College of Europe
Collège d'Europe

Brugge

Natolin

The Atlantic – A Bridge Too Far? TTIP's Provenance, Prospects and Pitfalls

Jonatan Thompson (ed.)

DEPARTMENT OF EU INTERNATIONAL
RELATIONS AND DIPLOMACY STUDIES

EU Diplomacy Paper 02 / 2015

College of Europe
Collège d'Europe
Brugge | Natolin

Department of EU International
Relations and Diplomacy Studies

EU Diplomacy Papers
2/2015

The Atlantic – A Bridge Too Far?
TTIP's Provenance, Prospects and Pitfalls

Jonatan Thompson (ed.)

© Jonatan Thompson *et al.* 2015

Dijver 11 | BE-8000 Bruges, Belgium | Tel. +32 (0)50 477 251 | Fax +32 (0)50 477 250 |
E-mail info.ird@coleurope.eu | www.coleurope.eu/ird

About the Authors

Frances Ainley is currently studying EU International Relations and Diplomacy Studies at the College of Europe in Bruges. She is a UK Civil Servant who worked on EU-related policy in London before a year-long secondment to DG ECHO at the European Commission. Frances holds a BA in Modern History from Oxford University. She also has experience of working in the private sector at Mars Inc. and has worked in Beijing in the Political Section of the EU Delegation to China, as well as at Save the Children China Programme.

Andrea Chiarello is currently studying EU International Relations and Diplomacy Studies at the College of Europe in Bruges. He holds a two-year MA in European Studies from the University of Padua, with a one-year Erasmus at the IEP Strasbourg, and a BA in International Relations and Human Rights from the University of Padua. He also underwent a traineeship as MEP assistant the European Parliament and at the General Secretariat of the Council of the EU in Brussels (unit 'Trade').

Richard Cuntz est diplômé en Master de 'International Economic Policy' de Sciences Po Paris ainsi qu'en Master en Relations internationales et études diplomatiques de l'Union européenne du Collège d'Europe. Dans le cadre de son parcours, il a acquis plus de deux ans d'expérience professionnelle, notamment dans la politique économique extérieure et dans la diplomatie. Entre autres, il a réalisé des stages à la Représentation permanente de la France auprès de l'UE, ainsi qu'à la délégation de l'UE en Turquie. En outre, il a effectué des travaux pour la Chambre de commerce et d'industrie allemande et 'The Foundation on Economic Trends'.

Ueli Staeger is currently studying EU International Relations and Diplomacy Studies at the College of Europe in Bruges. He previously completed a BA in Political Science at the University of Geneva and an MA in International Politics at the School of Oriental and African Studies, University of London. Ueli worked in Brussels and Palestine, and has led the Swiss chapter of the European Youth Parliament. He will join the Graduate Institute in Geneva for doctoral studies in September 2015.

Jonatan Thompson is since April 2013 Academic Assistant in the Department of EU International Relations and Diplomacy Studies at the College of Europe in Bruges. He holds an MA in European Affairs from Sciences Po Paris and a BA in Social and Political Sciences from the University of Cambridge. He previously worked as EU Affairs Executive for the Institute of Chartered Accountants in England and Wales and underwent a traineeship in the General Secretariat of the Council of the EU (unit 'Trade').

Abstract

This collective *EU Diplomacy Paper* on the Transatlantic Trade and Investment Partnership (TTIP), which the United States and the European Union (EU) are currently negotiating, consists of condensed versions of a Master's thesis and three shorter essays written by students of the EU International Relations and Diplomacy Studies programme at the College of Europe. The contributions reflect the state of play in April 2015.

The introduction by Jonatan Thompson asks whether TTIP's ambition to create a single market spanning the Atlantic might, given the gaps in interests and mounting political contestation, turn out be 'a bridge too far' for the negotiators.

Richard Cuntz argues in his contribution that the official justification for TTIP put forward by its European proponents, boosting prosperity through greater trade and investment, seems rather unconvincing on its own. TTIP covers a large range of issues that do not bear directly on transatlantic trade and seem rather intended to forge a template for the rest of the world. The renewal of geo-economic and political ties with the US is seen as a means to mitigate Europe's relative global decline. Hence, European support for TTIP can partly be traced to particular economic interests, but also to the larger political and economic crisis gripping the EU.

Frances Ainley applies Putnam's well-known 'two-level games' approach to the current TTIP talks, focusing on investor-to-state dispute settlement (ISDS). While ISDS is a 'must-have' for U.S. negotiators, on the EU side a strong anti-globalisation movement coupled with 'reverberation' from recent court cases and German domestic politics complicate, and could derail, TTIP negotiations as a whole.

Andrea Chiarello analyses another controversial issue in the transatlantic trade negotiations: Geographical Indications (GIs). While GIs are a key European interest in the TTIP negotiations and in the EU's broader agricultural trade policy, U.S. agricultural policy and exports are based on generic products and a system of trademarks. The tensions arising over agriculture in TTIP negotiations can be traced to economic interests as well as diverging philosophies of agricultural production and intellectual property regulation. However, he argues that with pragmatism on both sides, a compromise on the contentious issue of GIs could be within reach.

Ueli Staeger's contribution examines the European side of the TTIP negotiations through the 'two-level game' and 'principal-agent' approaches. It argues that the European domestic level is characterised by a game of 'real' and 'fictional', or 'lobbying' and 'ratifying', principals; second, the actors acting as 'fictional principals' capitalise on TTIP's politicisation to reinforce their structural role in EU policy-making by overstretching the legal competences through a democratisation and transparency discourse.

Table of Contents

Introduction: The Atlantic – A Bridge Too Far?

Jonatan Thompson 5

Une analyse des motivations européennes en faveur du TTIP

Richard Cuntz 9

The Investor-to-State Dispute Settlement Clause in the TTIP – An Unsettling Dispute?

Frances Ainley 32

Geographical Indications in the TTIP: A Lost Battle?

Andrea Chiarello 41

Understanding Civil Society and European Parliament Contention with the TTIP Negotiations

Ueli Staeger 48

Editorial Team:

Nicola Del Medico, Sieglinde Gstöhl, Enrique Ibáñez Gonzalez, Lucas Maurer, Jonatan Thompson, Anna Wardell

Dijver 11 | BE-8000 Bruges, Belgium | Tel. +32 (0)50 477 251 | Fax +32 (0)50 477 250 | E-mail ird.info@coleurope.eu | www.coleurope.eu/ird

Views expressed in the *EU Diplomacy Papers* are those of the authors only and do not necessarily reflect positions of either the series editors or the College of Europe.

Introduction: The Atlantic – A Bridge Too Far?

Jonatan Thompson

> « J'avoue que dans l'Amérique j'ai vu plus que l'Amérique ; j'y ai cherché une image de la démocratie elle-même, de ses penchants, de son caractère, de ses préjugés, de ses passions ; j'ai voulu la connaître, ne fût-ce que pour savoir du moins ce que nous devions espérer ou craindre d'elle. »
>
> *Alexis de Tocqueville*

Complete "the largest free trade zone in the world";[1] create an "economic NATO".[2] The Transatlantic Trade and Investment Partnership (TTIP), an economic project covering half of global nominal GDP, a third of global trade and $4 trillion in investment, is an enterprise whose dimension, scope and political aspirations can only awe.

It cannot avoid raising questions, too – not least due to TTIP's origins, a on-and-off transatlantic courtship whose consummation the European Commission called a "no-go" as late as 2010.[3] Almost two years after the U.S. and EU Commission Presidents and UK Prime Minister opened negotiations now entering their 9th round, the present publication – a collective effort of College of Europe students, graduates and staff – re-examines TTIP's provenance, prospects and pitfalls. What are the motivations that underlie the project? What is the state of play and what are the prospects in the major areas of contention? What risks do the negotiating parties incur with this enterprise?

The first contribution analyses the European motivations for TTIP. The headline goal of the project is to align regulations and further lower trade barriers to invigorate two mature, already closely intertwined economies. For the EU, trundling through a 'lost decade' on a fiscal-free policy cure, it is tempting to see growth through trade as "the cheapest stimulus you can imagine".[4] The transatlantic tie-up is deeply desired by German exporters (if not by the Germany public) and Berlin has used its growing heft to twist France's arm to make common cause with the Atlanticist United Kingdom. Likewise, from the other side of the Atlantic, a group of influential industries have a keen eye to still relatively sheltered European markets such as food and agriculture, telecommunications, energy, digital and professional services.

---

[1] J. M. Barroso, "Statement by President Barroso on TTIP", European Commission, Brussels, 13 February 2013.

[2] H. R. Clinton, speech at the Brookings Institution, Washington D.C., 29 November 2012.

[3] Cited in D. Levie, "Implications for the Global Trade System of the ongoing TTIP negotiations", background note for the roundtable *Evolutions in the Transatlantic Relationship within a Multipolar World*, Brussels, October 2013, p. 3.

[4] K. De Gucht, "Transatlantic Trade and Investment Partnership: Opening free trade negotiations with the United States", speech, Brussels, 21 February 2013.

Secondly, in a world upended by stagnation in Europe and the long Chinese surge, the U.S. and EU hope to gain a 'first mover' advantage by forging common rules on a wide gamut of contentious global issues such as intellectual property rights and investment. As the first contribution argues, many of the provisions in TTIP, including Investor-State Dispute Settlement, evince little bilateral interest and seem aimed at setting the terms for debate with emerging powers.

How do the headline selling points for TTIP look upon closer inspection? As the first contribution observes, while aligning EU and U.S. rules and reducing the remaining barriers to market access are likely to increase net economic activity, the projected gains are not all that impressive. Given the contentious assumptions, we should, moreover, take the quantitiative forecasts with a pinch of salt.

Furthermore, within any net gains there will certainly be winners and losers. Liberalisation here involves giving the largest multinational companies freer rein to outcompete others and dominate both the U.S. and EU markets. U.S. companies such as Wal-Mart, AT&T, Exon-Mobil and Boeing often enjoy competitive advantages thanks to, inter alia, their established positions in a huge and homogenous home market, liquid capital markets and lower energy and labour costs. Furthermore, European legislators have often been relatively more inclined towards social protection while their U.S. counterparts have tended to favour corporate freedom. TTIP's Investor-State Dispute Settlement system will potentially constrain legislators' freedom to promote non-commodity public goods such as social equality, consumer protection, culture, and the natural environment.

The TTIP's second major aspiration, to forestall the secular eastward shift of normative power by establishing a blueprint for global economic governance, is trickier to assess. Even if negotiations succeed in setting common standards in areas such as intellectual property rights, investment or competition, many observers consider it unlikely that the duo could still set the tone now the way the 'Quad' (U.S., EU, Japan and Canada) used to in the World Trade Organisation (WTO).

The prospective payoffs of an agreement, while attractive, are then far from sensational, and heavy with caveats. And, as the second and third contributions argue, agreement is anything but given. Familiar contentious issues such as the EU's Geographical Indications have led to clashes between the negotiators, while the cornerstone Investor-State Dispute Settlement clause, negotiated by both sides with an eye on parallel negotiations with China, has faced domestic political headwind in Europe in particular. Although the overall win-sets of the parties may overlap, the landscape of offensive and defensive interests and the unprecedented public

mobilisation against TTIP have piled up the hurdles for negotiators on both the international and the domestic fronts.[5]

Indeed, amidst a trend of increasingly far-reaching trade agreements and ever broader and louder public debate, the transatlantic negotiations may set a new tidemark for mobilisation. As the fourth contribution argues, elected representatives and organisations now, to an extent unseen in any previous trade negotiation, claim a stake in the TTIP, and by implication in all like negotiations to come. For example, while leaked negotiating directives has become the rule for EU trade negotiations, the European Commission felt compelled to publish the TTIP mandate. Although trade negotiators will continue to meet in closed rooms, from now on the room will have a "glass wall".[6]

Besides heavy domestic contention, what risks did negotiators incur when they rolled the dice for TTIP? Given that the ambitions for the deal extend well beyond North America and Europe, so will the likely loss of goodwill – as well as credibility, should the negotiations run aground. The perception that the U.S. and Europe are trying in a none-too-discrete way to make standards for their competitors is unsurprisingly ruffling feathers in Beijing and elsewhere. And, given its scope, the transatlantic enterprise necessarily diverts both parties' energies from other trade topics, especially those discussed in the WTO, as they shift their rhetorical emphasis from multilateral negotiations for inclusive growth to one-on-one bargaining for hard interests.

In sum, this publication aims, two years after the launch of the negotiations, to contribute to our understanding of their motivations, prospects and potential effects, in order that we may see more clearly where the next steps could lead us. While TTIP negotiations do not appear to be running out of steam anytime soon, several hurdles lie ahead. In the EU, against a backdrop of rising public and political contestation, a looming unanimity vote in the Council and ratification by national parliaments, the new Commission leadership champions TTIP with less fervour than its predecessors. As for Washington, should the negotiators manage to wrap up a deal before the 2016 Presidential elections, the 'dead duck' Obama Administration has little political capital to steer the agreement through a hostile double-majority in Congress. Not a walk in the park, then, for the prospective parents of the world's largest market.

---

[5] R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games", *International Organization*, vol. 42, no. 3, 1988, pp. 427-460.
[6] See Ueli Staeger's contribution below.

Bibliography

Barroso, José Manuel, "Statement by President Barroso on TTIP", European Commission, Brussels, 13 February 2013.

Clinton, Hillary Rodham, speech at the Brookings Institution, Washington D.C., 29 November 2012.

De Gucht, Karel, "Transatlantic Trade and Investment Partnership: Opening free trade negotiations with the United States", speech, Brussels, 21 February 2013, retrieved 15 April 2015, http://europa.eu/rapid/press-release_SPEECH-13-147_en.htm.

Levie, Damien, "Implications for the Global Trade System of the ongoing TTIP negotiations", background note for the roundtable *Evolutions in the Transatlantic Relationship within a Multipolar World*, Brussels, October 2013, retrieved 15 April 2015, http://www.agora-forum.eu/files/attachments/.458/(Oct%202013)%20RT1%20-%20Technical%20Background %20Note%20by%20D.%20Levie.pdf.

Putnam, Robert, "Diplomacy and Domestic Politics: The Logic of Two-Level Games", International Organization, vol. 42, no. 3, 1988, pp. 427-460.

Une analyse des motivations européennes en faveur du TTIP

Richard Cuntz

Un accord commercial entre les Etats-Unis et l'Union européenne (UE) est loin d'être un nouveau projet. Il fut proposé et rejeté à des nombreuses reprises.[7] Les principales causes d'un manque d'enthousiasme se trouvaient essentiellement dans l'importance accordée au rôle de l'Organisation Mondiale du Commerce (OMC), le sujet sensible de l'agriculture, les divergences profondes voire idéologiques en termes de réglementation, ainsi qu'un niveau de tarifs déjà bas. Ces mêmes problèmes persistent aujourd'hui. Encore en 2010, la Commission européenne estimait qu'un accord de libre-échange avec les Etats-Unis constituait une « no-go area ».[8] Néanmoins, à peine un an plus tard, les partenaires transatlantiques lancèrent conjointement un groupe de travail de haut niveau sur l'emploi et la croissance (GTHN), dont les propositions donnèrent en 2013 l'impulsion pour l'initiation des négociations d'un accord sur le commerce et l'investissement.

Peu d'accords commerciaux ont autant mobilisé l'attention publique que le Partenariat transatlantique de commerce et d'investissement (TTIP). Cela n'est pas seulement dû à la taille des deux marchés mais aussi au contenu des négociations qui couvrent bien plus que des sujets purement commerciaux (voir tableau 1). Il y a toutefois une certaine confusion autour de la nature exacte de l'accord et des motivations précises de ces négociations.

Selon le discours public européen, il s'agirait entre autre de : un plan de relance gratuit,[9] établir les standards et règlements globaux du 21e siècle,[10] assurer le leadership occidental du monde,[11] revigorer le partenariat transatlantique,[12] contrer la Russie,[13] faire avancer le cycle de Doha[14] ou encore améliorer la sécurité énergétique de l'UE.[15] A en croire ces promesses, le TTIP représente la panacée générique pour les maux économiques, politiques et stratégiques de l'Europe.

---

[7] Par le ministre allemand des affaires étrangères Kinkel en 1995, par le Commissaire européen au commerce Brittan en 1998 et par la chancelière allemande Merkel en 2006/7.
[8] Cité dans D. Levie, « Implications for the Global Trade System of the ongoing TTIP negotiations », note d'information, *Evolutions in the Transatlantic Relationship within a Multipolar World*, octobre 2013, p. 3.
[9] K. De Gucht, « A European Perspective on Transatlantic Free Trade », discours, 2 mars 2013.
[10] C. Malmström & J. Hill, « Don't believe the anti-TTIP hype », *The Guardian*, 16 février 2015.
[11] K. De Gucht cité dans C.Chatignoux & V.Robert, « Le débat se polarise sur le partenariat transatlantique », *Les Echos*, 15 avril 2014.
[12] J.M. Barroso, discours à l'U.S. Chamber of Commerce, 30 avril 2014.
[13] J. V. de Almeida, table ronde à la conférence *The Future of Transatlantic Trade*, 10 avril 2014.
[14] J.M. Barroso, « A new era of good feelings », discours, 12 avril 2013.
[15] C. Malmström, « Transatlantic and Global Trade, and Security », discours, 14 février 2015.

L'envergure apparente d'objectifs nous laisse perplexe, tant ils sont holistiques et touchent à des disciplines aux aspects distincts. Peut-être la meilleure description de la stratégie de communication est livrée par l'ancien ambassadeur de l'UE auprès des Etats-Unis : « Dans le TTIP il y a quelque chose pour tout le monde ».[16] Autant cette explication est simple, elle reste cependant insatisfaisante.

Le TTIP est sans doute plus qu'un simple accord de libre-échange, mais qu'est-il exactement, ou plutôt : qu'est-il est censé être selon le souhait européen ? Le présent article se propose d'analyser les motivations européennes en faveur du TTIP afin de répondre à cette problématique.

Tableau 1 : Mandat de négociation de la Commission européenne

Domaines de négociations	**Contenu**
Accès au marché	1. Échanges des marchandises - tarifs - règles d'origines - anti-dumping, mesures compensatoires, mesures de sauvegarde 2. Services, protection des investissements (règlement de différend investisseur-État) 3. Approvisionnement public
Questions réglementaires et barrières non-tarifaires	1. Mesures sanitaires et phytosanitaires 2. Obstacles techniques au commerce 3. Cohérence réglementaire 4. Dispositions sectorielles (non-exhaustive): - automobiles - produits chimiques - produits pharmaceutiques - TIC - services financiers 5. 'Accord vivant' - Conseil de coopération réglementaire
Règles	1. Droits de propriété intellectuelle 2. Commerce et développement durable 3. Douanes et facilitation du commerce 4. Accords commerciaux sectoriels 5. Commerce et concurrence - Entreprises publiques 6. Échanges liés à l'énergie et aux matières premières 7. Petites et moyennes entreprises 8. Mouvements de capitaux et paiements 9. Transparence 10. Cadre institutionnel et règlement des différends

Source : fait à partir de : Conseil de l'Union européenne, « Directives de négociations concernant le Partenariat transatlantique de commerce et d'investissement entre l'Union européenne et les États-Unis d'Amérique », ST 11103/13 DECL 1, 17 juin 2013.
TIC = technologies de l'information et de la communication

[16] J. V. de Almeida, entretien, *Central Europe Digest*, 10 septembre 2013.

It's (not) the economy, stupid!

« Le TTIP est conçu pour stimuler la croissance et créer des emplois. »[17]

Brochure d'explication de la Commission européenne

Le seul objectif européen qui est explicitement mentionné dans le mandat de négociation de la Commission est de générer de nouvelles opportunités économiques pour la croissance et la création d'emplois. La Commission européenne fonde son raisonnement économique concernant les bienfaits du TTIP sur les résultats d'une étude d'impact qu'elle a commandée auprès du Centre for Economic Policy Research (CEPR).

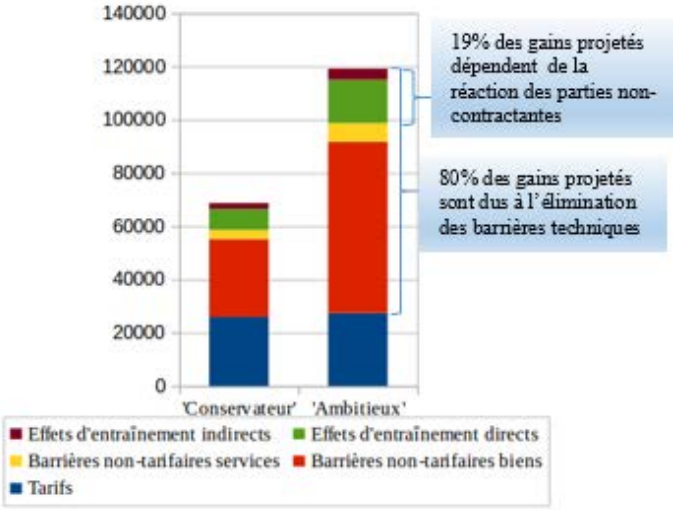
En utilisant des modèles d'équilibre général calculable (MEGC), le CEPR a estimé l'incidence de deux scénarios de libéralisation entrant en vigueur dès l'année 2017. L'hypothèse 'conservatrice' table sur une réduction de 98% des tarifs, une baisse de 10% des obstacles non-tarifaires ainsi que sur une diminution de 25% des obstacles concernant l'approvisionnement public. Dans le scénario le plus ambitieux, les tarifs sont complètement éliminés, les obstacles non-tarifaires sont réduits de 25% et les obstacles aux marchés publics sont diminués de 50%. Les principaux résultats à l'horizon 2027 sont reproduits ci-dessous (voir tableaux 2-4).

Tableau 2 : CEPR: Aperçu des résultats

Scénario 'conservateur'	
PIB	Exportations
+ 0.27 %	+ 3.37 %
+ 0.21 %	+ 4.75 %
* + 0.07 %	+ 0.51 %
Scénario 'ambitieux'	
PIB	Exportations
+ 0.48 %	+ 3.37 %
+ 0.39 %	+ 5.91 %
* + 0.14 %	+ 1.04 %

*Reste du Monde

Tableau 3 : CEPR: Gains par type de libéralisation (en mn €)



Source : fait à partir de : J. Francois (dir.), « Reducing Transatlantic Barriers to Trade and Investment - An Economic Assessment », Centre for Economic Policy Research, mars 2013.

[17] Commission européenne, DG Trade, « Le commerce à votre service », *Qu'est-ce que le TTIP?*, dossier en ligne.

Tableau 4 : Aperçu des résultats d'autres études d'impact

	PIB de l'UE à long terme	Scénario	Méthodologies
CEPII	+ 0.30 %	-25 % BNT, -100 % tarifs	MEGC basé sur des élasticités proposées par l'étude Ecorys
CEPR UK	+ 0.61 %	-25 % BNT*, -100 % tarifs	MEGC basé sur des élasticités proposées par l'étude Ecorys
Kommerskollegium	+ 0.22 %	-25 % BNT*, -100 % tarifs	MEGC basé sur des élasticités proposées par l'étude Ecorys
Ifo	+ 4.95 %	Ambitieux	Analyse économetrique basées sur anciens ALE

Sources : K. Berden *et al.*, « Non-Tariff Measures in EU-U.S. Trade and Investment – An Economic Analysis », Ecorys, 2009; L. Fontagné *et al.*, « Transatlantic Trade: Whither Partnership, Which Economic Consequences », *Policy Brief N°2013-01*, CEPII, septembre 2013; « Estimating the Economic Impact on the UK of a TTIP-Agreement between the EU and the U.S. », CEPR, mars 2013; S. Kinnman & T. Hagberg, « Potential Effects from an EU-U.S. Free Trade Agreement – Sweden in Focus », Kommerskollegium, novembre 2012; G. Felbermayr *et al.*, « TTIP: Who benefits from a free trade deal? Part 1: Macroeconomic Effects », ifo Institut, Fondation Bertelsmann, juin 2013.

BNT = Barrières non-tarifaires
ALE = Accord de libre-échange
* « - 50% BNT actionnables » = - 25% de toutes les BNT

A long terme nous sommes tous morts

« [Le TTIP] est le plan de relance le moins cher qu'on puisse s'imaginer. » [18]

Karel De Gucht, ancien Commissaire européen au Commerce

L'essentiel des bénéfices projetés viendraient des gains dynamiques et de la diminution des barrières non-tarifaires. Or, ces gains prendraient un certain temps pour se manifester. C'est pour cela que l'étude d'impact du CEPR prend un horizon de 10 ans, de 2017 à 2027, afin d'estimer l'impact du TTIP et le chiffre de 0.48% constitue alors la croissance supplémentaire qui sera réalisée pendant 10 ans : soit une croissance annuelle moyenne de 0.048%. Un « plan de relance » qu'il est difficile de qualifier d'impressionnant.

Les bénéfices mis en avant par la Commission elle-même sont tellement minimes qu'ils ne seront point quantifiables sur une si longue période. Un modèle qui a l'ambition de projeter le développement économique mondial jusqu'en 2027 en ne prenant en compte qu'une 'chose' – le TTIP – ne peut qu'être aberrant, parce que forcément des 'milliers de choses' vont se passer. Un exemple flagrant est que le CEPR ne prend pas en compte une éventuelle passation du Partenariat transpacifique (TPP),[19] laquelle changerait inévitablement toutes les estimations concernant le commerce transatlantique.

Le meilleur des mondes possibles – une appréciation des suppositions de l'étude d'impact

La fiabilité de l'étude d'impact dépend foncièrement de ses suppositions sur la réduction des barrières non-tarifaires – 80% de bénéfices devraient se faire ici, ce qui s'explique par le niveau de tarifs déjà très bas et la nature du commerce

[18] K. De Gucht, « Opening free trade negotiations with the U.S. », discours, 21 février 2013.
[19] Commission européenne, DG Trade, « Coup de projecteur sur l'analyse économique », septembre 2013, p. 14.

transatlantique qui est avant tout intra-sectorielle. Une réduction totale de 25% des BNT, telle qu'elle est supposée dans le scénario ambitieux du CEPR, reviendrait en effet à une élimination de la moitié de toutes les BNT « modifiables par la politique ».[20] Pour plusieurs raisons ceci semble irréalisable.

Cela fait vingt ans que les Etats-Unis et l'UE cherchent des solutions aux divergences règlementaires qu'ils avaient identifiées dès 1995 comme entraves principales à un commerce transatlantique plus efficace. De nombreuses initiatives n'ont abouti qu'à très peu de chose.[21] Les problèmes qui se sont présentés et qui persistent toujours résident dans la différente nature des systèmes réglementaires et des préférences des deux côtés de l'Atlantique. Les barrières réglementaires sont bien plus compliquées à éliminer car, à la base, elles ne sont pas censées être des barrières commerciales. Alors que les tarifs sont clairement des instruments protectionnistes, la raison d'être des règlements et des standards se trouve dans les préférences collectives. L'incompatibilité des deux systèmes réglementaires est d'ailleurs partiellement admise dans le discours officiel de la Commission et la Commissaire Cecilia Malmström dit seulement vouloir inclure des secteurs dans le TTIP où les positions américaines et européennes sont proches.[22]

De nombreuses autres suppositions de l'étude d'impact ont été publiquement infirmées par la Commission et les Etats-Unis. Par exemple, contrairement à ce qui est sous-entendu par le CEPR, il ne devrait pas y avoir de rapprochement réglementaire dans le secteur chimique,[23] des tarifs devraient persister dans les secteurs dits sensibles[24] et les Etats-Unis refusent d'inclure la réglementation des services financiers.[25]

On observe donc une contradiction dans le discours de la Commission, puisqu'elle insiste sur les gains de 0.48% du scénario ambitieux du CEPR, alors qu'elle admet que les hypothèses sous-jacentes sont irréalisables. Si le TTIP sera conclu il est probable que ses stipulations seraient bien moins ambitieuses que celles prévues par l'étude d'impact.

La Commission Barroso présentait le TTIP comme une panacée pour les maux économiques actuels de l'UE. Si l'on peut raisonnablement estimer que, comme pratiquement toute libéralisation commerciale, le TTIP engendrerait des gains économiques, ceux-ci se manifesteraient seulement à long terme et seraient faibles.

---

[20] Commission européenne, « Impact assessment on the future of EU-U.S. Trade Relation », mars 2013, p. 6.
[21] M. Pollack, « The Political Economy of the Transatlantic Partnership », Robert Schuman Centre for Advanced Studies, 2003, pp. 32-46.
[22] C. Malmström, « Mehr Handel, mehr Jobs », entretien, *DIE ZEIT*, 19 février 2015.
[23] Commission européenne, « Position de l'UE sur les substances chimiques », mai 2014.
[24] K. De Gucht, Propos dans le débat en plénière au Parlement européen, 15 juillet 2014.
[25] S. Donnan, « EU-U.S. trade talks hit roadblock over financial services », *Financial Times*, 16 juin 2014.

A eux seuls, ils ne pourraient pas justifier l'enthousiasme européen pour un projet d'une telle envergure demandant un investissement politique massif.

Une explication possible pour cette énigme pourrait être que, compte tenu de la mauvaise situation économique, on essaie de racler tout centième de pourcentage de croissance supplémentaire possible. L'UE pourrait peut-être également s'attendre à des gains plus significatifs au-delà de la phase d'implantation par la caractéristique du TTIP en tant que 'accord vivant', qui – notamment avec le projet d'un Organisme de Coopération Règlementaire (RCB)[26] – devrait avoir un impact continu sur les barrières non-tarifaires au commerce. Ces gains potentiels sont cependant incertains et impossibles à estimer.

Une deuxième explication possible serait que les motivations européennes se fondent plus sur les aspects stratégiques et symboliques attribués au TTIP que sur les retombées économiques espérées – ce qui ne voudraient tout de même pas dire que ces dernières ne jouent aucun rôle.

Une observation intéressante est que la nouvelle Commissaire Malmström édulcore les promesses économiques par rapport à celles de l'ancien Commissaire De Gucht. Si ce dernier affirmait que le TTIP créerait de millions d'emplois,[27] Malmström dit ne pas pouvoir faire de promesses concrètes sur le nombre d'emplois que le TTIP engendrerait.[28] Malmström n'utilise également plus le terme de « plan de relance gratuit » qui se trouvait au cœur de la stratégie de communication de la Commission Barroso.

Un jeu géoéconomique

> « Le plus grand apport [du TTIP] résidera peut-être dans les effets qu'il aura sur nos relations avec le reste du monde. »[29]
>
> *Karel De Gucht, ancien Commissaire européen au Commerce*

Le TTIP est censé être un accord stratégique qui amplifie l'influence de ses parties contractantes et, *in fine*, devrait leur donner un avantage relatif face aux pays tiers. Les stipulations du TTIP doivent couvrir plus que des questions purement commerciales et les négociations sont censées être « utilisées pour traiter des sujets qui vont bien au-delà de nos dossiers bilatéraux ».[30] Le grand objectif est de poser les bases de la gouvernance commerciale du 21e siècle.[31]

---

[26] Pour plus de détails sur le RCB voir: DG Trade, « Textual proposal for legal text on regulatory cooperation in TTIP », 10 février 2015.
[27] K. De Gucht, « Solving the Regulatory Puzzle », discours, 10 octobre 2013.
[28] Malmström, *DIE ZEIT*, *op.cit.*
[29] K. De Gucht, « Where do we stand on the hottest topics in the current debate? », discours, 22 janvier 2014.
[30] Barroso, « A new era », *op.cit.*
[31] Barroso, discours à l'U.S. Chamber of Commerce, *op.cit.*

A la recherche du leadership perdu

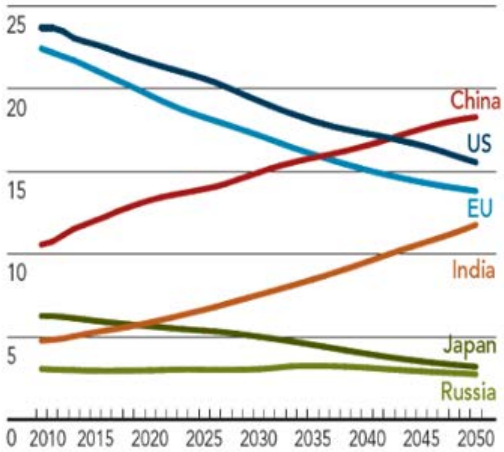
« Le TTIP pourrait nous aider à gérer l'éloignement du centre de gravité économique et politique de l'Europe et de l'Amérique du Nord. »[32]

Cecilia Malmström, Commissaire européenne au Commerce

Historiquement, le GATT servait de plate-forme de confrontation entre l'UE et les Etats-Unis et c'était la dynamique de cette relation qui déterminait l'issue des négociations multilatérales. Avec l'entrée de nouveaux poids lourds dans l'OMC, il est apparu cependant que le 'Quad' ne peut pas conserver son rôle de prescripteur. L'impasse de Doha a certainement diminué l'enthousiasme européen pour le multilatéralisme commercial, mais en dehors de cela on estime que le TTIP peut « combler des lacunes du règlement international » qui persisteraient même si le cycle de Doha aboutissait.[33] De cette manière les Etats-Unis et l'UE cherchent à imposer par la voie bilatérale des « règles globales qui représentent nos valeurs et nos intérêts ».[34]

En outre, un certain alarmisme figure dans le discours sur le TTIP. L'essor d'autres acteurs diminue forcément le poids relatif de l'Europe et des Etats-Unis. Malmström dit qu'il faut se dépêcher de cimenter un régime de gouvernance économique qui prenne en compte les valeurs occidentales tant qu'on dispose encore d'un poids incontournable.[35] Le partenariat transatlantique est présenté comme une bouée de sauvetage sans lequel l'Europe ne saurait plus défendre ses intérêts au niveau global.[36]

Tableau 5 : Indice de pouvoir global du Conseil national de renseignements des États-Unis



Source : Peter van Ham, « The Geopolitics of TTIP », *Clingendael Policy Brief*, n° 23, Clingendael Institute, octobre 2013.

[32] C. Malmström, « On Course for the UK », discours, 16 février 2015.
[33] K. De Gucht, « A Bilateral Agreement with Multilateral Impacts », discours, 21 mai 2013.
[34] K. De Gucht, table ronde à la conférence *The Future of Transatlantic Trade*, 10 avril 2014.
[35] Malmström & Hill, *op.cit.*
[36] C. Malmström, « Subsidiarity and other shared transatlantic principles », discours, 12 février 2015.

La définition des normes mondiales

> « Toute approche commune va multiplier notre influence. Et ceci nous permettrait de façonner la réglementation dans le monde entier, y compris dans des pays tels que le Brésil, la Chine, l'Inde ou la Russie, où les normes sont bien moins élevées que dans l'UE. Cela serait extrêmement bénéfique pour l'Europe. »[37]
>
> *Karel De Gucht, ancien Commissaire européen au Commerce*

Selon les négociateurs, tout rapprochement règlementaire entre l'UE et les Etats-Unis contribuerait à la création de normes globales.[38] Il y a un double objectif dans le souhait euro-américain de créer des normes globales. Premièrement, cela réduirait les coûts de production ainsi que les coûts d'exportation des entreprises européennes et américaines. Deuxièmement, on compte élever la rigueur des normes dans le reste du monde, notamment dans les pays émergents. Puisque les normes y sont moins strictes, les coûts de production des pays émergents sont moins élevés, ce qui leur donne un avantage dans leur compétitivité-prix.

Un objectif est « d'établir des règles de jeu équitables »[39] – le TTIP va donc tenter de contrer ce que les Etats-Unis et l'Europe considèrent comme de la concurrence déloyale.

Des règles occidentales pour le monde entier

> « Dans un monde globalisé la pression augmente pour avoir des standards communs. Il vaut mieux que nous établissions ces règles ensemble avec les Etats-Unis, que si la Chine ou la Russie le font. »[40]
>
> *Cecilia Malmström, Commissaire européenne au Commerce*

Les négociations du TTIP sont composées de trois piliers : l'accès au marché, la réglementation et les 'règles'. Alors que l'accès au marché et la réglementation influent directement sur les flux commerciaux, le pilier 'règles' traite plutôt de sujets avoisinants dans des domaines liés à la production ou à ladite 'bonne gouvernance'.

Dans le pilier 'règles', le TTIP entame des négociations dans certains domaines qui n'ont pas de grande importance pour le commerce ou l'investissement à travers l'Atlantique (voir tableau 1). Par contre, l'UE et les Etats-Unis ont exclu des négociations des sujets qui posent réellement problème entre eux. Ainsi, le TTIP ne touche pas aux questions des subsides à l'agriculture, des sanctions économiques ou encore de la taxation et de l'évasion fiscale – autant de sujets où un accord euro-américain constituerait sans doute une avancée majeure pour « combler des lacunes du règlement international ». Le pilier des négociations 'règles' du TTIP se

---

[37] De Gucht, « Hottest topics », *op.cit.*
[38] C. Malmström, « TTIP On Track », discours, 12 mars 2015.
[39] K. De Gucht, « Stepping Up a Gear », discours, 18 février 2014.
[40] Malmström, *DIE ZEIT*, *op.cit.*

concentre en revanche sur l'investissement et la concurrence – des sujets où les pays émergents ne souhaitent se soumettre à aucune contrainte internationale.

Les questions liées aux droits de propriété intellectuelle (DPI) et à la protection de l'investissement inclues dans les négociations du TTIP sont des mesures qui ont été conçues pour les relations commerciales avec des pays qui ont des systèmes juridiques laxistes et des mécanismes de renforcement légal faibles. Par contre, l'inclusion de telles mesures dans un accord régissant les relations transatlantiques semble hautement superflu, voire inapproprié. La principale raison pour stipuler de telles règles est l'intérêt d'établir des précédents et de codifier les positions actuelles des Etats-Unis et de l'UE. Ainsi le contenu d'autres accords futurs avec et parmi des pays tiers doit être façonné.

Un motif essentiel pour inclure l'ISDS par exemple, réside dans le fait que l'on veut établir un précédent pour la Chine en vue des pourparlers sur un traité bilatéral d'investissement.[41] Le fait que les Etats-Unis soient également en train de négocier un tel accord avec la Chine illustre l'utilisation du TTIP comme une plateforme coordinatrice des partenaires atlantiques afin d'amplifier leur poids. La Commission accorde également « une importance extrême »[42] à l'introduction de mesures strictes concernant la concurrence et le traitement des entreprises publiques par le TTIP. Clairement, celles-ci n'ont pas un grand rôle à jouer dans le commerce transatlantique. Il s'agit cependant « d'établir des normes élevées, afin d'encourager nos partenaires commerciaux d'appliquer les mêmes règles du jeu »[43] – ici aussi l'objectif est de rehausser la barre pour des pays dont les intérêts et les valeurs divergent de ceux des pays européens. Les destinataires de telles stipulations sont des pays pratiquant le capitalisme d'État.

Des sujets tels que les DPI, les entreprises publiques ou encore des questions de protection des travailleurs montrent que les Etats-Unis et l'UE sont en train de négocier par la voie bilatérale des sujets qui ciblent des acteurs se trouvant exclus de l'accord. Il s'agit de pays émergents, avec lesquels ils ont tous deux des doléances concernant précisément ces sujets. Le TTIP est alors une réaction commune à ce qu'ils qualifient comme des politiques de « beggar-thy-neighbour ».[44]

La libéralisation compétitive

Selon De Gucht le TTIP « servira d'exemple pour des futurs accords commerciaux dans le monde entier ».[45] Une voie par laquelle l'UE et les Etats-Unis pourraient

[41] De Gucht, Parlement européen, *op.cit.*
[42] De Gucht, « Stepping Up a Gear », *op.cit.*
[43] *Ibid.*
[44] *Ibid.*
[45] K. De Gucht, « The Real Debate », discours, 22 mai 2014.

externaliser et généraliser des règles communes du TTIP est la libéralisation compétitive. Poussée à son extrême, la libéralisation compétitive est même censée permettre de convaincre des tiers à conclure un accord multilatéral. D'après Barroso, c'est l'ALÉNA qui aurait donné l'impulsion finale à la conclusion du cycle d'Uruguay et la même ambition existe de sa part pour le TTIP regardant les négociations multilatérales actuelles.[46] La pression sur des parties exclues du TTIP est renforcée par des négociations simultanées sur d'autres accords dont le contenu ressemble à celui du TTIP, tel que le TPP (voir tableau 6) et dans une moindre mesure l'Accord sur le commerce des services (TiSA, voir tableau 7).

Le TTIP est aussi lui-même partiellement la conséquence de l'escalade de la libéralisation compétitive. L'accélération des négociations du TPP en 2012 et le lancement du projet d'un Partenariat économique intégral régional (RCEP, voir tableau 6) ont probablement influencé la prise de décision de l'UE en faveur du TTIP, par peur d'être reléguée au rôle d'observateur et de subir une diversion de commerce. Carl Bildt et Javier Solana soulignent : « Si le TTIP s'effondre, tandis que le TPP réussit, alors l'équilibre mondial va pencher fortement en faveur de l'Asie et l'Europe aura peu d'options pour retrouver une influence économique et géopolitique ».[47]

Tableau 6 : Le Partenariat transpacifique et le RCEP

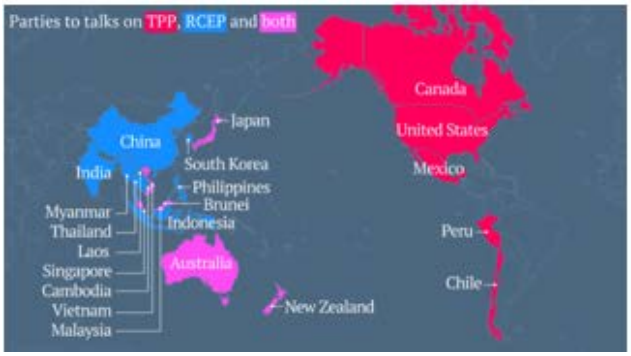


Tableau 7 : Le TiSA

Sources : Tableau 6 : L. Kuo, « How rival trade blocs between the US and China could be good for free trade in Asia », *Quartz*, 17 March 2013; Tableau 7 : BMWi, « TiSA - Trade in Services Agreement ».

La continuation de la géopolitique par d'autres moyens

Le concept d'OTAN économique

« [Le rôle de l'OTAN est de] maintenir les Russes dehors, les Américains dedans et les Allemands en bas. »

Lord Ismay, premier secrétaire général de l'OTAN

La description du TTIP comme une OTAN économique est originellement attribuée à Hillary Clinton.[48] Alors que Malmström rejette le terme,[49] il a été repris par de

[46] Barroso, « A new era », *op.cit.*
[47] C. Bildt & J. Solana, « La stratégie de retour de l'Europe », Project Syndicate, 6 janvier 2015.
[48] D. Ignatius, « A free-trade agreement with Europe? », *Washington Post*, 5 décembre 2012.

nombreux commentateurs, entre autres par Anders Fogh Rasmussen qui y voit l'opportunité de complémenter l'OTAN 'militaire' et de créer une « Communauté transatlantique intégrée ».[50] La signification exacte de l'expression 'OTAN économique' est ambiguë. Elle peut être comprise comme une affirmation positive du partenariat transatlantique, qu'on chercherait ainsi à renforcer. De l'autre côté, le terme réveille forcément des associations avec la guerre froide, une confrontation idéologique de nature existentielle, l'antagonisme avec l'hyperpuissance à l'écart de l'organisation et le désir de garder des tiers « en bas » ou « dehors ».

« Maintenir les Chinois dehors » – Le nouveau Grand Jeu

« Le fait que tu sois paranoïaque ne signifie pas qu'ils ne sont pas après toi. »
Henry Kissinger, ancien Secrétaire d'État américain

L'hégémon américain est aussi une puissance asiatique qui se dispute la prédominance du Pacifique avec la Chine. Des projets tels que le TTIP et le TPP – qui rassemblent les premiers partenaires commerciaux de la Chine et se focalisent sur des thèmes porteurs de griefs envers la Chine – ainsi que l'exclusivité du TiSA[51] ne peuvent que difficilement ne pas être perçus comme une stratégie de confinement. Selon Timothy Garton Ash, la stratégie commerciale américaine peut se résumer comme « EBC: Everyone But China ».[52] Les Etats-Unis ne font d'ailleurs pas un grand effort pour nier de telles ambitions, ainsi le représentant américain au commerce Michael Froman met en exergue: « Une véritable compétition globale se déroule en ce moment, et cette compétition est sauvage. Les pays qui réussiront seront ceux qui fixent les règles pour l'avenir. »[53]

Tableau 8 : Chine: premiers partenaires commerciaux, marchandises

	(Mio €)	(%)	Autres ALE notables actuels
Monde	3,187,976	100	
UE	428,648	13.4	**TTIP**, **TiSA** et al.
Etats-Unis	395,664	12.4	**TTIP**, **TPP**, **TiSA** et al.
Hong Kong	307,570	9.6	**TiSA**, RCEP
Japon	239,346	7.5	**TPP**, RCEP, (UE-Japon)
Corée du Sud	210,150	9.6	**TPP**, RCEP, (*KORUS, KOREU*)*
Australie	99,006	3.1	**TPP**, **TiSA**, RCEP
Malaisie	81,273	2.5	**TPP**, RCEP, (UE-Malaisie)
Brésil	68,903	2.2	(UE-Mercosur)
Russie	67,379	2.1	-
Singapour	57,873	1.8	**TPP**, RCEP, *(UE-Singapour, US-Singapour)* *

**conclus*

Source : Commission européenne, DG Trade, « China, Trade with World », 27 août 2014.

---

[49] Malmström, « Trade&Security », *op.cit.*
[50] A. F. Rasmussen, discours à la conférence *A New Era for EU-U.S. Trade*, 8 octobre 2013.
[51] Contrairement à l'UE, les États-Unis bloquent la demande de la Chine de se joindre aux pourparlers.
[52] T. G. Ash, « Welcome to the geopolitics of trade, where Dr Pangloss meets Machiavelli », *The Guardian*, 10 juillet 2013.
[53] M. Froman, discours au New England Council Luncheon, Boston, 14 avril 2014.

L'ancien Commissaire De Gucht a fait valoir qu'au fond la tâche du TTIP est d'« affirmer notre leadership quand le centre de gravité se déplace vers l'Asie ».[54] Et il utilisait même du vocabulaire de la guerre froide en parlant du TTIP: « Il s'agit ici du poids politique et économique du Monde occidental libre ».[55] Angela Merkel compare l'importance du TTIP à celle de la double décision de l'OTAN lors de la crise des euromissiles en 1979.[56] Des tels propos révèlent les aspirations européennes d'être une puissance stratégique. Ils sont aussi témoins d'une certaine escalade rhétorique afin de justifier l'importance du TTIP.

Cependant, même si l'Europe partage les griefs américains vis-à-vis de la Chine en ce qui concerne certaines questions commerciales, elle ne peut pas être intéressée par une confrontation avec elle, telle que les Etats-Unis la recherchent. Malmström dit qu'on ne cherche pas à se lier contre des tiers[57] et on peut raisonnablement estimer que l'UE n'a pas pour objectif de nuire à la Chine. Par contre, elle accepte consciemment de se faire instrumentaliser par les Etats-Unis dans une telle stratégie – Juan Manuel Barroso dixit: « Plus on est fort dans l'Atlantique, plus cela nous donnera la capacité d'influencer les développements dans le Pacifique. »[58]

« Garder les Américains dedans » – Le pivot américain vers l'Asie

En 2011 Hillary Clinton annonça le siècle Pacifique, soulignant que c'est cette partie du monde qui contient désormais les marchés les plus intéressant et les défis politiques les plus importants.[59] Simultanément on observait le lancement du TPP et la réduction de troupes américaines stationnées en Europe. Dans son ensemble cela faisait surgir le sentiment que le pivot vers l'Asie allait de pair avec un détournement de l'Europe. Ces rebuffades du côté américain ne semblaient que confirmer les chants du cygne que l'Europe, affaiblie par des problèmes économiques et démographiques, errait vers l'insignifiance globale.

Compte tenu de ces circonstances, le lancement des négociations du TTIP a revêtu une grande importance symbolique pour l'UE. Le Président du Conseil européen Van Rompuy s'exclama lors du lancement des négociations que le TTIP montre que « l'Atlantique n'est pas le passé, il est le futur! ».[60]

---

[54] Chatignoux & Robert, *op.cit.*
[55] K. De Gucht cité dans R. Emmot, « EU trade chief hopes to clinch U.S. trade deal by late 2014 », *Reuters*, 27 février 2013.
[56] A. Merkel, discours au congrès du CSU, 12 décembre 2014.
[57] Malmström, « Trade & Security », *op.cit.*
[58] J. M. Barroso, « Global Europe, from the Atlantic to the Pacific », discours, 1er mai 2014.
[59] H. Clinton, « America's Pacific Century », *Foreign Policy*, 11 octobre 2011.
[60] Conférence de presse conjointe, Lough Erne, 17 juin 2013.

La revigoration du partenariat transatlantique

« En renforçant notre alliance avec les Etats-Unis, le TTIP peut renouveler un partenariat qui peut aider à façonner le monde pour les décennies à venir. »[61]

Cecilia Malmström, Commissaire européenne au Commerce

« La nécessité politique de renforcer le partenariat stratégique UE/Etats-Unis fait du TTIP un impératif géopolitique. »[62]

Juan Manuel Barroso, Président de la Commission européenne

Du côté officiel, on ne cesse de souligner l'importance des valeurs et des principes partagés à travers l'Atlantique, ainsi que la possibilité de façonner ensemble un ordre mondial basé sur des règles occidentales.[63] Le TTIP est censé revigorer le partenariat politique et en constituer le pilier économique.

La crise en Ukraine a pointé les projecteurs sur le besoin des Etats-Unis et de l'Europe d'agir conjointement. Assez vite, et l'UE[64] et les Etats-Unis[65] ont signalé que le TTIP pourrait justement représenter le renforcement nécessaire du partenariat transatlantique. Cette supposition repose sur la théorie que le commerce provoque une plus grande coopération politique et empêche les conflits.[66] Une telle hypothèse se heurte cependant à de nombreux contre-exemples (p.ex. France/Allemagne avant 1914, UE/Russie, mer de Chine méridionale). Le projet d'une zone de libre-échange Chine-Japon-Corée montre que même une institutionnalisation des relations commerciales dans un accord de libre-échange peut se faire indépendamment des réalités politiques, et sans influer sur ces dernières. Par ailleurs, le TTIP ne diminuerait pas les doléances commerciales entre l'UE et les Etats-Unis, puisque les négociations esquivent des contentieux commerciaux[67] qui continueront à peser sur le partenariat.

Sans doute la crise en Ukraine a néanmoins augmenté l'enjeu des négociations. Un échec reviendrait à un désastre politique. Cela serait d'autant plus le cas, étant donné qu'on vend désormais le TTIP comme un projet qui solidifie la position de l'Occident face à la Russie. Même si le TTIP ne renforcerait pas le partenariat politique entre les Etats-Unis et l'Europe, une non-conclusion des négociations l'affaiblirait toutefois.

Un changement que le TTIP pourrait cependant éventuellement introduire dans le partenariat transatlantique est le rôle que Bruxelles joue dans celui-ci. Alors que le

---

[61] C. Malmström, « Debating TTIP », discours, 11 décembre 2014.
[62] Barroso, discours à l'U.S.CC, *op.cit.*
[63] p. ex.: K. De Gucht, « Strengthening our Values », discours, 6 juin 2014.
[64] de Almeida, table ronde, *op.cit.*
[65] « Ukraine crisis gives new impetus to EU-U.S. trade talks, U.S. says », Reuters, 22 mars 2014.
[66] C. A. Kupchan, « Parsing TTIP's Geopolitical Implications », dans Center for Transatlantic Relations, *The Geopolitics of TTIP*, 2014, pp. 21-22.
[67] Malmström, *DIE ZEIT*, *op.cit.*

partenariat transatlantique est un des piliers politiques de l'Europe, l'UE n'a pas sa place dans cette alliance qui se concentre sur l'OTAN et les relations bilatérales avec des Etats-membres singuliers. Les Etats-Unis furent toujours les premiers à dénigrer la 'bureaucratie bruxelloise sans numéro de téléphone'. Le TTIP devrait alors élever le rôle de l'UE en tant qu'interlocuteur stratégique et renvoie à son désir de reconnaissance.

L'enjeu énergétique

> « En vue des défis actuels de la politique étrangère, l'élimination de l'incertitude juridique entourant le commerce transatlantique d'énergie serait peut-être la meilleure contribution que cet accord pourrait faire à la solidité de notre alliance. »[68]
>
> *Karel De Gucht, ancien Commissaire européen au Commerce*

L'UE met en exergue que le chapitre énergétique du TTIP est de toute première importance, que ce soit d'un point de vue politique ou économique.[69] Les Etats-Unis ont principalement interdit les exportations des énergies fossiles : des ventes ne sont autorisées qu'individuellement. Dans les négociations, la Commission européenne demande une garantie juridique de la part des Etats-Unis de vendre ses énergies fossiles à l'Europe - l'UE serait ainsi exemptée de la procédure des autorisations de vente.[70] Elle justifie ces demandes avec le besoin de diminuer sa dépendance énergétique envers la Russie afin d'élargir sa marge de manœuvre politique.[71]

L'inclusion d'une telle provision dans le TTIP n'aurait cependant pas un impact sur la situation énergétique actuelle de l'UE. Pour l'instant, l'infrastructure nécessaire pour l'exportation de gaz naturel liquéfié (GNL) n'est pas suffisamment développée.[72] Par ailleurs, à cause de la concurrence constituée par la demande asiatique et du fait que le transport et le traitement du GNL engendrent des coûts importants, le gaz américain se vendrait à un prix d'environ 40% plus élevé que le prix actuel du gaz naturel en Europe.[73]

Le motif de ce chapitre de négociation est alors essentiellement de nature symbolique. C'est une arme diplomatique qui doit signaler l'étroite coopération de l'Occident et montrer à la Russie qu'au moins de façon théorique l'Europe pourrait disposer d'autres sources énergétiques.

---

[68] De Gucht, « Strengthening our Values », *op.cit.*
[69] Conférence de presse de D. Mullaney et I.G.Bercero, 14 mars 2014.
[70] Conseil de l'UE, « Non-paper on a Chapter on Energy and Raw Materials in TTIP », 27 mai 2014.
[71] C. Malmström, « How Europe Can Deliver », discours, 5 février 2015.
[72] S. Mufson, « Can U.S. natural gas rescue Ukraine from Russia? », *Washington Post*, 25 mars 2014.
[73] *Ibid.*

Le discours public autour de ce chapitre de négociation est aussi un exemple de la manière dont la Commission adopte un raisonnement *ex-post* afin de justifier le TTIP.

La politique intérieure

Le rôle des intérêts particuliers

> « Si l'Allemagne veut encore être une forte nation exportatrice d'ici 10 ans, si l'Europe veut refaire surface économiquement, on doit négocier [le TTIP] avec un [enthousiasme infaillible]. »[74]
>
> *Angela Merkel, chancelière allemande*

Si le TTIP n'est pas forcément un grand générateur de croissance pour toute l'UE, il pourrait l'être pour certains secteurs et certains Etats-membres (voir tableau 9).

Tableau 9 : 'TTIP Potential Benefit Index' par État-membre (Estimations du ECFR)

Member state	Exports to US as share of total exports (%)	Exports to US as share of GDP (%)	Exports to Substitutionality (S) (0-1)	Trade Complementarity (C) (0-1)	Summary measure (trade S minus trade C)	Tariff on top 10 exports trade-weighted average (%)	Overall score (0-10)
Estonia	3.47	2.59	0.315	0.339	0.02	5.19	10
Denmark	5.2	1.74	0.379	0.411	0.03	2.42	9
Portugal	4.22	1.21	0.318	0.355	0.04	4.62	9
Germany	8.08	3.24	0.53	0.519	-0.01	1.65	8
Italy	6.96	1.73	0.428	0.438	0.01	2.12	8
Lithuania	2.79	1.98	0.319	0.337	0.02	5.68	8
Netherlands	3.88	2.77	0.501	0.453	-0.05	3.49	8
Spain	3.71	0.85	0.403	0.421	0.02	3.47	8
UK	11.46	2.49	0.527	0.505	-0.02	1.99	8
Finland	6.07	1.76	0.328	0.279	-0.05	2.46	7
Ireland	21.16	11.21	0.232	0.2	-0.03	1.48	7
Sweden	5.82	1.74	0.447	0.423	-0.02	1.64	7
Belgium	5.14	5.17	0.467	0.417	-0.05	1.76	6
Cyprus	3.58	0.35	0.168	0.197	0.03	2.09	6
Hungary	3.04	2.52	0.389	0.406	0.02	1.1	6
Slovakia	1.81	1.61	0.332	0.403	0.07	2.45	6
Austria	5.36	2.14	0.419	0.407	-0.01	1.02	5
Bulgaria	1.37	0.76	0.28	0.298	0.02	11.1	5
Czech Rep.	2.17	1.76	0.405	0.438	0.03	1.16	5
Poland	2.24	0.87	0.38	0.398	0.02	2.22	5
Croatia	2.75	0.57	0.284	0.273	-0.01	2.23	4
France	6.31	1.31	0.485	0.444	-0.04	0.69	4
Greece	3.42	0.51	0.288	0.219	-0.07	4.74	4
Malta	4.34	2.34	0.21	0.152	-0.06	0.99	4
Romania	1.67	0.58	0.308	0.345	0.04	1.57	4
Latvia	1.18	0.51	0.314	0.316	0	1.31	3
Luxembourg	3.41	0.78	0.219	0.196	-0.02	0.28	2
Slovenia	1.69	1.04	0.346	0.321	-0.03	0.66	2

Source : S. Dullien *et al.*, « A Fresh Start for TTIP », ECFR, février 2015.

[74] Merkel, *op.cit.*

L'Allemagne notamment a toujours été à l'avant-garde du projet d'une libéralisation bilatérale du commerce transatlantique. Ainsi, ce fut le ministre allemand des affaires étrangères Kinkel qui proposa pour la première fois une zone de libre-échange – un TAFTA – en 1995.[75] Dès 2006, la chancelière Merkel faisait circuler des idées concernant un accord commercial avec les États-Unis[76] et ce fut sous la présidence allemande du Conseil de l'UE en 2007 que le Conseil Economique Transatlantique a été établi - celui-ci a créé le GTHN.

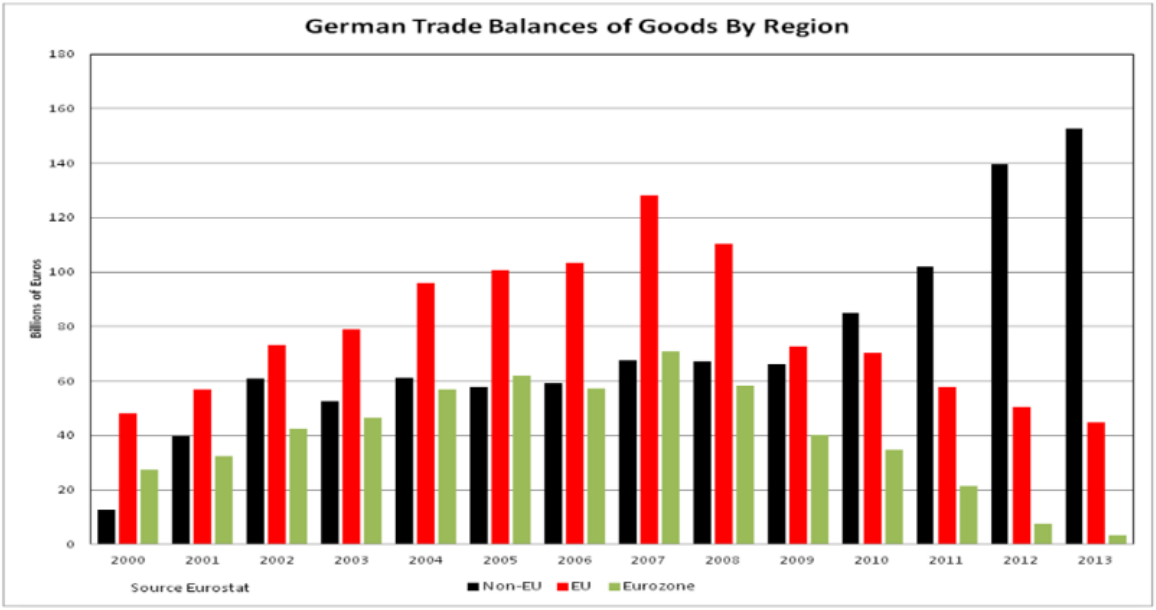
Ce sont les relations germano-américaines qui déterminent le commerce transatlantique, l'Allemagne étant responsable pour 31% des exportations européennes de marchandise vers les Etats-Unis.[77] Le modèle économique de l'Allemagne est basé sur une maximisation de son excédent commercial, qui a constitué 7.5% de son PIB en 2014 avec un taux d'exportation à 39%.[78] La crise économique a provoqué une rupture structurelle dans le commerce de l'Allemagne : il y a eu une chute drastique de l'excédent commercial avec les autres Etats-membres et, en revanche, ses exportations vers des régions hors de l'Europe ont augmenté de façon pharamineuse (voir tableau 10). Les exportations allemandes de marchandise vers les Etats-Unis ont augmenté de 72% entre 2009 et 2014 et l'excédent commercial allemand avec les Etats-Unis a plus que doublé.[79] De plus, les Etats-Unis sont de très loin le pays avec le plus grand stock d'IDE allemands.[80]

Un changement fondamental qui a eu lieu entre 1995, quand le projet d'un TAFTA fut rejeté, et 2013 réside dans le rôle que l'Allemagne joue au sein de l'UE. Son influence politique a en effet augmenté suite à la crise économique et son modèle économique a été pris comme exemple à imiter par l'initiative commerciale 'Commerce, croissance et affaires mondiales'[81] et par la stratégie Europe 2020[82] qui proposent une orientation sur la compétitivité externe ainsi que sur l'amplification des exportations comme source de croissance.

---

[75] H. Siebert, « TAFTA - A Dead Horse or an Attractive Open Club? », *Kiel Working Paper*, n°1240, mars 2005, p. 2.
[76] S.-A. Mildner & C. Schmucker, « The German point of view », dans *Weimar Triangle Analyses*, Ifri, février 2013, p. 3.
[77] Eurostat, « EU28 surplus in trade in goods with the U.S.A of 92 bn euro in 2013 », 24 mars 2014.
[78] Statistisches Bundesamt, « Globalisierungsindikatoren ».
[79] United States Census Bureau, « Trade in Goods with Germany ».
[80] IfW, « Stocks of FDI of Germany ».
[81] Commission européenne, « Commerce, croissance et affaires mondiales », COM(2010) 612, Bruxelles, 9 novembre 2010.
[82] Commission européenne, « Europe 2020 : une stratégie pour une croissance intelligente, durable et inclusive », COM(2010) 2020, Bruxelles, 3 mars 2010.

Tableau 10 : Balances commerciales de l'Allemagne



Source: G. Zestos & C.W. Coffman, « Transatlantic Economic Integration », dans J. Roy et R. Dominguez (eds.), *The TTIP*, Miami-Florida EU Center, 2014, p. 78.

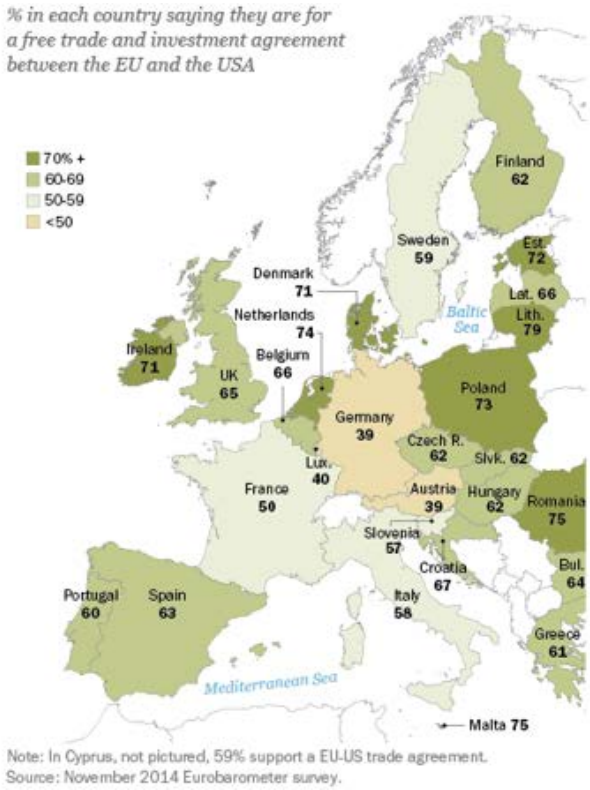
Le TTIP comme actionnisme politique face aux crises européennes

Une grande partie des motivations de l'UE pour le TTIP réside dans le message qu'il est censé représenter. Le changement de cap pour la prise de décision en faveur d'un accord commercial avec les Etats-Unis s'est fait entre 2010, l'année où la Commission affirmait encore qu'un tel accord constituait une « no-go area »,[83] et fin 2011, avec le lancement du GTHN. L'explication de ce revirement est à chercher avant tout à l'intérieur de l'Europe. Une crise économique sévissait, mais ce fut aussi le sommet d'une crise d'identité et de la non-reconnaissance de la construction européenne de la part des citoyens européens. L'Europe se trouva alors dans une véritable dépression, économique et psychologique.

Dans ces circonstances, les dirigeants européens trouvèrent nécessaire de présenter un grand projet lumineux, qui devait représenter une UE proactive. Ainsi De Gucht déclara déjà en 2012 : « Au cœur des problèmes actuels se trouve une crise de confiance […]. Une nouvelle initiative commerciale entre les Etats-Unis et l'Europe serait une preuve d'audace qui démontrerait que le monde politique travaille pour des solutions et qu'il peut tenir parole. »[84] Par ailleurs, le projet d'un accord commercial transatlantique rencontre un vaste support public à travers l'Europe, à l'exception notable – assez ironiquement – de l'Allemagne.

[83] Levie, *op.cit.*
[84] K. De Gucht, discours au congrès des libéraux européens, 9 novembre 2012.

Tableau 11 : Soutien public pour le TTIP



Stokes, Bruce, « Is Europe on board for a new trade deal with the U.S.? », Pew Research Center, 29 janvier 2015.

Réconcilier le Royaume-Uni

2010 fut aussi l'année de la victoire électorale des Tories au Royaume-Uni, avec un comportement dénégatoire envers l'UE. A de nombreuses reprises la Commission européenne a utilisé le TTIP comme un atout pour convaincre l'Outre-Manche désaffecté des bienfaits de l'UE.[85] Le TTIP doit réconcilier le Royaume-Uni atlantiste et libre-échangiste avec l'UE et il occupe une place importante dans la stratégie de communication en vue du referendum britannique sur le maintien de l'île dans l'UE.[86]

Conclusion

Tout comme le TTIP représente un projet complexe englobant des aspects divers et distincts, les objectifs européens ne peuvent pas être réduits à un ou deux facteurs dominants. La communication de la Commission européenne s'avère être quelque peu incohérente, en ayant mis en avant des points particuliers différents au fur et à mesure des circonstances politiques changeantes. Lors de son lancement le TTIP devait notamment faire partie d'une offensive (rhétorique) de l'UE pour la croissance économique. Ensuite, avec l'apparition de la crise en Ukraine, on a pointé les projecteurs sur l'aspect géopolitique, l'importance du partenariat politique et la sécurité énergétique.

---

[85] p.ex.: Malmström, « On Course for the UK », *op.cit.*
[86] S. Nixon, « Cameron grabs a transatlantic lifeline », *Wall Street Journal*, 17 juin 2013.

La supposée valeur ajoutée stratégique du TTIP dans le domaine géoéconomique semble être le sujet qui est souligné de la façon la plus constante dans le discours officiel. Ceci renvoie à l'intérêt européen d'utiliser le TTIP et le ralliement avec les Etats-Unis comme échappatoire pour ralentir le déclin relatif de l'influence européenne au niveau mondial. Le TTIP est dans ce sens présenté comme un projet incontournable dans l'ère géoéconomique du 21e siècle face à une prétendue course au développement des bases du régime commercial, voire économique, global.

Bibliographie

Discours, conférences, tribunes, entretiens

Barroso, Juan Manuel, « A new era of good feelings », discours, *Bloomberg & European American Chamber of Commerce Conversation*, New York, 12 avril 2013.

Barroso, Juan Manuel, « Global Europe, from the Atlantic to the Pacific », discours à l'université Stanford, Palo Alto, 1er mai 2014.

Barroso, Juan Manuel, discours à l'U.S. Chamber of Commerce, Washington DC, 30 avril 2014.

Clinton, Hillary, « America's Pacific Century », tribune, *Foreign Policy*, 11 octobre 2011.

Conférence de presse conjointe de Juan Manuel Barroso, Herman van Rompuy, David Cameron et Barack Obama, Lough Erne, 17 juin 2013.

Conférence de presse de Dan Mullaney et Ignacio Garcia Bercero suite au 4e cycle de négociations sur le TTIP, Bruxelles, 14 mars 2014.

de Almeida, João Vale – ambassadeur de l'UE auprès des Etats-Unis, entretien, *Central Europe Digest*, 10 septembre 2013, consulté le 18 août 2014, http://www.cepa.org/content/insider-view-head-delegation-eu-united-states-ambassador-jo%C3%A3o-vale-de-almeida.

de Almeida, João Vale, table ronde à la conférence *The future of transatlantic trade*, Paris, 10 avril 2014, consulté le 18 août 2014, http://www.euintheus.org/press-media/eu-ambassador-proposed-us-eu-trade-pact-makes-more-sense-after-crimea.

De Gucht, Karel, « A European Perspective on Transatlantic Free Trade », discours à l'université Harvard, Cambridge MA, 2 mars 2013.

De Gucht, Karel, table ronde à la conférence *The Future of Transatlantic Trade*, Paris, 10 avril 2014, consulté le 17 avril 2014, https://www.youtube.com/watch?v=dHnf-crsBao (à partir de 22e minute).

De Gucht, Karel, « Towards the TTIP: Stepping Up a Gear », discours à l'Atlantic Council, Washington DC, 18 février 2014.

De Gucht, Karel, « TTIP: A Bilateral Agreement with Multilateral Impacts », discours au Council of Foreign Relations, New York, 21 mai 2013.

De Gucht, Karel, « TTIP: Opening free trade negotiations with the United States», discours devant le comité INTA, Bruxelles, 21 février 2013.

De Gucht, Karel, « TTIP: Solving the Regulatory Puzzle », discours à l'Institut Aspen, Prague, 10 octobre 2013.

De Gucht, Karel, « TTIP: Strengthening our Values », discours, *Wroclaw Global Forum*, Wroclaw, 6 juin 2014.

De Gucht, Karel, « TTIP: The Real Debate », discours devant le Bundesrat allemand, Berlin, 22 mai 2014.

De Gucht, Karel, « TTIP: Where do we stand on the hottest topics in the current debate? », discours à l'Atlantikbrücke, Düsseldorf, 22 janvier 2014.

De Gucht, Karel, discours au congrès des libéraux européens, Dublin, 9 novembre 2012.

De Gucht, Karel, Propos dans le débat en plénière au Parlement européen, Strasbourg, le 15 juillet 2014, consulté le 6 août, http://www.europarl.europa.eu/ep-live/en/plenary/video?debate=1405436531874.

Froman, Michael, discours au New England Council Luncheon, Boston, 14 avril 2014.

Malmström, Cecilia & Jonathan Hill, « Don't believe the anti-TTIP hype », tribune, *The Guardian*, 16 février 2015.

Malmström, Cecilia, « Debating TTIP », discours à Open Europe & Friedrich Neumann Stiftung, Bruxelles, 11 décembre 2014.

Malmström, Cecilia, « Mehr Handel, mehr Jobs », entretien, *DIE ZEIT*, 19 février 2015.

Malmström, Cecilia, « Transatlantic and Global Trade, and Security », discours devant l'assemblée parlementaire de l'OTAN, Bruxelles, 14 février 2015.

Malmström, Cecilia, « TTIP On Track », discours, *Bruegel TTIP Workshop*, Bruxelles, 12 mars 2015.

Malmström, Cecilia, « TTIP: How Europe Can Deliver », discours, *Forum Europe's 2nd Annual EU-U.S. Trade Conference*, Bruxelles, 5 février 2015.

Malmström, Cecilia, « TTIP: On Course for the UK », discours, conférence *TTIP: Facts, Fiction and the Future*, Londres, 16 février 2015.

Malmström, Cecilia, «TTIP: Subsidiarity and other shared transatlantic principles», discours devant le Comité des Régions, Bruxelles, 12 février 2015.

Merkel, Angela, discours au congrès du CSU, Nuremberg, 12 décembre 2014, consulté le 20 mars 2015, https://www.youtube.com/watch?v=FHtTHDMxIpc.

Levie, Damien, « Implications for the Global Trade System of the on-going TTIP negotiations », note d'information pour la conférence *Evolutions in the Transatlantic Relationship within a Multipolar World*, octobre 2013.

Rasmussen, Anders Fogh, discours à la conférence *A New Era for EU-U.S. Trade*, Copenhague, 8 octobre 2013.

Documents officiels

BMWi, « TiSA – Trade in Services Agreement », consulté le 20 mars 2015, http://www.bmwi.de/EN/Topics/Foreign-trade/tisa.html.

Commission européenne, « Commerce, croissance et affaires mondiales », COM(2010) 612, Bruxelles, 9 novembre 2010.

Commission européenne, « Europe 2020 : une stratégie pour une croissance intelligente, durable et inclusive », COM(2010) 2020, Bruxelles, 3 mars 2010.

Commission européenne, « Impact assessment on the future of EU-U.S. Trade Relation », mars 2013.

Commission européenne, « Le Partenariat transatlantique de commerce et d'investissement – Le commerce à votre service », *Qu'est-ce que le TTIP ?*, dossier en ligne, consulté le 30 juillet 2014, http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/index_fr.htm.

Commission européenne, « Partenariat transatlantique de commerce et d'investissement - Coup de projecteur sur l'analyse économique », septembre 2013.

Commission européenne, « Position de l'UE sur les substances chimiques », mai 2014.

Commission européenne, « Textual proposal for legal text on regulatory cooperation in TTIP », 10 février 2015.

Conseil de l'Union européenne, « Directives de négociations concernant le Partenariat transatlantique de commerce et d'investissement entre l'Union européenne et les États-Unis d'Amérique », ST 11103/13 DECL 1, 17 juin 2013 (publié le 9 octobre 2014).

Conseil de l'Union européenne, « Non-paper on a Chapter on Energy and Raw Materials in TTIP », 27 mai 2014, fuite publiée par le *Washington Post*, consulté le 22 août 2014, http://www.washingtonpost.com/blogs/wonkblog/wp/2014/07/08/could-a-trade-deal-lift-the-u-s-longstanding-ban-on-crude-oil-exports-europe-thinks-so/.

Articles

Ash, Timothy Garton, « Welcome to the geopolitics of trade, where Dr Pangloss meets Machiavelli », *The Guardian*, 10 juillet 2013.

Bildt, Carl & Javier Solana, « La stratégie de retour de l'Europe », *Project Syndicate*, 6 janvier 2015, consulté le 20 mars 2015, http://www.project-syndicate.org/commentary/2015-ttip-conclusion-critical-by-carl-bildt-and-javier-solana-2015-01/french.

Chatignoux, Catherine & Virginie Robert, « Libre-échange: le débat se polarise sur le partenariat transatlantique », *Les Echos*, 15 avril 2014.

Donnan, Shawn, « EU-U.S. trade talks hit roadblock over financial services », *Financial Times*, 16 juin 2014.

Dullien, Sebastian *et al.*, « A Fresh Start For TTIP », European Council on Foreign Relations, février 2015.

Emmot, Robin, « EU trade chief hopes to clinch U.S. trade deal by late 2014 », *Reuters*, 27 février 2013, consulté le 13 août 2014, http://www.reuters.com/article/2013/02/27/us-euro-summit-trade-idU.S.BRE91Q0QM20130227.

Ignatius, David, « A free-trade agreement with Europe? », *Washington Post*, 5 décembre 2012.

Kuo, Lily, « How rival trade blocs between the US and China could be good for free trade in Asia », *Quartz*, 17 March 2013, http://qz.com/63491/how-rival-trade-blocs-between-the-us-and-china-could-be-good-for-free-trade-in-asia.

Kupchan, Charles A., « Parsing TTIP's Geopolitical Implications », dans Center for Transatlantic Relations, *The Geopolitics of TTIP: Repositioning the Transatlantic Relationship for a Changing World*, 2014, pp. 21-32.

Mildner, Stormy-Annika & Christiane Schmucker, « A Transatlantic Free Trade Agreement? The German point of view », dans *Weimar Triangle Analyses*, Ifri, février 2013.

Mufson, Steven, « Can U.S. natural gas rescue Ukraine from Russia? », *Washington Post*, 25 mars 2014.

Nixon, Simon, « Cameron grabs a transatlantic lifeline », *Wall Street Journal*, 17 juin 2013.

Pollack, Mark, *The Political Economy of the Transatlantic Partnership*, Robert Schuman Centre for Advanced Studies, 2003.

Siebert, Horst, « TAFTA – A Dead Horse or an Attractive Open Club? », *Kiel Working Paper n° 1240*, mars 2005.

Stokes, Bruce, « Is Europe on board for a new trade deal with the U.S.? », *Pew Research Center*, 29 janvier 2015, consulté le 20 mars 2015, http://www.pewresearch.org/fact-tank/2015/01/29/is-europe-on-board-for-a-new-trade-deal-with-the-u-s.

« Ukraine crisis gives new impetus to EU-U.S. trade talks, U.S. says », *Reuters*, 22 mars 2014, consulté le 6 septembre 2014, http://www.reuters.com/article/2014/03/22/us-ukraine-crisis-usa-trade-idU.S.BREA2L0AB20140322.

van Ham, Peter, « The Geopolitics of TTIP », *Clingendael Policy Brief n° 23*, Clingendael Institute, octobre 2013.

Zestos, George & Christopher W. Coffman, « Transatlantic Economic Integration » dans Joaquin Roy & Roberto Dominguez (éds.), *The TTIP*, Miami-Florida EU Center, 2014, p. 78.

Etudes d'impact et statistiques

Berden, Koen *et al.*, « Non-Tariff Measures in EU-U.S. Trade and Investment – An Economic Analysis », Ecorys, 2009.

Commission européenne, DG Trade, « China, Trade with World », 27 août 2014.

« Estimating the Economic Impact on the UK of a TTIP-Agreement between the EU and the U.S. », CEPR, mars 2013.

Eurostat, « EU28 surplus in trade in goods with the U.S.A of 92 bn euro in 2013 », 24 mars 2014, consulté le 1er septembre 2014, http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/6-24032014-BP/EN/6-24032014-BP-EN.PDF.

Felbermayr, Gabriel *et al.*, « Dimensionen und Auswirkungen eines Freihandelsabkommens zwischen der EU und den U.S.A », ifo Institut, Etude pour le ministère allemand de l'économie, janvier 2013.

Felbermayr, Gabriel *et al.*, « TTIP: Who benefits from a free trade deal? Part 1: Macroeconomic Effects », ifo Institut, Fondation Bertelsmann, juin 2013.

Fontagné, Lionel *et al.*, « Transatlantic Trade: Whither Partnership, Which Economic Consequences », *Policy Brief, n° 2013-01*, CEPII, septembre 2013.

Francois, Joseph (dir.), « Reducing Transatlantic Barriers to Trade and Investment - An Economic Assessment », Centre for Economic Policy Research, mars 2013.

Institut für Weltwirtschaft, « Stocks of FDI of Germany », consulté le 20 mars 2015, https://www.ifw-kiel.de/forschung/Daten/fdi/stocks-of-foreign-direct-investment-of-the-us-japan-germany.

Kinnman, Susanna & Tomas Hagberg, « Potential Effects from an EU-U.S. Free Trade Agreement – Sweden in Focus », Kommerskollegium, novembre 2012.

Statistische Bundesamt, « Globalisierungsindikatoren 2014 », consulté le 20 mars 2015, https://www.destatis.de/DE/ZahlenFakten/Indikatoren/Globalisierungsindikatoren/Tabellen/01_02_03_AH.html.

United States Census Bureau, « Trade in Goods with Germany», consulté le 20 mars 2015, http://www.census.gov/foreign-trade/balance/c4280.html.

The Investor-to-State Dispute Settlement Clause in the TTIP – An Unsettling Dispute?

Frances Ainley

As EU-US talks for a Transatlantic Trade and Investment Partnership (TTIP) began in earnest in June 2013, President Obama emphasised its "economic and strategic importance"[87] while President Barroso declared it a "game-changer" creating "the largest free trade zone in the world".[88] The negotiation has roots in longstanding EU-U.S. 'competitive interdependence', exacerbated by a deadlock in the WTO Doha Round negotiations and the subsequent shift to bilateral agreements as part of U.S. 'competitive liberalisation' and the EU's 2006 'Global Europe' Communication.[89] The U.S. has concluded a number of free trade agreements, such as with South Korea and Singapore, which the EU sought to emulate.

We can thus see TTIP as two competitors turning to each other to discuss areas of overlap and divergence. This is not surprising. Together the EU and U.S. economies account for approximately half of global GDP. Annual EU-U.S. trade is estimated at $1 trillion, which is a third of global trade; and is matched by the world's largest investment relationship, worth nearly $4 trillion.[90] U.S. Ambassador to the EU, Anthony Gardner, highlighted "critical geostrategic reasons to get this deal done",[91] against the backdrop of the 2008 economic crisis and the growing economic power of East Asia, notably China, with resulting impetus to create a counter-balancing transatlantic trading-bloc.

The Investor-to State-Dispute Settlement Clause – a TTIP-ing Point?

This paper applies Putnam's theory of 'two-level games' to current TTIP talks, focusing on investor-to-state dispute settlement (ISDS).[92] 'Level I' refers to international EU-U.S. negotiation, with Commissioner Malmström (DG Trade) and U.S. Trade Representative (U.S.TR) Froman as chief negotiators. At 'Level II', EU and U.S. institutions need to ratify any agreement reached at 'Level I'. This happens within the U.S. Congress and Senate; and between the European Commission, Council and Parliament. The 'win-sets' for both sides, namely the 'set of all possible 'Level I' agreements that would "win"', will be examined using Putnam's three determinants,

---

[87] "President Obama makes a statement on TTIP", *The White House*, 17 June 2013.
[88] European Commission, "Statement by President Barroso on TTIP", 13 February 2013.
[89] A. Sbragia, "The EU, the U.S., and trade policy: competitive interdependence in the management of globalisation", *Journal of European Public Policy*, vol. 17, no. 3, 2010, pp. 368-382.
[90] "Fact Sheet: U.S.-EU Economic Ties that Bind", *The White House*, 26 March 2014.
[91] Cited in D. Vincenti, "U.S. Ambassador: Beyond growth, TTIP must happen for geostrategic reasons", *EurActiv*, 16 July 2014.
[92] R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games", *International Organization*, vol. 42, no. 3, 1988, pp. 427-460.

including 'cost of no agreement', 'ratification procedures' and 'negotiation strategies'.[93] Given the complexity of TTIP negotiations, clearly we can conclude that 'two-level' is insufficient and TTIP is in fact a 'multi-level game' with wide interaction across boundaries and a global impact. This paper will argue that ISDS represents a key stumbling block to agreement within this multi-level game.

The Cost of No Agreement

The level of ambition and 'cost of no agreement' on TTIP are high, implying relatively large general win-sets, and there is clearly considerable will at 'Level I' to conclude some kind of deal. There is a "sense of urgency and opportunity on both sides" likely to mean "overcoming well-known reservations", since both sides wish to establish a model for future bilateral and multilateral deals while also ensuring that an increasingly competitive China follow the same international rules.[94] It is suggested that Obama "may come to see TTIP as part of his personal legacy in support of global multilateralism".[95] Meanwhile the European Commission has presented TTIP as "the cheapest stimulus package you can imagine" for the flagging European economy.[96] From the perspective of Putnam's theory, both win-sets are thus increased.

However, prolonged and vocal lobbying on specific issues on both sides has reduced the 'overlap', possibly threatening to jeopardise overall agreement.[97] After the seventh round of negotiations in October 2014, both sides aimed to conclude by the end of 2015, although EU officials admit this is unlikely given outstanding controversies.[98] The U.S. has insisted that financial regulation be removed while the EU has drawn non-negotiable red lines surrounding GMOs or hormone regulation.[99]

Similarly, a strong anti-globalisation movement coupled with 'reverberation' from recent court cases and German domestic politics means that the ISDS clause in the Commission's negotiating mandate is apparently threatening not only to derail TTIP but also, perhaps, to reopen the EU's Comprehensive Trade and Economic Agreement (CETA) with Canada.

ISDS clauses, common in international trade deals since the 1960s, are "an arbitration mechanism which would allow private investors to sue governments if they believed

---

[93] Putnam, *op.cit.*, p. 437.
[94] P. Van Ham,"The Geopolitics of TTIP", *Clingendael Institute*, no. 23, October 2013, pp. 2-3.
[95] *Ibid.*, p. 3.
[96] Transatlantic Trade Agreement to Provide Economic Stimulus, Delegation of the European Union to the United States.
[97] L.J. Eliasson, "Problems, progress and prognosis in trade and investment negotiations: TTIP", *Journal of Transatlantic Studies*, vol. 12, no. 2, 2014, p. 133.
[98] B. Fox, "EU-U.S. trade pact to miss 2015 deadline", *EUObserver*, 26 March 2015.
[99] A. Pangratis, EU Ambassador to WTO, speech, College of Europe, 30 September 2014.

that local laws were threatening their investments".[100] Today there are more than 3,000 international investment agreements containing ISDS provisions. EU Member States account for 1,400 of these,[101] the EU trade agreements negotiated with Canada and Singapore both include such clauses, and the U.S. is party to 50 agreements with ISDS provisions.[102]

Despite this, at 'Level II' there are several influential EU players able to form powerful coalitions against the inclusion of ISDS in the TTIP. In 2014 public opposition caused the Commission to suspend negotiations on investment in TTIP and conduct a public consultation. Having generated an unprecedented 150,000 replies, 88% of which objected to an inclusion of ISDS in its current form, the negotiators agreed in January 2015 to set it aside while the Commission debates how to proceed.[103] Removing ISDS completely would require a new negotiating mandate by qualified majority vote in the Council and remains unlikely,[104] although many options are being considered.[105] Thus, those vocal MEPs and Member States, notably Germany, applying 'Level II' pressure significantly decrease the EU's win-set on ISDS. In the U.S., on the other hand, a 2009 public consultation bolstered Congress support for a robust ISDS model, thereby implying limited overlap with EU politicisation and scepticism.[106]

Ratification Procedures

Turning to Putnam's second determinant, ratification processes significantly narrow both win-sets. TTIP will require ratification by either a majority in both Congress and the Senate or by over two-thirds of the Senate.[107] Republican Senators now dominate, suggesting possible deadlock, in this unpredictable body, on a deal championed by a Democrat President. Despite a free trade majority since 2009, Congress can amend any aspect. The outcome of the November 2014 mid-term elections and union pressure make it unclear whether Congress will grant the U.S. President 'trade promotion authority', namely the authority to fast track negotiations, allowing a direct 'yes/ no' Congressional vote without the opportunity to make

---

[100] "Germany plans to block ISDS clause in transatlantic trade deal", *Out-Law*, 18 March 2014.
[101] European Commission, "Investor-to-State Dispute Settlement (ISDS), Some Facts and Figures", DG Trade, 12 March 2015.
[102] "The Facts on ISDS: Safeguarding the Public Interest and Protecting Investors", *Office of the U.S.TR*, 27 March 2014.
[103] A. Grice, "TTIP: Activists triumph as contentious U.S. free trade deal clause suspended", *The Independent*, 20 March 2015.
[104] "ISDS decision delayed to end of TTIP talks", *Euractiv*, 13 January 2015.
[105] "Brussels considers replacing ISDS with a public court", *Euractiv*, 19 March 2015.
[106] S. Donnan,"Transatlantic Trade Talks Hit German Snag", *Financial Times*, 14 March 2014.
[107] W. Toszczynska-Van Genderen,'TTIP: The U.S. Congress' Positions", DG for External Policies, European Parliament, 9 September 2014, p. 4.

amendments.[108] That IMF reform, another important international file, is still stuck, highlights Congress' power to block should TTIP not match the U.S. win-set.

For the EU, TTIP is likely to be a 'mixed agreement', due in large part to the inclusion of ISDS, since investor protection is not an exclusive Union competence. Agreement requires a unanimous Council vote, approval by simple majority in the European Parliament and ratification by national parliaments. Each layer of complexity and potential veto shrinks the win-set on each side and increases the risk of 'involuntary defection' whereby an agreed deal is not ratified by the legislature.[109] This risk is particularly high in the case of ISDS. Germany's SPD-led Economics Ministry is the most strongly opposed, declaring that Germany would not pass TTIP with an ISDS clause, placing unanimous Council approval in jeopardy.[110] Equally, while a majority of MEPs are pro-TTIP, this is less certain for ISDS. Germany has the largest number of MEPs and, with the Greens and far-right, may gain support to vote down any agreement with ISDS. Conversely, the current dilemma for negotiators is that the U.S. Congress is in favour of ISDS and may veto a deal without it.

Negotiator Strategies

The last win-set determinant is negotiator strategies. There have already been removals of some high U.S. tariffs and imports of EU beef after a decade-long ban,[111] demonstrating the benefits of enhanced cooperation and thus increasing the win-set. That outgoing Commissioner De Gucht and U.S.TR Froman continually stressed TTIP's importance and praised each other's efforts, might also be seen as attempts to increase each other's domestic support and win-set.

For ISDS the picture has become less clear, however, especially given the recent changing of the guard on the EU side, with a new Commission and European Parliament. New Commission President Juncker appears personally opposed to ISDS and glad to be able to counter accusations that the EU is not listening to society's concerns.[112] Despite strong opposition from at least 14 Member States who support the current mandated ISDS clause in paragraph 22, he may place TTIP in jeopardy by stating "my Commission will not accept that the jurisdiction of courts in the EU member states be limited by special regimes for investor-to-state disputes".[113] Although new Trade Commissioner Malmström suggested room for a possible "new system" of ISDS, she caused real confusion during her parliamentary hearing by

---

[108] *Ibid.*
[109] Putnam, *op.cit.*, p. 438.
[110] *Out-law*, *op.cit.*
[111] Eliasson, *op.cit.*, p. 131.
[112] S. McKeagney, "ISDS dominates CETA debate in Strasbourg", *TTIP Beware What Lies Beneath*, 17 September 2014.
[113] "Jean-Claude Juncker plays with future of EU-U.S. trade deal", *FT View*, 23 October 2014.

mistakenly stating it would not be part of TTIP.[114] 'Reverberation' has clearly had a large impact on public opinion and interest groups in EU Member States. Swedish energy company Vattenfall is seeking German compensation for phasing out nuclear power; and Philip Morris International is fighting Australia and Uruguay's tobacco packaging restrictions, resulting in increased scepticism regarding how ISDS might be used. In addition, 'Level II' opposition to the ISDS clause included in the CETA agreement set the ball rolling for momentum to build against this larger TTIP deal.

It is not yet known whether the apparent change in stance by Germany and the Commission is posturing, applying a 'tied hands' approach to negotiations.[115] Germany could agree to CETA's ISDS in return for further banking and debt restructuring provisions.[116] The same flexibility might emerge in TTIP negotiations, especially if those in favour are able to convince others that the ISDS clause has been improved. Meanwhile, the U.S. has stressed ISDS benefits while stating that TTIP would not meet the desired "high standard" without it,[117] linking the fate of ISDS to the deal as a whole. At this stage, as Putnam suggests, win-set uncertainty on both sides could be either a bargaining strength or a weakness.[118] Potentially the cost of no TTIP agreement at all increases the win-set, so ISDS is either included in some form, or excluded without derailing negotiations. Whether this will occur, however, remains unclear. Strong 'Level II' positions place the 'Level I' negotiators in a dilemma. On the one hand, a narrow 'Level II' win-set can strengthen the 'Level I' negotiator's bargaining position. On the other hand, the risk of involuntary defection on one or both sides may instil doubt about the negotiator's ability to secure domestic backing for a deal. The other side may demand additional concessions to compensate the perceived risk that his interlocutor could defect involuntarily. Moreover, small 'Level II' win-sets on both sides could reduce the negotiators' ability to reach agreement at 'Level I' at all. The global level then comes into play. "Both sides of the Atlantic have a strong interest in persuading China to include ISDS in future deals",[119] which may also influence 'Level I' agreements and supersede 'Level II' issues.

At this point, negotiator autonomy matters. The Commission, as chief negotiator on behalf of all EU MS, updates the Council through the Trade Policy Committee and a high-level working group, while the European Parliament is informed through the Trade Committee (INTA). Under Pollack's 'principal-agent' theory, the Commission as 'agent' negotiates for Member State 'principals' with a large amount of autonomy;

---

[114] "Malmström plays transparency card, but gets timid applause", *EurActiv*, 30 September 2014.
[115] Putnam, *op.cit.*, p. 440.
[116] McKeagney, *op.cit.*
[117] A. Behsudi, "Froman: TTIP not high standard with no ISDS", *Politico*, 31 October 2014.
[118] Putnam, *op.cit.*, p. 452.
[119] *FT View*, *op.cit.*

the Commission does not share consolidated texts of U.S. suggestions with Member States and this 'agency slack' in transparency allows it more control.[120] It might mean that the EU win-set is actually larger than public statements suggest, even on ISDS, as it could ensure overlap with the U.S. in relatively secret discussions and thus 'sell' these to Member States later as necessary means of securing a deal.

This is hard to predict. Clearly, the EU and U.S. negotiators have an interest in presenting a strong deal so as to increase their own standing and legitimacy. At the same time, however, the complexity at 'Level II' due to the number of different players and politicisation mean that the EU win-set as a whole may in fact be narrow.

Conclusion

Applying Putnam's 'two-level game' approach to TTIP poses challenges. TTIP, and the ISDS clause within it, is not only influenced by 'Level I' negotiation and 'Level II' ratification, but also by a separate domestic level of lobby groups and Member State politics. These determine the positions of the Council and the European Parliament on ratification, lobbying their own governments, the European Parliament and Council, as well as directly the Commission and U.S. Congress.[121]

Indeed, since "TTIP is the largest, most complex agreement of its kind",[122] it is unsurprising that while Putnam's 'two-level' approach goes some way to add structure to this complexity, it cannot cover it entirely. With the WTO Doha Round at an impasse, TTIP has emerged as the way to address the world's largest economic relationship. It will also be a means to set future global standards, for example in deals with East Asia, notably China, and this will influence 'Level I' and 'Level II' decisions, adding yet another dimension. Thus it is accepted that a closer reflection of TTIP reality is a 'multi-level game' to include the domestic and global, while also allowing for horizontal interaction between actors. ISDS within such a complex model represents its own set of challenges, threatening to derail an agreement due to its political nature, the reverberation of recent court cases and CETA negotiations and with an as yet unclear impact on negotiator win-sets due to the potential risk of involuntary defection. It remains to be seen how this contentious issue might be settled.

---

[120] M. Pollack,"Delegation, Agency and Agenda Setting in the European Community", *International Organisation*, vol. 51, no. 1, 1999, pp. 99-134.
[121] "Who Lobbies most on TTIP", *Corporate European Observatory*, 8 July 2014.
[122] Eliasson, *op.cit.*, p. 134.

Bibliography

Behsudi, Adam, "Froman: TTIP not high standard with no ISDS", *Politico*, 31 October 2014 http://www.politico.com/morningtrade/1014/morningtrade15912.html.

"Brussels considers replacing ISDS with a public court", *Euractiv*, 19 March 2015, retrieved 15 April 2015, http://www.euractiv.com/sections/trade-society/eu-considers-replacing-isds-public-court-313079?utm_source=EurActiv+Newsletter&utm_campaign=9771bd51d0-newsletter_daily_update&utm_medium=email&utm_term=0_bab5f0ea4e-9771bd51d0-245800993.

Collinson, Sarah 'Issue-systems', 'multi-level games' and the analysis of the EU's external commercial and associated policies: a research agenda, *Journal of European Public Policy*, vol. 6, no. 2, 1999, pp. 206-224.

Da Conceição, Eugénia, "Two-Level Games and Trade Cooperation: What Do We Now Know?", *International Politics*, vol. 50, no. 4, 2013, pp. 579-599.

"Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America", *Council of the European Union*, dated 17 June 2013, Declassified 9 October 2014, retrieved 15 April 2015, http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf.

Donnan, Shawn, "Transatlantic Trade Talks Hit German Snag", *Financial Times*, 14 March 2014, retrieved 15 April 2015, http://www.ft.com/intl/cms/s/0/cc5c4860-ab9d-11e3-90af-00144feab7de.html#axzz3VCArT2Yf.

Eliasson, Leif Johan, "Problems, progress and prognosis in trade and investment negotiations: the transatlantic free trade and investment partnership", *Journal of Transatlantic Studies*, vol. 12, no. 2, 2014, pp. 119-139.

European Commission, "Report of the Seventh Round of Negotiations 29 September – 3 October 2014", retrieved 15 April 2015, http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152859.pdf.

European Commission, "Statement by President Barroso on TTIP", 13 February 2013, retrieved 15 April 2015, http://europa.eu/rapid/press-release_SPEECH-13-121_en.htm.

"Fact Sheet: U.S.-EU Economic Ties that Bind", *The White House*, 26 March 2014, retrieved 15 April 2015, http://www.whitehouse.gov/the-press-office/2014/03/26/fact-sheet-us-eu-economic-ties-bind.

Fox, Benjamin, "EU-U.S. trade pact to miss 2015 deadline", *EU Observer*, 26 March 2015, retrieved 15 April 2015, https://euobserver.com/news/128146.

"Germany plans to block ISDS clause in transatlantic trade deal", *Out-Law*, 18 March 2014, retrieved 15 April 2015, http://www.out-law.com/en/articles/2014/march/germany-plans-to-block-isds-clause-in-transatlantic-trade-deal.

Gizzi, John, "House GOP: IMF Reforms will stay 'stuck' in Congress", *Newsmax*, 3 November 2014, retrieved 15 April 2015, http://www.newsmax.com/John-Gizzi/IMF-Lagarde-China-Republicans/2014/10/14/id/600531.

Grice, Andrew, "TTIP: Activists triumph as contentious U.S. free trade deal clause suspended", *The Independent*, 20 March 2015, retrieved 15 April 2015, http://www.independent.co.uk/news/uk/politics/ttip-activists-triumph-as-contentious-us-free-trade-deal-clause-suspended-9976090.html.

"Investor-to-State Dispute Settlement (ISDS), Some Facts and Figures", DG Trade, European Commission, 12 March 2015, retrieved 15 April 2015, http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153046.pdf.

"ISDS decision delayed to end of TTIP talks", *Euractiv*, 13 January 2015, retrieved 15 April 2015, http://www.euractiv.com/sections/trade-society/isds-decision-delayed-end-ttip-talks-311234.

"Jean-Claude Juncker plays with future of EU-U.S. trade deal", *FT View*, 23 October 2014, retrieved 15 April 2015, http://www.ft.com/intl/cms/s/0/3571c8b2-5ac0-11e4-b449-00144feab7de.html#axzz3Httc6fZU.

Keating, Dave, "Juncker takes reins on schedule", *EuropeanVoice*, 23 October 2014, retrieved 15 April 2015, http://www.europeanvoice.com/article/juncker-takes-reins-on-schedule.

Kilcourse, James, "TTIP faces political hurdles on both sides of the Atlantic", *The Institute of International and European Affairs*, 3 February 2014, retrieved 15 April 2015, http://www.iiea.com/blogosphere/ttip-faces-political-hurdles-on-both-sides-of-the-atlantic.

Maçães, Bruno "CETA, TTIP: Global trade threatened by vested national interests", *EurActiv*, 26 September 2014, retrieved 15 April 2015, http://www.euractiv.com/sections/trade-industry/ceta-ttip-global-trade-threatened-vested-national-interests-308753.

"Malmström plays transparency card, but gets timid applause", *EurActiv*, 30 September 2014, retrieved 15 April 2015, http://www.euractiv.com/sections/eu-priorities-2020/eu-trade-candidate-plays-transparency-card-gets-timid-applause-308793.

McKeagney, Simon, "ISDS dominates CETA debate in Strasbourg", *TTIP Beware What Lies Beneath*, 17 September 2014, retrieved 15 April 2015, http://ttip2014.eu/blog-detail/blog/CETA%20Plenary%20September.html.

Pangratis, Angelos, EU Ambassador to the WTO, speech, College of Europe, 30 September 2014.

Panichi, James, "Philip Morris, Australia and the fate of Europe's trade talks", *Inside Story*, 8 January 2014, retrieved 15 April 2015, http://insidestory.org.au/philip-morris-australia-and-the-fate-of-europes-trade-talks.

Pollack, Mark, "Delegation, Agency and Agenda Setting in the European Community", *International Organisation*, vol. 51, no. 1, 1999, pp. 99-134.

Pop, Valentina, "An American in Strasbourg: U.S. ambassador woos MEPs on trade pact", retrieved 15 April 2015, *EuObserver*, 23 October 2014, http://euobserver.com/political/126202.

Porterfield, Matthew & Christopher Byrnes, "Philip Morris v. Uruguay: Will investor-State arbitration send restrictions on tobacco marketing up in smoke?", *Investment Treaty News*, 12 July 2011, retrieved 15 April 2015, http://www.iisd.org/itn/2011/07/12/philip-morris-v-uruguay-will-investor-state-arbitration-send-restrictions-on-tobacco-marketing-up-in-smoke.

"President Obama makes a statement on TTIP", *The White House*, 17 June 2013, retrieved 15 April 2015, http://www.whitehouse.gov/photos-and-video/video/2013/06/17/president-obama-makes-statement-transatlantic-trade-and-investment.

Putnam, Robert. D, "Diplomacy and domestic politics: the logic of two-level games", *International Organisation*, vol. 42, no. 3, 1988, pp. 427-460.

Remarks by Ambassador Michael Froman: "Dialogue on the Transatlantic Trade and Investment Partnership", *U.S. Diplomatic Mission to Italy*, 14 October 2014, retrieved 15 April 2015, http://italy.usembassy.gov/news-events/amb-froman-transatlantic-trade-and-investment-partnership.html.

Sbragia, Alberta, "The EU, the U.S. and trade policy: competitive interdependence in the management of globalisation", *Journal of European Public Policy*, vol. 17, no. 3, 2010, pp. 368-382.

"Transatlantic Trade Agreement to Provide Economic Stimulus", *Delegation of the European Union to the United States*, http://www.euintheus.org/press-media/eu-trade-commissioner-transatlantic-trade-agreement-to-provide-economic-stimulus.

"The Facts on ISDS: Safeguarding the Public Interest and Protecting Investors", *Office of the U.S.TR*, 27 March 2014, retrieved 15 April 2015, http://www.ustr.gov/about-us/press-office/blog/2014/March/Facts-Investor-State%20Dispute-Settlement-Safeguarding-Public-Interest-Protecting-Investors.

Troszczynska-Van Genderen, Wanda, "The Transatlantic Trade and Investment Partnership (TTIP): The U.S. Congress's positions", Directorate-General for External Policies, European Parliament, retrieved 15 April 2015, http://www.europarl.europa.eu/RegData/etudes/BRIE/2014/536395/EXPO_BRI(2014)536395_EN.pdf.

Van Ham, Peter, "The Geopolitics of TTIP", *Clingendael Institute*, no. 23, October 2013, retrieved 15 April 2015, http://www.clingendael.nl/sites/default/files/The%20Geopolitics%20of%20TTIP%20-%20Clingendael%20Policy%20Brief.pdf.

Vincenti, Daniela, "U.S. Ambassador: Beyond growth, TTIP must happen for geostrategic reasons", *EurActiv*, 16 July 2014, retrieved 15 April 2015, http://www.euractiv.com/sections/trade-industry/us-ambassador-eu-anthony-l-gardner-beyond-growth-ttip-must-happen.

"Who Lobbies most on TTIP", *Corporate European Observatory*, 8 July 2014, retrieved 15 April 2015, http://corporateeurope.org/international-trade/2014/07/who-lobbies-most-ttip.

Geographical Indications in the TTIP: A Lost Battle?

Andrea Chiarello

"Feta is not a place, it's a process".

Tom Vilsack, U.S. Secretary for Agriculture[123]

Introduction: A Lost Battle?

In June 2013, European Union (EU) and United States (U.S.) leaders announced the launch of the Transatlantic Trade and Investment Partnership (TTIP) negotiations. In a market accounting for about half of the world's GDP and a third of global trade flows, 'growth and jobs' were the top priorities to face the economic and financial crisis.

Today's globalised economy seems to reduce the importance of 'location'. Nevertheless, it plays a crucial role in the ongoing debate around Geographical Indications (GIs) in the TTIP, where the EU and the U.S. policy approaches diverge markedly. Meanwhile, recent politicisation of the negotiations has fed a general attitude of negativity towards TTIP, especially in Europe, where concerns about quality standards for agricultural products are widespread. The debate escalated notably after the German Agriculture Minister had stated that the EU would not be able to "protect every sausage" under TTIP.[124]

This paper gives an overview of the European and American systems for protecting GIs and analyzes the role of GIs in the TTIP negotiations. Drawing on Putnam's theory, it approaches the TTIP negotiations as a 'two-level game' with the 'Level I' international negotiators – the European Trade Commissioner and U.S. Trade Representative, respectively - and their 'Level II' domestic stakeholders – the Council of the EU, the European Parliament and Member State assemblies on one hand and the U.S. Congress on the other (plus interest groups on both sides) – vying to advance their 'win-sets'.[125] Both parties have an interest in reaching agreement on the contentious GI chapter but the sharp divergences and structure of their win-sets raise the question: could a row over GIs trip up the TTIP negotiations? This paper attempts to answer the question and, in the concluding section, put forward some policy recommendations to facilitate a mutually beneficial outcome.

---

[123] "EU, U.S. face food labelling spat in TTIP talks", *Euractiv*, 18 June 2014.

[124] "'We can't protect every sausage,' says German agriculture minister over TTIP deal", *Deutsche Welle*, 4 January 2015.

[125] R. D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games", *International Organization*, vol. 42, no. 3, 1988, pp. 427-460.

The EU's Approach to GIs

The EU's GI regulatory framework covers agricultural products and foodstuffs, wines and spirits. It promotes sustainable rural development and preserves local production methods and traditions. The level of protection within the single market is higher than the one under the WTO TRIPS Agreement and it applies against any "misuse, imitation or evocation", including in translation.[126] Among the downsides of this system is the relative lack of flexibility with respect to other, trademark-based, legislations like the American one. According to the 'coexistence rule', once a GI is registered, it is no longer possible to claim the protection of a new trademark in the same type of product, although pre-existing trademarks may continue to exist.

In the last twenty years, the EU has sought to enhance the international recognition and protection of GIs through both WTO and bilateral agreements. Since, according to the principle of 'territoriality', the EU's regulatory framework remains limited to the territory of EU Member States, EU negotiators see TTIP as an opportunity to achieve further regulatory convergence and reduce trade conflicts.[127]

The U.S. is the biggest market for EU GI products, which make up a third of U.S. food and beverage imports from the EU.[128] A key EU aim in TTIP is to address the obstacles to EU exports due to current U.S. practices. Failure to obtain a strong deal on GIs in TTIP would represent a sizeable lost economic opportunity and would also set an unfavourable precedent for future trade agreements.

The EU's win-set is not homogeneous. A few products, such as champagne and Cognac, Scotch whiskey, Grana Padano and Parmigiano Reggiano account for a large proportion of the export value,[129] and countries like Italy, France and Greece rely more than others on the export of GI products.[130] For example, France exports 2 billion euros in wine and spirits to the U.S. and expects to increase this figure also thanks to a better GI protection.[131] As regards Italy, the commercialisation of non-GI 'Parmesan' and 'Asiago' in the U.S. market represents economic losses of around 3 billion euros for the Italian cheese producers.[132] This means that the European Commission, as 'Level I' negotiator, must represent a heteronymous array of 'Level II' interests, reducing its room for maneuver. Without a satisfactory compromise, countries like Italy and France could threaten not to ratify the TTIP, putting the

---

[126] Regulation (EEC) 2081/92, Article 13(1)(b).
[127] Interview with an official, DG AGRI, European Commission, Brussels, 10 November 2014.
[128] A. Matthews, "Geographical indications (GIs) in the U.S.-EU TTIP negotiations", *CAP Reform* website, 19 June 2014.
[129] *Ibid*.
[130] Author's traineeship at the Council of the EU (2014), notably following the Trade Policy Committee.
[131] "Grâce au TTIP, la France espère exporter plus de fromage et de vins aux Etats-Unis", *La Tribune*, 25 March 2015.
[132] F. Lotta & C. Varallo, "Geographical Indications Protection in the Transatlantic Trade and Investment Partnership (TTIP)", *Food News*, March 2015, p. 6.

European Commission negotiators at risk of 'involuntary defection' which would scupper the whole package.[133]

GIs from the U.S. Perspective

From the American perspective, it is essential to increase the access of U.S. industry, especially for agriculture and processed food, to the EU's single market. "[S]ince 2000, global U.S. agricultural exports have increased by 176% while exports to the EU have increased only 54%" because of (tariff and non-tariff) barriers to trade. Moreover, although total EU agricultural imports have recently grown, the U.S. has lost considerable portions of market share to large emerging economies such as China and Brazil.[134]

The U.S. see the EU approach to GIs as a protectionist policy which discourages competition and innovation. A common argument against the extension of GI status for products like 'feta' cheese is that they have "been on the American market for generations and have become generic terms denoting types of food". Therefore, "once a geographic designation is generic in the United States, any producer is free to use the designation for its goods/services".[135]

From the U.S. point of view, regulatory convergence with the EU could prove to be costly for American food producers in terms of re-labelling, new marketing strategies and reduced export capacity. U.S. negotiators have portrayed the EU's GI policy as a direct threat to U.S. industry's export potential in the EU single market. Deputy U.S.TR Punke clearly stated that the U.S. "will not be bringing the European system of geographical indications to the United States" through the TTIP, although he recognised the need for "a serious negotiation" on the issue.[136]

Despite this hard stance on EU demands, a basic GI system already exists in the U.S., including indicators such as 'Idaho' potatoes, 'Florida' oranges and 'Vidalia' onion. In contrast to the EU, however, these products are protected as trademarks, collective marks or certification marks (a less regulated and rigid system). Interestingly, the U.S. 'winset' is not entirely homogenous, as some geographically specific exporters like the Napa Valley Vintners stand on the side of the EU. They would benefit from strengthened GI regulations, but still lack the resources and organisation to influence the negotiations.

---

[133] A. Dür & M. Elsig (eds.), "Principals, agents, and the European Union's foreign economic policies", *Journal of European Public Policy*, vol. 18, no. 3, 2011, pp. 323-338.
[134] U.S. Department of Agriculture, *Agricultural Exports to the European Union: Opportunities and Challenges*, International Trade Report, 15 February 2013.
[135] S. Benka, "Protection of Geographical Indications: How Extensive Should They Be?", *America's Trade Policy website*, 25 November 2013.
[136] "Vilsack Shoots Down EU GI Demands In Meeting With Agriculture Ministers", *Inside U.S. Trade*, 19 June 2014.

Conclusions: An Unresolved Deadlock in the TTIP Negotiations

Given the differences outlined above, it does not come as a surprise that negotiators are facing considerable challenges in the GI chapter of the TTIP: "from one perspective, too little protection of geographical indications is a trade barrier; from another perspective, too much protection is a trade barrier".[137] The high economic interests at stake, combined with recent politicisation, have considerably reduced the size of both parties' win-sets. Consequently, so far they have displayed little flexibility.

Information and misperceptions about GIs are another issue: former EU Ambassador to Washington Nuno de Almeida pointed out that, for many American 'generic' products, there would be no need for re-labelling, as they are not protected as GIs in the European single market.[138]

This paper has argued that the conflict does not concern the principle of adopting a GI system, but "rather revolve around a number of specific names which are protected in the EU as GIs but which the U.S. sees as generic".[139] A solution is, however, not easy to find, as these (few) products, like 'feta' cheese, champagne or 'Parma' ham, represent the majority of EU export values. In the words of Tom Vilsack, negotiators must now work "to find that sweet spot where value can be protected but market access is not denied".[140]

The EU is conscious of the strong U.S. resistance: former Trade Commissioner De Gucht admitted that "recognition of GIs would be a counterweight for concessions that would probably have to be made in U.S. access to EU beef, chicken or pork markets, and would serve to soften the blow".[141] To mention but one example, the EU absorbed only about 2% of total U.S. beef exports in the last year, while the top market (Japan) accounted for almost 20%.[142]

On the basis of this paper's findings, how could the progress towards a pragmatic solution be facilitated?

Firstly, a joint communication campaign between the European Commission and the U.S. Trade authorities should be launched. Providing the public with accurate and comprehensive information would help preventing further politicisation and radicalisation of the debate.

---

[137] S. Lester, "One Year into the TTIP Negotiations: Getting to Yes", Cato Institute, *Free Trade Bulletin*, no. 59, 29 September 2014.
[138] "EU Ambassador Fights Back Against U.S. Claims On GI Protections For Food", *Inside U.S. Trade*, 12 June 2014.
[139] Matthews, *op.cit.*
[140] J. Fatka, "Vilsack Talks Trade to European Ag Commissioners", *Feedstuffs*, 16 June 2014.
[141] "TTIP Talks On GIs Focused On Comparing Systems, Not On EU GI List", *Inside U.S. Trade*, 22 May 2014.
[142] U.S. Meat Export Federation, *Leading Markets for U.S. Beef Exports*, Jan 2014 – Jan 2015.

Secondly, as major problems have arisen only with regards to the few GIs outlined above, a detailed 'name-by-name' discussion should be undertaken, based on a cost-benefit analysis with specifics from industries on both sides of the Atlantic. The solution found in the EU-Canada CETA is widely considered as a potential model for TTIP.[143] In the GI chapter, EU demands were accepted in a flexible way: while the commercialisation of new products in the Canadian market shall not be incompatible with EU GIs, pre-existing conflicting trademarks will enjoy a phasing-out period. Furthermore, exceptions were negotiated as regards the translation of product names: for example, 'Parmigiano Reggiano' will be protected as a GI while 'parmesan' will not.[144]

Thirdly, the GI chapter should be seen in the wider context of TTIP: in such a comprehensive and ambitious deal, negotiators will have the chance to operate 'package deals' and 'horse-trading' not only between product names, but also across different chapters of the agreement.

Lastly, although outside the scope of this paper, the geopolitical *rationale* behind the TTIP is evident and could even be considered as its main driving force. Beyond the clear benefits of economic stimulus, this agreement is a 'golden opportunity' to foster the 'political renewal' of the transatlantic relationship, in a world where power seems to be shifting towards rapidly developing countries.[145]

[143] K. Hübner, *TTIP and CETA: Remaking of the Atlantic Economy?*, Vancouver, British Columbia University, February 2014.
[144] CETA consolidated text, 26 September 2014, Chapter 22, Art. 7, p. 339.
[145] C. A. Kupchan, "The Geopolitical Implications of the Transatlantic Trade and Investment Partnership", *Transatlantic Academy analysis*, June 2014, p. 7.

Bibliography

Benka, Samuel, "Protection of Geographical Indications: How Extensive Should They Be?", *America's Trade Policy website*, 25 November 2013, retrieved 28 March 2015, http://americastradepolicy.com/protection-of-geographical-indications-how-extensive-should-they-be/#.VHTrgNJ0y71.

CETA consolidated text, 26 September 2014, Chapter 22, Art. 7, p. 339, retrieved 28 March 2015, http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf

"EU Ambassador Fights Back Against U.S. Claims On GI Protections For Food", *Inside U.S. Trade*, 12 June 2014, retrieved 28 March 2015, http://insidetrade.com.

Defraigne, Pierre, "Choosing between Europe and the TTIP", *Madariaga Paper*, vol. 6, no. 7, November 2013, retrieved 28 March 2015, http://www.ttip2014.eu/files/content/docs/28-nov-2013%20defraigne-choosing%20between%20ttip%20and%20europe.pdf.

Dür, Andreas & Manfred Elsig (eds.), "Principals, agents, and the European Union's foreign economic policies", *Journal of European Public Policy*, vol. 18, no. 3, 2011, pp. 323-338.

"EU, U.S. face food labelling spat in TTIP talks", *Euractiv*, 18 June 2014, retrieved 28 March 2015, http://www.euractiv.com/sections/agriculture-food/eu-us-face-food-labelling-spat-ttip-talks-302895.

European Commission, *Countries and Regions - United States*, DG TRADE website, retrieved 28 March 2015, http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states.

European Commission, *Geographical Indications*, DG TRADE website, retrieved 28 March 2015, http://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/geographical-indications.

European Commission, "Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products", Brussels, Green Paper, COM/2014/0469 final, 2014.

European Commission, "Statement by President Barroso on the EU-U.S. trade agreement with U.S. President Barack Obama, the President of the European Council Herman Van Rompuy and UK Prime Minister David Cameron", Brussels, *Press Release*, 17 June 2013, http://europa.eu/rapid/press-release_SPEECH-13-544_en.htm.

European Commission, *Value of production of agricultural products and foodstuffs, wines, aromatised wines and spirits protected by a geographical indication (GI)*, Final report, October 2012, retrieved 28 March 2015, http://ec.europa.eu/agriculture/external-studies/2012/value-gi/final-report_en.pdf.

Fatka, Jaqui, "Vilsack Talks Trade to European Ag Commissioners", *Feedstuffs*, 16 June 2014, retrieved 28 March 2015, http://feedstuffs.com/story-vilsack-talks-trade-european-ag-commissioners-45-113904.

"Geographical indications in TTIP: a new European controversy", *Borderlex*, 8 January 2015, retrieved 28 March 2015, http://www.borderlex.eu/expert-ttip-worsen-position-eu-registered-gis-us.

Giovannucci, Daniele *et al.*, *Guide to Geographical Indications: Linking products and their origins*, Geneva, International Trade Centre, 2009.

"Grâce au TTIP, la France espère exporter plus de fromage et de vins aux Etats-Unis", *La Tribune*, 25 March 2015, retrieved 29 March, http://www.latribune.fr/economie/international/grace-au-ttip-la-france-espere-exporter-plus-de-fromage-et-de-vins-aux-etats-unis-463691.html.

Hübner, Kurt, *TTIP and CETA: Remaking of the Atlantic Economy?*, Vancouver, British Columbia University, February 2014.

Kupchan, Charles A., "The Geopolitical Implications of the Transatlantic Trade and Investment Partnership", *Transatlantic Academy analysis*, June 2014, retrieved 28 March 2015, http://www.gmfus.org/wp-content/blogs.dir/1/files_mf/1402500858Kupchan_TTIPsGeopolitical Implications_Jun14.pdf.

Lester, Simon, "One Year into the TTIP Negotiations: Getting to Yes", Cato Institute, *Free Trade Bulletin*, no. 59, 29 September 2014.

Lotta, Francesca & Cesare Varallo, "Geographical Indications Protection in the Transatlantic Trade and Investment Partnership (TTIP)", *FoodNews by Meyerlegal.de*, March 2015, retrieved 28 March 2015, http://meyerlegal.de/newsletterbox/2015/en/2015-mar_en_news-broschuere-ml01.pdf.

Matthews, Alan, "Geographical indications (GIs) in the U.S.-EU TTIP negotiations", *CAP Reform website*, 19 June 2014, retrieved 28 March 2015, http://capreform.eu/geographical-indications-gis-in-the-us-eu-ttip-negotiations.

"NVV has assumed the duty of preserving the Napa Valley name for those who have earned the right to put it on their labels", Napa Valley Vintners' website, retrieved 28 March 2015, http://www.napavintners.com/about/napa_name_protection.asp.

Office of Policy and International Affairs: Geographical Indications, U.S. Patent Office website, retrieved 28 March 2015, http://patents.uspto.gov/ip/global/geographical/index.jsp.

Porter, Michael E., "Clusters and the New Economics of Competition", *Harvard Business Review*, November 1998, retrieved 28 March 2015, http://www.hbs.edu/faculty/Pages/item.aspx?num=46852.

Putnam, Robert D., "Diplomacy and Domestic Politics: The Logic of Two-Level Games", *International Organization*, vol. 42, no. 3, 1988, pp. 427-460.

"TTIP Talks On GIs Focused On Comparing Systems, Not On EU GI List", *Inside U.S. Trade*, 22 May 2014, http://insidetrade.com.

"Small Businesses Are Important Players in U.S. Business and Job Growth", *Small Business Administration website*, 29 October 2009, retrieved 28 March 2015, https://www.sba.gov.

U.S. Department of Agriculture, *Agricultural Exports to the European Union: Opportunities and Challenges*, International Trade Report, 15 February 2013, retrieved 28 March 2015, http://www.fas.usda.gov/data/agricultural-exports-european-union-opportunities-and-challenges.

U.S. Meat Export Federation, *Leading Markets for U.S. Beef Exports, Jan 2014 – Jan 2015*, statistics provided by U.S.DA and compiled by U.S.MEF, retrieved 28 March 2015, http://www.usmef.org/downloads/statistics/2015-01-beef-exports.pdf.

"Vilsack Shoots Down EU GI Demands In Meeting With Agriculture Ministers", *Inside U.S. Trade*, 19 June 2014, retrieved 28 March 2015, http://insidetrade.com.

Understanding Civil Society and European Parliament Contention with the TTIP Negotiations

Ueli Staeger

Why would 150,000 individuals and organisations participate in a European Commission consultation? This contribution scrutinises the two-decade long U.S.-EU trade diplomacy behind the Transatlantic Trade and Investment Partnership (TTIP) and its recent politicisation. Building upon Putnam's two-level-games, I will introduce the transatlantic political context and respective win-sets, and focus on the European side.[146] The following question guides my enquiry: Does European 'Level II' contention in TTIP negotiations by the European Parliament and Civil Society Organisations (CSOs) yield potential to alter the EU policy-making balance structurally beyond the singular issue of TTIP? In averring it cautiously, I make two claims: First, the European 'Level II' is characterised by a game of 'real' and 'fictional', or 'lobbying' and 'ratifying', principals; second, the actors acting as 'fictional principals' capitalise on TTIP politicisation to reinforce their structural role in EU policy-making by overstretching legal competences through a democratisation and transparency discourse. The essay thus expands Putnam's framework by engaging both legal institutionalism and political discourse.

A Tedious Transatlantic Voyage

To consolidate post-Cold-War geopolitics, U.S.-EU transatlanticism through trade was reinvigorated. A series of agreements gradually intensified transatlantic mutual trust, until the work of the Transatlantic Economic Council created a moment ripe for the negotiation of a TTIP in 2013.[147] A major external reverberation effect unfurled from stalled WTO negotiations since 2000, leading the U.S. and EU, representing 40% of world GDP, to advance through bilateralism.[148] In the spirit of a deep transatlantic economic-political rapprochement, TTIP aspires not simply to 'national treatment' for U.S./EU products, but 'mutual recognition', and underlying regulatory harmonization: a "reciprocal, negotiated, and institutionalized form of extraterritoriality".[149] The long build-up enabled negotiators to appear in harmony, seeking to improve their counterpart's standing in their constituencies, thereby increasing their win-set.[150] TTIP

---

[146] R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-level Games", *International Organization*, vol. 42, no. 3, 1988, pp. 434-460.
[147] L.J. Eliasson, "Problems, Progress and Prognosis in Trade and Investment Negotiations: The Transatlantic Free Trade and Investment Partnership", *Journal of Transatlantic Studies*, vol. 12, no. 2, 2014, p. 125.
[148] *Ibid*.
[149] K. Nicolaïdis & G. Shaffer, "Transnational Mutual Recognition Regimes: Governance without Global Government", *Law and Contemporary Problems*, vol. 68, no. 2, 2005, p. 275.
[150] Eliasson, *op.cit.*, p. 124.

is part of a "dense regime complex"; the Canada-EU Comprehensive Economic and Trade Agreement (CETA) set an important precedent for TTIP.[151] Overall, TTIP is unmatched in shaping the future of global trade. It would regulate 40% of world trade volume and "may become a model for others to follow".[152] At a time when containing China, overcoming WTO multilateral deadlock and economic recovery are ever-pressing, a transatlantic regulatory area appeared strategically crucial.

Structure of the Win-sets

The U.S. Senate significantly shapes win-sets by threatening involuntary defection. Single prominent Senators can "pick apart" negotiation outcomes, and attempts to suspend Congressional veto through "Fast Track" were thwarted.[153] TTIP's envisaged scope was hollowed out by lobbies: financial services were excluded, and liberalising public procurement in the U.S. is contentious across partisan lines.[154] The Administration's declaratory goals overlap with the European Commission's negotiation mandate.[155] In the EU, contentions from 'Level II' in different policy areas shrink the overlap of negotiators' win-sets; most notably intellectual property rights, audio-visual services, and the threat of lowering European health, environment and welfare standards.[156]

CSO opposition gained momentum through anecdotal issues such as U.S. chlorine chicken. In turn, other fundamental issues of democratic governance are quite absent in the debate: regulatory harmonization will be implemented through a Regulatory Cooperation Body that, according to BusinessEurope "essentially co-write[s] regulation" with the European Commission and hence institutionalises corporate lobbying.[157] Most criticised, however, is the Investor-State-Dispute-Settlement (ISDS), especially 'umbrella clauses' establishing unspecified state obligations towards investors who could sue governments for deteriorated regulatory environments. This politicisation of ISDS is a CETA reverberation effect. American negotiators and business lobbies temporarily restructured the win-set overlap such that the European Commission affirmed there is "no TTIP without an ISDS", a position

---

[151] S. Meunier & J.-F. Morin, "No Agreement is an Island: Negotiating TTIP in a Dense Regime Complex", in J.-F. Morin, T. Novotna, F. Ponjaert & M. Telò (eds.), *TTIP in a Multipolar World*, Aldershot, Ashgate, forthcoming.
[152] Office of the U.S. Trade Representative, *op.cit.*
[153] Eliasson, *op.cit.*, p. 129.
[154] J. Crisp, "Financial services off the table at next round of TTIP talks", *Euractiv*, 13 June 2014.
[155] Office of the U.S. Trade Representative, "U.S. Objectives, U.S. Benefits In the Transatlantic Trade and Investment Partnership", 2014; Council of the European Union, *Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America*, Brussels, 9 October 2014.
[156] "TTIP: No to backroom deals that would imperil our health, environment and welfare", *Corporate Europe Observatory*, 29 September 2014.
[157] European Commission, "Initial Provisions for Chapter [] Regulatory Cooperation", Brussels, February 2015; U.S. Chamber of Commerce and Businesseurope, "Regulatory Cooperation in the EU-U.S. Economic Agreement", October 2012.

that will likely prevail as anything else would formally require a revision of the negotiation directives.[158]

CSOs rightly doubt the macroeconomic impact of TTIP, as its prospective impact is calculated through controversial Computable General Equilibria.[159] Siles-Brügge argues that the European Commission conflates one-time abstract mutual recognition and the contentious post-ratification process regulatory harmonization, which will meet significant resistance in 'Level II' constituencies. Tellingly, business wishes to „overcome unnecessary regulatory differences" through TTIP.[160] Finally, Member States are becoming an important 'Level II' actor through national parliaments who call for a mixed agreement.[161] For example, the Syriza-led Greek Parliament announced that it would "never ratify" TTIP.[162]

Reappraising Principal-Agent Dynamics

While the formal principal-agent relationship is that of the Council mandating the European Commission to negotiate TTIP, the reality is more complex. Meunier explains the European Commission's autonomous interest in liberalisation as "collusive delegation": Member States delegated trade policy to the comparatively depoliticised European Commission to "insulate the process from protectionist pressures and, as a result, promote trade liberalization".[163] Operating on an internalised liberalisation mandate (that business lobbies reinvigorate constantly), the European Commission manages 'fictional expectations' of its citizens, thereby rhetorically establishing as TTIP's beneficiary a European demos – a 'fictional principal', of which it becomes the agent at the negotiating table (see Figure 1).[164] The main actors therefore are: pro-liberalisation business as real principal, the European Commission as pro-liberalisation agent, and a 'fictional principal' represented by the European Parliament and CSOs. A part of the European

---

[158] F. Bermingham, "EU Trade Commissioner Karel De Gucht Warns 'No TTIP Without ISDS'", *International Business Times*, 16 October 2014.

[159] B.H. Mitra-Kahn, "Debunking the Myths of Computable General Equilibrium Models", SCEPA Working Paper, 2008, no.1, F. De Ville & G. Siles-Brügge, "The Transatlantic Trade and Investment Partnership and the Role of Computable General Equilibrium Modelling: An Exercise in 'Managing Fictional Expectations'", Paper presented at the 55th International Studies Association Convention, March 2014.

[160] "Regulatory Component in the TTIP – Key to Success", *Business Alliance for TTIP*, 30 September 2014.

[161] "Brief aan Eurocommissaris De Gucht over parlementaire betrokkenheid bij vrijhandelsakkoorden", *Tweede Kamer der Staten Generaal*, 16 June 2014.

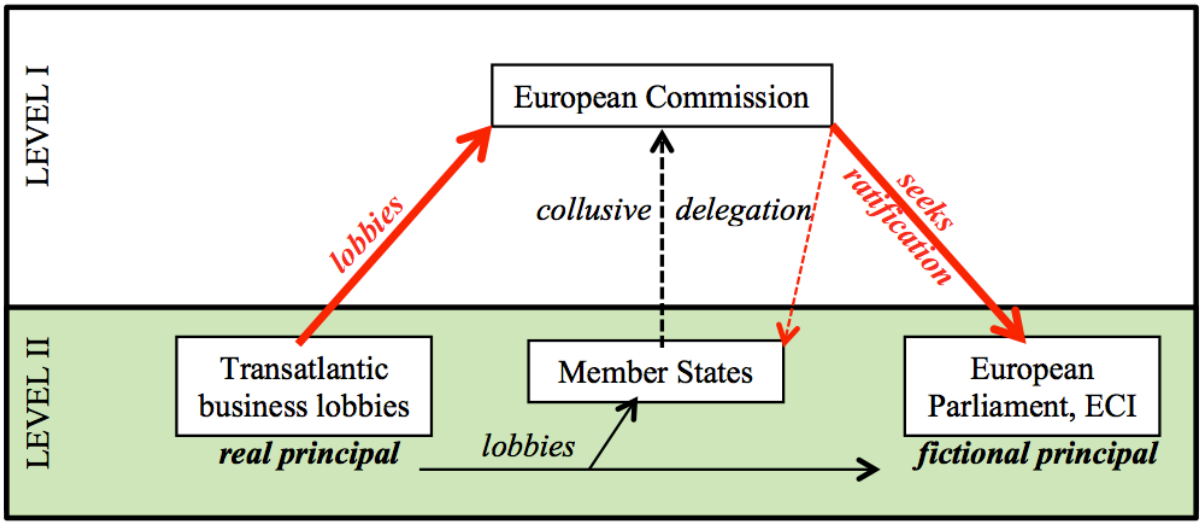
[162] S. Michalopoulos, "Syriza-led Greek parliament 'will never ratify TTIP'", *Euractiv*, 2 February 2015.

[163] S. Meunier, *Trading Voices: The European Union in International Commercial Negotiations.* Princeton, Princeton University Press, 2005, p. 8.

[164] De Ville & Siles-Brügge, *op.cit.*

Parliament is, under lobbying pressure, however in favour of TTIP. After reaching agreement at 'Level I', the 'Level II' fictional principal now just has legal competence of ratification, but is unconstrained by prior 'fictional expectations'.

Figure 1: 'Hard' and discursive two-level games between main actors



Source: author's compilation.

TTIP-toeing towards Democratisation and Transparency?

The 'real/fictional principal' argument requires an appreciation of how political discourse and 'hard' legal facts upset the game board. 'Fictional principals' are indeed actively shaping how they cope with their role by embedding overstretched 'hard' institutional-legal instruments into discourses of transparency and democracy. This section explains how 'Level II' actors use TTIP politicisation to enhance their structural role in EU policy-making.

The European Parliament factions and CSOs opposing TTIP successfully established a link between the unclear feasibility of 'fictional expectations', and transparency and democratic accountability. There is considerable substance to the slogan 'beware what lies beneath' in deploring the conflation of mutual recognition and regulatory harmonization: the regulatory harmonization that implements mutual recognition is potentially undemocratic and un-transparent if it occurs afar from public scrutiny. To be sure, TTIP negotiations comparatively were the most transparent EU trade negotiations yet, but TTIP politicisation erodes this caveat – perhaps because the European Commission is ineffective in communicating trade policy to citizens.[165] Once CSOs established an effective pro-democracy/transparency discourse, they

[165] De Ville & Siles-Brügge, *op.cit.*; G. Siles-Brügge, *Constructing European Union Trade Policy: A Global Idea of Europe*, Basingstoke, Palgrave Macmillan, 2014, p. 151.

argue that 'no agreement' is preferable, as TTIP would *lower* the wellbeing of European citizens: deep mutual recognition is depicted as "race-to-the-bottom".[166]

Democratic Contention through 'Hard' Structures

TTIP opponents successfully transpose the democratisation discourse through multiple avenues of contention. Closely linked to 'transparency' is the leaked negotiation mandate: only months later, under pressure from the Ombudsman, did the European Commission publish the by-then omnipresent directives.[167] Second, not just anti-TTIP European Parliament factions criticise the lack of "immediate and full" negotiation information "at all stages" that the Treaties (art. 218(10) TFEU) foresee. The few post-Lisbon precedents indicate a European Parliament eager to establish an ambitious treaty interpretation. The European Parliament also used the hearings for the Juncker Commission to challenge the European Commission by galvanising differences between Commissioner Malmström and Juncker.[168] The debate on ISDS in TTIP is one of the few areas where civil society contention yielded piecemeal promises of a new-generation, more transparent ISDS.[169]

The inadequacy of the European Citizens' Initiative (ECI) in effectively democratising the EU is well-established.[170] An ECI launched to stop TTIP negotiations corroborated this assessment when it was refused by the European Commission on the grounds that the TTIP mandate falls outside the ECI's legal scope.[171] CSOs could subsequently claim that this is "bad timing for citizens to be rejected".[172] Amidst a broader campaign to reform the ECI, the European Commission's refusal will be contested legally, and STOP TTIP "self-organise[s]" an ECI outside the European Commission administered framework.[173] More than 1.5 million EU citizens signed within six months.

Restructuring EU Policy-making

The examples above share an impetus towards democratisation and transparency of the EU far beyond TTIP. Due to the strong politicisation of TTIP building on CETA reverberation, pro-democratisation factions have both threatened non-ratification of TTIP and restructured what Giddens calls the "conditions governing the continuity of

---

[166] CEE Bank Watch Network *et al.*, "TTIP puts the EU's environmental and social policies on the line", *Euractiv*, 13 January 2014.
[167] European Ombudsman, *Ombudsman asks Council and Commission to publish more TTIP documents*, Brussels, 31 July 2014.
[168] C. De Gruyter, "Ruzie over oplossen van ruzies", *NRC Handelsblad*, 15 October 2014.
[169] *Ibid*.
[170] F. Ohnmacht, "The European Citizens' Initiative: 'Much Ado About Nothing'", *Fondation Pierre du Bois*, 2012.
[171] J. Organ, "Commission blocks TTIP ECI and public debate", 23 October 2014.
[172] "Bad Timing for Citzens to be rejected on TTIP", CESI, 12 September 2014.
[173] "European Commission faces court challenge over trade talks", *STOP TTIP*, 19 September 2014.

transmutation of structures".[174] In other words, these 'Level II' actors have understood their restructuring potential within the wider EU policy-making structure, and contest TTIP *ipso facto* and for restructuration. Putnam reminds us that involuntary defection can reshuffle negotiations entirely, which applies here: U.S./EU negotiators today share far more than with most of their 'Level II' constituencies.

Conclusion

The politicisation of TTIP is unmatched in post-Lisbon EU politics. In conclusion of this essay, the research question can be answered with a cautious affirmative: On the one hand, the European Parliament's and the CSOs' intertwined discursive and 'hard' legal contention indeed radiates beyond TTIP. The decade-long 'collusive delegation' of trade to the European Commission is eroding. EU negotiators perhaps negotiate at a confidential table, but there is only a glass wall separating them from 'Level II'. This will require a reorientation of 'Level I' strategies, for example by exacerbating the 'kinkiness' of EU win-sets to maximise EU interests in TTIP. EU/U.S. involuntary defection and an 'empty shell' agreement are realistic scenarios. A result could be a "living agreement" that, as mandated, would "harness […] the outcome of subsequent regulatory discussions into the overall Agreement".[175]

On the other hand, effective 'hard' change of EU policy-making is unsure. Politicisation of TTIP will eventually fade, hence lowering the salience of the discourse of pro-democracy/transparency. Stripped of these discursive accretions, 'hard' legal competences dominate EU politics again – unless EU democratisation campaigns succeed in institutionalising their demands through an inarguably difficult treaty revision. But by still insisting TTIP is a "no-brainer", the European Commission has failed to 'sell' TTIP and deliver the mere appearance of taking CSOs seriously.[176] By doing so, it gained little and exacerbated the 'real/fictional' principal divide and hence added pertinence to civil society's discourse of democratisation and transparency. The partial concessions on ISDS building on a Commission consultation should serve as precedent for substantial, serious dialogue about TTIP. The consultation's partial success also suggests a systematised, constructive debate between Council, European Commission, Parliament and CSOs. The upcoming Trade in Services Agreement (TiSA) should see a significant reverberation effect from TTIP contentions. If ISDS is the crux in TTIP, data privacy concerns are sure to be at the heart of contentions of the European Commission's stance on TiSA, as civil society will invoke a powerful discourse of European liberty. The European Commission will face expert and powerful civic opposition which it better address more eagerly than in TTIP.

---

[174] A. Giddens, *The Constitution of Society: Outline of the Theory of Structuration*, Cambridge, Polity Press, 1984, p. 25.
[175] Eliasson, *op.cit.*, p. 133; Council of the European Union, *op.cit.*, p. 13.
[176] C. Malmström & J. Hill, "Don't believe the anti-TTIP hype – increasing trade is a no-brainer", *The Guardian*, 16 February 2015.

Bibliography

"Bad Timing for Citizens to be rejected on TTIP", CESI, 12 September 2014, retrieved 3 November 2014, http://www.cesi.org/bad-timing-for-citizens-to-be-rejected-on-ttip.

Bermingham, Finnbar, "EU Trade Commissioner Karel De Gucht Warns 'No TTIP Without ISDS'", *International Business Times*, 16 October 2014, retrieved 1 November 2014, http://www.ibtimes.co.uk/eu-trade-commissioner-karel-de-gucht-warns-no-ttip-without-isds-1470373.

"Brief aan Eurocommissaris De Gucht over parlementaire betrokkenheid bij vrijhandelsakkoorden", *Tweede Kamer der Staten Generaal*, 16 June 2014, retrieved 3 November 2014, http://www.tweedekamer.nl/kamerstukken/detail?id=2014D22207&did=2014D22207.

CEE Bankwatch Network, Climate Action Network Europe, Corporate Observatory Europe, European Public Health Alliance, European Environmental Bureau, Friends of the Earth Europe, Health and Environment Alliance, Nature Friends International, Transport & Environnent, World Wide Fund for Nature, "TTIP puts the EU's environmental and social policies on the line", *Euractiv*, 13 January 2014, retrieved 3 November 2014, http://www.euractiv.com/trade/ttip-puts-eus-environmental-soci-analysis-532724.

Council of the European Union, *Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America*, Brussels, 9 October 2014.

Crisp, John, "Financial services off the table at next round of TTIP talks", *Euractiv*, 13 June 2014, retrieved 2 November 2014, http://www.euractiv.com/sections/euro-finance/financial-services-table-next-round-ttip-talks-302808.

De Gruyter, Caroline, "Ruzie over oplossen van ruzies", *NRC Handelsblad*, 15 October 2014, retrieved 3 November 2014, http://www.nrc.nl/handelsblad/van/2014/oktober/15/ruzie-over-oplossen-van-ruzies-1428913.

De Ville, Ferdi & Gabriel Siles-Brügge, "The Transatlantic Trade and Investment Partnership and the Role of Computable General Equilibrium Modelling: An Exercise in 'Managing Fictional Expectations'", Paper presented at the 55th International Studies Association Convention, March 2014, retrieved 1 November 2014, http://web.isanet.org/Web/Conferences/Toronto%202014/Archive/ebb12214-50a7-4f8a-80eb-d25ce06fbed3.pdf.

Eliasson, Leif Johan, "Problems, Progress and Prognosis in Trade and Investment Negotiations: The Transatlantic Free Trade and Investment Partnership", *Journal of Transatlantic Studies*, vol. 12, no. 2, 2014, pp. 119-139.

European Commission, "Initial Provisions for Chapter [] Regulatory Cooperation", Brussels, February 2015, retrieved 1 April 2015, http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153120.pdf.

"European Commission faces court challenge over trade talks", STOP TTIP, 19 September 2014, retrieved 1 November 2014, https://stop-ttip.org/european-commission-faces-court-challenge-over-trade-talks.

European Ombudsman, *Ombudsman asks Council and Commission to publish more TTIP documents*, Brussels, 31 July 2014, retrieved 3 November 2014, http://www.ombudsman.europa.eu/en/press/release.faces/en/54636/html.bookmark.

Giddens, Anthony, *The Constitution of Society: Outline of the Theory of Structuration*, Cambridge, Polity Press, 1984.

Malmström, Cecilia & Jonathan Hill, "Don't believe the anti-TTIP hype – increasing trade is a no-brainer", *The Guardian*, 16 February 2015, retrieved 1 April 2015, http://www.theguardian.com/commentisfree/2015/feb/16/ttip-transatlantic-trade-deal-businesses.

Meunier, Sophie & Jean-François Morin, "No Agreement is an Island: Negotiating TTIP in a Dense Regime Complex", in J-F Morin, T. Novotna, F. Ponjaert & M. Telò (eds.), *TTIP in a Multipolar World*, Aldershot, Ashgate, forthcoming.

Meunier, Sophie, *Trading Voices: The European Union in International Commercial Negotiations.* Princeton, Princeton University Press, 2005.

Michalopoulos, Sarantis, "Syriza-led Greek parliament 'will never ratify TTIP'", *Euractiv*, 2 February 2015, retrieved 1 April 2015, http://www.euractiv.com/sections/trade-society/syriza-led-greek-parliament-will-never-ratify-ttip-311719.

Mitra-Kahn, Benjamin H., "Debunking the Myths of Computable General Equilibrium Models", SCEPA Working Paper, 2008, no. 1, retrieved 1 April 2015, http://www.newschool.edu/scepa/publications/workingpapers/SCEPA%20Working%20Paper%202008-1%20Kahn.pdf.

Nicolaïdis, Kalypso & Gregory Shaffer, "Transnational Mutual Recognition Regimes: Governance without Global Government", *Law and Contemporary Problems*, vol. 68, no. 2, 2005, pp. 263-317.

Office of the U.S. Trade Representative, "U.S. Objectives, U.S. Benefits In the Transatlantic Trade and Investment Partnership", 2014, retrieved 2 November 2014, http://www.ustr.gov/about-us/press-office/press-releases/2014/March/U.S.-Objectives-U.S.-Benefits-In-the-TTIP-a-Detailed-View.

Ohnmacht, Felix, "The European Citizens' Initiative: 'Much Ado About Nothing'", *Fondation Pierre du Bois*, 2012, retrieved 25 October 2014, http://www.fondation-pierredubois.ch/images/stories/pdf/no3_2012_eudoc.pdf.

Organ, James, "Commission blocks TTIP ECI and public debate", 23 October 2014, retrieved 2 November 2014, http://www.ecicampaign.org/commission-blocks-ttip-eci-and-public-debate.

Putnam, Robert, "Diplomacy and Domestic Politics: The Logic of Two-level Games", *International Organization*, vol. 42, no. 3, 1988, pp. 434-460.

"Regulatory Component in the TTIP – Key to Success", *Business Alliance for TTIP*, 30 September 2014, retrieved 3 November 2014, http://www.transatlanticbusiness.org/wp-content/uploads/2014/09/Business-Alliance-Regulatory-Component-in-the-TTIP-September-30-2014.pdf.

Siles-Brügge, Gabriel, *Constructing European Union Trade Policy: A Global Idea of Europe*, Basingstoke, Palgrave Macmillan, 2014.

"TTIP: No to backroom deals that would imperil our health, environment and welfare", *Corporate Europe Observatory*, 29 September 2014, retrieved 3 November 2014, http://corporateeurope.org/international-trade/2014/09/ttip-no-backroom-deals-would-imperil-our-health-environment-and-welfare.

U.S. Chamber of Commerce and Businesseurope, "Regulatory Cooperation in the EU-U.S. Economic Agreement", October 2012, http://ec.europa.eu/enterprise/policies/international/cooperating-governments/usa/jobs-growth/files/consultation/regulation/9-business-europe-us-chamber_en.pdf.

List of EU Diplomacy Papers

1/2006
Karel De Gucht, *Shifting EU Foreign Policy into Higher Gear*

2/2006
Günter Burghardt, *The European Union's Transatlantic Relationship*

1/2007
Jorge Sampaio, *Global Answers to Global Problems: Health as a Global Public Good*

2/2007
Jean-Victor Louis, *The European Union: from External Relations to Foreign Policy?*

3/2007
Sieglinde Gstöhl, *Political Dimensions of an Externalization of the EU's Internal Market*

4/2007
Jan Wouters, *The United Nations and the European Union: Partners in Multilateralism*

5/2007
Martin Konstantin Köhring, *Beyond 'Venus and Mars': Comparing Transatlantic Approaches to Democracy Promotion*

6/2007
Sahar Arfazadeh Roudsari, *Talking Away the Crisis? The E3/EU-Iran Negotiations on Nuclear Issues*

1/2008
Yann Boulay, *L'Agence Européenne de Défense : avancée décisive ou désillusion pour une Europe de la défense en quête d'efficacité ?*

2/2008
Pier Carlo Padoan, *Europe and Global Economic Governance*

3/2008
Sieglinde Gstöhl, *A Neighbourhood Economic Community* - finalité économique *for the ENP?*

4/2008
Davide Bonvicini (ed.), *Playing Three-Level Games in the Global Economy – Case Studies from the EU*

5/2008
Fredrick Lee-Ohlsson, *Sweden and the Development of the European Security and Defence Policy: A Bi-Directional Process of Europeanisation*

6/2008
Anne-Claire Marangoni, *Le financement des operations militaires de l'UE : des choix* nationaux *pour une politique* européenne *de sécurite et de défense ?*

7/2008
Jing Men, *EU-China Relations: from Engagement to Marriage?*

8/2008
Giuseppe Balducci, *Inside Normative Power Europe: Actors and Processes in the European Promotion of Human Rights in China*

1/2009
Monika Tocha, *The EU and Iran's Nuclear Programme: Testing the Limits of Coercive Diplomacy*

2/2009
Quinlan Carthane, *A Misleading Promise? Rethinking European Support for Biofuels*

3/2009
Joris Larik, *Two Ships in the Night or in the Same Boat Together? Why the European Court of Justice Made the Right Choice in the Kadi Case*

4/2009
Alice Serar, *Tackling Today's Complex Crises: EU-U.S. Cooperation in Civilian Crisis Management*

5/2009
Judith Huigens & Arne Niemann, *The EU within the G8: A Case of Ambiguous and Contested Actorness*

6/2009
Mathias Dobbels, *Serbia and the ICTY: How Effective Is EU Conditionality?*

7/2009
Hugo de Melo Palma, *European by Force and by Will: Portugal and the European Security and Defence Policy*

8/2009
Paul Meerts (ed.), *Negotiating with the Russian Bear: Lessons for the EU?*

9/2009
Anne Tiedemann, *EU Market Access Teams: New Instruments to Tackle Non-tariff Barriers to Trade*

1/2010
Severin Peters, *Strategic Communication for Crisis Management Operations of International Organisations: ISAF Afghanistan and EULEX Kosovo*

2/2010
Sophie Lecoutre, *The U.S. Shift towards 'Smart Power' and its Impact on the Transatlantic Security Partnership*

3/2010
Herman Van Rompuy, *The Challenges for Europe in a Changing World*

4/2010
Camilla Hansen, *Non-Governmental Organisations and the European Union's Promotion of Human Rights in China: NGO Influence or NO Influence?*

5/2010
Egemen Bağış, *Turkey's EU Membership Process: Prospects and Challenges*

6/2010
Jan Steinkohl, *Normative Power Rivalry? The European Union, Russia and the Question of Kosovo*

7/2010
André Ghione, *Pushing the Boundaries: DG Enlargement between Internal and External Environments*

8/2010
Athanasia Kanli, *Is the European Union Fighting the War for Children? The EU Policy on the Rights of Children Affected by Armed Conflict*

9/2010
Jan Weisensee, *Measuring European Foreign Policy Impact: The EU and the Georgia Crisis of 2008*

10/2010
Mario Giuseppe Varrenti, *EU Development Cooperation after Lisbon: The Role of the European External Action Service*

11/2010
Nicole Koenig, *The EU and NATO: Towards a Joint Future in Crisis Management?*

1/2011
Mitja Mertens, *The International Criminal Court: A European Success Story?*

2/2011
Mireia Paulo Noguera, *The EU-China Strategic Partnership in Climate Change: The Biodiversity Programme*

3/2011
Bart van Liebergen, *American War, European Struggle? Analyzing the Influence of Domestic Politics on the ISAF Contributions of EU Member States*

4/2011
Dieter Mahncke, *Post-modern Diplomacy: Can EU Foreign Policy Make a Difference in World Politics?*

5/2011
Erika Márta Szabó, *Background Vocals: What Role for the Rotating Presidency in the EU's External Relations post-Lisbon?*

6/2011
Charles Thépaut, *Can the EU Pressure Dictators? Reforming ENP Conditionality after the 'Arab Spring'*

7/2011
Jannik Knauer, *EUFOR Althea: Appraisal and Future Perspectives of the EU's Former Flagship Operation in Bosnia and Herzegovina*

8/2011
Paul Quinn (ed.), *Making European Diplomacy Work: Can the EEAS Deliver?*

9/2011
Nathan Dufour, *Thinking Further about EU-Russia Cooperation: Drug Trafficking and Related Issues in Central Asia*

10/2011
Anselm Ritter, *The EU's Gas Security of Supply: Risk Analysis and Management*

1/2012
Malthe Munkøe, *The 2011 Debacle over Danish Border Control: A Mismatch of Domestic and European Games*

2/2012
Martin Schmid, *The Deputisation of the High Representative/Vice-President of the Commission: Making the Impossible Job Work*

3/2012
Sieglinde Gstöhl, *European Union Diplomacy: What Role for Training?*

4/2012
Konstantinos Hazakis & Filippos Proedrou, *EU-Russia Energy Diplomacy: The Need for an Active Strategic Partnership*

5/2012
Laura Richardson, *The Post-Lisbon Role of the European Parliament in the EU's Common Commercial Policy: Implications for Bilateral Trade Negotiations*

6/2012
Vincent Laporte, *The European Union – an Expanding Security Community?*

7/2012
Kirsten Lucas, *1 + 1 = 3? EU-U.S. Voting Cohesion in the United Nations General Assembly*

8/2012
David Smith, *International Financial Regulation: A Role for the Eurozone?*

9/2012
Sylvain Duhamel, *L'usage des mesures restrictives autonomes de l'Union européenne: deux poids deux mesures ou des mesures de poids ?*

1/2013
Thomas Stiegler, *Reaching for a Calculator or a Mirror? Why the EU Joins International Human Rights Treaties*

2/2013
Martin Minarik, *Approximation to EU Technical Standards with and without the Promise of Membership: the Cases of Slovakia and Ukraine*

3/2013
Raphaël Metais, *Ensuring Energy Security in Europe: The EU between a Market-based and a Geopolitical Approach*

4/2013
Raphaël Metais, Charles Thépaut & Stephan Keukeleire (eds.), *The European Union's Rule of Law Promotion in its Neighbourhood: A Structural Foreign Policy Analysis*

5/2013
Hrant Kostanyan & Bruno Vandecasteele, *The EuroNest Parliamentary Assembly: The European Parliament as a Socializer of its Counterparts in the EU's Eastern Neighbourhood?*

6/2013
Mirko Woitzik, *Pure Business, Law Enforcement or Sheer Politics? The EU's WTO Complaints against Chinese Export Restrictions on Raw Materials*

7/2013
Domhnall O'Sullivan, *Road to Proscription: The EU and Hezbollah since the Arab Spring*

8/2013
Carl Baudenbacher, *The Judicial Dimension of the European Neighbourhood Policy*

1/2014
Georg Haßlinger, *Climate Conundrums at High Altitude*

2/2014
Dirk Buschle, *Exporting the Internal Market – Panacea or Nemesis for the European Neighbourhood Policy? Lessons from the Energy Community*

3/2014
Leander Leenders, *EU Sanctions: A Relevant Foreign Policy Tool?*

4/2014
Benjamin Thibaut Denis, *Afghan Opium and the EU: Fighting the War Economy through Development Cooperation*

5/2014
Nikolaj Borreschmidt, *The EU's Human Rights Promotion in China and Myanmar: Trading Rights for Might?*

6/2014
Adam Kaznowski, *Defying the Treaty: The Influence of the Polish and Lithuanian Council Presidencies on the Development of the Eastern Partnership*

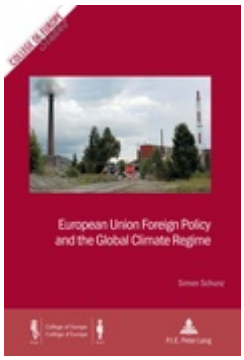
7/2014
Nicola Del Medico, *A Black Knight in the Eastern Neighbourhood? Russia and EU Democracy Promotion in Armenia and Moldova*

8/2014
Juliane Schmidt, *Between Irrelevance and Integration? New Challenges to Diplomacy in the 21st Century and the Role of the EEAS*

9/2014
Eleanor Friel, *Riding or Reaping the Whirlwind? An Account of the EU's Engagement with Insecurity in Northern Nigeria*

1/2015
Piotr Kobza, *Civilian Power Europe in the Arctic: How Far Can the European Union Go North?*

2/2015
Jonatan Thompson (ed.), *The Atlantic – A Bridge Too Far? TTIP's Provenance, Prospects and Pitfalls*



College of Europe Studies

Series Editors:

Govaere I. / Gstöhl S. / Mink G. / Monar J. / Nicolaides P.

Order online at www.peterlang.com

PIE - Peter Lang Bruxelles

vol. 18 Schunz, Simon, *European Union Foreign Policy and the Global Climate Regime*, 2014 (371 p.), ISBN 978-2-87574-134-9 pb.

vol. 17 Govaere, Inge / Hanf, Dominik (eds.), *Scrutinizing Internal and External Dimensions of European Law: Les dimensions internes et externes du droit européen à l'épreuve*, Liber Amicorum Paul Demaret, Vol. I and II, 2013 (880 p.), ISBN 978-2-87574-085-4 pb.

vol. 16 Chang, Michele / Monar, Jörg (eds.), *The European Commission in the Post-Lisbon Era of Crises: Between Political Leadership and Policy Management (With a Foreword by Commission Vice President Maros Sefcovic)*, 2013 (298p.), ISBN 978-2-87574-028-1 pb.

vol. 15 Mahncke, Dieter / Gstöhl, Sieglinde (eds.), *European Union Diplomacy: Coherence, Unity and Effectiveness (with a Foreword by Herman Van Rompuy)*, 2012 (273 p.), ISBN 978-90-5201-842-3 pb.

vol. 14 Lannon, Erwan (ed.), *The European Neighbourhood Policy's Challenges / Les défis de la politique européenne de voisinage*, 2012 (491 p.), ISBN 978-90-5201-779-2 pb.

vol. 13 Cremona, Marise / Monar, Jörg / Poli, Sara (eds.), *The External Dimension of the European Union's Area of Freedom, Security and Justice*, 2011 (434 p.), ISBN 978-90-5201-728-0 pb.

vol. 12 Men, Jing / Balducci, Giuseppe (eds.), *Prospects and Challenges for EU-China Relations in the 21st Century: The Partnership and Cooperation Agreement*, 2010 (262 p.), ISBN 978-90-5201-641-2 pb.

vol. 11 Monar, Jörg (ed.), *The Institutional Dimension of the European Union's Area of Freedom, Security and Justice*, 2010 (268 p.), ISBN 978-90-5201-615-3 pb.

vol. 10 Hanf, Dominik / Malacek, Klaus / Muir Elise (dir.), *Langues et construction européenne*, 2010 (286 p.), ISBN 978-90-5201-594-1 br.

vol. 9 Pelkmans, Jacques / Hanf, Dominik / Chang, Michele (eds.), *The EU Internal Market in Comparative Perspective: Economic, Political and Legal Analyses*, 2008 (314 p.), ISBN 978-90-5201-424-1 pb.

vol. 8 Govaere, Inge / Ullrich, Hans (eds.), *Intellectual Property, Market Power and the Public Interest*, 2008 (315 p.), ISBN 978-90-5201-422-7 pb.

vol. 7 Inotai, András, *The European Union and Southeastern Europe: Troubled Waters Ahead?*, 2007 (414 p.), ISBN 978-90-5201-071-7 pb.

vol. 6 Govaere, Inge / Ullrich, Hanns (eds.), *Intellectual Property, Public Policy, and International Trade*, 2007 (232 p.), ISBN 978-90-5201-064-9 pb.

vol. 5 Hanf, Dominik / Muñoz, Rodolphe (eds.), *La libre circulation des personnes: États des lieux et perspectives*, 2007 (329 p.), ISBN 978-90-5201-061-8 pb.

vol. 4 Mahncke, Dieter / Gstöhl, Sieglinde (eds.), *Europe's Near Abroad: Promises and Prospects of the EU's Neighbourhood Policy*, 2008 (318 p.), ISBN 978-90-5201-047-2 pb.

vol. 3 Mahncke, Dieter / Monar, Jörg (eds.), *International Terrorism: A European Response to a Global Threat?* 2006 (191p.), ISBN 978-90-5201-046-5 / U.S.-ISBN 978-0-8204-6691-0 pb.

vol. 2 Demaret, Paul / Govaere, Inge / Hanf, Dominik (eds.), *European Legal Dynamics - Dynamiques juridiques européennes*, Revised and updated edition of *30 Years of European Legal Studies at the College of Europe*, 2005 / 2007 (571 p.), ISBN 978-90-5201-067-0 pb.

vol. 1 Mahncke, Dieter / Ambos, Alicia / Reynolds, Christopher (eds.), *European Foreign Policy: From Rhetoric to Reality?*, 2004 (381 p.), ISBN 978-90-5201-247-6/ U.S.-ISBN 978-0-8204-6627-9 pb.