspire a multilateral GPA revision.⁸⁰ EU firms reportedly would like more access to sub-central government (e.g., states) entities in the U.S.⁸¹

⁷² WTO, Government Procurement, <http://www.wto.org/>.

⁷³ ECORYS, *Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis*, Final Report, for European Commission, Directorate-General for Trade, 2009, p. 183, http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc_145613.pdf.

⁷⁴ HLWG Final Report.

⁷⁵ USTR, *2013 National Trade Estimate Report on Foreign Trade Barriers*, March 2013.

⁷⁶ European Union, Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 (Utilities Directive (2004/17)), OJ L 134, 30.4.2004, p. 1.

⁷⁷ USTR, *2013 National Trade Estimate Report on Foreign Trade Barriers*, March 2013.

⁷⁸ Ibid.

⁷⁹ Letter from Demetrios Marantis, Acting United States Trade Representative, to John Boehner, Speaker, United States House of Representatives, March 20, 2013, <http://www.ustr.gov/>.

⁸⁰ European Commission, *EU-U.S. FTA Negotiations*, Non-Paper on Public Procurement, June 20, 2013.

⁸¹ Ibid.

They also point to U.S. laws such as the Berry Amendment (10 U.S.C. 2533a) that restrict government purchases of certain items to U.S. businesses for security reasons; and the Buy American Act (41 U.S.C. 8301ff), which provides a preference for American goods in government purchases, as among those that are potentially injurious to EU companies that want to bid for U.S. procurement contracts.⁸²

Access to government procurement markets at the “sub-central” (i.e., state and city) level will likely be an issue in the TTIP negotiations. At the sub-central level, U.S. states can voluntarily agree to be subject to government procurement commitments in U.S. FTAs. In recent years, the number of U.S. states that have opted into government procurement agreements has declined. For example, 37 states acceded to the provisions of the WTO GPA in 1995, while 8 states signed on to the government procurement commitments in the most recent U.S. bilateral FTAs implemented in 2012 (those with Peru, Panama, and Colombia).

Agriculture

Although not specifically mentioned in the HLWG final report or the official congressional notification, agriculture, in particular, is a sector in which the incompatibility of regulations, such as sanitary and phytosanitary (SPS) measures, has led to long, difficult, and high-profile transatlantic trade disputes. Agricultural issues are likely to be a topic for debate, both in the context of market access negotiations and regulatory discussions. The following EU-U.S. agriculture issues are among those that may be addressed in the TTIP negotiations.

Sanitary and Phytosanitary (SPS) Measures

SPS measures are food safety, animal, and health regulations put in place by public officials to ensure that a country’s consumers are being supplied with food products that are safe by the standards they consider appropriate. WTO members, in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), agree to apply SPS measures, based on science, only to the extent necessary to protect human, animal, or plant life and health; and to not arbitrarily or unjustifiably discriminate between WTO members where identical standards prevail. Members are also encouraged to base their standards on international guidelines where they exist.⁸³ The HLWG final report, although not mentioning agriculture specifically, did recommend that the two trading partners negotiate provisions that go beyond the SPS Agreement (“SPS-plus”), including “establishing an ongoing mechanism for improved dialogue and cooperation” and requiring that “each side’s SPS measures be based on science and on international standards or scientific risk assessments.”⁸⁴

A longstanding dispute between the United States and EU on SPS measures concerns an EU decision, dating back to 1981, to ban U.S. hormone-treated meat.⁸⁵ Despite a series of adverse rulings in WTO dispute settlement panels and the U.S. imposition of retaliatory tariffs on imported EU products, EU officials continue to maintain the ban. U.S. meat producers strongly

⁸² ECORYS Report, 2009, p. 183

⁸³ For more information on the WTO SPS Agreement, see http://www.wto.org/english/tratop_e/sps_e/sps_e.htm.

⁸⁴ HLWG Final Report.

⁸⁵ CRS Report R40449, *The U.S.-EU Beef Hormone Dispute*, by Renée Johnson and Charles E. Hanrahan.

support U.S.-EU efforts to resolve these issues.⁸⁶ In early 2013, the EU agreed to allow U.S. exports of beef processed with lactic acid and live hogs to enter the European market. These actions were regarded by the two governments as “confidence building” measures illustrating the EU’s willingness to resolve intractable issues in the transatlantic economic relationship.⁸⁷ Other transatlantic disputes include an ongoing one concerning the EU practice, introduced in 1997, that bans the import and marketing of U.S. poultry processed with pathogen reduction treatments (PRTs), such as chlorine-washed poultry. In 2009, the United States asked the WTO to establish a dispute settlement panel to examine the issue, arguing that such practices are safe and that there is no scientific evidence that their usage poses any health and safety risks to consumers.⁸⁸

Genetically Modified Organisms

Genetically modified organisms (GMOs) refer to plant and animals that are genetically modified or bioengineered so that they have certain desired characteristics. For example, seeds are often genetically modified so that the resulting crops are pest-resistant or produce higher yields. GMO crops became popular with U.S. farmers of soybeans, cotton, and corn in the mid-1990s.⁸⁹ The United States is the leading country in planting GMO crops, with 69.5 million hectares planted in 2012—about 41% of the more than 170 million hectares planted worldwide that year.⁹⁰

EU officials have been cautious in allowing GMO products to enter the EU market. In fact, in a dispute brought by the United States and other WTO members, a WTO dispute settlement panel determined that the EU had maintained a de facto moratorium on GMO products between 1999 and 2003.⁹¹ U.S. producers of certain agricultural products assert that continuing EU labeling and traceability regulations⁹² and lack of timelines and transparency in the EU process for admitting GMO products have caused U.S. exports of certain crops, such as soybeans, to decline over time.⁹³ EU officials argue that the number of GMO product approval requests is increasing, but some agriculture industry stakeholders assert that the time for processing (close to 3.5 years in the EU, in contrast to an average of 1.5 years in the United States) and the attendant backlog remain a major trade barrier.⁹⁴ These stakeholders suggest that legally prescribed timelines, transparency, and risk assessment, among other things, could be established to address these issues.

⁸⁶ Letter from Philip M. Seng, President and CEO, U.S. Meat Export Federation, October 31, 2012. Response to HLWG request for public comment.

⁸⁷ “Senior U.S. Officials Seek SPS Solutions Parallel to U.S.- EU Negotiations,” *Inside U.S. Trade*, February 14, 2013.

⁸⁸ USTR, “United States Requests WTO Panel in Challenge of EU Restrictions on U.S. Poultry Exports,” press release, October 2009.

⁸⁹ CRS Report RL32809, *Agricultural Biotechnology: Background, Regulation, and Policy Issues*, by Tadlock Cowan.

⁹⁰ International Service for the Acquisition of Agri-Biotech Applications (ISAAA), *Global Status of Commercialized Biotech/GM Crops: 2012*, ISAAA Brief 44-2012, <http://www.isaaa.org>.

⁹¹ For more information on the WTO dispute, see http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds291_e.htm.

⁹² EU regulations require that most food, ingredients, and animal feed containing more than 0.9% of a Gzmo product be labeled as containing such.

⁹³ Letter from Steve Wellman, President, American Soybean Association, February 3, 2012. Response to HLWG request for public comment.

⁹⁴ Letter from Carel du Marchie Savaas, for Europa Bio and the Biotechnology Industry Association, November 30, 2012. Response to HLWG request for public comment.

Industrial Regulations and Standards

Regulatory issues are widely regarded by stakeholders as a core element of the TTIP negotiations. The HLWG report recommended the establishment of cross-cutting disciplines for developing efficient, cost-effective, and more compatible regulations; additional commitments in specific, individual sectors; and a framework for guiding future regulatory cooperation.⁹⁵ (Note: this section focuses on industrial regulation; for a discussion of financial services regulation, see “Services” discussion above.)

Potential economic gains from greater regulatory cooperation and compatibility could be significant for certain sectors (see **text box**). The HLWG report acknowledged that a major portion of the benefits received from any potential U.S.-EU trade agreement would be realized through reducing costs in the regulatory arena.⁹⁶ Estimates of these potential gains vary. A December 2009 study for the European Commission that weighed only the benefits of regulatory liberalization, estimated that if even 50% of U.S.-EU regulatory differences and other non-tariff measures were aligned, the EU GDP could gain as much as 0.7% in 2018 (the time horizon of the study), representing an annual potential gain of \$158 billion per year to the EU economy. The study estimated that U.S. gains would be slightly more modest, at 0.3%, or about \$53 billion annually.⁹⁷

At the same time, many stakeholders are skeptical about whether a comprehensive agreement on regulatory issues can be reached in the TTIP. The United States and EU have had well-established channels and fora for exchanging views on these issues for some time. However, their longstanding differences in regulatory approaches, relating in part to divergent public preferences and values, have been stumbling blocks in previous transatlantic regulatory talks. According to some observers, all of the easier issues have already been resolved, and what are left to negotiate are the more difficult ones.⁹⁸ However, supporters assert that breakthroughs may be possible in the context of a politically important FTA deal.

A fundamental concern for both sides is to provide well-regulated market economies that provide a high level of consumer safety and welfare, maintain financial stability, and manifest concern for the environment.⁹⁹ However, many economists assert that differing EU and U.S. approaches to regulation are a significant cause of reduced overall consumer welfare. For example, many multinational corporations cite different, and often duplicative, regulations on each side of the

⁹⁵ Ibid.

⁹⁶ HLWG Final Report, p. 3.

⁹⁷ ECORYS, *Non-Tariff Measures in EU-U.S. Trade and Investment - An Economic Analysis*, Final Report for the European Commission, Directorate General for Trade, OJ 2007/S 180-219493, December 2009 (Hereinafter, ECORYS Report). In the study, non-tariff measures included border measures (customs procedures, etc.), as well as behind-the-border measures flowing from domestic laws, regulations, and practices. The 2018 horizon was chosen to allow for forward-looking analysis. It was estimated that this time period was sufficient for the economies to absorb the effects of the regulatory alignment.

⁹⁸ Remarks at Global Business Dialogue event, “Fresh Start: A Post-Election Review of Global Trade,” November 16, 2012.

⁹⁹ John F. Morrall III, *Determining Compatible Regulatory Regimes Between the U.S. and the EU*, U.S. Chamber of Commerce, 2012.

Atlantic as significant barriers to trade, due to the increased costs involved in modifying products to meet the different requirements of each regulatory regime.¹⁰⁰

As mentioned above, some U.S. and EU regulatory differences relate to divergent public preferences and values. For example, many European consumers prefer “naturally produced” foods, while American consumers tend to be more accepting of products made by alternative forms of agricultural production (e.g., GMO foods).¹⁰¹ In addition, the United States and EU also operate two different systems of risk management. In the United States, regulators tend to work cooperatively with industry—which leads them to engage in science-based, cost-benefit analysis, and be supportive of technological innovation. This is a regulatory approach that has the strong support of farmers, industry, and many U.S. government officials. In the EU, regulators favor a more precautionary approach, which often leads to more stringent risk regulation.¹⁰²

Selected Sectors of Interest

Chemicals: On June 1, 2007, the EU adopted the Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) regulation. In the development stages, U.S. officials objected to the increased costs and timelines for testing chemicals for EU export. The United States also highlighted differences between REACH and the U.S. Toxic Substances Control Act (TSCA, 15 U.S.C. 2601-2692) and other U.S. standards, as well as possible WTO inconsistencies. EU firms have also mentioned differences in U.S. testing, classification, and labeling of chemicals as matters of concern. Many in the U.S. and EU recommend that the United States and EU pursue enhanced regulatory cooperation by seeking efficiencies and burden sharing, both when considering new regulations and when examining existing regulations. Others are concerned that chemical regulatory standards could be harmonized to the “lowest common denominator,” thus weakening them.

Pharmaceuticals: U.S. pharmaceutical companies assert that transatlantic testing protocols, submission of clinical data, and certification of good manufacturing practices vary considerably. Moreover, public health policy is governed by EU member states, and each member state has its own protocols for testing and marketing. This can make getting authorization to market pharmaceuticals in the EU or even in a few EU countries very expensive. Many in U.S. industry call for the TTIP to address U.S.-EU regulatory differences and duplicative requirements, such as in testing, that can impede efficiency in global drug development. EU pharmaceutical firms have mentioned the U.S. Food and Drug Administration approval process (which they assert lasts longer for foreign firms than for U.S. ones), multiple complex U.S. technical regulations for consumer and environmental protection, and differences in scientific research methods and proof of their acceptance as issues with importing products into the U.S. market.

Automobiles: Even though similar cars are sold in both markets, there are different transatlantic standards and testing requirements for many auto parts, including wiper blades, headlights, light beams, and seat belts. According to one U.S. trade association, a U.S.-based producer of light trucks found that a popular U.S. model the manufacturer wanted to sell in Europe required 100 unique parts, an additional \$42 million in design and development costs, incremental testing of 33 vehicle systems, and 133 additional people to develop—all without any performance differences in terms of safety or emissions. EU manufacturers face similar issues in reverse when considering selling an EU-designed model in the United States. The U.S. auto industry supports moving toward mutual recognition for existing automobile regulations, and a regulatory harmonization process to facilitate adopting new ones.

Sources: Trade Policy Staff Committee (TPSC), Public Hearing on the TTIP, May 29, 2013, Testimony by the American Chemistry Council, Center for International Environmental Law, and the Auto Alliance; U.S. Congress, Senate Finance, *Testimony of David Ricks, Senior Vice-President and President Lilly Biomedicines*, Hearing on “the Transatlantic Trade and Investment Partnership: Achieving the Potential,” October 30, 2013; CRS Report RS22673, *Chemical Regulation in the European Union (EU): Registration, Evaluation, and Authorization of Chemicals*, by Jerry H. Yen; and USTR, *2012 National Trade Estimate on Foreign Trade Barriers*.

¹⁰⁰ Ibid.

¹⁰¹ CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn.

¹⁰² David Vogel, *The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States* (Princeton: Princeton University Press, 2012).

Technical Barriers to Trade

Technical Barriers to Trade (TBT) are technical regulations, standards, and procedures that relate to health, sanitary, welfare, and environmental regulations. In the WTO Agreement on Technical Barriers to Trade, the right of WTO members to set standards is acknowledged, but members also agree to ensure that standards-related measures serve legitimate objectives, are transparent, and do not create unnecessary obstacles to trade.¹⁰³ Similar to SPS measures, the United States and EU aim to achieve “TBT-plus” commitments in TTIP, including establishing a framework for “improved dialogue and cooperation for addressing bilateral TBT issues.” The objectives of such an agreement would be to “yield greater openness, transparency, and convergence in regulatory approaches and requirements and related standards-development processes, as well as... to reduce redundant and burdensome testing and certification requirements.”¹⁰⁴

Standards Development

U.S. officials have expressed concern that the EU’s methodology and institutional strategy regarding the development of regulatory standards continues to represent a “strategic challenge” to the United States.¹⁰⁵ The EU approach, as cited in a 2007 European Commission strategy paper, recommended that the EU “promote greater global regulatory convergence,” by favoring the “adoption of European standards internationally through international organizations and bilateral agreements.”¹⁰⁶

One of the ways that the EU promotes European standards is through “New Approach Directives,” that define “essential requirements related to health, safety, and environmental issues.” EU standards bodies¹⁰⁷ harmonize these standards by ensuring that new standards developed meet the “essential requirements” of the Directives.¹⁰⁸ The EU promotes these standards internationally through: (1) its relationships with international standards bodies; and (2) requiring the adoption of EU standards as a condition of providing assistance to, or affiliation with, other countries.¹⁰⁹

These practices are of concern to U.S. stakeholders, who assert that they are unable to directly participate or vote in the deliberative processes of EU standards-creating organizations, and are also limited in their ability to influence or comment on them. In addition, while other standards—for example, those endorsed by the American National Standards Institute (ANSI)—may be used to meet EU essential requirements, U.S. exporters report that the costs and uncertainty associated with demonstrating that alternative standards fulfill EU requirements can be prohibitive. Thus, U.S. producers assert that they feel compelled to use relevant EU standards when making

¹⁰³ For more information on the WTO TBT Agreement, see http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm.

¹⁰⁴ HLWG Final Report.

¹⁰⁵ USTR, *2012 Technical Barriers to Trade (TBT) Report*, March 2012, p. 44.

¹⁰⁶ Communication of the European Communities, *Communication from the Commission to the Council, the European Parliament, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: A Single Market for Citizens*, COM (2007) 60 Final, Brussels, February 21, 2007, p. 7.

¹⁰⁷ Major EU standards organizations include the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunication Standards Institute (ETSI).

¹⁰⁸ USTR, *2012 Technical Barriers to Trade (TBT) Report*, March 2010, p. 46.

¹⁰⁹ *Ibid.*

products for the EU market.¹¹⁰ In addition, the international promotion of EU standards could harm U.S. producers in other country markets in which the EU also has ties.

U.S. administering agencies, in contrast, are subject to considerable public input when proposing regulations and standards, in large part due to the requirements of the U.S. Administrative Procedures Act (APA),¹¹¹ the Freedom of Information Act (FOIA),¹¹² and the Government in the Sunshine Act; and many other laws, executive orders and bulletins that ensure that public input, transparency, and due process remain part of the regulatory process. Federal agencies must publish proposed rules and public comments, as well as the supporting justification and analysis for any promulgated final regulations.¹¹³ In addition, more standards development is private sector-driven, and private U.S. standards organizations, such as Underwriters Laboratories (UL) and American National Standards Institute (ANSI) also provide opportunities for interested parties to participate in the standards development process.¹¹⁴

Approaches to Transatlantic Regulatory Cooperation

Traditional forms of transatlantic regulatory cooperation have included “horizontal” information exchanges/dialogues between regulators, Mutual Recognition Agreements (MRAs), and harmonization of regulatory standards. U.S. and EU regulators have been actively engaged in these information exchanges since 1998, when the *Transatlantic Economic Partnership* (TEP) action plan called for both sides to identify and implement general government guidelines for effective regulatory cooperation.¹¹⁵ These efforts were reinforced during annual U.S.-EU summits beginning in 2004 with the first *Roadmap for EU-U.S. Regulatory Cooperation and Transparency*, and in a *Common Understanding on Regulatory Principles and Best Practices* in June 2011.¹¹⁶

Since 2005, U.S. and EU senior officials have also engaged in High-Level Regulatory Cooperation Forums designed to build effective mechanisms to promote better quality regulations and minimize regulatory divergences.¹¹⁷ The Transatlantic Economic Council (TEC), established in 2007, also actively engages in regulatory cooperation.¹¹⁸ These groups have made substantial progress in some former areas of contention; for example, signing a mutual recognition decision on U.S. and EU “trusted trader” programs, and advancing transatlantic collaboration on testing methods for electric vehicles and nanotechnology.¹¹⁹ However, many in the business community

¹¹⁰ Ibid., p. 44.

¹¹¹ 5 U.S.C. §551, *et seq.* CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey.

¹¹² 5 U.S.C. §552 *et seq.* See CRS Report R41933, *The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues*, by Wendy Ginsberg

¹¹³ CRS Report R43056, *Counting Regulations: An Overview of Rulemaking, Types of Federal Regulations, and Pages in the Federal Register*, by Maeve P. Carey.

¹¹⁴ Underwriters Laboratories, <http://www.ul.com>; and American National Standards Institute, <http://www.ansi.org>.

¹¹⁵ See http://www.whitehouse.gov/omb/oira_irc_europe for links to a copy of this document.

¹¹⁶ Ibid.

¹¹⁷ See archived CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn (hereinafter, CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*).

¹¹⁸ *Framework for Advancing Transatlantic Economic Integration Between the European Union and the United States of America*, April 30, 2007, http://ec.europa.eu/enterprise/policies/international/files/tec_framework_en.pdf.

hold that more intensive transatlantic regulator-to-regulator cooperation efforts are needed to remove the regulatory barriers that stand in the way of expanding transatlantic trade, investment, and incomes.¹²⁰

Mutual Recognition Arrangements (MRAs) are a stronger form of cooperation in which regulators agree to accept products or services from another jurisdiction under specified conditions, so that actors complying with the regulations in one jurisdiction will be considered to be in compliance with the rules in another jurisdiction. MRAs operate using “tested once” criteria, where product testing conducted in one market is considered to have been tested in both markets. In 1998, a transatlantic MRA was completed on testing and certification requirements for certain sectors, including telecommunications equipment, recreational craft, and medical devices.¹²¹ In 2011, the two sides concluded a transatlantic MRA on safety certification for civil aircraft (see **text box**). Regulators and negotiators state that MRA negotiations are extremely time-consuming, and that leadership and guidance from policymakers are essential to the process.¹²²

U.S. – EU Agreement on Cooperation in the Regulation of Aviation Safety

On May 1, 2011, a bilateral aviation safety agreement (BASA) between the United States and EU entered into force. The BASA created a framework for bilateral cooperation on the certification of civil aircraft by focusing on: (1) airworthiness approvals and monitoring of civil aeronautical products; (2) environmental testing; and (3) approvals for and monitoring of maintenance facilities.

Under the agreement, U.S. and EU air safety agencies, the U.S. Federal Aviation Administration (FAA) and the European Aviation Safety Agency (EASA), recognize each other’s inspections and analysis so that the two agencies can share information and avoid duplicating efforts. The safety agreement is expected to produce greater efficiency in transatlantic oversight of certification, continued airworthiness, and maintenance by doing away with redundant certification activities through the validation and acceptance of both design approvals and repairs between the U.S. and all EU member states.

The BASA is a form of Mutual Recognition Agreement (MRA) in which each side agreed to recognize the regulatory decisions made by the other agency, while both the FAA and the EASA retain their basic regulatory prerogatives. The two agencies also agreed to cooperate with each other and engage in a high level of information exchange. Some in the trade community have cited the BASA as an example in which an agreement was signed on a highly regulated product, as well as of what could be achieved in TTIP.

Sources: Aviation Safety Agreement Between the United States and the European Union; Daniel Michaels, “U.S., EU Near Air-Safety Pact,” *Wall Street Journal*, March 9, 2011; and “Chamber: U.S.-EU Deal Should Create ‘Binding’ Process for Regulatory Review” *Inside U.S. Trade*, February 15, 2013.

The strongest form of regulatory cooperation involves harmonization of standards or rules applied across jurisdictions. U.S. and EU negotiators appear to be most interested in seeking greater compatibility of standards for new and future technologies, such as electric cars and nanotechnology. At the conclusion of the second TTIP negotiating round, U.S. and EU officials said that both sides had agreed to seek a long-term regulatory mechanism for establishing

(...continued)

¹¹⁹ U.S. Department of State, “Transatlantic Economic Council (TEC) Facilitators Report to Stakeholders,” press release, April 12, 2013, <http://www.state.gov/p/eur/rls/or/2013/210510.htm>.

¹²⁰ John F. Morrall III, *Determining Compatible Regulatory Regimes between the U.S. and the EU*, U.S. Chamber of Commerce; various speaker comments at Wilson Center Roundtable on the Transatlantic Trade and Investment Partnership, March 21, 2013, p. 2.

¹²¹ *Ibid.*

¹²² Discussions with European Commission officials.

regulations and standards for new products after the trade negotiations are completed. Assistant U.S. Trade Representative Dan Mullaney, the lead U.S. negotiator, said that, from the U.S. perspective, the exact composition of the regulatory mechanism and how it operates will depend on what the two sides agree on relative to existing regulatory barriers, including TBT, SPS, and existing industrial sector regulations.¹²³

Certain public comments on the proposed TTIP, especially from the American Chamber of Commerce EU, suggested that a framework for establishing new regulations and standards could consist of a joint consultation process, with common impact and risk assessments, along with broad stakeholder involvement.¹²⁴

Some U.S. and EU TTIP supporters suggest that if officials on each side of the Atlantic have the confidence that each side properly protects its citizens, a joint regulatory framework could consist of: (1) eliminating duplicative testing in favor of a “tested once” principle (meaning that a product test on one side of the Atlantic would be valid for regulators on the other side); (2) creating a transatlantic framework for cooperation on eliminating redundant and duplicative regulations; (3) developing a framework for creating joint standards for new products and an interoperability of standards principle for older ones; (4) developing transatlantic impact assessments of prospective regulations; and (5) increasing transparency by soliciting stakeholder comments on regulations for a defined period, while each side still retains the right to regulate.¹²⁵

Observers familiar with trade negotiations have mentioned that negotiators on both sides would have to rely heavily on regulators to develop disciplines and frameworks in these areas. Furthermore, with regard to regulations and standards in individual business sectors, negotiators have indicated that regulatory convergence is most likely to be negotiated in sectors where representatives on both sides of the Atlantic have worked together to provide a common roadmap to achieving that goal.¹²⁶ The HLWG parties invited stakeholders to present concrete proposals when preparing the report, and these submissions may inform the negotiations.¹²⁷

Investment

The United States and EU (as a whole) have among the most open, business-friendly investment environments in the world, which have helped to facilitate high levels of transatlantic investment. Broadly speaking, the two sides share similar investment policy goals, seeking to reduce restrictions on foreign investment and protect investor rights, while balancing other policy interests.

The United States negotiates investment commitments in FTAs on the basis of a U.S. “Model Bilateral Investment Treaty” (“Model BIT”), which provides five basic benefits:

¹²³ “U.S., EU Agree in Principle to Seek Long-Term Regulatory Mechanism,” *Inside U.S. Trade*, November 15, 2013.

¹²⁴ Letter from Michelle Gibbons, Chair, EU-U.S. Task Force, American Chamber of Commerce to the European Union, regarding Call for Input on Regulatory Issues for Possible EU-U.S. Trade Agreement, October 31, 2012.

¹²⁵ John F. Morrall III, *Determining Compatible Regulatory Regimes between the U.S. and the EU*, U.S. Chamber of Commerce; various speaker comments at Wilson Center Roundtable on the Transatlantic Trade and Investment Partnership, March 21, 2013.

¹²⁶ Remarks of Charles Levy at Cato Institute event, “U.S.-EU Free Trade Agreement: Recipe for Growth or Road To Nowhere?” February 27, 2013, <http://www.cato.org/>.

¹²⁷ HLWG Final Report.

- non-discriminatory treatment for investment—implemented through national treatment and/or most-favored-nation (MFN) treatment for investments;
- clear limits on the expropriation of investments and provisions for payment of prompt, adequate, and effective compensation in cases of expropriation;
- quick transfer of funds into and out of the host country without delay using a market rate of exchange;
- the right to submit an investment dispute with the treaty partner’s government to international arbitration (generally referred to as “investor-state dispute settlement” or “investor-state arbitration”); and
- restrictions on the use of trade-distorting performance requirements (such as local content rules, technology transfer requirements, or export quotas).

The EU generally subscribes to these core obligations as well (see **text box**), though there are some differences in views and approaches. According to the HLWG final report, the goal of transatlantic investment negotiations should include “investment liberalization and protection provisions based on the highest levels of liberalization and highest standards of protection that both sides have negotiated to date.”¹²⁸ The United States and EU also could use transatlantic investment commitments secured through TTIP to shape global investment rules.

Evolving EU Investment Policy and Legal Certainty of Investment Protections

The dynamics of investment policy in the EU have changed with the entry into force of the EU Lisbon Treaty on December 1, 2009. The negotiation of investment treaties—a competence shared by the European Commission and member states prior to the Lisbon Treaty—is now the exclusive competence of the Commission under its Common Commercial Policy. The Lisbon Treaty cast uncertainty about the legal status of existing BITs concluded between EU member states and non-EU countries. In December 2012, the European Parliament and the Council adopted legislation that confirmed that EU member states’ BITs with a country concluded prior to the Lisbon Treaty can remain in force until replaced by a EU-wide BIT with that country.

The EU-Canada Comprehensive Economic and Trade Agreement (CETA), which was concluded on October 18, 2013, is the first occasion for EU-wide rules on investment as part of a broad trade agreement. CETA includes rules on treating investors from Canada and the EU in a fair, equitable, and non-discriminatory manner; provisions on expropriation, including “indirect” expropriation; and investor-state dispute settlement on a post-establishment basis. Investment commitments secured in TTIP could solidify the contours of U.S.-EU investor protections in light of the uncertainty cast by the Lisbon Treaty.

Sources: USTR, *National Trade Estimate Report on Foreign Trade Barriers*, March 2012, p. 156; European Commission, “EU takes key step to provide legal certainty for investors outside Europe,” press release, December 12, 2012; Official Journal of the EU, *Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries*, December 12, 2012, pp. L 351/40-46; and Government of Canada, *Technical Summary of Final Negotiated Outcomes: Canada-European Union Comprehensive Economic and Trade Agreement, Agreement in Principle*.

In the absence of a comprehensive multilateral agreement on investment rules, transatlantic investment flows are governed by an “incomplete” network of bilateral investment treaties (BITs).¹²⁹ The United States has over 40 BITs in force worldwide, seven of which are with EU members (Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Poland, and Romania); one with

¹²⁸ Ibid.

¹²⁹ CRS Report RL33978, *The U.S. Bilateral Investment Treaty Program: An Overview*, by Martin A. Weiss and Shayerah Ilias Akhtar (archived: available from author).

an EU candidate (Turkey); and one with a potential EU candidate (Albania).¹³⁰ EU member states have roughly 1,200 BITs in force with non-EU countries.¹³¹ At the same time, no BIT exists between the United States and the EU (as a whole), though the two partners have established several mechanisms over the years to negotiate on investment issues.¹³²

What follows is an overview of selected investment issues that could be raised in the TTIP negotiations.

- **Non-Discriminatory Treatment:** Through TTIP, the United States and EU may seek to liberalize additional sectors for investment which currently are not subject to national treatment or MFN treatment. Although the United States is generally open to investment, foreign companies face U.S. restrictions on ownership in certain sectors such as aviation, communications, government contracting, maritime, mining, and natural resources—the underlying rationale often being protection of national security.¹³³ The EU imposes restrictions on certain foreign investments, and individual member states sometimes maintain more stringent policies and practices, such as subjecting foreign investments to additional licensing requirements for approval in certain sectors.¹³⁴ Other issues include entry conditions for investors—i.e., conditions under which foreign investors can establish a business in another country.¹³⁵ While U.S. BITs provide non-discriminatory treatment (i.e., through the better of national treatment or MFN treatment) from pre-establishment through the full life-cycle of a foreign investment,¹³⁶ the majority of EU member states’ BITs do not cover non-discriminatory treatment for entry conditions.¹³⁷ Questions also may arise about issues related to maintaining an open investment environment while allowing for safeguards to protect other interests, such as national security and prudential exception provisions in investment agreements.
- **Expropriation:** Customary international law permits governments to expropriate (or take) private property under certain conditions. “Direct” expropriation occurs when an investment is nationalized or otherwise directly taken through formal transfer of title outright seizure. “Indirect” expropriation occurs when a

¹³⁰ Trade Compliance Center, “Bilateral Investment Treaties Currently in Force,” <http://tcc.export.gov/>.

¹³¹ WTO, *Trade Policy Review: European Union*, WT/TPR/S/248, June 1, 2011, p. 25.

¹³² “Statement of the European Union and the United States on Shared Principles for International Investment,” April 2012, http://trade.ec.europa.eu/doclib/docs/2012/april/tradoc_149331.pdf.

¹³³ CRS Report RL33103, *Foreign Investment in the United States: Major Federal Statutory Restrictions*, by Michael V. Seitzinger, and U.S. Government Accountability Office, *Sovereign Wealth Funds: Laws Limiting Foreign Affect Certain U.S. Assets and Agencies Have Various Enforcement Processes*, GAO-09-608, May 2009.

¹³⁴ USTR, *National Trade Estimate Report on Foreign Trade Barriers*, March 2012. The USTR has expressed concerns about investment restrictions in certain EU members states for certain economic sectors, such as air transport, banking and insurance, broadcasting, development and exploitation of natural resources, and mining.

¹³⁵ Peter H. Chase, *Strengthening the Transatlantic Economy: The United States, European Union, and International Investment*, German Marshall Fund, July 2011.

¹³⁶ The full life-cycle for an investment includes its establishment or acquisition; its management, operation, and expansion; and to its disposition.

¹³⁷ European Commission, “Toward a Comprehensive European International Investment Policy,” Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, July 7, 2010. WTO, *Trade Policy Review: European Union*, WT/TPR/S/248, June 1, 2011, p. 25.

government action, such as a regulatory decision, has the equivalent effect of direct expropriation without formal transfer of title or outright seizure. U.S. and European BITs generally provide foreign investors with prompt, adequate, and effective compensation for expropriation. However, there are debates about what constitutes indirect expropriation, to what extent compensation is required, and its coverage under investor-state dispute settlement (see below). Such debates raise questions about the appropriate balance between protecting the rights of investors and the right of national governments to regulate in the public interest.

- **Free Capital Transfers:** The United States and EU seek the free flow of payments and investment-related capital movements, but one area of potential divergence is the extent to which investment rules should include safeguard provisions for capital controls. The international financial crisis that began in 2008 raised questions about the importance of allowing states to use capital controls to help prevent or mitigate financial difficulties, such as balance of payments problems. While supporters say that such flexibility is needed to avoid destabilizing financial situations, others argue that capital account liberalization promotes economic growth and that capital controls lead to inefficient financial systems.
- **Investor-State Dispute Settlement:** A key U.S. and EU priority is procedures for neutral investor-state dispute settlement, which allows investors to bring claims against a foreign government instead of requiring their government to espouse claims on their behalf. The investor community argues that investor-state dispute settlement is critical for protecting investments in foreign markets, while some civil society groups contend that it can have a “chilling effect” on government regulatory measures for the public interest. Given the already strong overall levels of U.S. and EU investor protections, some question the need for including investor-state dispute settlement in TTIP. Others argue that such provisions in TTIP would play a key role in signaling the importance of strong investor protections to third countries, which often have weak, underdeveloped judicial systems.¹³⁸

Intellectual Property Rights

The protection and enforcement of intellectual property rights (IPR) are key trade negotiating objectives for the United States and EU, due to the importance of IPR to innovation, economic growth, and competitiveness, and the potentially negative commercial, health and safety, and security consequences associated with counterfeiting and piracy. The United States and EU subscribe to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”), and have generally sought “TRIPS-plus” provisions in their FTA negotiations. However, the HLWG’s findings suggest that it may be difficult for the United States and EU to reconcile differences on the IPR obligations that each side typically includes in its FTAs. The final report recommended that “both sides explore opportunities to address a limited number of significant IPR issues of interest to either side, without prejudice to the outcome.”¹³⁹

¹³⁸ For example, see AmCham Germany, *U.S.-EU Business Relations: Deepening Transatlantic Trade to Boost Jobs and Growth*, July 2012.

¹³⁹ HLWG Final Report.

Some stakeholders question whether an IPR chapter is needed in TTIP and argue that its inclusion could open up the negotiations to controversial issues that could stall their progress (see **text box**). Debates could emerge about the appropriate balance between IPR protection and enforcement with other public policy goals, such as access to medicines in poor or developing countries, the free flow of information, and other concerns. Others argue that IPR commitments secured in TTIP are critical to providing the United States and EU leverage for addressing IPR issues in third countries and at the multilateral level. In addition, certain sectors, such as the pharmaceutical brand name sector, contend that there are opportunities for greater enhancements of the EU's IPR regime through TTIP. Moreover, the U.S. government remains concerned about the adequacy and effectiveness of IPR practices in specific EU member states.¹⁴⁰

Prior IPR Negotiating Experience: Anti-Counterfeiting Trade Agreement

The state of uncertainty about the entry-into-force of the Anti-Counterfeiting Trade Agreement (ACTA)—a non-binding plurilateral agreement on copyrights and trademarks negotiated among the United States, EU, Japan, South Korea, Mexico, Morocco, New Zealand, Singapore, and Switzerland in October 2010—raises questions about IPR prospects in the TTIP negotiations. The United States, the EU and 22 of its member states, and most other negotiating parties have signed ACTA. However, the ACTA awaits “formal approval” by the parties (i.e., it would enter into force after the sixth instrument of ratification, acceptance, or approval is deposited). Following months of controversy over ACTA in the EU, including widespread protests by advocates of Internet free speech, in July 2012, the European Parliament (EP) voted against ACTA. Consequently, neither the EU, nor its member states, can approve the agreement in its current form. Japan is the only party that has submitted a formal instrument of approval to date. The United States continues efforts to bring ACTA into force. Some observers raise questions about the EU's commitment to higher IPR standards. Others argue that the EP's rejection of ACTA reflected a “messaging” problem, i.e., that the widespread protests in Europe against the ACTA reflected misperceptions of ACTA as an agreement against Internet free speech. Civil society concerns with ACTA could re-emerge in the TTIP negotiations.

Source: CRS Report R41107, *The Proposed Anti-Counterfeiting Trade Agreement: Background and Key Issues*, by Shayerah Ilias Akhtar.

What follows is a discussion of certain possible IPR issues in the TTIP negotiations.

Geographical Indications

Geographical indications (GIs) are geographical names that act to protect the quality and reputation of a distinctive product originating in a certain region; the benefit does not accrue to a sole producer, but rather to the producers of a region. Examples of GIs include Parmesan cheese and Parma ham from the Parma region of Italy, Champagne from the region of the same name in France, and Irish whiskey.

Under the WTO TRIPS Agreement, the United States and EU have committed to providing a minimum standard of protection for GIs (i.e., protecting GI products to avoid misleading the public and to prevent unfair competition) and an “enhanced level of protection” to wines and spirits that carry a geographical indication, subject to certain exceptions.¹⁴¹ Beyond this, the U.S. and EU approaches to protecting GIs differ noticeably: the U.S. IPR system tends to protect GIs through trademark law, while EU IPR systems tend to offer more specific protections for GIs.¹⁴²

¹⁴⁰ The USTR's Special 301 “watch list” for 2013—which is used to identify countries whose IPR policies and practices warrant U.S. concern—included Finland, Greece, Italy, and Romania. U.S. concerns included high levels of Internet piracy and lack of adequate IPR enforcement. See USTR, *2013 Special 301 Report*.

¹⁴¹ The enhanced level of protection for wines and spirits means that they must be protected even if their misuse would not cause the public to be misled.

¹⁴² U.S. Patent and Trademark Office, *Geographical Indication Protection in the United States*; and Alfred Radauer et (continued...)

Because of their commercial value, the protection of GIs is a major priority for the EU. However, terms that the EU recognizes as GIs often are considered to be generic versions of trademarks in the United States. For instance, in the United States, “feta” is considered the generic name for a type of cheese, though it is protected as a GI in Europe. From the U.S. perspective, the EU approach raises national treatment concerns and adversely affects trademarks and widely accepted generic terms for food products.¹⁴³

Differences in U.S. and EU approaches to GIs are evident in their trade policies, such as in the treatment of GIs in the U.S.-South Korea (KORUS) and EU-South Korea (KOREU) FTAs. While the U.S. FTA with South Korea protects geographical products through trademark law, the EU FTA with South Korea provides for specific GI protections; establishes a GI register for agricultural products, foodstuffs, and wines; specifically designates certain EU and South Korean products to be given GI protection; and provides for additional enforcement measures related to GIs.¹⁴⁴ The treatment of GIs is also a point of debate in the WTO, where there are divergent U.S. and EU views on proposals to create a multilateral register for wines and spirits and extend the “enhanced level of protection” beyond wines and spirits.¹⁴⁵

Given differing U.S. and EU views on the treatment of GIs, there is debate about whether TTIP will include GIs. On one hand, the EU may not be willing to negotiate a “comprehensive” FTA that does not include GIs. On the other hand, the historically strong U.S. resistance to more expansive protection and enforcement of GIs raises questions about how TTIP will address GIs.

Copyright Protection

The United States and EU have sought strong copyright standards in past FTAs. For example, their respective FTAs with South Korea provide an additional 20 years of copyright protection after the death of the author, beyond the minimum 50 years required under the TRIPS Agreement. They also include IPR protections related to the digital environment, including anti-circumvention provisions that prohibit altering technologies intended to prevent piracy and unauthorized distribution over the Internet.

U.S. and EU differences could emerge on the liability of Internet Service Providers (ISPs) for infringing content over their networks—a reportedly contentious issue during the ACTA negotiations. Many IPR-based industries argue that increasing ISP involvement in IPR enforcement is critical to combating online piracy. However, critics contend that requiring ISPs to filter communication places undue burdens on them. Some civil liberties groups have expressed concern about what they perceive as a low threshold for terminating consumers’ Internet access; they assert that proof of online piracy, not allegations, should be the requirement for termination

(...continued)

al., *Transatlantic IPR Collaboration*, June 29, 2009, p. 58.

¹⁴³ USTR, *2012 National Trade Estimate Report on Foreign Trade Barriers*, p. 148.

¹⁴⁴ *EU-South Korea Free Trade Agreement: A Quick Reading Guide*, October 2010, p. 8,

http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145203.pdf; and Jeffery J. Schott and Cathleen Cimino, *Crafting a Transatlantic Trade and Investment Partnership: What Can Be Done*, Peterson Institute for International Economics, Policy Brief Number PB13-8, March 2013.

¹⁴⁵ CRS Report RS21569, *Geographical Indications and WTO Negotiations*, by Charles E. Hanrahan.

of Internet accounts.¹⁴⁶ In the TTIP negotiations, questions could be raised about how to balance enforcement of IPR in the digital environment with ensuring the free flow of information.

Patents

Both the United States and EU support strong patent protection, while respecting the Doha Declaration on TRIPS and Public Health, which confirms that the “TRIPS Agreement does not and should not prevent members from taking measures to protect public health.” U.S. and EU approaches to patent protection are broadly similar, though with some differences. For example:

- **Patent term extensions:** The United States and EU, in their trade agreements with other countries, generally have provided for patent term extensions to compensate for regulatory delays in the granting of patent approval, beyond the TRIPS Agreement obligation of patent protection terms of twenty years from the filing date. In contrast to the EU, the United States also offers patent term extensions based on delays in the patent examination process. The length of time for extensions can differ as well. For example, although both the U.S. and EU FTAs with South Korea provide for patent term extensions, the EU FTA restricts the extension to a maximum of five years, while the U.S. FTA does not place any such limits.
- **Protection of “test” data:** Both partners provide for the protection of data submitted to obtain marketing authorization for pharmaceutical products, such as “test” data demonstrating the safety and efficacy of the products. In the TPP negotiations, certain Members of Congress, U.S. biotechnology industry groups, and other stakeholders have sought a 12-year data exclusivity provision for biologic products (i.e., medical preparations derived from living organisms, but generally not considered distinct from traditional pharmaceuticals in U.S. intellectual property law), as under U.S. law through the 2010 Affordable Care Act.¹⁴⁷ The issue is likely to emerge in the TTIP negotiations.
- **Patent linkage:** U.S. and EU approaches diverge on patent linkage—whereby the regulatory approval for the marketing of a generic drug is tied with the patent status of its brand name counterpart. Under the U.S. patent-linkage system, government regulators must check to see whether a new drug would violate an existing patent before granting marketing approval. The United States has negotiated patent linkage provisions in many of its FTA. In contrast, a 2001 directive by the European Commission allows for marketing authorizations for medicinal products for human use, stating that these authorization procedures can be carried out without affecting the protection of industrial and commercial property interests (i.e., removing patent linkage). However, the authorization holder of a generic drug is not allowed to place a product on the market before

¹⁴⁶ See public comments in response to USTR, “Anti-Counterfeiting Trade Agreement (ACTA): Request for Public Comments,” 72 *Federal Register* 8910, February 15, 2008.

¹⁴⁷ See CRS Report R41483, *Follow-On Biologics: The Law and Intellectual Property Issues*, by John R. Thomas. The 12-year data exclusivity provision for biologics was contained in the Biologics Price Competition and Innovation Act (BPCIA), which was incorporated into Title VII of the Patient Protection and Affordable Care Act (P.L. 111-148, 124 Stat. 119).

the patent on the reference product has expired.¹⁴⁸ Patent linkage practices vary across EU member states varies.

In prior FTAs, patent protections have raised concerns about public policy issues, such as access to medicines for developing countries. Some Members of Congress have expressed concern over how to balance the goals of providing incentives for innovation through patents and addressing the need to provide affordable access to medicines. In the TPP negotiations, where participants to the negotiation are a mix of developed and developing countries, the role of patents in access to medicines is controversial. However, in the transatlantic context, since both the United States and EU (as a whole) are advanced partners with large pharmaceutical industries, patent commitments may not be as controversial. At the same time, some civil society groups may express concern about TTIP's possible impact on patent protections in third countries.

Trade Secrets

Trade secrets have emerged as an active area of discussions in IPR as well as in other areas of the TTIP negotiations. A trade secret is any type of valuable information, including a “formula, pattern, compilation, program device, method, technique, or process,” that derives independent economic value from not being generally known or readily ascertainable and is subject to reasonable efforts by the owner to maintain its secrecy.¹⁴⁹

The United States and some EU member states protect against the misappropriation of trade secrets, and seek to strengthen such protections through trade policy discussions, including bilaterally through the TTIP negotiations and multilaterally through the WTO. Both the United States and EU express concern about trends suggesting increased instances of trade secret misappropriation internationally, due in part to increased cybercrime. The USTR has highlighted China as of major concern as a growing source of trade secret theft.¹⁵⁰ The increased use of technology, combined with requirements that data be stored locally (“localization,” see discussion below), have contributed to trade secret theft. U.S. and European companies that are involved in global value chains may face greater vulnerability to trade secret theft, as their business models often require them to share sensitive and valuable trade secrets overseas. U.S. and European companies face millions of dollars in damages from the loss of trade secrets and potential threats to their competitiveness.¹⁵¹

The Obama Administration's strategy on mitigating the theft of U.S. trade secrets, released in February 2013, includes seeking, in U.S. trade negotiations, new criminal remedy provisions for trade secret theft—similar to remedies provided in U.S. law.¹⁵² In the TTIP context, it is not necessarily concerns about trade secret theft by EU countries that would prompt the inclusion of trade secrets in the negotiation. Rather, trade secrets protections may be achieved more broadly if TTIP becomes a prototype to heighten standards internationally.

¹⁴⁸ Europa, “Pharmaceuticals: Commission calls on Italy to comply with EU rules on marketing authorisation of generic drugs,” press release, January 26, 2012.

¹⁴⁹ Uniform Trade Secrets Act, §1(4).

¹⁵⁰ USTR, *2013 Special 301 Report*, May 2013, p. 13.

¹⁵¹ Center for Responsible Enterprise and Trade, *Trade Secret Theft: Managing the Growing Threat in Supply Chains*, 2012.

¹⁵² Executive Office of the President, *Administration Strategy on Mitigating the Theft of U.S. Trade Secrets*, 2012, p. 4.

The United States and EU also could seek to address forced technology transfer requirements related to trade secrets in certain countries. For example, the “indigenous innovation” policies of certain countries, such as China and India, may require the transfer of technology as a condition for allowing access to a market or for a company to continue to do business in the market.

Trade Facilitation

Trade facilitation¹⁵³ is the simplification or harmonization of import and export procedures, including collecting, presenting, and processing the data necessary for the movement of goods across borders. Addressing trade facilitation issues can expand trade generally and support global supply chains specifically, including by removing unnecessary “red tape” and costs to trade and improving the predictability and efficiency of supply chains. An example of potential benefits to U.S. businesses is provided by UPS, which estimates that “an ambitious and successful TTIP, which moves beyond tariff barriers to encompass a broad range of non-tariff, regulatory and supply chain barriers to trade” could boost the company’s trade volume by 131 million packages and support 24,000 jobs over 10 years.¹⁵⁴

Trade facilitation is a priority issue that the United States and EU are pursuing on multiple fronts. In the WTO, the two sides negotiated the December 2013 WTO multilateral “Bali Agreement,” which includes binding disciplines on trade facilitation. The United States and EU also are seeking binding disciplines in other FTA negotiations, such as TPP. In addition, the United States, EU, and other members of the World Customs Organization (WCO) are encouraging the use of electronic systems to expedite the clearance of merchandise entries and to ensure effective customs controls. U.S. officials are leading international efforts to implement WCO-developed best practices, such as “single window” data systems so that importers can enter data, and multiple cross-border regulatory agencies can use the “window” to clear merchandise entries, as well as transportation carriers, equipment, and workers.¹⁵⁵

One major trade facilitation issue U.S. officials mention is a longstanding concern with the EU’s treatment of imports. Customs agencies in each EU member state are responsible for customs responsibilities, including proper classification, valuation, and tariff collection.¹⁵⁶ Thus, even though there are uniform EU customs laws and a common tariff, there is no assurance for U.S. exporters that those laws will be interpreted or administered in a consistent manner across member states. Although some discrepancies may be referred to the EU Customs Code Committee (an entity consisting of member state representatives and chaired by a European Commission representative to assist in reconciling differences), success in resolving them has been limited. Legal issues involving customs laws are handled through individual courts in each member state. U.S. officials have raised these concerns numerous times, including through WTO dispute settlement.¹⁵⁷

¹⁵³ For more information on trade facilitation, see CRS Report R43014, *U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security*, by Vivian C. Jones and Marc R. Rosenblum.

¹⁵⁴ UPS, “UPS Commends United States and the European Union on the Launch of Transatlantic Trade Talks,” press release, June 17, 2013.

¹⁵⁵ World Customs Organization, <http://www.wcoomd.org>.

¹⁵⁶ USTR, *National Trade Estimate Report on Foreign Trade Barriers*, March 2013.

¹⁵⁷ For information on the WTO dispute (DS315) see http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds315_e.htm.

EU officials mention potential implementation of U.S. laws requiring “100% scanning” of maritime cargo containers as possibly injurious to EU exports. This U.S. legislation seeks to reduce potential terrorist threats to maritime shipments by pre-scanning containers prior to arrival in U.S. ports.¹⁵⁸ U.S. shippers have also expressed concern about implementation of the law.¹⁵⁹

Labor and the Environment

The United States and EU maintain high levels of protection for workers and the environment in their domestic economies. As such, U.S. labor and environmental concerns associated with prior FTA negotiations do not appear to be as pronounced for TTIP.¹⁶⁰ However, several U.S. and EU non-governmental organizations, including those representing labor and environmental interests, have expressed concern that a potential TTIP with “regulatory harmonization” provisions could facilitate deregulation that is harmful to certain consumer protections, worker rights, environmental regulations, and other areas of public interest.¹⁶¹ At the same time, certain civil society groups may consider the negotiations as an opportunity to harmonize U.S. and EU protections for labor and the environment.

Recent U.S. FTAs include labor and environmental commitments that are enforceable under FTA dispute settlement procedures.¹⁶² In contrast, the EU tends to take a more consultative approach to resolve differences.¹⁶³ The HLWG’s final report recommends that the two sides “explore opportunities to address these important issues [labor and the environment], taking into account work done in the Sustainable Development Chapter of EU trade agreements and the Environmental and Labor Chapters of U.S. trade agreements.”

Localization Barriers to Trade

Localization barriers to trade function as a type of non-tariff barrier to market access. “Forced” localization measures generally refer to those designed to protect, favor, or stimulate domestic industries, service providers, or intellectual property at the expense of imported goods, services, or foreign-owned or foreign-developed intellectual property. Localization barriers can take a number of forms, such as requirements for: service providers to process data in the foreign country as a condition of market access; businesses to transfer technology and intellectual property as a condition of approval of foreign investments; or firms to use local content as a

¹⁵⁸ Implementation of this U.S. law has been delayed until July 1, 2014. See CRS Report R43014, *U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security*, by Vivian C. Jones and Marc R. Rosenblum.

¹⁵⁹ Mark Szakonyi, “Shippers Fail to Kill Overseas Container Scanning Plan,” *Journal of Commerce*, June 6, 2012.

¹⁶⁰ Nicholas Kulish and Jackie Calmes, “Obama Bid for Europe Trade Pact Stirs Hope on Both Sides,” *The New York Times*, February 13, 2013.

¹⁶¹ Letter signed by 63 groups regarding a Transatlantic Free Trade Agreement to Presidents Barack Obama, Juan Manuel Barroso, and Herman Van Rompuy, July 8, 2013.

¹⁶² The May 10th Agreement stated that labor and environmental provisions would be fully enforceable under U.S. FTAs with Colombia, Peru, Panama, and South Korea.

¹⁶³ CRS Report RS22823, *Overview of Labor Enforcement Issues in Free Trade Agreements*, by Mary Jane Bolle, and CRS Report R41534, *The EU-South Korea Free Trade Agreement and Its Implications for the United States*, by William H. Cooper et al.

condition for manufacturing or for government procurement. According to the USTR, these measures can distort trade, inhibit FDI, and lead other countries to follow suit.¹⁶⁴

The United States and EU are increasingly concerned about localization barriers to trade in emerging economies. For instance, the USTR has identified localization requirements in China and India.¹⁶⁵ At the same time, U.S. companies are concerned that the disclosure of NSA surveillance activity could lead to European demands for restrictions on cross-border data flows and possible localization barriers, for example, requiring that servers be located in the EU for data privacy reasons.

Certain localization barriers have been addressed in previous multilateral trade negotiations. For instance, the WTO Agreement on Trade-Related Investment Measures (TRIMs) prohibits “local content” requirements imposed in a discriminatory manner with respect to foreign investment.¹⁶⁶ Other localization barriers, particularly with respect to the digital environment, are considered to be newer trade issues. The HLWG’s final report recommends that the two partners seek to reach bilateral agreement on globally relevant rules, principles, or modes of cooperation related to localization barriers to trade.

State-Owned Enterprises

Through the TTIP negotiations, the United States and EU seek to address competitive challenges associated with the rise of state-owned enterprises (SOEs) and state-supported enterprises (SSEs) in the global economy. SOEs are businesses in which the government has significant control, through full, majority, or significant minority ownership. Governments often provide SOEs with specific privileges, such as subsidies, preferential financing, preferential access to government procurement, trade protection, and other immunities, that may not be available to non-domestic counterparts in the private sector.¹⁶⁷ This can present concerns over potential anti-competitive behavior related to SOEs and discriminatory treatment of U.S. and European private counterparts operating in foreign countries. Similar concerns also can exist with respect to SSEs.

While entities exist in both economies that could be considered SOEs (e.g., the U.S. Postal Service and the German postal operator, Deutsche Post AG), of greater U.S. and EU concern is the growth of SOEs in third countries, particularly in emerging markets such as Brazil, China, India, and Russia. In a set of shared investment principles, the United States and EU stated that, “[g]overnments should seek to enhance their understanding of the concrete challenges posed by state influence in relation to commercial enterprises... and work to coordinate their approaches to address these challenges.”¹⁶⁸

¹⁶⁴ USTR, *2013 National Trade Estimate Report on Foreign Trade Barriers*, March 2013.

¹⁶⁵ *Ibid.*

¹⁶⁶ As defined by USTR, “local content” requirements are requirements to purchase domestically-manufactured goods or domestically-supplied services.

¹⁶⁷ Companies not under significant government control, but which are favored by their government, could also receive such benefits.

¹⁶⁸ “Statement of the European Union and the United States on Shared Principles for International Investment,” April 2012, http://trade.ec.europa.eu/doclib/docs/2012/april/tradoc_149331.pdf; and OECD, *Competitive Neutrality: Maintaining a level playing field between public and private business*, August 30, 2012, <http://oecd.org/>.

International disciplines on SOEs are limited. The United States has sought to address the potential unfair competitive element of SOEs through FTAs. For instance, several U.S. FTAs contain provisions related to national treatment, non-discrimination, and transparency provisions, while maintaining the right of countries to establish and maintain SOEs. The United States is seeking stronger disciplines in the TPP negotiations to ensure that SOEs operate on commercial terms.¹⁶⁹ In addition, the 2012 U.S. Model Bilateral Investment Treaty clarifies that investment obligations apply to SOEs.¹⁷⁰ In the TTIP negotiations, debate about SOEs provisions likely would include consideration of the wider applicability of such provisions to third countries.

Small- and Medium-Sized Enterprises

In both the United States and EU, small- and medium-sized enterprises (SMEs) represent the majority of the number of firms involved in commercial enterprise and international trade.¹⁷¹ In 2011, SMEs accounted for about 98% of all firms involved in U.S. international trade, but represented a comparatively smaller share of U.S. exports and import value, around 30% for both. SMEs also participate in trade indirectly as suppliers of intermediate goods and services in supply chains for final products that are traded. The EU is an important trading partner for U.S. SMEs. In 2011, about one-third of U.S. SMEs exported to the EU. U.S. SME exports to the EU represented about one-fifth of all U.S. SME exports in that year.¹⁷²

Although they hold significant exporting potential, SMEs may face greater challenges than larger firms in accessing information about foreign markets, connecting with potential overseas buyers, and securing export financing. SMEs have been a long-running focus of U.S. export assistance efforts, as well as an increasing focus of U.S. trade policy more generally. For instance, the proposed TPP includes a specific chapter focused on enhancing SMEs' ability to take advantage of trading opportunities through the trade agreement.¹⁷³

The United States and EU have cooperated to increase participation of U.S. and EU small businesses in the transatlantic market, including through efforts to reduce transatlantic regulatory and other barriers to trade, increase access to trade financing and trade promotion activities, improve information on standards, and address IPR issues.¹⁷⁴ The HWLG's final report

¹⁶⁹ CRS Report R42694, *The Trans-Pacific Partnership (TPP) Negotiations and Issues for Congress*, coordinated by Ian F. Fergusson

¹⁷⁰ A footnote in Article 2 of the 2012 U.S. Model BIT clarifies the standard for whether a Party has delegated governmental authority to an SOE or any other person or entity. The text of the 2012 U.S. Model BIT is accessible at: <http://www.state.gov/documents/organization/188371.pdf>.

¹⁷¹ Small- and medium-sized enterprises (SMEs) generally are classified based on the number of employees and revenues, although the U.S. government does not have a generally accepted definition of SMEs. The Small Business Administration (SBA) Office of Advocacy identifies small businesses as those with less than 500 employees. This definition was used for recent studies by the U.S. International Trade Commission (ITC) on SMEs and exports.

¹⁷² CRS analysis based on data from U.S. Census Bureau, *A Profile of U.S. Importing and Exporting Companies, 2010 – 2011*, April 5, 2013.

¹⁷³ CRS Report R42694, *The Trans-Pacific Partnership (TPP) Negotiations and Issues for Congress*, coordinated by Ian F. Fergusson

¹⁷⁴ TEC, "EU-U.S. Workshop on Small and Medium-sized Enterprises (SMEs)," December 3-4, 2012; and "Memorandum of Understanding Between U.S. Department of Commerce International Trade Administration and the European Commission Directorate-General for Enterprise and Industry Concerning Cooperation on Small- and Medium-Sized Enterprises," December 3, 2012.

recommended that the two sides seek to reach bilateral agreement on globally relevant rules, principles, or modes of cooperation related to SMEs.

Dispute Settlement

U.S. and EU trade agreements with other countries generally include provisions for resolving government-to-government disputes stemming from their commitments under the agreements. Likewise, any final TTIP will likely include dispute settlement provisions, separate from any investor-state dispute settlement mechanism that may also be included. Through TTIP, the United States seeks to “establish fair, transparent, timely, and effective procedures to settle disputes on matters arising under a trade and investment agreement with the EU, including through early identification and settlement of disputes through consultation.”¹⁷⁵

As the negotiations evolve, specific questions may arise with respect to the scope and form of dispute settlement. One set of questions centers on what areas would be covered under a possible TTIP dispute settlement mechanism. For example, would regulatory and sanitary and phytosanitary (SPS) issues be subject to dispute settlement? A second set of questions focuses on what options would be available for the resolution of disputes. Would TTIP commitments be subject to binding resolution or consultative mechanisms for resolution? In addition, how would disputes on issues common to both TTIP and the WTO be resolved?

Issues for Congress

Possible Contours of the TTIP Negotiations

One issue for Congress is the extent to which the United States will be able to reach its goals of securing a comprehensive and high-standard final TTIP agreement. Several variables could influence the outcome of the negotiations. First, the complexity of the issues, along with differing U.S. and EU views on what a “comprehensive” and “high-standard” agreement entails, make the scope of the TTIP negotiations uncertain. For example, will the talks include the audiovisuals sector, financial services regulation, and geographical indications?

Second, although the two sides have outlined specific objectives for the TTIP negotiations, external factors could also influence their substance. One factor is the broader trade policy context. How will other trade agreements that the United States and EU are currently negotiating affect the TTIP negotiations, and vice versa? For instance, how might the TPP negotiations affect the goals, objectives, rules, and dynamics of the TTIP negotiations, given that similar issues likely will be discussed and the goal of both negotiations is to produce comprehensive and high-standard FTAs? Additionally, would TPP-specific issues, such as “currency manipulation,” spill over into TTIP? Likewise, how might other FTAs, such as the EU-Canada Comprehensive Economic and Trade Agreement (CETA), affect the TTIP? External political dynamics are another possible factor affecting the substance of the TTIP negotiations. For example, how will the apparently continuing diplomatic fallout from the disclosure of NSA surveillance activity

¹⁷⁵ Letter from Ambassador Demetrios Marantis, Acting United States Trade Representative, to The Honorable John Boehner, Speaker of the United States House of Representatives, March 20, 2013.

affect TTIP, particularly its treatment of digital trade and data privacy? An additional set of factors involves whether or not TTIP is negotiated as an “open” or “living” agreement which other members can join. How might an expansion of TTIP partners affect the substance of the agreement? (See discussion below, “Potential Future Members of TTIP”).

Third, the level of U.S. government resources available for the negotiations could affect TTIP’s outcome. Some observers question whether the USTR can effectively negotiate multiple, complex trade agreements simultaneously. Others counter that the USTR, despite its relatively small size, is an efficient, effective agency capable of the task. They also point out that the USTR is supported by an interagency process involving the resources and expertise of the Departments of Commerce, State, and the Treasury, as well as other federal agencies.¹⁷⁶ In addition, the lead U.S. negotiators for the TTIP are different, and the TPP appears to be closer to completion.

Finally, timing may play a role in the outcome of the TTIP negotiations. The United States and EU have set a two-year time frame for concluding the negotiations, before European Parliament elections and changes in the European Commission in 2015. While some observers applaud this near-term deadline, others express doubt that it can be met. Skeptics note that the CETA negotiations continued years longer than originally envisioned, and the TPP negotiations could be facing a similar situation. Others also express concern that a desire to conclude the TTIP negotiations in two years could lead to less ambitious outcomes.

U.S. Economic Implications

Members of Congress have a direct interest in the implications of TTIP for the U.S. economy as a whole, as well as their specific states and/or districts. The economic challenges in both the United States and EU are a major incentive for the TTIP negotiation. Many policymakers view the TTIP as a low-cost economic stimulus for supporting U.S. exports, employment, and economic growth. However, there is debate about how the economic effects of the TTIP may be borne by various stakeholders. With any FTA, the benefits of trade liberalization tend to be diffuse, extending to a wide range of businesses, consumers, and other stakeholders. In contrast, the costs of FTAs tend to be highly concentrated—for example, with increased foreign competition resulting from an FTA adversely affecting certain firms and workers.

TTIP and the Multilateral Trading System

Congress may wish to examine TTIP’s potential impact on the multilateral trading system. One view is that TTIP could help to advance multilateral trade liberalization, given the current impasse in the WTO Doha Round. Historically, U.S. and EU agreement has been a strong driver of trade liberalization through multilateral negotiations. Supporters assert that transatlantic agreement on key trade and investment issues through TTIP could provide momentum for further liberalization and serve as a template for resolving these issues in the WTO, especially “21st century” issues not covered in the Doha Round. Should TTIP become an “open” or “living” agreement (like TPP), whereby other countries could join TTIP in the future, it could set the stage for weaving together the multiple, overlapping FTAs negotiated by the United States and EU with other countries. This could pave the way for broader trade liberalization.¹⁷⁷ Another view is that

¹⁷⁶ For example, the Food and Drug Administration with respect to certain regulatory issues included in the negotiations.

¹⁷⁷ Council on Foreign Relations, *Why Transatlantic Trade Winds Are Blowing*, Interview of Jeffrey Schott, Senior (continued...)

TTIP, as well as other FTAs, may undermine multilateral trade liberalization. Some critics also contend that developing countries could feel threatened by the United States and EU negotiating a trade agreement. Some critics go further, speculating that the TTIP negotiations may turn developing countries away from the WTO altogether.¹⁷⁸

Potential Future Members of TTIP

Congress may wish to examine the potential of other countries joining TTIP in the future. Certain countries have shown interest in joining TTIP or could express such interest in a later stage of the negotiations. For example, Turkey (an official candidate for EU membership) has expressed interest in participating in the TTIP discussions. Under the current rules of the Customs Union that Turkey has with the EU, countries with which the EU has signed FTAs have access to Turkey's market without having to reciprocate (e.g., the United States, if TTIP is concluded). In order to gain market access to those countries, Turkey must negotiate its own FTAs with them. Turkey also has raised the possibility of parallel FTA negotiations with the United States.¹⁷⁹

Other countries that also may wish to join the TTIP negotiations include Canada and Mexico. Mexican officials, in particular, have shown interest in joining TTIP.¹⁸⁰ Both Canada and Mexico arguably have strong ties to the United States and EU: Canada and Mexico are a part of the North American Free Trade Agreement (NAFTA) with the United States; both countries joined the TPP negotiations in December 2012; Mexico and the EU have a FTA; and Canada and the EU concluded negotiations on a Comprehensive Economic and Trade Agreement (CETA) in October 2013. Some stakeholders contend that the United States, Canada, and Mexico can enhance their negotiating positions relative to the EU if they leverage their weight collectively by negotiating together. Some also argue that TTIP presents an opportunity to "update" NAFTA (signed in 1992) and the EU-Mexico FTA (signed in 1997).

Currently, the U.S. position is that the TTIP negotiations are already complex, and the inclusion of additional trading partners may further complicate the negotiations and prospects for concluding a comprehensive and high-standard agreement. As the negotiations evolve, Congress could examine the economic, political, and other strategic implications of other countries joining (or not joining) the TTIP.

Trade Promotion Authority

Approval of any final TTIP agreement may take place under renewed Trade Promotion Authority (TPA), which provides for expedited legislative procedures (e.g., limited floor debate, no

(...continued)

Fellow, Peterson Institute for International Economics, by Jeanne Park, Deputy Director, February 25, 2013.

¹⁷⁸ Axel Berger and Clara Brandi, *The transatlantic free trade agreement: think of the consequences!*, The German Development Institute, March 4, 2013.

¹⁷⁹ Kemal Kirişci, *Turkey and the Transatlantic Trade and Investment Partnership: Boosting the Model Partnership with the United States*, Center on the United States and Europe at Brookings, Turkey Project Policy Paper, Number 2, September 2013.

¹⁸⁰ For example, see Carl Meacham, *The Trans-Atlantic Trade and Investment Partnership: Mexico Wants In--Why Not?*, Center for Strategic & International Studies, July 25, 2013, <http://csis.org/publication/trans-atlantic-trade-and-investment-partnership-mexico-wants-why-not>.

amendments, up-or-down vote) for the consideration of bills to implement trade agreements, contingent on the President meeting certain statutory objectives in negotiating the agreements.¹⁸¹ The most recent version of TPA, passed in 2002, expired on July 1, 2007.¹⁸² In the 113th Congress, bipartisan, bi-cameral legislation to renew TPA has been introduced. Congress may debate the renewal of TPA, both in the context of TTIP, as well as other U.S. trade agreement negotiations.

Although TPA is neither required to begin nor conclude a trade negotiation, it is widely regarded as a major signal of congressional support for it. Some observers question whether the EU will negotiate with the United States on sensitive issues, such as in the regulatory sphere, without an assurance that U.S. commitments are credible and not subject to congressional amendment. Others point out that the absence of TPA has not hindered U.S. engagement on sensitive issues in the TPP negotiations, though some counter that discussions of the most sensitive issues in the TPP are still to come.

The Transatlantic Relationship

Many in Congress have long supported a close transatlantic relationship, and view cooperation with the EU as supporting and advancing U.S. interests. Both sides of the Atlantic share common values, and face a broad set of common economic and strategic challenges. Despite concerns from some stakeholders that the transatlantic relationship is eroding, the United States and EU continue to cooperate closely on a wide range of foreign policy, international security, and economic issues.¹⁸³ A potential TTIP could provide a framework for the largest trading and investment relationship in the world to operate more efficiently, and to increase economic growth and jobs for our mutual benefit, while setbacks to the negotiations could raise questions about the strength of the transatlantic relationship. As the TTIP negotiations evolve, Congress may continue to examine its impact on the transatlantic relationship.

¹⁸¹ CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by William H. Cooper

¹⁸² The Bipartisan Trade Promotion Authority Act of 2002 was enacted as Title XXI of the Trade Act of 2002 (P.L. 107-210).

¹⁸³ CRS Report RS22163, *The United States and Europe: Current Issues*, by Derek E. Mix.

Appendix. U.S. and EU Average Tariff Rate Comparison

Table 2. United States and European Union: Average Bound and Applied Tariff Rate Comparison by Product Group, 2012

Product Groups	United States Tariffs		European Union Tariffs	
	Bound	Applied	Bound	Applied
Animal products	2.4	2.2	23.4	20.4
Dairy products	19.8	19.9	54.7	52.9
Fruit, vegetables, plants	4.7	4.7	10.2	10.7
Coffee, tea	3.3	3.3	6.2	6.2
Cereals and preparations	3.5	3.1	22.2	17.1
Oilseeds, fats, and oils	4.2	4.8	5.6	5.6
Sugars and confectionery	11.2	14.4	31.0	32.1
Beverages and tobacco	15.0	14.0	21.3	19.9
Cotton	4.4	4.1	0.0	0.0
Other agricultural products	1.1	1.1	4.1	4.3
Fish and fish products	1.0	0.8	10.9	11.8
Minerals and metals	1.7	1.7	2.0	2.0
Petroleum	1.3	1.1	2.0	2.8
Chemicals	2.8	2.8	4.6	4.6
Wood, paper, etc.	0.4	0.5	0.9	1.0
Textiles	7.9	7.9	6.5	6.6
Clothing	11.4	11.6	11.5	11.5
Leather, footwear, etc.	4.3	3.8	4.2	4.2
Non-electrical machinery	1.2	1.2	1.7	1.9
Electrical machinery	1.7	1.7	2.4	2.8
Transport equipment	3.1	3.1	4.1	4.3
Manufactures, not otherwise specified	2.1	2.4	2.5	2.7

Source: World Trade Organization Tariff Download Facility.

Notes: Bound tariff rates are the legally bound commitments on customs duty rates, which act as a ceiling on the tariffs that WTO members can set. Applied tariff rates are the rates that are actually charged on imports. Bound rates are set by individual tariff line. The rates provided in this table are presented in product groupings. Therefore, applied rates may be higher than bound rates presented due to averaging.

Author Contact Information

Shayerah Ilias Akhtar
Specialist in International Trade and Finance
siliasakhtar@crs.loc.gov, 7-9253

Vivian C. Jones
Specialist in International Trade and Finance
vcjones@crs.loc.gov, 7-7823

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