The Transatlantic Trade and Investment Partnership (TTIP)

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1 Background

At the November 2011 EU-US summit, leaders directed the Transatlantic Economic Council (TEC) to establish a High-Level Working Group on Jobs and Growth, led by EU Trade Commissioner Karel De Gucht and US Trade Representative Ron Kirk. The Group was tasked to "identify policies and measures to increase EU-US trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness."

The Group published a final report on 11 February 2013, concluding that:

> ...a comprehensive agreement that addresses a broad range of bilateral trade and investment issues, including regulatory issues, and which contributes to the development of global rules, would provide the most significant mutual benefit. [1]

Following this recommendation, the European Commission and US Government announced that they had agreed to initiate the internal procedures necessary to launch negotiations on a free trade agreement called the *Transatlantic Trade and Investment Partnership (TTIP)*.[2]

Negotiation of a "reasonable and balanced" trade agreement with the US is one of the 10 priorities of the Juncker Commission. Jean-Claude Juncker's website says:

> However, as Commission President, I will also be very clear that I will not sacrifice Europe's safety, health, social and data protection standards or our cultural diversity on the altar of free trade. Notably, the safety of the food we eat and the protection of Europeans' personal data will be non-negotiable for me as Commission President. Nor will I accept that the jurisdiction of courts in the EU Member States is limited by special regimes for investor disputes. The rule of law and the principle of equality before the law must also apply in this context.[3]

The main aims of the partnership are to increase trade and investment between the US and EU by reducing tariffs (particularly on agricultural products), aligning regulations and standards, improving protection for overseas investors, and increasing access to services and government procurement markets by foreign providers.[4]

The decision to start trade talks at this juncture is likely to have been motivated by a number of shared perspectives, including concern over economic stagnation; conviction that increased trade can boost growth; and frustration at the lack of progress in the Doha round of multilateral trade negotiations. A number of studies find mutual economic benefits from trade liberalisation; the most widely quoted, commissioned by the EU authorities, found that an agreement could bring aggregate economic gains of €68 billion to €119 billion per year to the EU (0.3% to 0.5% of GDP) and €50 billion to €95 billion (0.2% to 0.4% of GDP) to the US.[5] These figures are estimates for 2027.

Research for by the Centre for Economic Policy Research (CEPR), commissioned by the Department for Business, Innovation and Skills, estimated that the gains to the UK would be

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1 EU DG Trade website 13 Feb 2013

2 EC, *Statement from United States President Barack Obama, European Council President Herman Van Rompuy and European Commission President José Manuel Barroso*, MEMO/13/94, 13 February 2013

3 European Commission, *A Reasonable and Balanced Free Trade Agreement with the US*, 8 August 2014

4 Office of the United States Trade Representative, *Fact Sheet: United States to Negotiate Transatlantic Trade and Investment Partnership with the European Union*, 13 February 2013

5 CEPR (2013) *Reducing Transatlantic barriers to trade and investment*.

in the range of £4 billion to £10 billion annually (0.14%-0.35% of GDP) by 2027.[6] The UK Government cited this research when it said that an agreement could add up to £10 billion annually to the UK economy.[7] Anti-TTIP campaign groups have said that the economic gains from TTIP have been exaggerated.[8]

2 Timings and process of negotiations

2.1 Timings

- 14 June 2013: meeting of the EU Foreign Affairs Council, at which Member States approved the Commission's negotiating mandate, allowing it to formally commence talks with the US. [9]
- 17 June 2013: negotiations 'launched' at the G8 summit at Lough Erne.
- 8-12-July 2013: first negotiating round, at which 24 working groups, each representing a policy or trade area that might be included in the agreement, were established.
- 11-15 November 2013: second TTIP negotiating round (postponed from early October due to US Government shutdown). Talks focussed on investment, services, regulatory issues, and energy and raw materials.
- 16-20 December 2013: third TTIP negotiating round. The submission of an impact assessment by the US International Trade Commission meant deliberations on tariff elimination could take place for the first time at this meeting. Other areas of discussion included regulatory co-operation and public procurement.[10]
- 21 January: European Commission announces freeze of negotiations over the investment chapter of the TTIP, pending the outcome of a three-month consultation, beginning in early March (see Section 3.2 for further detail)
- 17-18 February 2014: stock-taking exercise with EU Commissioner Karel De Gucht and US Trade representative Michael Froman. Mr De Gucht noted that the 'marked-out' areas of difference between the parties were 'still larger than the common ground'.[11]
- 28 February 2014: informal meeting of Foreign Affairs Council (EU trade ministers) in the presence of trade commissioner Karel De Gucht
- 10-14 March 2014: fourth TTIP negotiating round
- 26 March 2014: President Obama visits Brussels for an EU-US summit
- 19-23 May: fifth TTIP negotiating round, Arlington Virginia

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6 CEPR (2013) *Estimating the Economic Impact on the UK of a Transatlantic Trade and Investment Partnership (TTIP) Agreement between the European Union and the United States*.

7 *The Transatlantic Trade and Investment Partnership (Government Response to the House of Lords European Union Committee's Fourteenth Report)*, Cm 8907, July 2014, p5.

8 See, for example, *Busting the "economic" arguments* on the StopTTIP.website.

9 The approval by the Council followed a vote on 25 April 2013 of the International Trade Committee of the European Parliament, which voted to begin formal talks on the TTIP by 23 votes to 5. The formal resolution was debated and put to vote of the European Parliament on 23 May.

10 A transcript of the press conference held after the negotiations is available here.

11 Speech by Karel De Gucht *Towards the TTIP: stepping up a gear*, 18 Feb 2014

- 14-18 July: sixth TTIP negotiating round in Brussels. The European Commission published a document in July 2014 outlining the state of play of the TTIP negotiations after the sixth round of negotiations.

- 29 September to 3 October: seventh negotiating round, Maryland, US. The Commission published a report on this round of negotiations.

Both sides originally hoped that the negotiations would be concluded within an 'ambitious timescale' of 18-24 months after their commencement (i.e. between the end of 2014 and the middle of 2015), well before the pressures of the 2016 US Presidential race begin to bear down. In September 2014, the outgoing EU trade commissioner, Karel De Gucht, said that there was a danger that the TTIP would never be agreed. He said that a lack of political leadership reduced the chances of an agreement by 2015 and that after that there could be further delays because of the US presidential election.[12]

2.2 Process

The European Commission, led by the trade commissioner takes the lead in trade talks. Negotiators are split into working groups (there were 24 groups in the first round), who discuss specific sectors and areas. The Commission consults the UK and other EU governments during the negotiations through the Trade Policy Committee, made up of senior officials from each Member State. EU Members are also consulted and informed via the Foreign Affairs Council, while the European Parliament is informed through its International Trade Committee. During their negotiations, the Commission will be required to adhere to the negotiating mandate approved on by the Foreign Affairs Council on 14 June 2013.[13] They will also be guided by position papers covering particular areas (e.g. regulation) and sectors (e.g. raw materials and energy). Following the first negotiation round in July 2013, the Commission took the unprecedented step of publishing six of its ten initial position papers.[14]

3 Scope of negotiations and potential sticking points

3.1 Scope

Averaging around 3%, tariffs between the EU and US are already low, and both sides foresee their eventual elimination under the Agreement. Most negotiating energy, however, is likely to be devoted to reducing non-tariff barriers to trade, with the aim of harmonising product regulation and standards (e.g. labelling, product specifications, sanitary requirements) in areas where these are deemed necessary, and eliminating them in areas where they are not. Other areas being contemplated include protection for foreign investors and a procedure to resolve investment disputes between the US and EU; co-operation to achieve greater participation by SMEs in EU-US trade; and provisions on intellectual property to protect the interests of US businesses in the EU and vice versa.

3.2 Potential sticking points and controversies

The US-EU High Level Working Group that conducted preparatory work on the agreement noted the existence of 'sensitive' sectors, describing ambitions for services trade liberalisation thus:

> The HLWG recommends that in the services area the goal should be to bind the highest level of liberalization that each side has achieved in trade agreements to date,

[12] "Time is running out for US-Europe trade deal", *Financial Times*, 26 September 2014

[13] The mandate was published by the Commission in October 2014 and is available here.

[14] They are available on this page of the Commission website.

> while seeking to achieve new market access by addressing remaining long-standing market access barriers, recognizing the sensitive nature of certain sectors. [15]

Following initial pressure from France,[16] the European Parliament passed a resolution on 23 May 2013 to request that the audiovisual sector be excluded from trade negotiations;[17] this was reflected in the final negotiating mandate approved by the Foreign Affairs Council on 14 June, which states that audiovisual services will not be covered. This would allow France and other EU Member States to continue to subsidise their audiovisual sectors on the grounds of cultural protection. However, the EU Trade Commissioner has said that the Commission may 'come back' to the issue further on in the negotiations to ask for a new mandate in this area.[18]

The consequences of the exclusion of audiovisual services, and the tit-for-tat nature of trade negotiations, was made explicit by the US ambassador to the EU in an interview with the *Financial Times*:

> If a mandate is released that constrains negotiators – whatever you want to call it, a carve-out, a red line, an exception – if it's not a clean mandate, it will increase the pressure on our side to do the same... That's only natural. There is a quid pro quo here, and there will be a price to pay[19]

Some areas likely to present particular difficulties during the negotiations are discussed below.

Investor-state dispute settlement (ISDS)

Much of the opposition to TTIP has centred on the ISDS provisions. These allow investors to bring proceedings against a foreign government that is party to the treaty. Importantly, these proceedings are brought under international law, thereby providing more certainty that the investor will have their claim adjudicated in an impartial manner. If the government is found to be in breach of its treaty obligations, the harmed investor can receive monetary compensation or other forms of redress. There is opposition to ISDS, not just in the UK, but also in Germany, for example.[20]

Most ISDS provisions are contained not in trade agreements, but in bilateral investment treaties (BITs). The UK has ISDS arrangements in all of its 92 BITs. Only two publicly known claims have ever been brought against the UK under ISDS, and neither was in connection with a change in public policy.[21] According to the Government, no successful ISDS action has been brought against the UK to date.[22] There are, however, international examples of policy change motivating legal action by foreign investors, including in the health sector.[23]

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15 Final report of High-level Working Group on Jobs and Growth, 11 February 2013

16 Euractiv, *France draws red lines in EU-US free trade negotiations*, 20 March 2013

17 EDN, *European Parliament votes in favour of cultural exception*, 24 May 2013

18 Intellectual Property Watch, *Controversial debate on TTIP mandate in EU Council*, 14 June 2013

19 "US warns EU against exempting film industry from trade talks", *Financial Times,* 11 June 2013

20 "Germany expresses concerns about US and Canada trade deals", *Financial Times*, 25 September 2014

21 UNCTAD database of treaty-based ISDS cases. The specific cases are *Eurotunnel Group v. France and United Kingdom 2003* (awarded in favour of investor) and *Sancheti v. United Kingdom 2006* (unknown outcome).

22 See TTIP: Vince Cable's detailed response to 'TTIP: no public benefits, but major costs', 12 November 2014 (section 5)

23 See, for instance, *FTR Holding S.A. (Switzerland), Philip Morris Products S.A. (Switzerland) and Abal Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay* 2010 and cases against the Slovak Republic

The ISDS provisions are highly controversial. Concerns have been raised that they will undermine the power of national governments to act in the interest of their citizens.[24] In particular, some commentators have claimed that, as a result of ISDS proposals in the TTIP, measures to open up the NHS to competition could be made irreversible if the provisions required US companies to be compensated in the event of a change of policy.[25] Other concerns raised include US oil companies challenging environmental regulations such as France's laws against fracking and that US companies might be able to challenge the EU's prohibition on genetically modified organisms.

In response to these concerns, negotiations over ISDS were suspended while the European Commission ran a public consultation. This took place between 27 March and 13 July 2014.[26] 149,000 responses were received with over a third (52,000) coming from the UK. The Commission will analyse the responses and report on the outcome. This is unlikely to happen before November 2014. Once the analysis is completed, the Commission will indicate what the next steps are likely to be.[27]

In July 2014, the European Commission wrote to John Healey MP, chair of the all-party parliamentary group on TTIP, setting out the Commission's view on the impact of TTIP on the NHS. This letter concluded:

> …we can already state with confidence that any ISDS provisions in TTIP could have no impact on the UK's sovereign right to make changes to the NHS.
>
> I hope that this information clearly demonstrates that there is no reason to fear either for the NHS as it stands today, or for changes to the NHS in future, as a result of TTIP.[28]

John Hilary of War on Want argued that this letter did not provide reassurance on the NHS:

> The first thing to note is that there is nothing new in the letter, nor any change in the EU's position. The European Commission has used exactly the same arguments to defend the inclusion of health, education and other public services in all previous trade agreements, as those of us who have been engaged in these debates for the past 20 years know all too well. Yet trade experts point out that public services are still highly vulnerable when they are included in negotiations, particularly when private operators have been granted access to public sector contracts, as is the case with the NHS.[29]

The Government's position on ISDS was set out in the following PQ response:

> The purpose of an investor-state dispute settlement (ISDS) mechanism in an investment protection agreement is to provide an independent process for foreign investors to seek compensation where they believe they have suffered a loss as a result of action by the host state which breaches the provisions of the treaty. ISDS provisions can help to create a positive investment climate and promote growth. As such, ISDS will not have a direct impact on consumers, who will benefit from other

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[24] See, for instance, George Monbiot *This Transatlantic trade deal is a full-frontal assault on democracy*, Guardian, 4 Nov 2013

[25] See, for instance, Davies, P. (2013) *Trade secrets: will an EU-US treaty enable big business to gain a foothold?* BMJ 2013;346:f3574

[26] Details of the consultation are here.

[27] European Commission Preliminary report (statistical overview), *Online public consultation on investment protection and investor-to-state dispute settlement (ISDS) in the Transatlantic Trade and Investment Partnership Agreement (TTIP)*, July 2014

[28] Letter from Ignacio Garcia Bercero to Rt Hon John Healey MP, 8 July 2014

[29] John Hilary, *On TTIP and the NHS, they are trying to bamboozle us*, 14 July 2014

> elements of the Transatlantic Trade and Investment Partnership (TTIP) and who have separate routes for seeking redress. The UK currently has over 90 investment protection agreements with other countries. While a number of UK businesses have used ISDS to seek compensation, there has been no successful action against the UK in respect of any of these agreements. The Department for Business, Innovation and Skills has commissioned research into investment protection agreements and the ISDS mechanism, reviewed academic research, consulted external experts and carried out its own internal analysis on investment provisions. The ISDS provisions in TTIP are still under negotiation. We believe these provisions must strike the right balance between protecting investors and the host nation's right to regulate and determine policy. Balanced investment protection provisions in TTIP could act as a model for future trade and investment agreements.[30]

The effect of TTIP on the NHS was the subject of another PQ:

> Hugh Bayley: To ask the Secretary of State for Business, Innovation and Skills, what safeguards for (a) the NHS and (b) other UK public services the Government is seeking to secure within the Transatlantic Trade and Investment Partnership.
>
> Matthew Hancock: The Transatlantic Trade and Investment Partnership (TTIP) will not change the fact that it is up to UK Governments alone to decide how UK public services, including the NHS, are run. The UK has insisted on maintaining the same safeguards for the NHS in TTIP as it has in all recent trade agreements.[31]

TTIP's effect on the NHS, including Scotland, Wales and Northern Ireland was the subject of an oral PQ on 21 October 2014:

> 1. Caroline Lucas (Brighton, Pavilion) (Green): What progress he has made on negotiations relating to the potential effect of the Transatlantic Trade and Investment Partnership on the NHS. [905538]
>
> 6. Mr Dave Watts (St Helens North) (Lab): What assessment he has made of the potential effect of the Transatlantic Trade and Investment Partnership on NHS services. [905543]
>
> The Parliamentary Under-Secretary of State for Health (George Freeman): The Government's aim and my central mission as the new Minister for life sciences is to accelerate access for NHS patients to the very latest diagnostic devices and drugs by making the UK the best place in the world in which to develop innovative treatments. The US is a world leader in medical technology and TTIP will help NHS patients get faster access to those innovations. Let me be clear: the treaty excludes the NHS from binding commitments. Parliament will retain sovereignty over how we organise and fund our health system and NHS England is free to decide how best to commission NHS services in the clinical interests of local patients, as it does today.
>
> Caroline Lucas: I thank the Minister for his answer and I welcome him to his new post. If his assurances were remotely credible then surely the British Medical Association would not have called for health to be excluded from TTIP entirely. Will the Minister confirm that under the investor-state dispute mechanism, US corporations will be able to challenge our national health policy decisions for ad hoc arbitration tribunals and potentially sue us for millions of dollars in damages for loss of profit in the event of any moves to reverse the coalition's privatisation agenda and bring the NHS back fully into public hands?

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[30] PQ 206924 10 September 2014

[31] PQ 905326 11 September 2014 (EU External Trade: USA)

George Freeman: No, I will not confirm that, but the hon. Lady does not have to take it from me. She can take it from the people who are doing the negotiations.

The US chief negotiator confirms that the United States has no provision in its trade agreements on health. The EU chief negotiator says:

> "I wish… to stress that our approach to services negotiations excludes any commitment on public services, and the governments remain at any time free to decide that certain services should be provided by the public sector."[32]

[…]

Sir Tony Baldry (Banbury) (Con): Will my hon. Friend confirm that there is absolutely no requirement in TTIP for this or any future Government to open NHS health care services to further competition and private sector provision, and that TTIP will have no effect on the ability of local NHS commissioners to decide who delivers services to patients?

George Freeman: I can absolutely provide that guarantee. UK sovereignty on health is not in any way threatened by TTIP. As I have already told the House, safeguards on this are being built in by both the American and the European negotiators. As my right hon. Friend points out, clinical commissioning decisions in the NHS will rightly remain with the clinical commissioning groups, which include the people who are closest to the patients.

Ms Margaret Ritchie (South Down) (SDLP): For the avoidance of any doubt, given that health is devolved to Northern Ireland, what assurances can the Minister give us that not just the UK Government, but the devolved Administrations, will be safeguarded from the investor-state dispute settlement mechanism?

George Freeman: The treaty's provisions apply to the whole United Kingdom, so it will be for the delegated authority of the people of Ulster and their Administration to give effect to the treaty locally.[33]

The question of exempting certain policy sectors from TTIP was the subject of this PQ:

Ian Murray:

To ask the Secretary of State for Business, Innovation and Skills, what work his Department has conducted on identifying specific policy areas and sectors for which the UK will seek exemptions from the scope of the Transatlantic Trade and Investment Partnership; and what representations the UK has made to the EU on exemption of such policy areas or sectors.

Matthew Hancock:

[holding answer 27 October 2014]: The Government has consistently pushed for an ambitious agreement under the Transatlantic Trade and Investment Partnership negotiations in line with the recently published mandate.

The European Commission has explicitly ruled out public services from the scope of any market liberalisation in TTIP, and it has therefore not been necessary to discuss any exclusions related to specific public services.

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[32] HC Deb 21 October 2014 cc739-740
[33] HC Deb 21 October 2014 c741

> The Commission has provided further details on the treatment of public services, available online at: http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152462.pdf [34]

In October 2014, 14 EU countries, including the UK, wrote to the European Commission in support of ISDS noting that it was part of the European Council mandate.[35] The *Financial Times* reported that Cecilia Malmstrom would no longer have outright control of the ISDS issue. It would also have to be approved by Frans Timmermans, a Dutch Labour politician and First Vice President of the Commission.

A *Financial Times* leader said that Mr Juncker was jeopardising the negotiations by treating ISDS as a political football. The *FT* argued that "ISDS is not a multinational conspiracy" but noted that a number of valid criticisms could be made, such as a lack of an enforcement mechanism. The recent EU trade deal with Canada, seen as a model for the TTIP, contained improvements in ISDS.[36]

Food standards

GM crops are strictly regulated in the EU, while a number of EU directives prohibit the importation and sale of meat treated with certain growth hormones and chicken washed with chlorine. The US has disputed these rules at the WTO; the EU has argued that the restrictions are necessary for the protection of human health,[37] while the US has called the bans 'unscientific', and part of a protectionist strategy to shut US farms out of EU markets.

Whatever the merits of each case, the food issue reflects different sensitivities and preferences among consumers on each side of the Atlantic; for instance, even though the EU has approved certain GM crop varieties, retailers have collectively refused to carry modified products in their stores for more than a decade. The Commission has offered assurances that EU regulations on GM and hormones are not up for negotiation (changes to these would have to separately be approved by Council and the European Parliament), while the negotiating mandate states that any agreement must recognise 'the right for the Parties to appraise and manage risk in accordance with the level of protection that each side deems appropriate'. On the US side, in his notification to Congress on the commencement of negotiations, President Obama noted that one of the major objectives for the US was the elimination of food standards 'not based on science'.[38]

The impact of TTIP on food standards and animal welfare was the subject of this PQ:

> Roger Williams (Brecon and Radnorshire) (LD): What part her Department has played in negotiating the Transatlantic Trade and Investment Partnership. [905743]
>
> The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (George Eustice): TTIP could be worth up to £10 billion a year for the UK. It has the potential to deliver significant opportunities for UK agriculture, food and drink. We are working very closely with BIS to ensure that TTIP maximises the benefits for UK businesses and consumers.

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[34] PQ 211430 28 October 2014

[35] Letter from Lord Livingstone (and 13 others) to Cecilia Malmstrom, Commissioner-designate for trade, 21 October 2014

[36] "Juncker plays with future of EU-US trade deal" [leader], *Financial Times*, 24 October 2014

[37] Article 191 TFEU requires EU environmental policy, including the protection of human health, to be based on the 'precautionary principle'. The EU can invoke the principle if a scientific "evaluation does not allow the risk to be determined with sufficient certainty", and puts the burden of proof on the manufacturer of the product to show there is no danger.

[38] Letter from the Acting US Trade Representative to the Speaker of the House of Representatives, 20 Mar 2013

> Roger Williams: The poultry industry, by which I mean the producers of poultry meat and eggs, have driven up animal welfare standards and hygiene in their businesses. Will the Minister assure that industry that that progress will not be compromised by unfair competition from US producers following lower standards?
>
> George Eustice: I have met members of the poultry industry and the British Poultry Council to discuss their concerns. We managed to get a very successful free trade agreement with Canada. Sometimes it is possible to work through the sanitary and phytosanitary issues that the hon. Gentleman raises, as well as animal welfare issues, and to establish equivalent rather than identical measures. That is the spirit in which we should approach the negotiations.
>
> Nia Griffith (Llanelli) (Lab): I welcome the openness of a free trade agreement, but can the Minister tell us what steps he is taking to ensure that there are no mechanisms included in it—such as an investor-state dispute settlement—that would enable powerful vested interests to bully future Governments into dropping legislation that would improve food standards? We have already seen that happen with the disgraceful action of the Philip Morris tobacco company against the Australian Government.
>
> George Eustice: I know that some people have expressed concern about the use of ISDS. Both the European Union and the United Kingdom are very conscious of that, and we do not intend to allow such agreements to undermine our ability to set our own welfare and regulatory standards when it comes to animal health.[39]

Public procurement

The Commission's negotiating mandate anticipates that the TTIP will contain provisions to increase mutual access to government procurement markets 'at all administrative levels... in the fields of public utilities... and ensuring treatment no less favourable than that accorded to locally established suppliers'. It is expected that a WTO-level agreement on government procurement, currently being revised, will provide the starting point for discussions over market access.

The European Commission considers the EU's public procurement markets to be more open than those of many of its trade partners,[40] and based on its negotiating mandate, it appears more enthusiastic about this element of the Agreement than the US (the President's notification to Congress did not mention procurement). The Commission is particularly keen to eliminate 'Buy America(n)' provisions and local provider requirements in US procurement markets that deny EU businesses fair access to the tendering process. However, the US may face particular difficulties in meeting the EU's demands because the Federal Government there cannot make decisions that bind the public procurement markets of individual states.

In the EU, there are concerns that liberalising public procurement markets, combined with measures to protect foreign investors from government action, could constrain the power of national governments to decide how public services are provided (see section above on investor-state dispute settlement for more detail).[41]

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[39] HC Deb 30 October 2014 c380

[40] This view has been challenged by some commentators, who point out that while EU procurement markets are 'legally' open, in practice, there remain many barriers to entry for businesses outside the EU. See, for instance, European Parliament Briefing Note *Detailed appraisal of the impact assessment on rules concerning third countries' reciprocal access to public procurement*, Jun 2013

[41] 'A motion for a resolution of the European Parliament (not eventually passed) called for the Commission to explicitly exclude from the negotiating mandate market access to public services (BV-0195/2013)

Intellectual property

In July 2012, the European Parliament rejected a multilateral agreement to harmonise and step-up international enforcement of anti-counterfeiting and anti-piracy law, the Anti-Counterfeiting Trade Agreement (ACTA). The vote, which followed widespread protest and criticism that the agreement would lead to censorship and loss of privacy online, prevented it from becoming law in the EU.

Some groups have expressed concern that the TTIP will lead to ACTA being implemented 'through the back door' against the European Parliament's expressed wishes; though it has not yet formally ratified it, the US, alongside Japan, were the first developers of ACTA. The European Commission has made it clear it does not want to harmonise intellectual property law through the TTIP, and that existing EU law in this area is not up for negotiation. The negotiating mandate states that 'the Agreement shall not include provisions on criminal sanctions', while European trade commissioner De Gucht has made the following statements in the International Trade Committee on TTIP and ACTA:

> ACTA, one of the nails in my coffin. I'm not going to reopen that discussion. Really, I mean, I am not a masochist. I'm not planning to do that… If the Commission advances new basic legislation, which I think she should, we will revisit the question, but I'm not going to do this by the back door[42]

The strength of language on intellectual property is similar in both the EU negotiating mandate and the President's notification to Congress. In practice, the Agreement is likely to contain provisions on co-operation to protect intellectual property in certain areas of mutual interest; the EU's 'geographic indicators' that identify the origin of products (e.g. Scotch whiskey' and 'Parma ham') is the only area specifically mentioned in this context so far.

Air and maritime transport

The US applies stringent access and ownership limits to foreign participants in its air and maritime transport sectors. In particular, EU airlines are unable to hold more than 25% of a US carrier, while the Jones Act (formally the US Merchant Marine Act 1920) requires all waterborne shipping between US ports to be carried out by vessels built in the US that are owned, registered and operated by Americans. The EU, which has a more open air and maritime sector, is keen to gain access to US markets. However, some commentators have noted that the US may respond to the exclusion of audiovisual services from the EU negotiation mandate by taking the Jones Act 'off the table' during negotiations.[43]

Financial services

Following the 2008 financial crisis, the EU and US have embarked on regulatory reform in an effort to increase stability and reduce systemic risk in the sector. However, the measures taken on each side of the Atlantic are different in both their substance and pace of implementation. The European Commission has expressed concern about the impact of this regulatory divergence; in particular, it believes that certain provisions of the US Dodd-Frank

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[42] From the blog of Marietje Schaake MEP *TTIP FAQ: the negotiation phase*, 21 Jun 2013

[43] See, for instance, interview with Peter Chase, Vice President Europe of US Chambers of Commerce in Euractiv, 13 Jun 2013

Act discriminate against foreign institutions with subsidiaries in the US, such as Barclays and Deutsche Bank.[44]

The Commission is eager to prevent further divergence and sees the inclusion of financial services in the TTIP as a means to this end. In particular, the Commission negotiating mandate calls for a 'common framework' that is 'binding on all regulators and other competent authorities'. The Commission's position was further articulated, and arguably hardened, by so-called 'non-paper' published in January 2014, which argued that 'unjustified' inconsistencies between EU and US financial regulation were not only a barrier to trade and investment, but 'undermine[d] the global financial stability that both the US and EU are seeking to achieve'.[45]

While supporting the inclusion of financial services 'access issues' in TTIP, the US Trade Representative has made clear his preference for regulatory issues to be discussed within 'existing and appropriate global forums, such as the G20 and international standard setting bodies'.[46]

Trade promotion authority

This is not a part of the TTIP negotiations, but could present a significant obstacle to the conclusion of an agreement. Trade promotion authority (TPA, also called 'fast track negotiating authority') allows the President to present agreements to Congress for a simple 'yes-no' vote; in effect, it prevents Congress from amending or filibustering an agreement, either of which could significantly delay or derail its conclusion. For a complex and sensitive agreement such as the TTIP, trade promotion authority is seen by many as a prerequisite to reaching a conclusion. Reflecting its importance, President Obama called on Congress to grant him TPA in his State of the Union address on 28 January 2014.

TPA is granted for a period of time by an Act of Congress. Senior Democrats in Congress, such as Senate majority leader, Harry Reid and Nancy Pelosi, minority leader in the House of Representatives, have voiced opposition to such legislation.[47][48] Newspaper reports suggest, however, that Congress may be more likely to grant TPA now that the Republicans control both the Senate and the House of Representatives.[49]

Reaching agreement on TPA is seen as a particularly urgent priority in the context of the US's trade deal with eleven Pacific Rim countries, the Trans-Pacific Partnership, which is further along in the negotiation phase than TTIP. It is likely, however, that any authority granted in respect of this agreement will also apply to the TTIP.

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[44] The principal area of concern is the requirement that subsidiaries of foreign banks operating in the US must meet the same capital requirements as banks headquartered there, irrespective of the capital rules in their home country, or the level of capitalisation of their parent company. In particular, the EU Commissioner for the internal market, Michel Barnier, has stated that "draft US rules on Foreign Banking Organisations… discriminate against non-US banks."

[45] European Commission *Co-operation on financial services regulation*, 27 Jan 2014

[46] Readout of meeting between Michael Froman and Michel Barnier, 16 Jul 2013

[47] Wall Street Journal *Reid deals body blow to Obama on trade*, 29 Jan 2014

[48] Huffington Post *Nancy Pelosi rejects Obama bid for fast-track trade*, 12 Feb 2014

[49] "Republicans nominate trade as area of co-operation with Obama", *Financial Tines*, 5 November 2014

4 Parliamentary scrutiny of TTIP

4.1 To date

Backbench business debate, 25 February 2014 cc186-234

The House of Lords European Union Committee published a report on TTIP in May 2014.[50] The Government's response was published in July 2014.[51] The Committee's report was debated in the House of Lords on 17 June 2014.[52]

The House of Commons European Scrutiny Committee questioned Lord Livingstone, the Minister of State for Trade and Investment, on TTIP, on 11 June. The transcript is available here.

4.2 Ratification

In the EU

Once negotiations are completed, the deal is presented to the European Council and the European Parliament, both of which must agree the outcome. This paves the way for the signature and formal ratification of the deal. Because it is likely to contain elements that fall outside of EU competence, the agreement will also have to be separately ratified by the national parliaments of each of the EU Member States before it formally enters force.[53] In the UK, this is done through secondary legislation; specifically, a draft Order in Council laid in Parliament, and approved by both the Commons and Lords (under the affirmative procedure), and then by the Privy Council.[54] Under 'provisional application' procedures, however,[55] if Member States agree to it (via the Council), parts of the agreement can enter force before it is ratified by national parliaments.

Any changes to EU laws, rules or regulations resulting from the Agreement would have to be separately approved by the EU's Member States in the Council, and by the European Parliament.

In the US

In the US, the agreement must be approved by Congress. The White House has indicated it intends to request so-called 'trade promotion authority' (TPA) under which Congress agrees to a simplified procedure for approving the negotiated trade deal, meaning that no amendments can be made and it has a limited amount of time to approve or reject the agreement. The issue of TPA is discussed in more detail in Section 3.2.

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[50] House of Lords European Union Committee Report, *The Transatlantic Trade and Investment Partnership*, 14th report, 2013-14, HL 179, 13 May 2014

[51] Government Response to the House of Lords European Committee's Fourteenth Report, The Transatlantic Trade and Investment Partnership, July 2014, Cm 8907

[52] HL Deb 17 June 2014 c727 onwards

[53] The scope of the EU's competence in trade policy was greatly expanded by the Treaty of Lisbon, which brought agreements covering services trade, trade-related aspects of intellectual property and foreign direct investment within the EU's exclusive competence. Nonetheless, elements of the TTIP, particularly investment protection and dispute settlement, are likely to be matters of mixed competence, hence requiring national parliamentary approval in each Member State. In the past, this has often been described as a 'rubber stamping' exercise.

[54] More information on secondary legislation can be found in the House of Commons Information Office Factsheet F7 *Statutory instruments*

[55] Article 25 of the Vienna Convention on the Law of treaties allow negotiating parties to apply some or all of the provisions of the treaty provisionally prior to its entry into force. In the EU, the Council, voting by qualified majority, is expressly authorised to provisionally apply a treaty before its entry into force, subject to the consent of the European Parliament.

5 Appendix 1: Links to further information

- #NoTTIP Coalition, TTIP: No Public Benefits, But Major Costs, September 2014
- TTIP: Vince Cable's detailed response to 'TTIP: no public benefits, but major costs', 12 November 2014
- UK Government collection of resources on TTIP
- European Commission TTIP website
- StopTTIP.net
- 38 degrees
- For Parliamentary Committee reports and debates, see section 4 above

6 Appendix 2: A short history of US-EU economic diplomacy

6.1 Early history

Diplomatic relations between the US and the then European Community were initiated in 1953 when US observers were sent to the European Coal and Steel Community (ECSC). The US Mission to the ECSC formally opened in Luxembourg in 1956. The Delegation of the European Commission to the United States in Washington, D.C. was established in 1954, and the United States Mission to the European Communities, now the United States Mission to the European Union, was established in 1961 in Brussels.[56]

In 1990, the relations of the U.S. with the European Community were formalised by the adoption of the Transatlantic Declaration. A regular political dialogue between the U.S. and the EC was initiated at various levels, including regular summit meetings, focussing on the economy, education, science and culture.

A New Transatlantic Agenda (NTA), launched at the Madrid summit in 1995, contained four broad objectives for enhanced collaboration:

- promoting peace and stability, democracy and development around the world;
- responding to global challenges;
- contributing to the expansion of world trade and closer economic relations; and
- building bridges Across the Atlantic.

In connection with the adoption of the New Transatlantic Agenda a Joint EU-US Action Plan was drawn up committing the EU and the US to a large number of co-operation measures.

6.2 Transatlantic Economic Partnership

As an extension of the NTA efforts, The Transatlantic Economic Partnership (TEP) was launched at the May 1998 London Summit. The principle aim of the TEP was to increase trade and investment by tackling regulatory barriers through co-operation, mutual

[56] United States Mission to the European Union website

recognition, and alignment of standards, and to give impetus to co-operation in the fields of trade and investment.[57]

6.3 Transatlantic Economic Council

The Transatlantic Economic Council (TEC) was set up in 2007 to guide work on transatlantic economic convergence. The TEC brings together the Members of the European Commission and US Cabinet Members that have the political responsibility for increasing economic ties.

The TEC brings together a range of economic cooperation activities in issues of "mutual interest" to give political guidance and direction to this work. The TEC also provides for a political forum for discussing wider strategic global economic questions. Three "advisory" groups help guide the work of the TEC:-

- The Transatlantic Consumer Dialogue is a forum of US and EU consumer organisations which develops and agrees on joint consumer policy recommendations to the US and EU to promote the consumer interest in policy making.

- The TransAtlantic Business Dialogue (TABD) is the principal business interlocutor with the US and EU on the transatlantic economic relationship. The organisation was convened in 1995 by the U.S. Department of Commerce and the European Commission to serve as the official dialogue between American and European business leaders, US cabinet secretaries and EU commissioners. Membership is comprised of chief executive officers or chairmen of American and European companies operating in the United States, Europe and globally.

- Established in 1999, the Transatlantic Legislators' Dialogue aims to enhance the level of political discourse between European and American federal Legislators, the European Parliament and the American Congress.

[57] EU (DG Trade), *Transatlantic Economic Partnership: Overview and Assessment*, October 2000