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## POLITICAL FACTORS IN THE NEGOTIATIONS ON A TRANS-ATLANTIC TRADE AND INVESTMENT PARTNERSHIP IN THE U.S.

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The crisis in Ukraine and the fragile situation in the Middle East, to name just two recent hotspots, once again highlight the need for transatlantic cooperation in all areas. In addition, the BRICS countries<sup>1</sup> attempt to challenge the Western countries' claim to leadership within the Bretton Woods institutions<sup>2</sup> by founding an alternative, common fund.<sup>3</sup> Given these circumstances, the negotiations surrounding a Transatlantic Trade and Investment Partnership (TTIP) are immensely important for the European and American partners, the future of transatlantic relations, as well as the future liberalisation and standards applied to world trade. TTIP would lend great momentum to transatlantic cooperation, even if no formal framework for policy dialog regarding existential issues is initially provided as is the case with NATO, for example. The significance and scope of a successful agreement as an anchor for future transatlantic partnership is nevertheless clear.

In order to assess TTIP's chances of success, it is important to understand and evaluate the political space in which the negotiations are embedded, as well as the stakeholders' interests and power bases. The following focuses on the political environment in which the negotiations are taking place on the American side. Formal negotiations are

- 1 | Brasil, Russia, India, China and South Africa.
- 2 | International Monetary Fund (IMF) und The World Bank Group.
- 3 | Cf. Patrick Welter, "Konkurrenz für den Währungsfonds", *Frankfurter Allgemeine Zeitung*, 16 Jul 2014, <http://faz.net/-gqe-7rnlo> (accessed 29 Aug 2014).

conducted by the U.S. Trade Representative (USTR) as a member of the Executive Office of the President. However, their interests do not necessarily align with those of other governmental institutions. Even the U.S. Congress is acting in favor of its own specific interests that continue to expand in the House of Representatives and the Senate. Representatives and Senators have to consider the public as well as various interest groups, political parties, trade associations, trade unions, environmental organisations, etc. Added to that are the federal and state levels with their own multifaceted range of interests. The chronology below represents certain aspects of the TTIP negotiations and a comprehensive critique is not possible here.

Table 1

**Timeline of TTIP negotiations**

2011 to 2013	Experts from the U.S. government and the EU Commission form the High Level Working Group on Jobs and Growth (HLWG). They are exploring options for advancing transatlantic economic relations.
11 February 2013	In its final report, the HLWG argues for a comprehensive trade and investment agreement.
14 June 2013	The EU Commission receives the negotiating mandate for the TTIP from the EU Trade Ministers.
17 June 2013	U.S. President Barack Obama and former President of the European Commission José Manuel Barroso announce the start of TTIP negotiations at the G8 summit. More than 20 working groups are to be formed.
July, November and December 2013	1 <sup>st</sup> to 3 <sup>rd</sup> round of negotiations. In the EU, the Commission is in charge of the TTIP negotiations, specifically the Directorate General for Trade. The political figure responsible is EU Trade Commissioner Karel De Gucht and Ignacio Garcia Bercero from the Directorate General for Trade is acting as chief negotiator. The United States Trade Representative, Michael Froman (Office of the United States Trade Representative, USTR) is politically responsible on the U.S. side, and their chief negotiator is Dan Mullaney.
Late January 2014	The EU Commission appoints a 14-member advisory body comprised of experts in consumer protection, trade unions and various economic sectors.
10 to 14 March 2014	4 <sup>th</sup> round of negotiations in Brussels.
26 March 2014	EU-US summit in Brussels with the TTIP as the main focus.
19 to 23 May 2014	5 <sup>th</sup> round of negotiations in Arlington, Virginia.

6 July 2014	End of the "Public consultation on the modalities for investment protection and investor-state dispute settlement in TTIP".
14 to 18 July 2014	6 <sup>th</sup> round of negotiations in Brussels.

Source: Federal Ministry for Economic Affairs and Energy, "Frequently Asked Questions on the Transatlantic Trade and Investment Partnership (TTIP)" (German), <http://bmwi.de/DE/Themen/Aussenwirtschaft/Ttip/faqs.html> (accessed 26 Aug 2014).

## **LEGAL FRAMEWORK: CONSTITUTIONAL BASIS AND NEGOTIATING POWER**

The U.S. Constitution provides clear guidance on accountability for foreign trade, though the political reality bears special challenges. To begin with, Article 1, Section 8 grants Congress the authority to conduct foreign trade.<sup>4</sup> It has the authority to regulate economic relations with other States and to levy tariffs. The President does not enjoy this authority. He is empowered to negotiate foreign trade agreements and international treaties with other countries. "He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur" (Article 2, Section 2). Successful foreign trade structure therefore requires the President and Congress to work well together, especially with the Senate in issuing a negotiating mandate.

The Constitution allows for Congress to empower the President to negotiate foreign trade agreements. Congress can do this using the Trade Promotion Authority (TPA, also called fast track), a system introduced by the Finance Committee in the Senate and the Ways and Means Committee in the House of Representatives in 1974. Bills are then put to a vote in their respective committees before being passed in both houses. These two committees therefore play a central role in free trade agreements. With TPA, Congress empowers the President (or the executive branch, i.e. specifically the United States Trade Representative of the USTR) to conclude trade agreements that Congress may

4 | The U.S. National Archives and Records Administration, Constitution of the United States, [http://archives.gov/exhibits/charters/constitution\\_transcript.html](http://archives.gov/exhibits/charters/constitution_transcript.html) (accessed 29 Aug 2014).

then only vote either for or against without amending the bill. TPA defines negotiating objectives and priorities for trade agreements and, during the negotiation process, establishes consulting and reporting requirements with regard to the legislature. TPA consequently establishes the basic framework for upcoming international trade agreements for the government. Restricting Congress to a clean vote on the negotiated agreement is meant to avoid a situation in which the agreements and regulations negotiated by the USTR are subsequently individually suspended by Congress or must be renegotiated. Theoretically, TPA is not essential to either open negotiations or to bring them to a vote in Congress. However, Congress has signaled early support for negotiations and their outcomes.

**TPA defines negotiating objectives for trade agreements and, during the negotiation process, establishes consulting and reporting requirements with regard to the legislature.**

With regard to the TTIP, however, this indicates that TPA is not strictly necessary. The negotiations began in 2013 without the President receiving the formal negotiating mandate or TPA. However, its further refusal would be a clear sign that Congress could reserve the right to have its own input on individual issues as well as refusing to pass the bill that results from the negotiations. It is therefore important for the President to continue to push for TPA. Furthermore, TPA signals Congress' approval of the negotiations to the negotiating parties. Otherwise it would be difficult for the U.S. negotiators to force concessions from the other side. The European Union might appear less flexible on sensitive topics such as regulatory issues if no support were granted by Congress, thus calling into question the weight of the negotiations. Time and again, however, there have been cases of Congress renegotiating trade agreements that had already been concluded prior to the required vote despite TPA. Both in the case of the North American Free Trade Agreement (NAFTA) in 1994 and the 2012 agreement with South Korea, Congressional Representatives would only pass the bills if certain passages were amended. In this respect, TPA holds great significance, albeit at times this (important) significance is a symbolic one.



Difficult relationship: President Obama expressed interest in TPA in his State of the Union Address on January 28. But because his relationship with Congress is considered problematic, ultimately this aim could also fail. | Source: © Pete Souza, The White House, flickr.

### **U.S. CONGRESSIONAL INTERESTS**

In the summer of 2013, President Obama submitted a formal request for a TPA bill. A draft followed on 9 January in the House of Representatives and the Senate (The Bipartisan Congressional Trade Priorities Act 2014). In the Senate a draft was proposed by the Chairman of the Finance Committee, Senator Max Baucus (D-Montana) and the Committee's senior Republican, Senator Orrin Hatch (R-Utah). In the House of Representatives this fell to the Chairman of the House Ways and Means Committee, David Camp (R-Michigan). This bill had not been ratified when Senator Baucus resigned his post in early February 2014 after almost 40 years in the Senate.

Senator Baucus initially represented an important ally for President Obama in obtaining TPA; he is a clear supporter of free trade in general and TPA in particular. He is also regarded as the strongest supporter of TPA in the Senate. Twelve senators who are not members of the Finance Committee had announced their opposition to TPA in an open letter in January 2014.<sup>5</sup> On the day Baucus' legislative initiative was submitted, five Democrats on the Senate Finance Committee also informed the U.S. Trade

5 | Cf. "TPA Ltr to Leader Reid 1.15.2014", <http://de.scribd.com/doc/200151609/TPA-Ltr-to-Leader-Reid-1-15-2014> (accessed 29 Aug 2014).

Representative, Mike Froman, that they would withhold their support until greater transparency and monitoring mechanisms are incorporated.<sup>6</sup> Since then, Baucus has become the U.S. Ambassador to China and his successor, Senator Ron Wyden (D-Oregon), is considered less open to free trade. Prominent opposition came and continues to come from the Democratic Senate Majority Leader, Senator Harry Reid (Nevada). He brought along the majority of Democratic Senators to join him in his opposition of the present TPA bill. There is strong opposition to TPA even among the Democrats in the House of Representatives, as evidenced by a letter signed by 149 Democrats. This makes it clear that about three-quarters of Democratic legislators would not support the TPA legislative initiative in this form.<sup>7</sup> There is also resistance from trade unions, agriculture and environmental groups, who seem to exercise greater influence on the negotiation process and thus oppose TPA.

**Prominent opposition comes from the Democratic Senate Majority Leader, Senator Harry Reid. There is strong opposition to TPA even among the Democrats in the House of Representatives.**

On the one hand, opposition to TPA is due to specific interests associated with the respective negotiations on free trade and which Congressmen must take into consideration. On the other hand, for many it is also primarily a matter of the legislature participating in the negotiation process. The existing TPA model passed by the Senate in 1974 already provides for regulations that bolster Congress through consulting mechanisms and executive branch's reporting requirements. Ultimately, since both houses must approve every trade agreement, it is also in the interest of the President or the executive to meet these transparency obligations and to secure their support. However, for some congressmen, such as Representative Sander Levin (D-Michigan), these rules are not extensive enough. He

6 | Cf. "Sens. Brown, Casey, Cardin, Stabenow, And Menendez Call On U.S. Trade Rep. To Better Consult Congress On Proposed 'Fast Track'", press release, Sherrod Brown, 9 Jan 2014, <http://brown.senate.gov/newsroom/press/release/sens-brown-casey-cardin-stabenow-and-menendez-call-on-us-trade-rep-to-better-consult-congress-on-proposed-fast-track> (accessed 29 Aug 2014).

7 | See Kenneth Quinnell, "151 House Democrats Say 'No' to Fast Track Authority", The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), 13 Nov 2013, <http://aflcio.org/Blog/Political-Action-Legislation/151-House-Democrats-Say-No-to-Fast-Track-Authority> (accessed 29 Aug 2014).

refused to grant authorisation under the former TPA model and advocates for Congress' increased participation as well as greater transparency in times of globalisation and in the face of complex trade agreements.<sup>8</sup>



Strong opposition: Senator Harry Reid (Nevada), is the Democratic majority leader in the Senate. With regard to TTIP, he opposes the Trade Promotion Authority for the President. In general, Democrats are said to be more critical of free trade than Republicans. | Source: Geri Kodey, University of Nevada Las Vegas Photo Services, flickr ©@@.

Similarly, the new Chairman of the Senate Finance Committee, Ron Wyden, has long emphasised the importance of transparency and on principle has tied his approval of TPA to a more open information policy on the part of the USTR to Congress. When speaking of trade promotion authority Senator Wyden no longer refers to it as fast track but rather smart track. This new label is to symbolize the improved participation of Congress in the political process. This clearly is an illustration in how the relationship between Congress and the President is generally strained, especially on trade matters. In fact, Obama expressed his interest in TPA in his State of the Union Address this year. However, critics point out that this was done in a rather en

8 | Cf. Ways and Means Committee Democrats, "Levin Statement on Today's Introduction of Trade Promotion Authority Legislation", press release, 9 Jan 2014, <http://democrats.waysandmeans.house.gov/press-release/levin-statement-today's-introduction-trade-promotion-authority-legislation> (accessed 29 Aug 2014).

*passant* manner and that he never really fought for TPA, for example through his personal contacts in the Senate. According to Gary Hufbauer, a trade expert at the prestigious Peterson Institute for International Economics, at least half of the Democratic senators would oppose TPA. He cites the reason for this as Obama's poor relationship with Democrats in the Senate and his failure to adequately include them in his decisions thus far. TPA could therefore be seen as a victim of the President's dysfunctional relationship to Congress.



More transparency and participation: Senator Ron Wyden chairs the U.S. Senate's Finance Committee. He stresses the importance of transparency in the negotiation process and asks for broader competences of the Congress when it comes to international trade. | Source: Talk Radio News Service, flickr ©①②③.

By contrast, Republicans (as well as industrial and economic groups) who have traditionally supported trade are supporting the President and while at the same time criticising him for not supporting free trade vigorously enough.<sup>9</sup> However, according to Hufbauer, Obama needs the backing of approximately three-quarters of Republicans to secure TPA. Some of the Tea Party Republicans, led by Representative Paul Broun (Georgia) and the libertarian Senator Rand Paul (Kentucky), essentially do not want to

9 | See i.e. Vicky Needham, "Hatch presses for Obama's involvement in trade promotion authority", *The Hill*, 1 May 2014, <http://thehill.com/policy/finance/204965-hatch-presses-for-obamas-involvement-in-trade-promotion-authority> (accessed 29 Aug 2014).



grant the executive any additional power on free trade and are thus against granting TPA to the President (which they pejoratively refer to as "Obamatrade").

### TTIP AND TPP

**A Trans-Pacific Partnership is aimed at strengthening Asian countries surrounding China through access to the American market.**

Granting the President TPA and thus the power to negotiate TTIP is further complicated by the fact that a trans-pacific free trade agreement (the Trans-Pacific Partnership, TPP) is currently being negotiated with twelve states. Both agreements have a clear strategic focus: increased competitiveness against China.<sup>10</sup> TPP is aimed at strengthening Asian countries surrounding China through access to the American market. This should also send a signal to China. At the same time, these countries' markets are to be opened to U.S. companies. U.S. automakers, for example, expect access to the Japanese market, which they have previously been virtually cut off from (with approximately a one per cent market share). The same applies to agricultural products, especially rice. With regard to Vietnam, the issues at hand are those of liberalising the labor market, but also designating certain products (e.g. catfish) and fundamental issues of recognising Vietnam as a market economy given its many state-owned enterprises.

The TPP negotiations are at an advanced stage. However, key aspects remain unresolved. For example, Japan does not want to open its auto market, nor does Vietnam want to issue new regulations for its labor market. The fact that Obama has not yet been granted TPA for this ambitious agreement is a hindrance in the negotiations.<sup>11</sup> TPP is in many ways a "traditional" trade agreement, which prompts the usual opponents to free trade in the U.S. to act.<sup>12</sup>

10 | For more on Vice President Biden's comments on geopolitics to Democratic Congressmen, see: Marc Landler und Jonathan Weisman, "Trade Pact With Asia Faces Imposing Hurdle: Midterm Politics", *The New York Times*, 14 Feb 2014, <http://nyti.ms/1dt2jw> (accessed 29 Aug 2014).

11 | For more on this, see Vicky Needham, "Camp says trade agenda at risk without fast-track", *The Hill*, 19 Jun 2014, <http://thehill.com/policy/finance/209956-camp-says-trade-agenda-at-risk-without-fast-track> (accessed 29 Aug 2014).

12 | However, TPP is also more comprehensive compared to previous trade agreements, which means that more government institutions are also affected by the issues negotiated here than usual. See Len Bracken, "Wyden Vows to Flesh Out >

Because the TPP negotiations have already been under way for a longer period of time, TPP plays a bigger role for the public. The political resistance to the President's authority to conduct negotiations (see above) is primarily sparking resistance to the TPP.

### **The Political Calendar: Midterm Elections and Presidential Elections**

The Democrats in particular will face extraordinary challenges in the November, 2014 Congressional election (midterm elections). Most observers assume that the Republicans stand a very good chance of defending their majority in the House and winning the Senate. Democrats have a skeptical attitude toward free trade – not least because a large part of their electorate is aligned with the trade unions and is close to environmental and consumer groups. Although the Democrats have an equally pro-business wing, on the whole they have to be more politically aware of free trade critics.

Republicans are considered more open to free trade and tend to support the President by granting him negotiating authority. However, because Senate Majority Leader Harry Reid has not brought TPA to a vote, the Republicans see no reason to publicly comment on this before the November elections. At this stage, it is hardly to be expected that the President will ask the Democrats to reinforce any support of TPA in the run-up to the election. Everything is organised around the goal of at least defending the Senate. Due to a lower turnout in midterm elections than in presidential elections, they do not want to risk more of their supporters abstaining because of their opposition to free trade. The elections are critical enough already. Consequently, the Democrats must demonstrate solidarity and avoid internal disputes on free trade. They are neither to quarrel among themselves nor with the President. After the elections, new opportunities will arise to promote TPA legislation and the prospects for TTIP (and TPP) along with it. However, it can be assumed that by the end of 2015 the campaigns for the

**At this stage, it is hardly to be expected that the President will ask the Democrats to reinforce any support of TPA in the run-up to the election.**

upcoming presidential election the following year will be in full swing. Everything will then be cast under a (party) political perspective.



Balancing act: Michael Froman holds the Office of the United States Trade Representative and leads the negotiations for the U.S. He has to respect the varying interests with regard to TTIP. | Source: Asia-Pacific Economic Cooperation (APEC), flickr ©.

This provides a window of opportunity of approximately one year to build a political process in support of the negotiations in order for this administration to finalise and implement the TTIP. The President is expected to repeat his push for support of TPA. The question will be whether he will request it for both the TTIP and the TPP. Theoretically, he could demand that Congress grant him the mandate for the TTIP alone in the belief that he can expect greater support for the TTIP than for the TPP (which is viewed more critically by the Democrats in particular). However, if he does not request TPA for the TPP as well, this could be seen as “reversing the pivot to Asia”. Presently up for debate is how much political capital the President is willing to use to go down in history with a free trade success story and the strengthening of transatlantic relations. At the same time, U.S. Trade Representative Mike Froman is continuing the negotiations independently of the political process. It is possible that the transatlantic trade agreement will only be concluded after the election of the new president in 2016.

## **New Aspects of the TTIP and the Diversity of Political Interests**

Compared to previous free trade agreements, the TTIP contains a new aspect that is having a strong impact on not only the content of political debate, but its structure as well. At their core, previous agreements focused on initiatives to lower tariff trade barriers. In contrast, non-tariff trade barriers, such as regulatory issues, should also become part of the new agreement. As a result, on the one hand this transcends the political debate over classical free trade with its proponents and opponents. On the other hand, institutions, such as senators or regulators, are now involved when they had only played a supporting role in previous agreements. This means that the U.S. Trade Representative must deal with a new variety of interests. In the end, new tensions might arise, but also opportunities for a potentially wider support base for the TTIP.

One example is financial regulation. The Treasury is not interested in ceding any authority over financial market regulation and its current authority in negotiating international financial agreements. It demands that U.S. Trade Representative Froman not discuss any financial regulations under the TTIP. The Department of Agriculture pursues other issues and may also put pressure on Froman. In addition, the USTR is under close scrutiny by Congressmen from constituencies where agriculture plays a central role. However, since employees are regularly sent from the Department of Agriculture to the USTR, the tension is likely to be limited.<sup>13</sup>

### **Interests of the States**

Depending on their economic structure, the states have varying degrees of interest in free trade in general and in trade with the EU in particular. The Representatives and

13 | The most recent example of this would be the appointment of Darci Vetter as Chief Agricultural Negotiator for the USTR on 11 Jul 2014. Cf. The Office of the United States Trade Representative, "Ambassador Froman Welcomes Senate Confirmation of Darci Vetter as Chief Agricultural Negotiator", Jul 2014, <http://ustr.gov/about-us/press-office/press-releases/2014/July/Amb-Froman-Welcomes-Senate-Confirmation-of-Darci-Vetter-as-Chief-Ag-Negotiator> (accessed 29 Aug 2014).

Senators serving on the committees that are critical for TPA come from export-oriented states, such as Illinois, California, New York or Texas; these states also produce high investment from the EU. Consequently, there is a great interest in increased trade with the Europeans in those states. Therefore, chances are increasing that the President will receive the negotiating mandate despite all the political disputes and dysfunctionality, thus increasing the prospect of a successful conclusion and implementation of the TTIP.

Furthermore, the TTIP enjoys a broader support base than other, more traditional free trade agreements do. Some ten trade-friendly states could previously be counted on.

**Since the TTIP includes the service and investment sectors, states that have previously been less amenable to free trade are now interested.**

As industrial sites they were able to benefit from free trade in the past. Since the TTIP does not only include the free trade of goods, but also the service and investment sectors, states that have previously been less amenable to free trade are now interested (for example South Carolina, North Carolina, Alabama and New Jersey).<sup>14</sup> The supporters can be divided into the following categories: first, states that traditionally advocate free trade; second, states with strong exports; and third, those that have benefited from EU investment. This list comprises the potential TTIP advocates Alabama, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington and Wisconsin.<sup>15</sup> A look at those committees that deal with free trade

14 | The authors would like to thank Charles Ludolph for this insight. As former Deputy Assistant Secretary of Commerce for Europe for the U.S. administration, he negotiated important transatlantic agreements on trade and tax issues, among others. See also the report on economic relations between the 50 States and Europe: Atlantic Council, "TTIP and the Fifty States: Jobs and Growth from Coast to Coast", 24 Sep 2013, <http://atlanticcouncil.org/publications/reports/ttip-and-the-fifty-states-job-growth-from-coast-to-coast> (accessed 29 Aug 2014).

15 | Cf. Daniel S. Hamilton and Joseph P. Quinlan, *The Transatlantic Economy 2014. Annual Survey of Jobs, Trade and Investment between the United States and Europe*, Bd. 2/2014, Center for Transatlantic Relations, Trans-Atlantic Business Council, American Chamber of Commerce to the European ▶

(House Ways and Means Subcommittee on Trade, Senate Finance Subcommittee on International Trade) reveals that the majority of their members come from states that correspond to these categories (see table 2).

Table 2

### Composition of Congressional Committees Dealing with Free Trade

#### House Committee on Ways and Means, Subcommittee on Trade

Chairman: Devin Nunes, CA	
Kevin Brady, TX Dave Reichert, WA Vern Buchanan, FL Adrian Smith, NE Aaron Schock, IL Lynn Jenkins, KS Charles Boustany, LA	Peter Roskam, IL Charles B. Rangel, NY Richard E. Neal, MA John Larson, CT Earl Blumenauer, OR Ron Kind, WI

#### Senate Finance Committee for International Trade

Chairman: Ron Wyden, OR	
Orrin G. Hatch, UT Debbie Stabenow, MI John. D. Rockefeller IV, WV Charles E. Schumer, NY Maria Cantwell, WA Bill Nelson, FL Robert Menendez, NJ Thomas R. Carper, DE Benjamin L. Cardin, MD Sherrod Brown, OH Michael F. Bennet Robert P. Casey, Jr., PA	Mark R. Warner, VA Chuck Grassley, IA Mike Crapo, ID Pat Roberts, KS Michael B. Enzi, WY John Cornyn, TX John Thune, SD Richard Burr, NC Johnny Isakson, GA Rob Portman, OH Patrick J. Toomey, PA

Source: Compiled by the authors. Note: Black indicates that the respective state can be regarded as a free trade supporter. Grey means that the state is not on the above list. (This does not necessarily mean that these Congressmen are against free trade, but that they each come from states that are not necessarily considered friendly to trade.)

Union, [http://transatlantic.sais-jhu.edu/publications/books/TA2014/TA2014\\_Vol\\_2\\_state\\_by\\_state.pdf](http://transatlantic.sais-jhu.edu/publications/books/TA2014/TA2014_Vol_2_state_by_state.pdf) (accessed 29 Aug 2014); National Association of Manufacturers, "US Manufacturing Statistics – Manufacturing & Trade Data By State", <http://nam.org/Statistics-And-Data/State-Manufacturing-Data/Manufacturing-by-State.aspx> (accessed 29 Aug 2014), Atlantic Council, Fn. 14.

## The Public and Interest Groups

Public interest is focused more on the trans-pacific trade agreement, which faces widespread resistance from the public.<sup>16</sup> Although Americans are also aware of the TTIP, they have not (yet) given it their full attention. The TPP negotiations are at best echoed by the media. The general public in the U.S. tends to be less well informed about trade agreements and not at all informed about the details.<sup>17</sup> This is due to the complex and relatively opaque nature of negotiation processes. U.S. Trade Representative Froman is seeking to involve the public via a consultation process early on in the negotiations. Thus on May 29 and 30, 2013, a public hearing was held on the priorities of the TTIP; some 60 representatives from civil society and industry participated. The public is also involved through expert groups. Many government agencies have established advisory committees for different sectors, for which professionals from various interest groups are appointed for a limited period of time. Members of these committees have access to negotiation documents (including classified information) and are regularly (pro forma) invited to exchange ideas. In addition, government officials often have informal contacts whom they consult if necessary.<sup>18</sup>

16 | Cf. the poll by Hart Research Associates and Chesapeake Beach Consulting, "Voters' View of Fast-Track Authority for the Trans-Pacific-Partnership Pact", Jan 2014, <http://fasttrackpoll.info> (accessed 29 Aug 2014).

17 | Cf. Curd Knüpfer, "Counting on the American Public to Be Informed on the TAFTA/TTIP Talks? Don't Hold Your Breath", *The Transatlantic Colossus*, 29 Jan 2014, <http://future-challenges.org/local/counting-on-the-american-public-to-be-informed-on-the-taftattip-talks-dont-hold-your-breath> (accessed 29 Aug 2014).

18 | The authors would like to thank Charles Ludolph for this insight as well.

Table 3

**Support for TTIP in the U.S. and in Germany  
(in per cent)**

Do you think this trade agreement will be good for our country or bad?

	<b>Good</b>	<b>Bad</b>	<b>Don't know</b>	<b>Haven't heard enough</b>	<b>Neither</b>
U.S.	53	20	12	14	<2
Germany	55	25	11	8	1%

Source: Cf. n. 19, Survey Q3.

Table 4

**Attitude towards specific TTIP goals (in per cent)**

<b>Support of...</b>	<b>U.S.</b>	<b>Germany</b>
Making American and European standards for products and services similar	76	45
Removing all duties on goods imported from Germany/U.S.	41	38
Removing all investment restrictions between U.S. and EU	39	41

Source: Cf. n. 19, Survey Q7a-c.

Table 5

**Background information of those who view the Transatlantic trade as "very good" (in per cent)**

	<b>Germany</b>	<b>U.S.</b>
Total	34	26
Men	48	32
Women	22	20
18-29	31	30
30-49	38	27
50+	33	23
No College	32	22
College degree	51	36

Source: Cf. n. 19, Survey Q1, Q4a-d, Q7a-c.



What does public opinion on the TTIP in the U.S. look like? According to a poll published by the Pew Research Center in cooperation with the Bertelsmann Foundation in April 2014, Americans generally support free trade, particularly with the EU, as well as the TTIP.<sup>19</sup> Eight out of ten respondents support increased trade with Germany. The reasons given for this are to boost competitiveness with China (43 per cent), positive effects for the U.S. economy (32 per cent) and closer cooperation with the EU (22 per cent). Younger Americans (aged 18 to 29) support TTIP (67 per cent), but the same support among those over the age of 50 is only 45 per cent. Compared to Germany (where support is below 50 per cent), 76 per cent of Americans favor making product and service standards as similar as possible through the TTIP. Younger respondents tend to trust U.S. standards less than their older counterparts, who are more likely to trust the U.S. government to set stricter standards.

### **Think Tanks and Non-governmental Organisations**

The major think tanks in the U.S., particularly those with transatlantic focus, support the TTIP. The Atlantic Council, for example, has initiated its own campaign. The Council sends out a weekly newsletter on the TTIP and compiles publications, reports, newspaper articles and events in Europe and the USA. The Center for Transatlantic Relations (CTR) also regards the TTIP as a priority. CTR has set up a web forum and regularly provides information through studies, polls and reports. Other renowned institutions, such as the German Marshall Fund, the Brookings Institution and the American Institute for Contemporary Studies (AICGS) are engaging in similar activities.

The landscape is more varied among NGOs. Numerous organisations oppose the agreement on principle. The Fair World Project<sup>20</sup> is against it arguing that free trade is

19 | Cf. Pew Research Center and Bertelsmann Foundation, "Support in Principle for U.S.-EU Trade Pact", Apr 2014, <http://pewglobal.org/files/2014/04/Pew-Research-Center-Bertelsmann-Foundation-U.S.-Germany-Trade-Report-FINAL-Wednesday-April-9-2014.pdf> (accessed 29 Aug 2014).

20 | Cf. Fair World Project, "Free Trade Agreements – Do They Really Affect You?", 8 Oct 2013, <http://fairworldproject.org/blogs/free-trade-agreements-do-they-really-affect-you> (accessed 29 Aug 2014).

detrimental to small farmers and results in wage losses for large segments of the population. The Transnational Institute makes similar arguments, maintaining that free trade has led to greater injustice.<sup>21</sup> Groups such as the Citizens Trade Campaign (CTC), established in the context of NAFTA as a coalition of different interest groups, such as environmentalists, unions, agricultural, religious and civil society groups, consumer organisations, only support free trade when it is subject to clearly defined social and societal objectives. They reject the argument that free trade boosts the economy and creates jobs as unfounded. At the same time, they fear that the existing standards in the environmental sector or consumer protection will be weakened or undermined. Other organisations observe certain aspects of the negotiations and mobilise citizens against the TTIP.<sup>22</sup> Even the politically influential Sierra Club, which by its own account is the largest and most influential environmental organisation in the U.S. – has lodged its opposition to the TTIP.<sup>23</sup> It argues that due to new export opportunities, the agreement could contribute to undermining environmental standards and expand fracking, which is regarded as harmful to the environment. The investment protections discussed in the negotiations (Investor State Dispute Settlement, ISDS) elicit further resistance. Because of this, U.S. and European civil society organisations sent an open letter to those leading the negotiations in the U.S. and the EU in December, 2013 and complained that ISDS undermined democracy.<sup>24</sup> Although there are a number of vocal TTIP opponents, their influence is limited and the general public is currently in favor of trade.

**Some civil society and interest groups only support free trade when it is subject to clearly defined social and societal objectives.**

21 | Cf. Transnational Institute (TNI), "Trade & Investment Works on", <http://tni.org/page/trade-investment-works> (accessed 26 Sep 2014).

22 | These include the Center for Food Safety, Food & Water Watch, Institute for Agriculture and Trade Policy, International Brotherhood of Boilermakers, Coalition for Sensible Safeguards, National Family Farm Coalition, PopularResistance.org, Center for Digital Democracy, Public Citizen's Global Trade Watch, Friends of the Earth U.S., and Trans Atlantic Consumer Dialogue.

23 | Cf. Sierra Club, "About the Sierra Club", <http://sierraclub.org/about> (accessed 29 Aug 2014).

24 | Cf. Corporate Europe Observatory, "Civil society groups say no to investor-state dispute settlement in EU-US trade deal", 17 Dec 2013, <http://corporateeurope.org/trade/2013/12/civil-society-groups-say-no-investor-state-dispute-settlement-eu-us-trade-deal> (accessed 29 Aug 2014).

## Trade Unions

The trade unions are more influential even if they currently exhibit reticence. Because previous free trade agreements have involved the reduction of tariffs, which liberalised the labor market and led to lower wages, the unions are considered opponents of free trade. Their negative experience with NAFTA plays a significant role and they do not want this to reoccur. The attitude of the trade unions is far more differentiated on the TTIP. The powerful confederation of trade unions, the American Federation of Labor-Congress of Industrial Organisations

**The American Federation of Labor-Congress of Industrial Organizations sees the benefits for American and European workers and is therefore not fundamentally opposed to the agreement.**

(AFL-CIO), with almost 60 trade unions as members, sees the benefits of the TTIP for American and European workers and is therefore not fundamentally opposed to the agreement.<sup>25</sup> However, it all depends on the specific regulations for the AFL-CIO. It is feared that the large corporations will ultimately improve their shareholder values by relocating their production facilities to low-wage countries. In addition, they are concerned that the U.S. labor market will not benefit and the general level of prosperity will not be increased.<sup>26</sup> The AFL-CIO would like to reduce the influence of corporations on the negotiations and strengthen the position of the public sector.

The AFL-CIO has therefore intensified its efforts vis-a-vis the negotiators to make the process more transparent and consult the public on the issue of ISDS.<sup>27</sup> Both the umbrella organisation and the individual unions hope the TTIP will introduce European regulations that are more

25 | Cf. AFL-CIO, "U.S.-EU Trade Agreement (TTIP)", <http://aflcio.org/Issues/Trade/U.S.-EU-Free-Trade-Agreement-TTIP> (accessed 29 Aug 2014).

26 | Cf. the article by the president of the AFL-CIO, Richard L. Trumka, "Corporate Leaning TTIP Needs To Benefit Average Worker", *Atlantic Community*, 2 Oct 2013, <http://atlanticcommunity.org/-/corporate-leaning-ttip-needs-to-benefit-average-worker> (accessed 29 Aug 2014).

27 | Cf. Celeste Drake, "Why Aren't We Having a Public Debate on Investment Policies in the TTIP?", AFL-CIO, 17 Apr 2014, <http://aflcio.org/Blog/Global-Action/Why-Aren-t-We-Having-a-Public-Debate-on-Investment-Policies-in-the-TTIP> (accessed 29 Aug 2014). The AFL-CIO joined 40 NGOs (see n. 24) in writing a letter against the inclusion of ISDS in the TTIP and would like to see a similar public hearing process to that which has been promised by European negotiator Karel de Gucht.

labor-friendly to the U.S. labor market. Unions, such as Workers Uniting (a coalition of the United Steelworkers, USW, in the United States and the largest trade union in the UK, Unite) are calling for a financial transaction tax to support social programs. They are also demanding that the “European Works Council Directive” of 1994, which strengthens workers’ representation in large multinational corporations operating in the EU, should apply to American workers as well. The same applies to security standards (e.g. in the chemical industry) and social standards. Furthermore, trade unions often oppose liberalisation and the adoption of the award process for public contracts in the TTIP.

### **Corporations**

The American Chamber of Commerce to the European Union, which represents U.S. corporations operating in the EU, foresees benefits for its large and small member corporations, for example by cutting red tape and reducing prices. Small and medium enterprises (SMEs) account for a significant portion of value creation in the United States. They have generated almost half of the gross domestic product (GDP) since 1993 and have created 63 per cent of new jobs.<sup>28</sup> This category of business in particular could benefit from the TTIP and more uniform standards and less bureaucracy. At the same time, however, SMEs would lose protection, for example in the area of public procurement, which is strictly regulated at the federal and state levels. Increased liberalisation of public procurement, for example through the U.S. State Preference Programs, as is already partially practiced in other free trade agreements, is therefore carefully regarded by SMEs.

The American side echoes a common call for European interest in lifting U.S. export restrictions on energy, especially for liquefied natural gas (LNG).<sup>29</sup> Ever since the oil shocks of the 1970s, the U.S. has viewed energy resources

28 | Cf. Small Business & Entrepreneurship Council, “Small Business Facts & Data”, <http://sbecouncil.org/about-us/facts-and-data> (accessed 29 Aug 2014).

29 | See the published report ,written by Karel de Gucht for Mike Froman “Non-Paper on a Chapter on Energy and Raw Materials on TTIP” dated 27 May 2014, <http://de.scribd.com/doc/233022558/EU-Energy-Non-paper> (accessed 29 Aug 2014).

as a strategic tool. The crisis in Ukraine and relations with Russia in particular have led to a controversial debate. But Congress has not yet approved the export of gas and crude oil, not least out of fear of increasing energy prices. By contrast, oil companies and their lobbying group, the American Petroleum Institute, belong to the proponents of liberalised export regulations. The extent to which Europe would ever benefit from LNG exports is unclear. First, it would take several years for the infrastructure to be built in the United States and in Europe. Second, transporting it to Europe would be expensive. In addition, the focus of companies on profit makes selling to the Asian markets more lucrative than exporting to Europe.

## **CONCLUSION**

Many political factors determine the process and outcome of free trade agreements. From an American perspective, geopolitical considerations in particular come into play in establishing free trade.

From NAFTA to free trade agreements with Israel, Jordan, Colombia and South Korea, politicians have always placed economic motives in the broader horizon of American interests and engaged in global interest politics with trade agreements. The TTIP is no exception, but it would be the first time an agreement was concluded between partners who are on a level playing field economically and are already so closely intertwined through trade and investment. Their trade balance, as well as the balance of direct investment is nearly equal. Even their fundamental interests, challenges and values are similar. Thus, both sides have a sound common starting point when it comes to negotiating a trade and investment partnership.

Trade experts in the United States believe this narrative of common ground will contribute to ensuring that U.S. politicians are willing to provide broader support for such an agreement. Other similarities with Europe that belong to the TTIP narrative are that Europe can potentially be counted on for support in other U.S. trade relationships, particularly with China, but also with the BRICS countries and in multilateral agreements in the World Trade Organization (WTO). U.S. trade politicians are therefore eager

to present the TTIP as the “gold standard” among partners with similar interests. This means new standards should be set with the TTIP in a way that has not yet been seen in any other trade agreement. Once the negotiations have been successfully completed and the agreement comes into effect, it should serve as a guideline for multilateral negotiations with the BRICS countries, especially with China within the framework of the WTO. While politicians in the United States recognise that Europeans share many objectives and priorities for the TTIP, this global perspective is missing in the European debate, as is the connection to the WTO. From an American perspective, the EU’s concerns are almost completely limited to commercial and economic impacts.

**Once the negotiations have been successfully completed and the agreement comes into effect, it should represent a guideline for multilateral negotiations with the BRICS countries.**

The developments in Eastern Europe and the crisis in Ukraine are currently slipping into the TTIP debate in the U.S. Politicians on both sides of the Atlantic are aware of the geostrategic importance of energy issues, as well as the implications for its trade and investment partnership. But the political realities can hardly be overlooked. In the United States, the TTIP is being negotiated by President Obama and his trade representative. During the negotiations, the executive branch will continue to press Congress for support under the fast track process (or TPA) and will come to an agreement with the legislature on objectives and strategies. When concluding an agreement, the President will need formal approval by both houses of Congress. The political calendar plays a major role in this: all Members of the House of Representatives and one-third of the Senators will face elections in November, 2014, and as a result, neither the House nor the Senate will vote on TPA or even a negotiated agreement prior to this date. The Democrats in particular, whose electorate is considered to be very critical of free trade, will not take any political risks.

Because the presidential elections are in November 2016 when a new head of State will be elected, all efforts to successfully conclude the TTIP will need to focus on the coming year. This would give President Obama the opportunity to go down in history with an important trade agreement. He could build on the success of former President Bill Clinton, whose accomplishments included NAFTA. In any case,

Democratic support cannot be taken as a given. Many opposed NAFTA because they recognised the threat of losing jobs (especially to Mexico). An agreement between the U.S. and the EU negotiated under the TTIP is different, however. To win over his party, Obama must clearly articulate and communicate these differences. Accordingly, the TTIP narrative should be strengthened with the prospect of higher regulatory standards and an improved investment climate.

As was once the case with Clinton, it is expected that the TTIP can only be implemented with the support of Republicans in the House of Representatives and the Senate. Both houses would be under Republican control if they were to win the Senate majority as is currently expected. On the one hand, this is good for the President's free trade agenda because Republicans are considered amenable to free trade. On the other hand, it remains to be seen whether they are willing to grant the President any political success. At present, the relationship between these two branches of government is considered to be completely shattered. Under these circumstances, the Republicans could withhold their support until after the elections in 2016 in hopes of taking greater control over the content of the TTIP and to allow a Republican president to take credit for its success.