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Transatlantic Trade and Investment Partnership (T-TIP) Negotiations

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Summary

The Transatlantic Trade and Investment Partnership (T-TIP) is a potential reciprocal free trade agreement (FTA) that the United States and the European Union (EU) are negotiating with each other. Formal negotiations commenced in July 2013. Both sides initially aimed to conclude the negotiations in two years, but more recently have updated their timeline and aim to conclude the T-TIP by the end of 2016. Twelve rounds of T-TIP negotiations have occurred to date.

The United States and EU seek to enhance market access and trade disciplines by addressing remaining transatlantic barriers to trade and investment in goods, services, and agriculture by negotiating a "comprehensive and high-standard" T-TIP through:

- reducing and eliminating tariffs between the United States and EU;
- further opening services and government procurement markets;
- enhancing cooperation, convergence, and transparency in regulations and standards-setting processes; and
- strengthening and developing new rules in areas such as intellectual property rights (IPR), investment, digital trade, trade facilitation, labor and the environment, localization barriers, and state-owned enterprises (SOEs).

Some rules potentially agreed to in T-TIP could exceed existing commitments in U.S. FTAs or World Trade Organization (WTO) agreements. Certain T-TIP issues are active areas of debate, in part because of divergent U.S. and EU cultural preferences and values as well as differing views on how any final T-TIP may impact government regulatory abilities. Such issues include regulatory cooperation, treatment of geographical indications (GIs), inclusion of investor-state dispute settlement (ISDS), and facilitation of cross-border data flows.

Congress has important legislative, oversight, and advisory responsibilities with respect to T-TIP. Congress establishes overall U.S. trade negotiating objectives, which it updated in the 2015 Trade Promotion Authority (TPA) legislation (P.L. 114-26), and would approve future implementing legislation for a final T-TIP agreement to enter into force. T-TIP could be eligible to receive expedited legislative consideration under TPA if Congress determines that it satisfies the TPA negotiating objectives and has met TPA's various other requirements.

T-TIP raises a range of issues of congressional interest:

- Will the United States and EU be able to successfully conclude a comprehensive and high-standard FTA through the T-TIP negotiations?
- What are the economic and broader strategic implications of a potential T-TIP?
- How does the T-TIP address U.S. trade negotiating objectives? What is T-TIP's relationship to the proposed Trans-Pacific Partnership (TPP), other potential trade agreements, and the multilateral trading system more generally?
- How do the T-TIP negotiations balance confidentiality and transparency?
- Should other countries be allowed to join the T-TIP negotiations or a completed agreement, and what are the implications?

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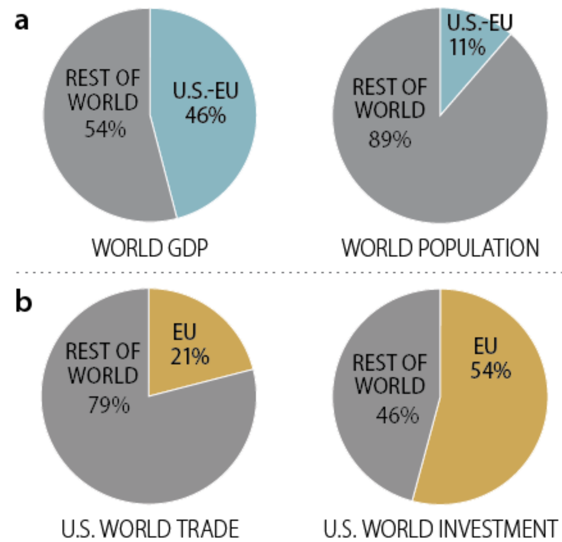
Introduction

The U.S.-EU trade and investment relationship, what many call the "transatlantic economy," is a mutually beneficial and globally significant relationship. It is not only the largest in the world, but also arguably the most important because of its sheer size (see **Figure 1**). At the same time, certain challenges remain in the relationship, and many stakeholders assert that it has not reached its full economic potential. To enhance trade disciplines and market access by addressing remaining transatlantic barriers to trade and investment, the United States and the European Union (EU)[1] presently are negotiating a "mega-regional" free trade agreement (FTA).[2] The potential agreement officially is referred to as the Transatlantic Trade and Investment Partnership (T-TIP).[3]

Figure 1. Combined U.S.-EU Share of Global Economy, 2014



Source: Bureau of Economic Analysis (BEA), World Bank, and United Nations Committee on Trade and Development.

Notes:
(a) U.S.-EU share and rest of world share are of world GDP and world population.
(b) EU share and rest of world share are of U.S. world trade in goods and services and U.S. world investment stock (BEA historical-cost basis).

On March 20, 2013, the Obama Administration notified Congress of its intent to enter into T-TIP negotiations. The United States and EU, led respectively by the Office of the U.S. Trade Representative (USTR) and European Commission, commenced negotiations in July 2013. Both sides initially aimed to conclude the negotiations in two years, but have extended that goal a number of times.[4] The timing is now uncertain given the complexity of the negotiations and the current U.S. focus on the proposed Trans-Pacific Partnership (TPP), among other factors. Twelve rounds of T-TIP negotiations have occurred to date. According to a U.S. statement at the conclusion of the 12th round, based on "intensified engagement over the past few months," the United States and the EU "now have proposed text in

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

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

[3] U.S. and EU official sources vary on the acronym for the Transatlantic Trade and Investment Partnership. This report uses "T-TIP," but "TTIP" also is a common and appropriate acronym for the proposed agreement.

[4] For example, both sides previously aimed to conclude negotiations by the end of 2016. See USTR, "Remarks by U.S. and EU Chief Negotiators from the Miami Round of T-TIP Negotiations," press release, October 23, 2015.

the vast majority of the negotiating areas. And in many cases, we are already removing brackets and agreeing on wording."[5]

Congress has a direct interest in the T-TIP negotiations because it establishes overall U.S. trade negotiating objectives, which it updated in 2015 in Trade Promotion Authority (TPA) legislation (P.L. 114-26), and would approve future implementing legislation for a final T-TIP to enter into force. T-TIP could be eligible to receive expedited legislative consideration under TPA if Congress determines that it advances U.S. trade negotiating objectives established in TPA and meets other statutory requirements. T-TIP also presents Congress with a range of possible issues that could be of oversight interest.

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

Background

Efforts to deepen the transatlantic relationship through trade and investment liberalization date back many years. For instance, in 1995, there was high-level interest on both sides in negotiating a "Transatlantic Free Trade Agreement" (TAFTA).[6] Certain groups recommended the TAFTA as a complement to the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements, which had led to the formation of the World Trade Organization (WTO). Others supported the idea, in part, to prevent Europe and the United States from drifting apart because they no longer faced a mutual Cold War enemy.[7] Others expressed concern that TAFTA negotiations could signal a lack of U.S. and EU confidence in the newly-formed WTO multilateral trading system. Critics also questioned the feasibility of addressing politically difficult transatlantic issues, such as agricultural subsidies and regulatory practices. Although the two sides did not take up TAFTA negotiations at that time, the proposal has continued to re-emerge periodically.

The Eurozone crisis, slowdown in the European economy, and slow U.S. economic recovery following the global economic crisis that began in 2008, along with increased competition from emerging markets, have renewed the interest of some Members of Congress, the Administration, private stakeholders, and others in reducing remaining U.S.-EU barriers to trade and investment as a way to boost transatlantic economic growth and jobs, a view supported by various studies.[8] The negotiation of an FTA is particularly compelling for some policymakers as a possible "low-cost" or "deficit-free" tool for supporting economic goals. While broadly supportive, some also underscore the importance and difficulties of reaching agreement on long-standing areas of difference in transatlantic trade and investment relations (see discussion in subsequent sections).[9]

[5] USTR, "U.S. Press Statement at the Close of the T-TIP Round in Brussels," February 26, 2016.

[6] For example, see Bloomberg Business, "Remember NAFTA? Well, Here Comes TAFTA," May 7, 1995.

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

[8] Organization for Economic Cooperation and Development (OECD), Working Paper No. 432, *On the Benefits of Liberalizing Product Markets and Reducing Barriers to International Trade and Investment: The Case of the United States and European Union*, May 26, 2005.

[9] For example, see Senate Committee on Finance, "Baucus, Hatch Outline Priorities for Potential U.S.-EU Trade Agreement," press release, February 12, 2013; and House Committee on Ways and Means, "Camp, Nunes Statements on U.S. - EU Trade and Investment Negotiations," press release, February 13, 2013. See also H.Res. 76 introduced in the 113th Congress.

Others are skeptical of U.S. trade negotiations and express specific concerns about the impact of a potential T-TIP, for example, on certain sectors of the U.S. economy that are import-sensitive or on governments' ability to protect health, environmental, and labor interests. While trade liberalization can lead to economy-wide gains, the costs can be highly concentrated on particular groups or economic sectors, including those in "import-sensitive" sectors of the U.S. economy.[10]

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

The decision to launch the T-TIP negotiations followed recommendations of the U.S.-EU High-Level Working Group (HLWG) on Jobs and Growth. Established by U.S. and EU leaders during the November 2011 U.S.-EU Summit Meeting under the auspices of the Transatlantic Economic Council (TEC),[11] the HLWG was tasked with identifying ways to increase transatlantic trade and investment to support jobs, economic growth, and international competitiveness. On February 11, 2013, the HLWG issued a final report to the U.S. and EU leadership recommending that the two sides launch negotiations on a comprehensive bilateral trade and investment agreement, referred to by both sides now as T-TIP. Based on the HWLG's recommendations, U.S. and EU leaders undertook the relevant procedures to launch the T-TIP negotiations (see **text box**).[12]

The HLWG concluded that "a comprehensive agreement that addresses a broad range of bilateral trade and investment issues, including regulatory issues, and contributes to the development of global rules would provide the most significant mutual benefit of the various options ... considered."[13] It recommended that the negotiations aim to achieve "ambitious" outcomes in three broad areas:

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

The HLWG's final report did not specifically mention agriculture as a negotiating topic, but the negotiations include discussion on agricultural issues.

[10] See CRS Report RL33944, *U.S. Trade Concepts, Performance, and Policy: Frequently Asked Questions*, by Wayne M. Morrison et al.

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

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

[13] Office of the U.S. Trade Representative (USTR), "Final Report of the U.S.-EU High Level Working Group on Jobs and Growth," February 11, 2013, http://www.ustr.gov/ (hereinafter, "HLWG Final Report").

Key Developments in the Launch of the T-TIP Negotiations

U.S. Domestic Procedures

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

- On March 20, 2013, the USTR notified Congress in writing of the President's intent to enter into the T-TIP negotiations, thus triggering a 90-day consultation period with Congress under the procedures of the expired 2002 Trade Promotion Authority (TPA). (Congressional consideration of any final T-TIP could take place under the renewed TPA, enacted in June 2015.)
- Several congressional committees have held oversight hearings related to the T-TIP and U.S.-EU relations, including the House Ways and Means Subcommittee on Trade; Senate Foreign Relations Committee; House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade; and Senate Finance Committee.

EU Internal Procedures

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

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

Legislative and Stakeholder Consultations

Both sides are consulting with their respective legislative bodies and stakeholders, as well as conducting studies of T-TIP's possible impacts. For example, the USTR requested comments from the public and held T-TIP hearings in May 2013. In addition, at the USTR's request, the U.S. International Trade Commission (ITC) investigated the probable economic effects of T-TIP, and submitted a confidential report on its findings to USTR on September 26, 2013. Likewise, the European Commission released an impact assessment on the future of the transatlantic trade relationship, and commissioned a publicly available report on reducing U.S.-EU trade and investment barriers.

Sources: Various official U.S. and EU government documents. For more information on the ITC study, see ITC, "Probable Economic Effect of Duty-Free Imports Under a U.S.-EU Transatlantic Trade and Investment Partnership Agreement will be Focus of New USITC Investigations," press release, April 18, 2013. To access the European Commission studies, see T-TIP "Resources," http://ec.europa.eu/trade/policy/in-focus/T-TIP/resources/.

Strategic Implications of a Potential T-TIP

U.S. Trade Policy

U.S. participation in T-TIP may contribute to several goals of U.S. trade policy. First, a successful T-TIP could support overall U.S. trade policy objectives to open markets and advance rules-based trade and investment liberalization. The United States negotiates free trade agreements (FTAs) bilaterally with other countries, regionally or plurilaterally with a larger group of countries, and multilaterally through the World Trade Organization (WTO). To date, 14 U.S. FTAs with 20 countries have entered into force, most recently with Colombia, Panama, Peru, and South Korea. In February 2016, the United States and 11 other Asia-Pacific countries signed the Trans-Pacific Partnership (TPP) FTA agreement.[14] The United States also is engaged in other international trade negotiations, both multilaterally in the WTO and plurilaterally within and around the WTO, including on international trade in services and environmental goods.

T-TIP also provides the United States with an opportunity to make its "comprehensive and high standard" FTA model more dominant in world trade. Globally, countries have notified over 400 regional trade agreements to the WTO, with nearly 300 in force.[15] A U.S.-style FTA covers substantially all trade in goods, services, and agriculture, and aims to reduce and eliminate tariff and non-tariff barriers to trade and investment. Typical of the U.S. approach, a potential T-TIP could build on prior U.S. FTAs, including the recent U.S.-South Korea FTA and the proposed TPP to pursue greater market access and enhanced rules and disciplines. In contrast to the United States, many trade agreements by other countries are not considered to be as "comprehensive and high standard" as U.S. FTAs. For example, some EU trade agreements have provided for limited liberalization of services and less market access for sensitive agricultural products. The content of EU trade agreements also has varied depending on the economic level of the trading partner. While EU FTAs may be becoming more comprehensive, even in their current form, they are viewed as more comprehensive than those of some other countries, such as China.[16]

Additionally, T-TIP provides an opportunity for the United States and the EU to cooperate on trade issues of mutual interest that could lead to new globally-relevant disciplines. Focal points of such cooperation could be issues either not currently, or fully, addressed in existing trade agreements, such as regulatory cooperation, state-owned enterprises (SOEs), and "forced" localization barriers to digital trade. In terms of TPP, President Obama has stated that the United States is "writing the rules for the global economy," and that without TPP, "competitors that don't share our values like China, will write the rules of the global economy."[17] Some cast T-TIP as a similar opportunity for the United States and EU, with many common values and interests, to "write the rules" for the global economy together.

Given the size of the transatlantic economic relationship, agreement between the United States and EU on key trade and investment issues could form the basis for the negotiation of future multilateral rules in the WTO. The United States and EU, which historically have led in setting international rules for global trade and investment, can significantly influence the rules of the global trading system when they work together. Others contend that mega-regional FTA negotiations detract from the focus on making progress at the multilateral level.

Transatlantic Relationship

T-TIP is significant for the U.S.-EU relationship in a number of ways. First, it is an opportunity for the United States and EU to strengthen their already extensive trade and economic relationship, including gaining strategic market access to each other's economies. The United

[14] Other Trans-Pacific Partnership (TPP) countries are Australia, Brunei, Chile, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. See CRS Insight IN10443, *CRS Products on TPP*, by Ian F. Fergusson and Brock R. Williams.

[15] WTO, "Regional Trade Agreements: Facts and Figures."

[16] For example, see Nargiza Salidjanova, *China's Trade Ambitions: Strategy and Objectives behind China's Pursuit of Free Trade Agreements*, U.S.-China Economic and Security Review Commission, May 28, 2015.

[17] The White House, "Weekly Address: Writing the Rules for a Global Economy," press release, October 10, 2015.

States and the EU increasingly run the risk of being disadvantaged in each other's market in the absence of their own bilateral FTA and in light of the FTAs that each side has with other countries. For instance, shortly after Japan announced plans to join the TPP negotiations, the EU and Japan stated their intent to negotiate a bilateral FTA and launched negotiations in March 2013. In October 2013, the EU concluded the Comprehensive Economic and Trade Agreement (CETA) with Canada, another TPP negotiating party.[18] More recently, in February 2015, a few months after TPP's conclusion, the EU and Vietnam announced the conclusion of a bilateral FTA.

Second, the extensive and mature nature of the transatlantic economic relationship distinguishes these negotiations. T-TIP is a strategic opportunity for the United States and the EU to develop new or expanded globally-relevant rules (see earlier discussion). Yet, in certain areas, notably regulatory compatibility, long-standing U.S.-EU differences in approaches could constrain such efforts. Should the two sides reach consensus, they could bring to bear considerable influence in the global economy in these areas. Consensus may require each side to be more flexible than it has been in other FTA negotiations, which generally have been with countries of lower levels of development and economic clout.[19] The comparable economic size of the two trading partners means that neither side can dominate the negotiations.

Third, T-TIP could affect the U.S.-EU political relationship. On one hand, a successful T-TIP could reinforce the United States' commitment to Europe in general and especially to the EU's role as a critical U.S. partner in the international community. On the other hand, any outcome that falls short of a comprehensive and high-standard FTA could call into question the strength of the transatlantic relationship. Some Europe watchers have questioned the U.S. commitment to the transatlantic relationship in light of the Obama Administration's "rebalancing" toward the Asia-Pacific region.[20] Some observers have raised concerns that the "rebalancing," combined with U.S. participation in the TPP negotiations, signifies a "pivot away" from Europe and key institutions, such as the North Atlantic Treaty Organization (NATO) and EU. Administration officials have rejected such claims, asserting that a U.S. focus on the Asia-Pacific is not at the expense of the transatlantic relationship.[21] Some observers assert that TPP's conclusion and potential approval in Congress could renew political momentum for T-TIP.

U.S. Free Trade Agreements and T-TIP[22]

The potential economic benefits of T-TIP are expected to exceed the gains from prior U.S. FTAs, given the size and the advanced nature of the U.S. and EU economies. In 2014, the United States

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

[19] Maya Rostowska, *The EU-U.S. Free Trade Agreement: Lessons from the Single European Act*, The Polish Institute of International Affairs, Bulletin No. 34 (487), April 3, 2013.

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

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

[22] Unless otherwise specified, T-TIP data in this section do not include Croatia, which joined the EU as its 28th member state on July 1, 2013.

and EU produced nearly half of the world's gross domestic product (GDP) and collectively accounted for more than one-tenth of the total global population. By these measures, the economic area covered under the proposed T-TIP would far exceed that covered by existing U.S. FTAs, as well as the recently concluded TPP (see **Table 1**).

Table 1. Largest U.S. Free Trade Agreements (FTAs): Economic Area, 2014

FTAs	GDP (billions of current U.S. dollars)	% World GDP	Population (millions)	% World Population
U.S.-South Korea FTA	$18,830	24%	369	5%
North American Free Trade Agreement	$20,488	26%	480	7%
Trans-Pacific Partnership*	$28,031	36%	810	11%
Transatlantic Trade and Investment Partnership**	$35,880	46%	827	11%

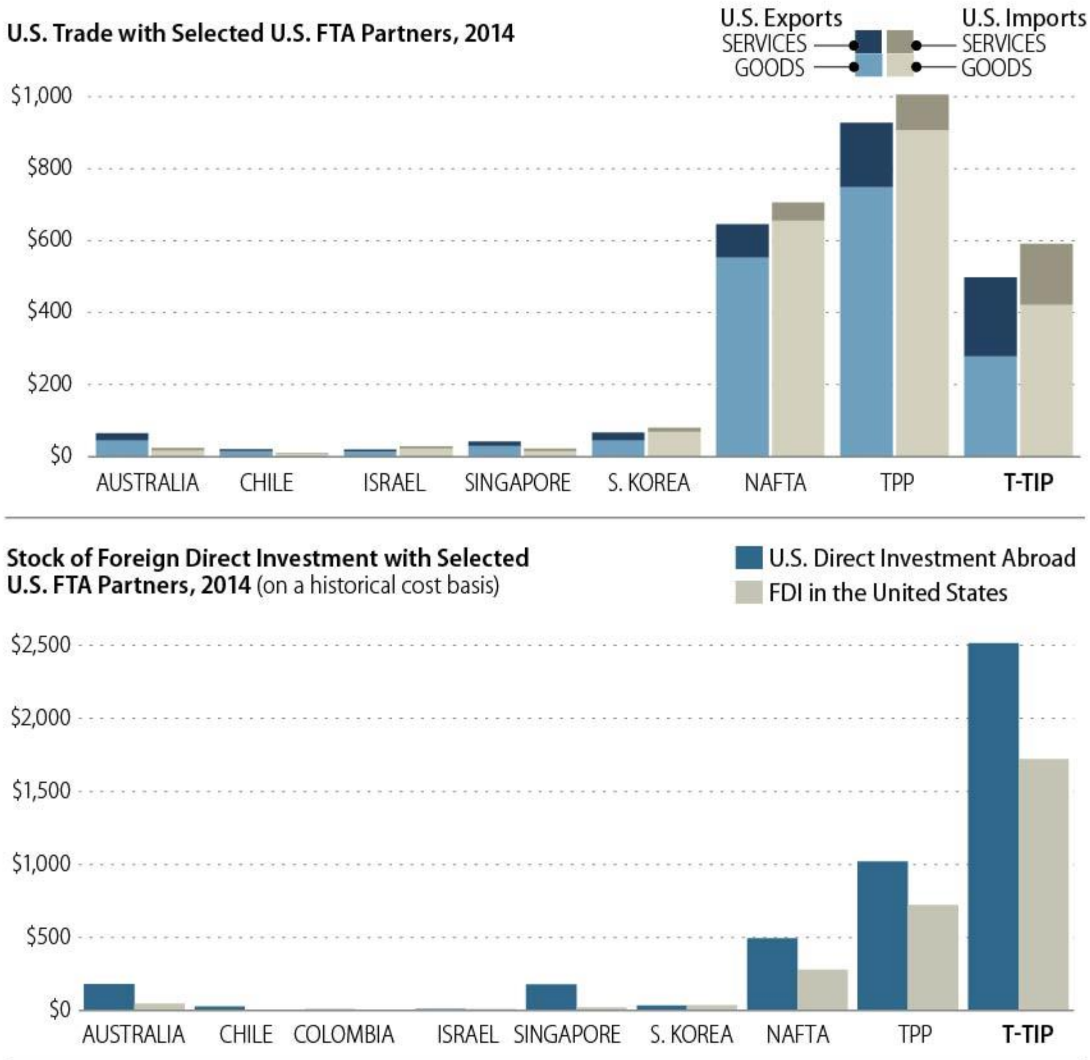
Sources: CRS analysis of data from The World Bank, World Development Indicators.

Notes: *Proposed FTA that has been concluded but not entered into force. GDP for New Zealand is for 2013. ** Potential FTA.

The potential T-TIP would be the third largest U.S. FTA in terms of U.S. trade in goods, after the proposed TPP and NAFTA. In contrast, it would be the largest U.S. FTA in terms of U.S. trade in services. When combining *both* goods and services, it would be the third largest FTA, after the proposed TPP and the existing NAFTA (see **Figure 2**). Although the transatlantic services relationship is significant, the larger volume of U.S. trade in goods with TPP countries outweighs U.S.-EU trade in services.

With respect to investment, T-TIP would far exceed existing U.S. FTAs and the proposed TPP. U.S.-EU direct investment is more than five times such investment between the United States and the NAFTA countries, and it is more than double such investment between the United States and the TPP countries (see **Figure 3**).

Figure 2. U.S. Trade and Investment with Selected FTA Partners, 2014



All dollars in billions.

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

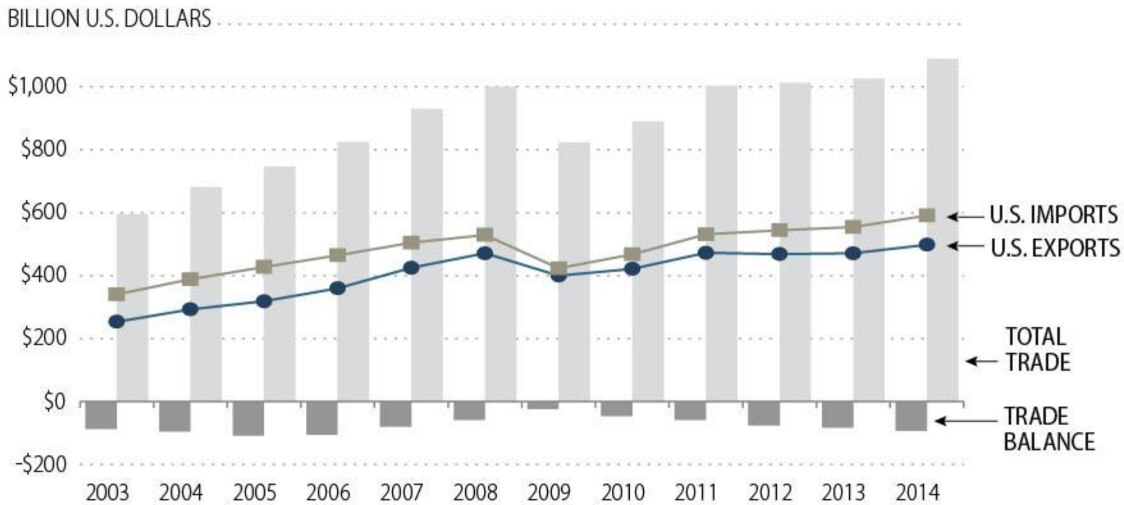
Notes:

TPP: Proposed FTA that has been concluded but not entered into force. Services data do not include Brunei, Peru, and Vietnam.
T-TIP: Potential FTA under negotiation.

U.S.-EU Trade and Investment Relationship

Despite the growing role of China and other emerging markets in the global economy, as well as current U.S. and EU economic challenges, the United States and the EU (as a bloc) remain each other's largest trade and investment partners. Total U.S.-EU trade in goods and services amounted to $1.1 trillion in 2014, leading to an overall U.S. trade deficit of $92.9 billion with the EU (see **Figure 3**). U.S.-EU trade is heavily weighted toward trade in advanced products. The flows of merchandise trade, services trade, and income across the Atlantic, totaling $1.7 trillion in 2014, reflect an active, integrated, and dynamic economic relationship.[23]

Figure 3. U.S. Trade in Goods and Services with the EU, 2003-2014



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

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

With globalization, new patterns of production, based on complex cross-border value chains, are a major element of U.S.-EU economic ties. Intra-industry trade dominates the transatlantic relationship, i.e., trade in similar products exported across borders. Intra-firm trade ("related-party trade"), which is cross-border trade between multinational companies and their affiliates, is also prevalent. Intra-firm trade occurs, for example, when Volkswagen of Germany sends parts to Volkswagen of Tennessee and vice versa. In 2014, related-party trade accounted for about 60% of all U.S. imports of goods from the EU and about 32% of U.S. exports of goods to Europe.[24]

The importance of the U.S.-EU relationship is even greater from the foreign direct investment (FDI) perspective. The United States and EU are each other's largest investors, and FDI is a major driver of transatlantic trade. In 2014, the U.S. FDI in EU totaled $2.5 trillion (or about 51%) of total U.S. direct investment abroad. Conversely, EU companies accounted for $1.7 trillion (or about 59%) of direct investment in the United States. Thus, U.S. and EU investors collectively owned more than $4 trillion in stock of direct investment in each other's economy in 2014.[25] These investments span manufacturing, banking, financial services, and other sectors.

[23] CRS analysis of U.S. Department of Commerce, Bureau of Economic Analysis (BEA), U.S. International Transactions data. Income includes investment income, compensation, and transfers.

[24] U.S. Census Bureau, "U.S. Goods Trade: Imports & Exports by Related-Parties 2014," May 5, 2015.

[25] CRS analysis based on data from the U.S. Bureau of Economic Analysis, FDI data.

Negotiating Issues

Overview

U.S. trade negotiations seek to reduce and eliminate tariff and nontariff barriers to trade and investment in goods, services, and agriculture. Issues discussed in the T-TIP negotiations to reduce these barriers can be grouped into three broad, overlapping[26] categories:

- **Market access:** Market access for goods, services, and agriculture involves seeking new competitive export opportunities through reducing and eliminating tariff and nontariff barriers. It often forms the foundation of FTA negotiations. Some "traditional" market access issues may play a lesser role in T-TIP compared to other U.S. FTA negotiations. U.S. and EU tariffs are already quite low, though given the magnitude of the transatlantic relations, further elimination and reduction of tariffs could yield significant economic gains. Commitments in other areas, such as further opening of government procurement markets, could also lead to greater market access.
- **Regulations and standards:** Greater cooperation, convergence, and transparency in regulations and standards-setting processes could help to reduce transatlantic nontariff barriers to trade. Key sectors of interest include automobiles, chemicals, cosmetics, engineering, information and communications technology (ICT), medical devices, pesticides, pharmaceuticals, and textiles. Economic gains from greater regulatory cooperation, convergence, and transparency could be significant, and are widely regarded by stakeholders as a core component of T-TIP. At the same time, there is skepticism about whether a comprehensive transatlantic agreement on regulatory issues can be reached.
- **Rules:** Trade-related rules span areas such as intellectual property rights (IPR), investment, digital trade, trade facilitation, labor, the environment, localization barriers, and state-owned enterprises (SOEs). T-TIP negotiations on rules could build on those in WTO agreements. Many of these areas, while not addressed in the WTO, have become a standard part of U.S. and EU FTAs with other countries. The negotiations also could break new ground on other issues that are modestly treated, or not at all, in prior U.S. FTAs or multilateral agreements.

The United States and EU generally are regarded as having more commonalities than differences in their approaches to these issues. For instance, both sides have strong commitments to protecting consumer health and safety through regulations and maintaining strong overall protections for investment, IPR, labor, and the environment. At the same time, certain areas—

[26] The issues in these categories often overlap; addressing one issue can help to address another. For example, regulatory cooperation to eliminate nontariff barriers can enhance market access.

such as regulations related to the precautionary principle[27] (such as for genetically modified organisms) or rules for cultural exceptions for the audiovisual sector and geographical indications—remain points of debate. To the extent that T-TIP is used to advance multilateral trade liberalization, debates about the impact of certain regulations, standards, and rules on third countries may be heightened. T-TIP remains in the early stages and the structure of a potential agreement is still evolving (see **text box**).

Publicly Available Information About the T-TIP Negotiations

The U.S. government has not released publicly any proposed or consolidated texts in the T-TIP negotiations. In general, the Administration tends to use existing FTAs as the starting point for future negotiations. For T-TIP, the United States-South Korea FTA (KORUS) and proposed TPP could be informative. However, with respect to the specific proposals, the U.S. government has sought to balance public engagement and disclosure with the need for confidentiality during negotiations. According to October 2015 guidelines for USTR engagement:

> The Administration's objective is to provide for timely disclosure of information in forms that the public can readily find and use and to provide timely opportunity for public input. At the same time, the United States must maintain an appropriate level of confidentiality during negotiations to create the conditions necessary for negotiators to communicate with a high degree of candor and creativity and to execute on the most effective negotiating strategies.[28]

Thus, while aiming to ensure confidentiality, the USTR provides Members of Congress and cleared advisors with access to U.S. proposals and consolidated texts as part of the consultation process. Additionally, the USTR meets with the public during each T-TIP negotiating round, solicits viewpoints from the public in stakeholder hearings, and posts on its website T-TIP resources such as U.S. negotiating objectives and issue-by-issue discussions, among other things.[29]

The European Commission, as part of an effort to boost public support for T-TIP, has pledged to make its positions in the negotiations more transparent. Since January 2015, the European Commission has published certain initial EU proposed texts to the United States on regulatory cooperation and rules, noting that the "actual text in the final agreement will be a result of negotiations" between both sides.[30] The European Commission anticipates that the final T-TIP could include 24 chapters distributed in three broad areas (italicized chapters are ones for which the European Commission has published initial T-TIP proposals in at least some of the areas of the chapter to the United States):

- **Market Access Chapters:** Trade in Goods and Customs Duties, *Services*, Public Procurement, Rules of Origin.
- **Regulatory Cooperation Chapters:** *Regulatory Coherence*, *Technical Barriers to Trade (TBT)*, *Food Safety and Animal and Plant Health (SPS)*, Chemicals, Cosmetics, Engineering, Medical Devices, Pesticides, Information and Communication Technology (ICT), Pharmaceuticals, Textiles, Vehicles.
- **Rules Chapters:** *Sustainable Development*, Energy and Raw Materials (ERMs), *Customs and Trade Facilitation (CTF)*, *Small and Medium-Sized Enterprises (SMEs)*, *Investment*, *Competition, Intellectual Property (IP)* and Geographic Indications (GIs), *Government-Government Dispute Settlement (GGDS)*.

[27] The "precautionary principle" is described in Article 191 of the Treaty on the Functioning of the European Union. According to an European Commission summary, the principle involves three specific underlying principles: (1) the fullest possible scientific evaluation, the determination, as far as possible, of the degree of scientific uncertainty; (2) a risk evaluation and an evaluation of the potential consequences of inaction; and (3) the participation of all interested parties in the study of precautionary measures, once the results of the scientific evaluation and/or the risk evaluation are available. Also according to the EC, "In most cases, European consumers and the associations which represent them must demonstrate the danger associated with a procedure or a product placed on the market, except for medicines, pesticides and food additives. However, in the case of an action being taken under the precautionary principle, the producer, manufacturer or importer may be required to prove the absence of danger. This possibility shall be examined on a case-by-case basis. It cannot be extended generally to all products and procedures placed on the market." See http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al32042.

[28] USTR, "Guidelines for Consultation and Engagement," October 27, 2015

[29] See, for example, USTR web page on T-TIP, https://ustr.gov/ttip.

[30] European Commission, "European Commission publishes TTIP legal texts as part of transparency initiative," press release, January 7, 2015.

Tariffs for Goods and Agriculture

As with past U.S. FTAs, T-TIP aims to eliminate duties on bilateral trade in goods, with a goal of substantially eliminating tariffs upon entry into force of the potential agreement and a phase out of all but the most sensitive tariffs in a short time frame.[31] At the same time, tariff issues may play a lesser role in the T-TIP negotiations because average U.S. and EU tariffs are already quite low, though higher for certain products of import-sensitive industries. Nevertheless, given the magnitude of the transatlantic economic relationship, further tariff elimination or reduction could yield to significant economic gains to both sides of the Atlantic (see **text box**). Some observers have suggested negotiating tariff reductions only in T-TIP would yield significant gains. Others generally view tariffs as "low-hanging fruit" in the T-TIP, and argue that the two sides should work toward a more "robust" agreement that would eliminate other drags on the system, including regulatory and other market access issues.

At present, EU and U.S. imports of each other's products are assessed at the most-favored-nation (MFN) or normal trade relations (NTR) rate.[32] According to WTO statistics, the U.S. simple average applied tariff rate[33] in 2014 was 3.5% *ad valorem*,[34] in contrast to the EU rate of 5.3%.[35] Although U.S. and applied tariff rates are relatively modest, tariffs are higher (known as "tariff peaks") in certain product import-sensitive categories such as dairy products, sugar and confectionery, beverages and tobacco, fish and fish products, and textiles and apparel (see the **Appendix**).[36] EU tariff peaks are similar to U.S. ones, except that EU tariffs on U.S. agricultural imports (simple average tariff of 13.7%; trade-weighted average of 8.6%) overall are much higher than U.S. tariffs on EU imports (4.7% simple average tariff rate; trade-weighted average of 2.1%).[37] By one estimate, U.S. firms pay about $6.4 billion tariffs to the EU.[38] The two sides have exchanged second tariff offers that reportedly cover 97% of tariff lines.[39] Negotiators reportedly have not yet agreed to commitments on more import-sensitive sectors, such as in agriculture.

Tariffs also play a significant role in intra-company trade for U.S. and EU firms. According to an estimate, in 2011, U.S. companies faced about $2.4 billion in duties on intra-firm imports from the EU. U.S.-based sectors that paid the most in terms of intra-firm import duties included automobiles, machinery, and chemicals.[40] Given that much of U.S.-EU trade is conducted by multinational firms with affiliates on each side of the Atlantic, these are sometimes called "nuisance tariffs," because they are viewed as adding unnecessary costs to intra-firm trade.

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[31] HLWG Final Report.

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

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

[34] Tariff rate charged as a percentage of the value of the product.

[35] WTO Tariff Download Facility, http://tariffdata.wto.org/Default.aspx?culture=en-US.

[36] Ibid.

[37] Ibid.

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

[39] European Commission, "TTIP round 11: Statement by EU chief negotiator Ignacio Garcia Bercero," October 23, 2015; and Adam Behsudi, "Official: Next four months critical for TTIP completion," *Politico*, October 23, 2015.

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

T-TIP's Potential Economic Impact

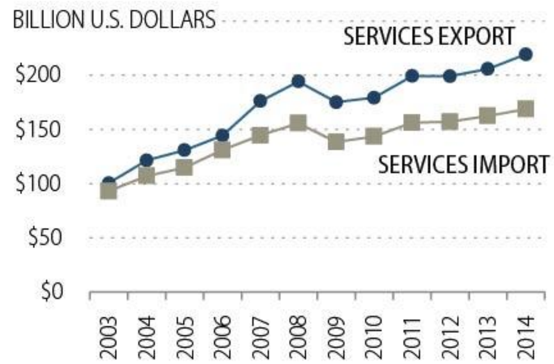
Various studies have estimated the potential impact of the elimination of tariffs through T-TIP. In considering such studies, it is important to note that estimating economic effects of trade agreements can be highly complex and challenging. Economic analyses can be constrained by a lack of data and other theoretical and practical issues associated with econometric analyses. In addition, estimates of economic effects of FTAs are often imprecise and highly sensitive to the assumptions that are used. Analysts differ in their views on the validity of these studies, including the suitability of their assumptions and approaches to modeling trade impacts. Moreover, a range of factors beyond trade policy can affect U.S. economic performance, including global economic growth and exchange rates. (See CRS In Focus IF10161, *International Trade Agreements and Job Estimates*, by James K. Jackson.)

A number of these studies use a computable general equilibrium (CGE) model that incorporates data on trade and other domestic economic variables. For instance, two widely cited T-TIP studies, discussed below, used CGE models based on data from the Global Trade Analysis Project (GTAP). The data in the models are limited for practical reasons, and the models sacrifice some level of precision.

- A 2010 European Centre for International Economic Policy (ECIPE) study suggested that eliminating tariffs would benefit the United States slightly more than the EU because the EU tariffs assessed on U.S. goods are somewhat higher than those assessed on EU goods in the U.S. market. According to the study, the increased welfare gains from a tariff-only agreement could be as much as $3 billion for the EU, and $4.5 billion for the United States. Given that the U.S. GDP in 2012 was $15.6 trillion and the EU's was $16.6 trillion for the same time period, these gains would be relatively small. The study also estimated that the "dynamic" welfare gains from eliminating tariffs would be much more substantial. These dynamic gains are purported to take into account the administrative costs of tariffs that accrue from intra-firm trade, increased productivity, and efficiency due to competition between firms, among other factors.
(Source: Fredrik Erixon and Matthias Bauer, *A Transatlantic Zero Agreement: Estimating the Gains from Transatlantic Free Trade in Goods*, ECIPE, ECIPE Occasional Paper No. 4/2010, 2010.)
- A 2013 Center for Economic Policy Research (CEPR) study, prepared for the European Commission, concluded that eliminating tariffs would lead to relatively small increases in GDP for both the United States and EU. This study forecast that the EU would fare slightly better, with a 0.10% increase, while U.S. GDP would increase by 0.01% to 0.04%. The study estimated that EU exports to the United States would increase by 1.18%, and imports by 1.00%, while U.S. exports would increase by 1.91% and imports by 1.13%. Although these estimated GDP increases may be relatively small, tariff elimination could be significant for specific firms and economic sectors.
(Source: Joseph Francois, Miriam Manchin, and Hanna Norberg et al., *Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment*, CEPR, Final Project Report, March 2013, p. 33.)
- Other studies, using different techniques, data, and assumptions, predict different economic outcomes from T-TIP. For example, a October 2014 study by the Global Development and Environment Institute (GDAE), using a United Nations Global Policy Model (GPM) that focuses on macroeconomic impacts, concluded that, in the long-term, T-TIP would lead to a 0.36% increase in U.S. GDP for the United States, but "small but widespread" reductions in GDP for European countries, such as -0.07% for the United Kingdom, -0.29% for Germany, -0.48% for France, and -0.03% for Italy in the long-term.
(Source: Jeronim Capaldo, *The Trans-Atlantic Trade and Investment Partnership: European Disintegration, Unemployment and Instability*, GDAE, Tufts University, Working Paper No. 14-03, October 2014.)
- Separately, on March 25, 2013, the USTR requested that the U.S. International Trade Commission (USITC) conduct an investigation on the potential economic effects of providing duty-free treatment for U.S. imports from the EU, pursuant to Section 131 of the Trade Act of 1974 (19 U.S.C. 2151) and Section 2104(b)(2) of the Trade Act of 2002 (19 U.S.C. 3804(b)(2)). Such investigations assist the President in determining whether to enter into trade agreements or how to develop trade policy and priorities. The USITC submitted a confidential report on its findings to USTR on September 26, 2013.
(Source: USITC, "Probably Economic Effect of Duty-Free Imports Under a U.S.-EU Transatlantic Trade and Investment Partnership Agreement Will Be Focus of New USITC Investigations," press release, April 18, 2013.)

Services

Figure 4. U.S. Trade in Services with the EU, 2003-2014



Source: U.S. Bureau of Economic Analysis.

The services sector includes economic activities such as accounting, banking, insurance, retail, education, legal, transportation, e-commerce, express delivery, tourism, and telecommunications. Services represent a large and ever-widening range of economic activities and employment, and constitute nearly 70% of U.S. GDP. The products of services providers are generally intangible in nature, and deliver some form of human value-added endeavor, such as labor, training, research and development, or design support.[41] The EU is an important services market for the United States, representing about one-third of annual U.S. services exports worldwide in 2014. The United States holds a services trade surplus with the EU, with exports of about $219 billion and imports of about $169 billion in 2014 (see **Figure 4**).[42] The United Kingdom (UK) is both the largest EU destination for U.S. services exports and the largest EU source of U.S. services imports. The United States exported $64 billion in services to the UK in 2014, followed by Ireland ($40 billion), Germany ($28 billion), and France ($20 billion). Likewise, in 2014, U.S. imports of services from the UK totaled about $50 billion, followed by Germany ($33 billion), France ($17 billion), and Ireland ($15 billion).[43]

Firms that produce services are often discussed in contrast with manufacturers that produce tangible goods. However, a study linking 2008 data on international services trade with statistics on the operations of multinational companies (MNCs) showed that firms typically associated with the production or sales of goods are also among the largest importers and exporters of services.[44] For example, manufacturing firms might export intellectual property that they hold in exchange for royalties and licensing fees and import or export design support, research and development, or product testing.[45] This is especially important in terms of U.S.-EU services trade given the number of firms that operate on both sides of the Atlantic.[46]

The United States and EU are both signatories to the WTO's General Agreement on Trade in Services (GATS), a multilateral agreement setting rules removing trade barriers to international trade in services. The GATS consists of: (1) a main text containing general obligations and

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[41] CRS Report R43291, *U.S. Trade in Services: Trends and Policy Issues*, by Rachel F. Fefer.

[42] OECD Dataset, *Trade in Services – EBOPS 2002*.

[43] BEA, International Data, *U.S. Trade in Services, by Type of Service and by Country or Affiliation*.

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

[45] Ibid., p. 68.

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

disciplines; (2) annexes containing rules for specific sectors; and (3) specific commitments of signatories to provide market access.[47]

The HLWG report recommended that U.S.-EU negotiations in services seek to achieve new market access "on a comprehensive basis" by dealing with long-standing barriers between the two; improve regulatory cooperation "where appropriate"; and include binding commitments to provide transparency, impartiality, and due process with regard to licensing and qualification requirements and procedures.[48] In addition to T-TIP, the United States and the EU are negotiating services liberalization in a potential Trade in Services Agreement (TiSA).[49]

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

Financial Services

Financial services are an important component of the transatlantic economic relationship, and market access issues with respect to financial services are expected to be a part of the T-TIP negotiations. However, debate continues over whether the scope of regulatory issues discussed in the negotiations should include financial services. In light of reforms to the U.S. and EU financial systems currently underway in response to the global financial crisis of 2008-2009, questions have arisen about the coherence of the regulatory reforms and whether differences in regulations affect the competitiveness of domestic financial services firms.

Certain Members of Congress, European officials, and business groups on both sides of the Atlantic have expressed support for including financial services regulatory issues in T-TIP. Some Members have called on the Administration to address regulatory discrepancies between the U.S. and EU financial systems in the negotiations, stating "[c]onfusion caused by inconsistent and conflicting regulations have already spilled over into the broader economy, reducing investment, creating higher compliance costs, lowering employment, and hindering economic growth."[50] Other Members and stakeholders have expressed concern that the inclusion of financial services regulatory issues in the negotiations could lower financial regulatory standards, such as reducing consumer protections included in the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203).[51]

The United States and EU currently are discussing financial regulatory cooperation issues proposals in larger dialogues, such as the G-20 and the Financial Stability Board (FSB).[52] Additionally, they are engaging in discussions bilaterally. For instance, on November 20, 2015,

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[47] WTO, "Services: Rules for Growth and Investment."

[48] HLWG Final Report, p. 3.

[49] See CRS Report R44354, *Trade in Services Agreement (TiSA) Negotiations: Overview and Issues for Congress*, by Rachel F. Fefer; and CRS In Focus IF10311, *Trade in Services Agreement (TiSA) Negotiations*, by Rachel F. Fefer.

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

[51] For example, see Consumer Federation of America's comments on the T-TIP, Document Number USTR-2013-0019, May 9, 2013.

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

the U.S. Department of the Treasury and the Office of the U.S. Trade Representative notified Congress of the United States' intent to negotiate with the EU on prudential measures for reinsurance.[53]

U.S. Administration officials reportedly remain reluctant to include financial regulatory cooperation in the T-TIP negotiations, in part, because of concern that it may interfere with ongoing discussions. For instance, during his nomination hearing, U.S. Trade Representative Froman stated that, with respect to financial services, market access issues should be included in the negotiations, while regulatory issues should continue to be addressed in parallel alongside, but outside, the T-TIP negotiations.[54] At the same time, they support discussing financial services market access in the negotiations.[55] More recent USTR statements have echoed the same position.[56] EU negotiators have asserted that divergences in financial rules should be addressed if T-TIP is to yield a meaningful outcome on financial services. They reportedly continue to link market access and regulatory cooperation issues in this sector.[57]

Audiovisual Services

The treatment of the audiovisual services sector, particularly with respect to "cultural exceptions," has emerged as a controversial topic. Through cultural exceptions, countries provide special support to domestic industries they consider culturally sensitive, such as through broadcasting quotas, subsidies, and local content requirements. These measures can limit market access to such industries for foreigners. For example, France maintains cultural exceptions for its film and television industries. Led by France, some EU member states have called for the exclusion of the audiovisual services sector from the T-TIP negotiations.[58] In its approval of the European Commission's "negotiating mandate," the Council of Ministers agreed that audiovisual services would not be covered in the mandate, but the European Commission could make additional recommendations that it be included in the mandate at a later time. The European Commission's subsequent position paper on T-TIP and culture and various statements have reiterated this position.[59] While this decision may assuage certain EU member states' concerns about T-TIP, some observers contend that it could set a precedent for carving out other sensitive sectors from the negotiations.

[53] U.S. Department of the Treasury, "Treasury, USTR Announce Intention to Negotiate Covered Agreement with the European Union,"

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

[55] For example, see USTR, "U.S. Objectives, U.S. Benefits in the Transatlantic Trade and Investment Partnership: A Detailed View," March 2014.

[56] Adam Behsudi, "Office: Next Four Months Critical for TTIP Completion," POLITICO, October 27, 2015.

[57] "TTIP Negotiators to Hold Talks on Financial Services in Coming Weeks," *Inside U.S. Trade*, October 23, 2015.

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

[59] See, for example, European Commission, *TTIP and Culture*, July 15, 2014; and "Malmstrom Calls for 'Realistic' TTIP, but Echoes Familiar EU Positions," *World Trade Online*, December 4, 2014.

Treatment of Service Providers

The treatment of services providers could be another area of focus in the T-TIP negotiations. One issue that the T-TIP could address is the licensing and certification of professional services providers. Appropriate credentials are required on both sides of the Atlantic in many fields such as medicine, insurance, education, and law. In the EU, such services are regulated by the member states, and, in the United States, at the state level. Thus, providing cross-border services could be challenging for services firms, because even if a services employee is qualified in one state or EU country, the certification may not be recognized elsewhere.[60]

Another issue that the T-TIP could address is the delivery of certain services through physically sending service providers across international borders. How the delivery of services in this manner (known as "Mode 4" in the GATS) is regulated is an evolving issue.[61] Potential changes in Mode 4 could be made in streamlining the temporary movement of business personnel. However, the inclusion of Mode 4 services in trade agreements can be sensitive, in part because of issues of congressional jurisdiction. The temporary movement of business personnel across borders has emerged in recent trade negotiations, however, and may surface in the T-TIP. For example, the EU-Canada Comprehensive Economic and Trade Agreement (CETA) includes provisions intended to make it easier for firms to move certain business professionals between the EU and Canada, such as to deliver services, perform after-sales maintenance, and monitor service commitments.[62] In addition, the current plurilateral Trade in Services Agreement (TiSA) negotiations include discussions of Mode 4 services.[63]

Digital Trade and E-Commerce

The Obama Administration's letter formally notifying Congress of the U.S. intent to enter into trade negotiations with the EU contained specific objectives for negotiations in electronic commerce and communication technology services, including "the development of appropriate provisions to facilitate the use of electronic commerce to support goods and services trade," and to "facilitate the movement of cross-border data flows."[64] TPA includes specific negotiating objectives in digital trade in goods and services.[65]

The Internet is both a major delivery platform for trade and an important services sector. It also is an essential asset for businesses as a tool for internal organization (i.e., communicating with

[60] Discussion with U.S. Chamber of Commerce officials, March 13, 2013.

[61] The GATS provides rules applying to four "modes" of delivery of services: mode 1 – cross-border supply (e.g., export of services); mode 2 – consumption abroad (e.g., consumer, such as a tourist or patient, goes to another country to obtain a service,); mode 3 – commercial presence (e.g., service supplier establishes a presence in another country to provide a service); and mode 4 – presence of natural persons (e.g., person entering another country to supply a service). For information, CRS Report R44354, *Trade in Services Agreement (TiSA) Negotiations: Overview and Issues for Congress*, by Rachel F. Fefer. As yet, the United States has not put forward any offers in Mode 4 in the TiSA negotiations.

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

[63] See CRS Report R44354, *Trade in Services Agreement (TiSA) Negotiations: Overview and Issues for Congress*, by Rachel F. Fefer.

[64] Letter from Demetrios Marantis, Acting United States Trade Representative, to John Boehner, Speaker, United States House of Representatives, March 20, 2013.

[65] See P.L. 114-26, Sec. 102(b)(6).

employees, receiving orders), external integration of business processes (i.e., supply chain management; invoicing), and conduct of business transactions worldwide.[66] For example, a study of the online marketplace eBay Inc., proposed that Internet commerce is much more effective than offline channels at reducing international trade costs and overcoming traditional trade impediments; for example, distances between countries, exporting goods to foreign markets, differences in legal systems, and foreign language barriers.[67] Online commerce also facilitates exports by small- and medium-sized businesses. For example, 97% of commercial sellers on eBay are engaged in selling overseas to one or more countries.[68] The Internet has made it possible for financial firms to provide account information and transactions online, for electronic medical records to be sent across borders for analysis, and for rural communities to access real-time information on agricultural prices, to name only a few services delivery possibilities.

Digital Data Flows

T-TIP is expected to include commitments on commercial cross-border data flows. The opportunities that the Internet offers individuals and businesses to connect, share information, and exchange ideas is sometimes limited by national governments that seek to regulate the flow of data across borders. In some cases, the motivation of officials is viewed as legitimate—to regulate and curtail illegal behavior, such as identity theft, child pornography, and other illicit activities. Rule of law issues such as dispute settlement and contract enforcement have also become reasons for government concern as the Internet expands as a business platform.[69] In other cases, motivations for the regulation of data flows can be questionable, particularly if the measures appear discriminatory. For instance, some countries have introduced measures that would compel some financial service providers to process data on-shore, or require online service providers to locate physical infrastructure (i.e., servers) within the country's borders—a type of localization barrier to trade. Others have proposed conditioning market access on the basis of where certain intellectual property has been developed or registered.[70]

Europe is the United States' largest trading partner overall, and this is also true in the digital trade sector. Data flows across the United States and the EU are the largest globally, approximately 55% larger than data flows between the United States and Asia, and 40% larger than data flows between the United States and Latin America.[71] "Digitally-enabled services," such as in financial services, are prominent in the transatlantic trading relationship. U.S. information sector firms' direct investment firms in establishing and expanding their operations in Europe also shapes U.S.-EU digital trade.[72] At the same time, U.S. firms identify certain remaining barriers to digital trade with the EU, such as data privacy and protection requirements (discussed below) and localization barriers (discussed separately further below).[73]

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[66] OECD, *OECD Internet Economy 2012*, p. 132.

[67] eBay, Inc., *Enabling Traders to Enter and Grow on the Global Stage*, An eBay-commissioned report conducted by Sidley Austin LLP, Washington, DC.

[68] Ibid.

[69] Joshua Meltzer, "The Internet, Cross-Border Data Flows, and International Trade," Center for Technology Innovation at Brookings, *Issues in Technology Innovation*, Number 22, February 2013, p. 5.

[70] National Foreign Trade Council, *Promoting Cross-Border Data Flows: Priorities for the Business Community*.

[71] U.S. Congress, House Committee on Energy and Commerce, Subcommittee on Commerce, Manufacturing, and Trade, *Examining the EU Safe Harbor Decision and Impacts for Transatlantic Data Flows*, Testimony of Dr. Joshua P. Meltzer, 114th Cong., 1st sess., November 3, 2015.

[72] ITC, *Digital Trade in the U.S. and Global Economies, Part 1*, USITC Publication 4415, July 2013.

[73] ITC, *Digital Trade in the U.S. and Global Economies, Part 2*, USITC Publication 4485, August 2014, p. 83.

Data Protection Standards[74]

T-TIP is not expected to include data protection standards; although the EU is willing to discuss data flows in the T-TIP talks, EU officials have stated that they will not discuss changes to EU data protection standards.[75] At the same time, developments in data protection may influence T-TIP's treatment of cross-border data flows. The United States and the EU differ in their approaches to data protection and data privacy.[76] Many Europeans, including some European Parliament members and European data protection authorities, have concerns about the adequacy of U.S. privacy laws and the volume of U.S. data collection under intelligence and counterterrorism programs. The unauthorized disclosure of classified information related to National Security Agency (NSA) surveillance activity since June 2013 elevated such concerns. Subsequently, the United States and the EU established a high-level expert group to discuss ensuring issues, including implications for the privacy rights of EU citizens. EU officials have asserted that any potential measures agreed to in T-TIP must not undermine EU data protection standards. U.S. companies have expressed concern that the NSA disclosures could lead to European demands for restrictions on cross border data flows (e.g., requiring that servers be located in the EU for data privacy reasons) in T-TIP. Key developments in data protection are discussed below.

Prior U.S.-EU Safe Harbor Agreement and New Privacy Shield Framework[77]

The NSA leaks, along with claims that some U.S. Internet and telecommunications companies were involved in the reported NSA activities, renewed some European concerns about the "U.S.-EU Safe Harbor Agreement." Concluded in 2000, Safe Harbor was an agreement under which participating U.S. businesses self-certified to the U.S. Department of Commerce that they provide "adequate" privacy protection (i.e., comply with EU standards), as defined by the EU's Directive on Data Protection of October 1995.[78] Safe Harbor allowed U.S. businesses with operations in the EU to transfer personal data to the United States in compliance with EU rules and regulations. Many U.S. businesses favored Safe Harbor as a way to, on one hand, make compliance requirements more streamlined and facilitate transatlantic data flows and, on the other hand, ensure EU-compliant data privacy protection.[79] Over 4,000 U.S. companies were certified under the program. In the wake of the NSA disclosures, some European Parliament members called on the European Commission to suspend Safe Harbor. The commission recognized weaknesses in Safe Harbor but rejected suspending it to avoid hurting business interests. In November 2013, the commission issued recommendations to improve Safe Harbor and engaged with U.S. authorities to identify measures to improve the program and ameliorate concerns about U.S. government

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74 Kristin Archick, Specialist in European Affairs, contributed to this section. For more information, see CRS Report R44257, *U.S.-EU Data Privacy: From Safe Harbor to Privacy Shield*, by Martin A. Weiss and Kristin Archick.

75 Associated Press, "NSA Activities to be Discussed During Talks Between EU and U.S.," *The Washington Post*, July 5, 2013; and Department of Justice, "Justice Department Statement on Meeting with European Union," press release, July 8, 2013.

76 The United States has a network of laws protecting data privacy with a respect for privacy rooted in the U.S. Constitution, while the EU treats privacy of communications and protection of personal data as a fundamental human right incorporated in its 2000 Charter of Fundamental Rights of the EU and made binding on all EU members through the Lisbon Treaty.

77 For more information, see CRS Report R44257, *U.S.-EU Data Privacy: From Safe Harbor to Privacy Shield*, by Martin A. Weiss and Kristin Archick.

78 The U.S. Federal Trade Commission is charged with enforcing the promise that companies make when they certify that they participate in the Safe Harbor Framework.

79 "U.S.-EU Safe Harbor Overview," http://export.gov/safeharbor/eu/eg_main_018476.asp.

access to personal data transferred from the EU to U.S. companies.[80] However, on October 6, 2015, the Court of Justice of the European Union (CJEU, which is also often commonly referred to as the European Court of Justice, or ECJ) issued a decision invalidating Safe Harbor.[81] EU data protection authorities then announced their intent to start enforcing the decision, potentially blocking transatlantic data transfers, unless a new arrangement was in place by January 31, 2016. U.S. and EU businesses called for the issue to be resolved, expressing concern about the uncertainty they faced in transferring data for their business operations.[82]

Shortly after the deadline passed, on February 2, 2016, the United States and the EU agreed to a "EU-U.S. Privacy Shield" framework for data transfer intended to improve commercial oversight and enhance privacy protections for European personal data.[83] On February 29, 2016, the United States and EU released a draft text of the framework agreement.[84] The Privacy Shield framework, which, when implemented, will replace Safe Harbor, will include obligations on U.S. companies to self-certify (and annually re-certify) their compliance with the Privacy Shield's requirements. It will also include U.S. Government enforcement obligations on (particularly the Federal Trade Commission, the Department of Transportation, and the Department of Commerce), including ensuring that access to EU personal data for U.S. law enforcement and national security purposes will be subject to clear limitations and oversights. It also includes additional avenues to address data privacy concerns of EU citizens, including free, independent dispute resolutions provided by participating companies and a new ombudsman housed in the U.S. Department of State. The United States and the EU agreed to proactively monitor the implementation and enforcement of the new agreement.[85]

Separately, in the 114th Congress, the Judicial Redress Act (P.L. 114-126), which has been passed by the House and Senate and presented to the President, extends the core judicial redress provisions in the U.S. Privacy Act of 1974 to EU citizens. Although initially introduced to facilitate passage of a U.S.-EU accord to address data transfers in the law enforcement context (see below), some U.S. policymakers and industry experts hope that it will also help to ease at least some European concerns about commercial data transfers and U.S. government access to personal data, as well as bolster confidence in the new "Privacy Shield." Some experts point out that the scope of the judicial redress in the U.S. legislation is not exactly equivalent to what U.S. persons and residents enjoy under the Privacy Act, is relatively limited, and relates specifically to information transferred in a law enforcement context.

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[80] European Commission, *Communication from the Commission to the European Parliament and the Council on the Functioning of the Safe Harbour from the Perspective of EU Citizens and Companies Established in the EU*, COM(2013) 847 final, November 27, 2013.

[81] Court of Justice of the European Union, "The Court of Justice declares that the Commission's US Safe Harbour Decision is invalid," press release no. 117/115, October 6, 2015.

[82] For example, see letter from U.S. and EU business representatives (BUSINESS EUROPE, U.S. Chamber of Commerce, DIGITALEUROPE, and Information Technology Industry Council), to U.S. and EU leadership, January 15, 2016.

[83] U.S. Department of Commerce, "EU-U.S. Privacy Shield," fact sheet, February 2, 2016; and European Commission, "EU Commission and United States agree on new framework for transatlantic data flows: EU-US Privacy Shield," press release, February 2, 2016.

[84] EU-U.S. Privacy Shield, https://www.commerce.gov/privacyshield.

[85] Letter from Penny Pritzker, Secretary of Commerce, to Ms. Vera Jourova, Commissioner for Justice, Consumers, and Gender Equality, February 23, 2016, https://www.commerce.gov/privacyshield.

Other Developments in EU Data Protection Standards

Other developments in EU data protection standards also may shape the T-TIP context. These include the following.

U.S.-EU Data Privacy and Protection Agreement for Law Enforcement[86]

In September 2015, the United States and the EU finalized and initialed the text of a Data Privacy and Protection Agreement (DPPA) for transatlantic law enforcement cooperation. DPPA negotiations began in March 2011 to establish a set of common data protection principles for future information exchanges and agreements in police and judicial cooperation in criminal matters. The DPPA aims to protect the security and privacy of U.S. and EU citizens, while also enhancing the ability of U.S. and EU law enforcement and prosecutorial agencies to cooperate with each other to combat serious crime and terrorism.[87] It is characterized as an "umbrella" agreement to supplement existing agreements and treaties between the United States and Europe that authorize law enforcement information-sharing, but it will not provide the legal basis for the actual transfer of personal data between U.S. and EU authorities (i.e., specific agreements for transferring airline passenger data, for example, will still be required). Issues covered under the DPPA include proper use, security, and retention of data; access to data, and judicial redress for EU citizens before U.S. courts for alleged misuse by the U.S. government of their personal information for law enforcement. On the last of these elements, the Judicial Redress Act extends the core of judicial redress provisions in the U.S. Privacy Act of 1974. Previously, some Members of the European Parliament suggested that the DPPA was a precondition for restoring transatlantic trust after the NSA fallout. They also suggested that the Parliament's consent to a final T-TIP could be endangered absent "an adequate solution ... for the data privacy rights of EU citizens, including administrative and judicial redress."[88]

EU Data Protection Reform

On December 15, the European Parliament, the Council of the European Union, and the European Commission reached agreement on a set of new data protection rules to establish a more modern data protection framework across the EU. The reforms are viewed as advancing the implementation of the EU's "Digital Single Market Strategy."[89] Originally proposed in 2012 by the European Commission, the reforms were aimed at: (1) updating the EU's 1995 Data Protection Directive to take into account changes in data processing brought about by the widespread use of the Internet; and (2) establishing standards for cross-border and domestic data processing for law enforcement purposes (not covered by the 1995 Directive). The reform consists of two pieces of EU legislation. One is the General Data Protection Regulation (GDPR), which increases people's control of their personal data including through new rules on data access, transfer, and retention (i.e., allowing data to be deleted online), as well as notification of data breaches. The GDPR also expands companies' liabilities, including allowing data protection authorities to fine companies who do not comply with EU rules up to 4% of their "global annual turnover" (revenue). The EU contends that these new rules will make it easier for companies to conduct business by establishing a single set of data protection rules across the EU and streamlining supervisory authority into "one-stop-shops" for businesses. The other legislation is the Data Protection Directive, which is intended to harmonize data protection standards used by law enforcement authorities throughout the EU. The final texts are expected by many to be formally adopted by the EU in 2016, with the rules becoming applicable two years later.[90]

U.S. technology firms have voiced concern that expanded privacy controls could injure the U.S. technology industry in Europe, which could have implications for U.S. e-commerce in other parts of the world. Potential issues may include changes that could block many types of online web tracking and targeted advertising and expanded liability, including through monetary fines, for companies that may fail to comply with what they view as overly burdensome requirements. The United States previously has raised concerns with the EU that some elements of the proposed legislative package could lead to high compliance costs and impede international data flows, which could negatively affect growth and innovation, among other concerns.

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[86] See CRS Report RS22030, *U.S.-EU Cooperation Against Terrorism*, by Kristin Archick.

[87] U.S. Mission to the European Union, "U.S. Government Statement on the Initialing of the "Umbrella" Data Privacy and Protection Agreement (DPPA)," press release, September 9, 2015; and European Commission, "Questions and Answers on the EU-US data protection "Umbrella agreement," fact sheet, September 8, 2015.

[88] See European Parliament resolution P7_TA(2014)0230, adopted March 12, 2014. For more on the U.S.-EU DPPA negotiations, see CRS Report RS22030, *U.S.-EU Cooperation Against Terrorism*, by Kristin Archick.

[89] European Commission, "Agreement on Commission's EU data protection reform will boost Digital Single Market," press release, December 15, 2015.

[90] European Parliament, "New EU Rules on Data Protection Put the Citizen Back in the Driving Seat," press release, December 17, 2015.

Government Procurement

Government procurement is the public purchase of goods and services for use in governmental activities. These activities include buying equipment, computers, paper, and supplies for employees; providing water treatment services; or building roads or buildings for the public.[91] In the United States and EU, the government procurement market is the equivalent of about 15% - 20% of each of their respective GDPs. As such, further market access in the sector could be of significant benefit to both partners.[92] The HLWG final report recommended that T-TIP aim to substantially improve access to government procurement opportunities at all levels of government.[93]

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

According to the USTR, gauging the current level of U.S. participation in the EU government procurement market is difficult because the EU does not keep statistics on government purchases of goods and services with the level of precision necessary.[94] The USTR also states that an EU directive on procurement of utilities[95] covering purchases in the water, energy, urban transport, and postal services discriminates against bids with less than 50% EU content that are not covered by an international or reciprocal bilateral agreement.[96] In contract competitions conducted by EU member state governments, U.S. firms point to concerns ranging from the lack of transparency in contract awards to EU bias in government contract awards.[97] In T-TIP, U.S. negotiators are seeking to expand market access opportunities in goods and services in the EU and EU member states' government procurement markets, and to ensure "fair, transparent, and predictable" rules for government procurement, as well as favorable, nondiscriminatory treatment for U.S. suppliers.[98]

EU negotiators assert that the T-TIP negotiations present an important opportunity to develop some bilateral "GPA-plus" elements that could inspire a multilateral GPA revision.[99] EU firms reportedly would like more access to sub-central government (e.g., states) entities in the United States.[100] They also point to U.S. laws such as the Berry Amendment (10 U.S.C. 2533a) that restrict government purchases of certain items to U.S. businesses for security reasons; and the

[91] WTO, Government Procurement.

[92] ECORYS, *Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis*, Final Report, for European Commission, Directorate-General for Trade, 2009, p. 183.

[93] HLWG Final Report.

[94] USTR, *2014 National Trade Estimate Report on Foreign Trade Barriers*, March 2014, p. 120.

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

[96] USTR, *2014 National Trade Estimate Report on Foreign Trade Barriers*, March 2014, p. 120.

[97] Ibid.

[98] USTR, "T-TIP Issue-by-Issue: Government Procurement"; and letter from Demetrios Marantis, Acting United States Trade Representative, to John Boehner, Speaker, United States House of Representatives, March 20, 2013.

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

[100] Ibid.

Buy American Act (41 U.S.C. 8301ff), which provides a preference for American goods in government purchases, as among those that are potentially injurious to EU companies that want to bid for U.S. procurement contracts.[101]

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

Agriculture

Agricultural issues have been an active topic of debate—not only in the context of market access negotiations but mainly within regulatory and also intellectual property rights discussions within the T-TIP negotiations (see below).[102] Negotiations on agricultural products may be viewed in the context of a series of long-standing, high-profile transatlantic trade disputes between the United States and EU, covering a range of trade issues. These include beef hormones, pathogen reduction treatment for poultry, regulations related to bovine spongiform encephalopathy (BSE, commonly known as mad cow disease), pesticide residues on foods, and the use of biotechnology (genetically modified organisms, or GMOs). Further complicating these negotiations are major underlying regulatory and administrative differences between the United States and EU in how each addresses these issues within their respective borders.

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

Market Access for Agricultural Products

The United States is among the world's largest net exporters of agricultural products, averaging more than $135 billion per year (2010-2014). The EU is a leading export market for U.S. agricultural exports, and is ranked as the fifth largest market for U.S. food and farm exports. However, in recent years, growth in U.S. agricultural exports to the EU has not kept pace with growth in trade to other U.S. markets, and imports from Europe currently exceed U.S. exports to the EU. In 2014, U.S. exports of agricultural products to the EU totaled $13 billion, while EU exports of agricultural products totaled $19 billion, resulting in a substantial trade deficit for the United States.[103] This reverses the net trade surplus in U.S. agricultural exports during the early 1990s (see **Figure 5**).

[101] ECORYS Report, 2009, p. 183

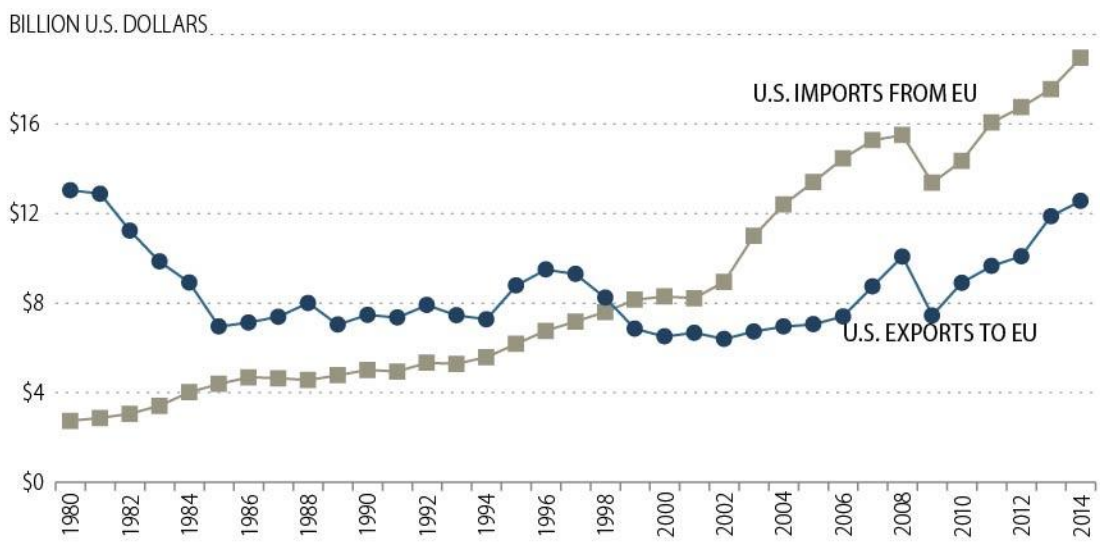
[102] Sanitary and phytosanitary (SPS) and related regulatory issues may likely be included as part of either an Agriculture chapter or a chapter on Regulatory Coherence issues, whereas geographical indications (GIs) may likely be included in a discussion of intellectual property rights (IPR).

[103] U.S. Department of Agriculture (USDA), "EU-U.S. Agricultural Trade and the TTIP," *GAIN Report* E14009, February 5, 2014.

Major U.S. agricultural exports to the EU include tree nuts, soybeans, forest products, distilled spirits, vegetable oils, wine and beer, planting seeds and tobacco, and processed fruit and wheat. Major EU agricultural exports to the United States include wine and beer, essential oils, snack foods, processed fruits and vegetables, other vegetable oils, cheese, cocoa paste/butter, live animals, nursery products, and red meats.[104]

The U.S. Department of Agriculture (USDA) reports that the EU's average agricultural tariff is 30%, well above the average U.S. agricultural tariff of 12%.[105] Other EU trading partners benefit from preferential tariff access to the EU, given that the EU has concluded free trade agreements with more than 30 countries with plans to negotiate agreements with a dozen more countries.[106] This preferential access will provide other U.S. exporter competitors, such as Canada, an advantage over U.S. agricultural exporters. A study by USDA reports that removing tariffs and tariff-rate quotas under T-TIP could increase U.S. agricultural exports to the EU by an estimated $5.5 billion; EU exports to the United States are estimated to rise by $0.8 billion.[107]

Figure 5. U.S.-EU Agricultural Trade, 1980-2014



Source: CRS from trade data posted at USDA's Foreign Agricultural Service's Global Agricultural Trade System, http://apps.fas.usda.gov/gats/default.aspx.

Notes: Reflects data for the EU-27 countries over the time period (calendar year, 1980-2014).

High EU average tariffs on U.S. exports are further exacerbated by the EU's nontariff measures to U.S. agricultural products, such as food safety, animal or plant health issues and technical barriers to trade. USDA reports that such nontariff barriers contribute to delays in reviews of biotech products (creating barriers to U.S. exports of grain and oilseed products); prohibitions on the use of growth hormones in beef production and the use of certain antimicrobial and pathogen

104 USDA, "Why Trade Promotion Authority is Essential for U.S. Agriculture and the Transatlantic Trade and Investment Partnership," April 2014, http://www.fas.usda.gov/sites/default/files/2014-04/tpa-ttip.pdf.

105 USDA, "Why Trade Promotion Authority is Essential for U.S. Agriculture and T-TIP," February 2015.

106 For more information, see European Commission, "Bilateral investment dialogues and agreements," http://ec.europa.eu/internal_market/capital/third-countries/bilateral_relations/index_en.htm.

107 J. Beckman, et al., *Agriculture in the Transatlantic Trade and Investment Partnership: Tariffs, Tariff-Rate Quotas, and Non-Tariff Measures*, ERR-198, USDA, November 2015. Estimates are compared to a 2011 base year.

reduction treatments (creating barriers to U.S. meat and poultry exports); and burdensome and complex certification requirements (creating barriers to U.S. processed foods, animal products and dairy products). In addition to high EU tariffs, a report by the U.S. International Trade Commission (ITC)[108] identified extensive EU regulations, as well as difficulty finding up-to-date information, among the primary concerns of U.S. businesses, particularly for processed foods. U.S. businesses also note concerns about the lack of a science-based focus in establishing SPS measures, difficulty meeting food safety standards and obtaining product certification, the lack of cohesive labeling requirements, and stringent testing requirements that often are applied inconsistently across EU member nations.

USDA reports that the *ad valorem equivalent* (AVE) effects of non-tariff barriers to U.S. agricultural exports are estimated to range from 23% to 102%.[109] USDA further estimates removing selected non-tariff barriers under T-TIP could increase U.S. agricultural exports to the EU by an estimated $4.1 billion (not including estimated export gains from the removal of other tariff barriers).[110] EU exports to the United States are estimated to rise by $1.2 billion. Gains would be greatest to the U.S. livestock and produce industries.

Sanitary and Phytosanitary (SPS) and Related Nontariff Trade Measures

SPS measures are laws, regulations, standards, and procedures that governments employ as "necessary to protect human, animal or plant life or health" from the risks associated with the spread of pests, diseases, or disease-carrying and causing organisms, or from additives, toxins, or contaminants in food, beverages, or feedstuffs.[111] Technical barriers to trade (TBTs) cover both food and non-food traded products. TBTs in agriculture include SPS measures, but also include other types of measures related to health and quality standards, testing, registration, and certification requirements, as well as packaging and labeling regulations.

SPS/TBT measures regarding food safety and related public health protection are addressed in various multilateral trade agreements and are regularly notified to and debated within the WTO. International trade rules recognize the rights and obligations of governments to adopt and enforce such requirements. These rules are spelled out primarily in two WTO agreements: (1) the Agreement on Sanitary and Phytosanitary Measures, and (2) the Agreement on Technical Barriers to Trade.[112] In general, under the agreements, WTO members agree to apply such measures, based on scientific evidence and information, only to the extent necessary to protect human, animal, or plant life and health; and to not arbitrarily or unjustifiably discriminate between WTO members where identical standards prevail. Member countries also are encouraged to observe established and recognized international standards. Improper use of SPS/TBT measures can create

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[108] USITC, "Trade Barriers that U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union," Investigation 332-541, USITC Publication 4455, March 2014.

[109] S. Arita, et al., *Estimating the Effects of Selected Sanitary and Phytosanitary Measures and Technical Barriers to Trade on U.S.-EU Agricultural Trade*, ERR-199, USDA, November 2015. Based on concerns based by U.S. exporters.

[110] J. Beckman, et al., *Agriculture in the Transatlantic Trade and Investment Partnership: Tariffs, Tariff-Rate Quotas, and Non-Tariff Measures*, ERR-198, USDA, November 2015. Estimates compared to a 2011 base year.

[111] Examples include product standards, requirements for products to be produced in disease-free areas, quarantine and inspection procedures, sampling and testing requirements, residue limits for pesticides and drugs in foods, and limits on food additives.

[112] Both agreements were entered into force on January 1, 1995, as part of the establishment of the WTO. For information, see WTO's website: http://www.wto.org/english/tratop_e/sps_e/sps_e.htm and http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm. See also CRS Report R43450, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade*, by Renée Johnson.

substantial, if not complete, barriers to trade when they are disguised protectionist barriers, are not supported by scientific evidence, or are otherwise unwarranted.

Regarding SPS/TBT measures between the United States and the EU, major differences exist in how each applies these measures and also how each regulates food safety and related public health protection. Among other administrative and technical review differences, one major difference is the EU's application of the so-called *precautionary principle*, which remains central to the EU's risk management policy regarding food safety and animal and plant health.[113] In the context of the WTO, the "precautionary principle" (or precautionary approach) allows a country to take protective action—including restricting trade of products or processes—if they believe that scientific evidence is inconclusive regarding their potential impacts on human health and the environment.[114] These types of regulatory differences between the United States and EU have likely indirectly contributed to some long-standing trade disputes regarding SPS and TBT rules between the two trading blocs, including formal WTO disputes involving meat and poultry production and processing methods, such as the U.S. use of beef hormones and ractopamine, pathogen reduction and other treatment technologies, BSE-related regulations, and other plant processing regulations.[115] Other SPS concerns between the United States and EU involve the use of agricultural biotechnology and pesticide regulations.

Some Members of Congress hope that the T-TIP negotiations will resolve long-standing trade disputes regarding SPS rules between the two trading blocs, as well as enhance disciplines to address SPS issues and other nontariff barriers.[116] Given such regulatory differences and also existing nontariff barriers between the United States and the EU, particularly regarding SPS matters, some are concerned about whether the T-TIP would be able to address such concerns, or whether the agreement might exclude agricultural products altogether.[117]

The final HLWG report recommends that the two trading partners negotiate provisions that go beyond both the SPS and TBT agreements, as part of "SPS-Plus" and "TBT-Plus."[118] For "SPS Plus," these recommendations include "establishing an ongoing mechanism for improved dialogue and cooperation" and requiring that "each side's SPS measures be based on science and on international standards or scientific risk assessments, applied only to the extent necessary to protect human, animal, or plant life or health, and developed in a transparent manner, without undue delay." For "TBT-Plus," this includes "establishing an ongoing mechanism for improved dialogue and cooperation for addressing bilateral TBT issues," including the goals of "greater

[113] See, for example, EU's food legislation in 2002 (Regulation EC No 178/2002); and Commission of European Communities, "Communication from the Commission on the precautionary principle," COM(2000) 1, Brussels, February 2, 2000.

[114] See, for example, WTO, "Glossary Term: Precautionary Principle" and WTO, "Understanding the WTO Agreement on Sanitary and Phytosanitary Measures." Also see Article 5.7, Article 3.3, and the preamble of the SPS agreement.

[115] See, for example, CRS Report R40449, *The U.S.-EU Beef Hormone Dispute*, by Renée Johnson; CRS Report R40199, *U.S.-EU Poultry Dispute on the Use of Pathogen Reduction Treatments (PRTs)*, by Renée Johnson; and USTR's annual reports on *Report on Sanitary and Phytosanitary Measures* and *Report on Technical Barriers to Trade*.

[116] "Baucus, Finance Members Set High Bar for SPS Issues in U.S.-EU Talks," *Inside U.S. Trade*, November 6, 2013; "U.S. Says 'Successful' TTIP Deal Will Eliminate EU Barriers to Meat Exports," *Inside U.S. Trade*, March 11, 2014; and also letter to USDA Secretary Thomas Vilsack and Acting USTR Demetrios Marantis from 26 farm-state U.S. Senators, May 7, 2013.

[117] See, for example, "U.S. Senators Worried U.S.-EU Talks Might Not Address Agriculture," *Reuters*, January 24, 2013; and letter from several U.S. agriculture and food groups to USTR Ron Kirk, March 4, 2013.

[118] HLWG Final report. These recommendations were submitted to the Presidents of the United States, European Council, and European Commission. For other detailed information, see CRS Report R43450, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade*, by Renée Johnson.

openness, transparency, and convergence in regulatory approaches and requirements and related standards-development processes ... , to reduce redundant and burdensome testing and certification requirements," among other changes. Many hope that an SPS-Plus and TBT-Plus approach might also provide for timelier SPS and TBT notification than that currently required by the WTO, along with some form of "rapid response mechanism" for resolving stoppages of agricultural products at the border, as well as other enforcement mechanisms or dispute settlement processes. Reportedly, the U.S. government is "proposing strong regulatory provisions that would build on [WTO] commitments and improve transparency and ensure that regulatory actions have a sound basis," and also result in improved regulatory coherence and cooperation (e.g., regarding regulations, best practices, and common acceptable standards).[119]

Various reports have further indicated that efforts by some U.S. and EU stakeholders to include a range of related policy issues as part of the T-TIP negotiations. These include efforts address the use of certain pesticides and chemicals,[120] the use of antibiotics in animal production,[121] and other agricultural applications, such as nanotechnology and animal cloning. For example, in September 2015, the European Parliament voted to ban the cloning of all farm animals and the sale of cloned livestock, their offspring, and products derived from them.[122] Cloning for research purposes would be permitted. The EU's position on cloning is at odds with that of the United States. The U.S. Food and Drug Administration (FDA) has found no significant differences between healthy clones and non-cloned animals; FDA also regards the products from cloned animals to be as safe as that from non-clones.[123] The United States and Brazil raised concerns about the EU's proposal at a WTO TBT Committee meeting in November 2015.

Use of Agricultural Biotechnology

Agricultural biotechnology[124] refers primarily to the use of recombinant DNA techniques to genetically modify or bioengineer plants and animals so that they have certain desired characteristics. Most crops developed through recombinant DNA technology have been engineered to be tolerant of various herbicides or to be pest resistant by having a pesticide genetically engineered into the plant organism. U.S. soybean, cotton, and corn farmers have rapidly adopted genetically engineered (GE) varieties of these crops since their commercialization starting in 1996. Over the past few decades, GE varieties in the United States have increased. In recent years, USDA reports that U.S. farmers planted roughly 170 million acres of GE crops annually.[125] Worldwide, 28 countries planted GE crops on an estimated 448

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[119] USDA, "Why Trade Promotion Authority is Essential for U.S. Agriculture and the Transatlantic Trade and Investment Partnership," February 2015, http://www.fas.usda.gov/sites/default/files/2015-02/tpa-ttip_feb_2015.pdf.

[120] "EPA Official Says U.S.-EU Endocrine Disruptor Talks Have No Link to TTIP." *World Trade Online*, November 19, 2015.

[121] M. Green, "EU seeks TTIP provision on animal antibiotics," *Food Chemical News*, November 9, 2015.

[122] European Parliament, "Cloning of animals kept and reproduced for farming purposes," September 8, 2015. Also: G. Vogel, "E.U. parliament votes to ban cloning of farm animals," AAAS *ScienceInsider*, September 8, 2015; and CRS correspondence with BIO representatives, April 22, 2015. For more information, contact Tadlock Cowan, tcowan@crs.loc.gov (7-7600).

[123] FDA, "Animal Cloning and Food Safety," 2008, http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm148768.htm.

[124] Also commonly referred to as Genetically Modified Organisms (GMOs) or genetically engineered (GE) crops.

[125] J. Fernandez-Cornejo, et al., *Genetically Engineered Crops*, in the United States, USDA Economic Research Service, Report#162, February 2014, http://www.ers.usda.gov/media/1282246/err162.pdf.

million acres in 2014.[126] GE varieties now dominate soybean, cotton, and corn production in the United States, and they continue to expand rapidly in other countries.[127]

GE crops play a much more limited role in the EU; they currently are cultivated in Spain, Portugal, the Czech Republic, Slovakia, and Romania.[128] GE crops account for about 1% of EU crop acreage. Also, several EU countries have banned the cultivation of GE crops in their territories or have specific rules on the trade of GE seeds.[129] In general, EU officials have been cautious in allowing GE products to enter the EU market and all GE-derived food and feed must be labeled as such. The EU's regulatory framework regarding biotechnology generally is regarded as one of the most stringent systems worldwide. A series of regulations, directives, and recommendations govern the EU's handling of food and feed derived from GE. Some EU farm groups complain about bureaucratic delays in the regulatory process, particularly to gain approval to grow GE seed varieties.[130] To date, very few GE varieties have been authorized (approved) by EU authorities for commercial cultivation.[131]

Many U.S. producer groups assert that U.S. agricultural exports to the EU have been limited by EU labeling and traceability regulations, and by lack of timelines and transparency in the EU process for admitting GE crops.[132] In a dispute brought by the United States and other WTO members, a dispute settlement panel determined that the EU had maintained a *de facto* moratorium on GE products between 1999 and 2003.[133] EU officials argue that the number of product approval requests is increasing, but some agricultural industry stakeholders assert that the time for processing (close to 3.5 years in the EU, in contrast to an average of 1.5 years in the United States) and the attendant backlog remain a major trade barrier.[134] These stakeholders suggest that legally prescribed timelines, transparency, and risk assessment, among other things, could be established to address these issues.

In January 2015, the European Parliament adopted new legislation to allow each member country to ban or approve GE crops in their respective country; proposals to implement these new directives were released in March 2015.[135] Many in the United States oppose the EU's proposal and believe it lacks a scientific basis and should be withdrawn.[136] As of October 2015, a reported

[126] International Service for the Acquisition of Agri-biotech Applications (ISAAA), "Global Status of Commercialized Biotech/GM Crops in 2014," Pocket K No. 16, http://www.isaaa.org/resources/publications/pocketk/16/. ISAAA is an independent, not-for-profit organization (http://www.isaaa.org/inbrief/default.asp).

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

[128] USDA, "EU-28 Agricultural Biotechnology Annual," *GAIN Report* FR9174, July 23, 2015.

[129] Member states include Austria, Bulgaria, France, Greece, Hungary, Germany, Italy, Luxembourg, and Poland.

[130] See, for example, letter from Senator Chuck Grassley to José Manuel Barroso, President of the European Commission, October 14, 2014; and letter from several farm, grain, and biotechnology organizations to United States Trade Representative Michael Froman, August 20, 2014.

[131] European Commission, EU Register of Authorized GMOs, http://ec.europa.eu/food/dyna/gm_register/index_en.cfm.

[132] See, for example, letter from Steve Wellman, President, American Soybean Association, February 3, 2012. Response to HLWG request for public comment.

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

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

[135] Directive (EU) 2015/412. European Commission Fact Sheet, "Review of the decision-making process on GMOs in the EU: Questions and Answers," April 2015. Information on these proposals is available at: http://ec.europa.eu/food/plant/gmo/authorisation/index_en.htm.

[136] USDA, "EU-28 Agricultural Biotechnology Annual," *GAIN Report* FR9174, July 23, 2015.

19 member states have requested to restrict GE cultivation.[137] Several EU countries have signed a "joint declaration" calling for the development of a GE-free agricultural model in Europe.[138] Other proposed efforts seeking to ban or restrict the *use or sale* of EU-approved GE products in Member territories have been rejected by the European Parliament.[139]

Geographical Indications

Geographical indications (GIs) are geographical names that act to protect the quality and reputation of a distinctive product originating in a certain region. The term is most often, although not exclusively, applied to wines, spirits, and agricultural products. Some food producers benefit from the use of GIs by giving certain foods recognition for their distinctiveness, differentiating them from other foods in the marketplace.[140] In this manner, GIs can be commercially valuable. As intellectual property, GIs also may be eligible for relief from acts of infringement or unfair competition. The use of GIs also may protect consumers from deceptive or misleading labels. Examples of GIs include Parmesan cheese and Parma ham from the Parma region of Italy, Tuscan olive oil, Roquefort cheese, Champagne from the region of the same name in France, and Irish whiskey. Other examples are Darjeeling tea, Ceylon tea, Florida oranges, Idaho potatoes, Vidalia onions, Washington State apples, and Napa Valley wines.

The use of GIs has become a contentious international trade issue, particularly for U.S. wine, cheese, and sausage makers. In general, some consider GIs to be protected intellectual property, while others consider them to be generic or semi-generic terms (see "Intellectual Property Rights" section for more information). Laws and regulations governing GIs differ markedly between the United States and EU, which further complicates this issue. Moreover, GIs are protected by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).[141] Under the TRIPS Agreement, both the United States and EU have committed to providing a minimum standard of protection for GIs (i.e., protecting GI products to avoid misleading the public and to prevent unfair competition) and an "enhanced level of protection" to wines and spirits that carry a geographical indication, subject to certain exceptions.

In the EU, a series of regulations governing GIs was initiated in the early 1990s covering agricultural and food products, wine and spirits.[142] Currently, more than 3,000 product names are registered and protected in the EU for foods, wine, and spirits originating in EU Member States

[137] USDA, "19 European countries restrict the cultivation of GE crops," GAIN Report FR9180, October 13, 2015. Full opt-out requests were made by Austria, Bulgaria, Croatia, Cyprus, Denmark, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, and Slovenia. Belgium and Britain requested opt-out for only part of their country's respective territories. Germany has requested a partial opt-out to allow research.

[138] P. Hutchinson, "EU member states claim benefits of "GMO-free" faming model," *Food Chemical News*, October 22, 2015. Countries include: Austria, Cyprus, Hungary, Italy, Lithuania, Poland, and Slovenia.

[139] European Parliament press release, "Parliament rejects national GMO bans proposal," *EP News*, October 28, 2015.

[140] Examples of non-agricultural GIs may include handicrafts or products using local natural resources or techniques "embedded in the traditions of local communities," such as Vetro di Murano glass, Scottish tartans, Marmo di Carrara marble, or Meissner Porzellan porcelain. See 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," COM(2014) 469, July 15, 2014.

[141] The WTO TRIPS Agreement defines GIs as "indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin" (Article 22.1).

[142] EU regulations include Council Regulation (EC) No. 1151/2012 and 510/2006 (agricultural products and foodstuffs); Council Regulation (EC) No. Regulation 1234/2007 and 479/2008 (wine); and Council Regulation (EC) No. 110/2008 (spirits).

and also in other countries.[143] The EU regulations establish provisions regarding products from a defined geographical area, given linkages between the characteristics of products and their geographical origin. Under EU regulations, producers qualify for either a "protected geographical indication" (PGI); a "protected designation of origin" (PDO); or "Traditional Specialties Guaranteed" (TSG).[144] Product registration markers for these three quality schemes are intended to help protect product names from misuse and imitation. Because of their commercial value, the protection of GIs is a major priority for the EU.

In the United States, GIs are geared toward brands and trademarks, and protected under the U.S. Trademark Act.[145] The U.S. Patent and Trademark Office (PTO) defines GIs as "indications that identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin." According to the PTO, "geographical indications serve the same functions as trademarks, because like trademarks they are: source-identifiers, guarantees of quality, and valuable business interests." Establishing a product based on its geography can be complicated, either involving establishing a trademark or a brand name through an extensive advertising campaign. PTO does not have a special register for GIs in the United States.[146]

In the United States, many food manufacturers view the use of common or traditional names as generic terms, and view the EU's protection of its registered GIs as a way to monopolize the use of certain food and wine terms, and as a form of trade protectionism. The United States does not protect a geographic term that is considered "generic," being "so widely used that consumers view it as designating a category of all of the goods/services of the same type, rather than as a geographic origin."[147] According to USTR, "The United States continues to have serious concerns with the EU's system for the protection of GIs, including with respect to its negative impact on the protection of trademark and market access for U.S. products that use generic names."[148] Bilateral trade concerns arise when a product name recognized as a protected GI in Europe is considered a generic name in the United States. For example, in the United States, "feta" is considered the generic name for a type of cheese; however, it is protected as a GI in Europe. As such, feta cheese produced in the United States may not be exported for sale in the EU since only feta produced in countries or regions currently holding GI registrations may be sold commercially.

Complicating this issue further are GI protections afforded to registered products in third country markets. This has become a concern for U.S. agricultural exporters following a series of recently concluded trade agreements between the EU and countries such as Canada, South Korea, South Africa, and other countries that are, in many cases, also major trading partners with the United

[143] For more information, see EU's databases: Database of Origin and Registration, DOOR (agricultural products and foodstuffs); "E-Bacchus" database (wine); and "E-Spirit-Drinks" database (spirits), available at http://ec.europa.eu/agriculture/. Roughly, about 1,800 EU wine names, 340 spirit names, and 1,300 food and agricultural product names are registered in the EU's registry.

[144] For more information, see CRS In Focus IF10188, *Geographical Indications (GIs) in U.S.-EU Trade Negotiations*, by Renée Johnson.

[145] 15 U.S.C. §1051 *et seq*. Section 4 provides for the registration of "certification marks including indications of regional origin."

[146] Its trademark register, the U.S. Trademark Electronic Search System (TESS), contains GIs registered as trademarks, certification marks, and collective marks. These register entries are not designated with any special field (such as "geographical indications") and cannot be readily compiled into a complete list of registered GIs.

[147] U.S. Patent and Trademark Office (PTO), "Geographical Indication Protection in the United States," http://www.uspto.gov/web/offices/dcom/olia/globalip/pdf/gi_system.pdf.

[148] USTR, *2014 National Trade Estimate Report on Foreign Trade Barriers*, p. 111.

States. Specifically, provisions in these agreements may provide full protection of GIs and not defer to a country's independent assessment of generic status for key product names. For example, recent agreements negotiated by the EU with Canada and with South Africa separately could reportedly recognize up to 200 EU GIs for milk and dairy products.[149] Similar types of GI protections are reportedly also in other trade agreements between the EU and other countries, affecting a range of food products and wine. In addition to facing trade restrictions for U.S. products in the EU market, these protections also may limit the future sale of U.S. exported products bearing such names to these third countries, regardless of whether the United States may have been exporting such products carrying a generic name for years.

The U.S. wine industry had considered some of its concerns regarding the use of traditional and semi-generic names, among other related bilateral trade concerns, to have been partly addressed following the existing agreement on wine in the 2006 U.S.-EU Agreement on Trade in Wine. However, recently some in the U.S. wine industry have become concerned given recent public comments by European trade groups indicating their desire to renegotiate some provisions.[150] Recently concluded trade agreements between the EU and other third countries also have raised concerns among U.S. winemakers and could restrict U.S. exports to these countries of wines that use certain "semi-generic" or "traditional" terms.

Some Members of Congress have long expressed their concerns about possible GI protections being debated as part of the T-TIP negotiations, as well as concerns regarding GI protections in other trade agreements that have been or are being negotiated by the EU with other countries.[151] Many U.S. food producers are members of the Consortium for Common Food Names (CCFN), which aims to protect the right to use common food names as well as protect legitimate food-related GIs.[152] However, some U.S. agricultural industry groups are trying to create a system similar to the EU GI system for U.S. agricultural producers. Specifically, the American Origin Products Association (AOPA) is seeking to protect American Origin Products (AOPs) in the marketplace from fraud and deceptive labeling, increase the value-added for all AOPs as a distinct food category, and create a national system to recognize AOPs through certification, among other goals.[153]

Industrial Regulations and Standards

Regulatory non-tariff barriers relate to the standards, testing, and certification procedures that countries use to ensure high standards of health and safety, as well as protection of labor and the environment. TPA principal negotiating objectives on government regulatory practices include to: (1) achieve increased transparency and the opportunity for affected parties to participate in regulatory development; (2) require that [trading partners'] proposed regulations be built on

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[149] See, for example, USDA, "South Africa: Proposed protection of Geographical Indications in South Africa," *GAIN Report*, August 29, 2014; and National Milk Producers federation, "U.S. Dairy Industry Decries Market Barriers Raised in EU-Canada Trade Deal," September 29, 2014.

[150] For more information, see CRS Report R43658, *The U.S. Wine Industry and Selected Trade Issues with the European Union*, by Renée Johnson.

[151] See, for example, letter from several Members of Congress for USTR and also USDA, May 9, 2014; letter from Senate Finance Committee Chairman and Ranking Member to USTR, February 12, 2013; and letter from several Members of Congress to USTR, September 27, 2010. See also letter referenced in press release, "Sens. Roberts and Baldwin Fight to Protect U.S. Producers against Ridiculous EU Trade Demands on Names of Meat Products," April 4, 2014.

[152] CCFN, Our Mission, http://www.commonfoodnames.com/the-issue/our-mission/.

[153] AOPA, What We Stand For, http://www.aop-us.org/what-we-stand-for.html.

sound science, cost benefit analysis, risk assessment, or other objective evidence; (3) establish consultative mechanisms and seek commitments to improve regulatory practices and coherence; (4) seek greater openness, transparency, and convergence of standards development process and enhance global cooperation on standards; and (5) promote regulatory compatibility through harmonization, equivalence, or mutual recognition of different regulations and standards, as well as encouraging the use of international and interoperable standards.[154]

On the EU side, the European Parliament's mandate for the T-TIP negotiations contains similar objectives:

> to ensure that the regulatory cooperation chapter promotes a transparent, effective, pro-competitive environment through the identification and prevention of potential future non-tariff barriers to trade ... to include cross-cutting disciplines on regulatory coherence and transparency for the development and implementation of efficient, cost-effective, and more compatible regulations for goods and services....[155]

Potential economic gains from greater regulatory cooperation and compatibility could be significant for certain sectors (see **text box**). The HLWG report acknowledged that a major portion of the benefits received from any potential U.S.-EU trade agreement would be realized through reducing costs in the regulatory arena.[156] Estimates of these potential gains vary. A December 2009 study for the European Commission that weighed only the benefits of regulatory liberalization, estimated that if even 50% of U.S.-EU regulatory differences and other nontariff measures were aligned, the EU GDP could gain as much as 0.7% in 2018 (the time horizon of the study), representing an annual potential gain of $158 billion per year to the EU economy. The study estimated that U.S. gains would be slightly more modest, at 0.3%, or about $53 billion annually.[157]

At the same time, many stakeholders are skeptical about whether a comprehensive agreement on regulatory issues can be reached in the T-TIP. The United States and EU have had well-established channels and fora for exchanging views on these issues for some time. However, their long-standing differences in regulatory approaches, relating in part to divergent public preferences and values, have been stumbling blocks in previous transatlantic regulatory talks. According to some observers, all of the easier issues have already been resolved, and what are left to negotiate are the more difficult ones.[158] However, supporters assert that breakthroughs may be possible in the context of a politically important FTA deal.

A fundamental concern for both sides is to provide well-regulated market economies that provide a high level of consumer safety and welfare, maintain financial stability, and manifest concern for

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[154] P.L. 114-26, Sec. 102(b)(7).

[155] European Parliament, *Resolution Containing the European Parliament's Recommendations to the European Commission on Negotiations for the Transatlantic Trade and Investment Parliament*, adopted February 24, 2014.

[156] HLWG Final Report, p. 3.

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

[158] Remarks at Global Business Dialogue event, "Fresh Start: A Post-Election Review of Global Trade," November 16, 2012.

the environment.[159] However, many economists assert that differing EU and U.S. approaches to regulation are a significant cause of reduced overall consumer welfare. For example, many multinational corporations cite different, and often duplicative, regulations on each side of the Atlantic as significant barriers to trade, due to the increased costs involved in modifying products to meet the different requirements of each regulatory regime.[160]

Selected Sectors of Interest

Chemicals: On June 1, 2007, the EU adopted the Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) regulation. In the development stages, U.S. officials objected to the increased costs and timelines for testing chemicals for EU export. The United States also highlighted differences between REACH and the U.S. Toxic Substances Control Act (TSCA, 15 U.S.C. 2601-2692) and other U.S. standards, as well as possible WTO inconsistencies. EU firms have also mentioned differences in U.S. testing, classification, and labeling of chemicals as matters of concern. While regulators have asserted that mutual recognition or harmonization is **not** feasible, they are reportedly cooperating in prioritizing chemicals for assessment and on assessment methodologies; and in promoting alignment in classification and labeling of chemicals.

Pharmaceuticals: EU-U.S. regulatory cooperation in this area has been established in some ways by the multilateral International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). U.S. pharmaceutical companies assert that transatlantic testing protocols, submission of clinical data, and certification of good manufacturing practices vary considerably. Moreover, public health policy is governed by EU member states, and each member state has its own protocols for testing and marketing. This can make getting authorization to market pharmaceuticals in the EU or even in a few EU countries very expensive. Many in U.S. industry call for the T-TIP to address U.S.-EU regulatory differences and duplicative requirements, such as in testing, that can impede efficiency in global drug development. EU pharmaceutical firms have mentioned the U.S. Food and Drug Administration approval process (which they assert lasts longer for foreign firms than for U.S. firms), multiple complex U.S. technical regulations for consumer and environmental protection, and differences in scientific research methods and proof of their acceptance as issues with importing products into the U.S. market. Negotiators and regulators have reportedly discussed assessing each other's Good Manufacturing Practices (GMP); cooperating on biosimilarity generics, finalizing ICH requirements, and exchange of confidential information between regulators.

Automobiles: Even though similar cars are sold in both markets, there are different transatlantic standards and testing requirements for many auto parts, including wiper blades, headlights, light beams, and seat belts. According to one U.S. trade association, a U.S.-based producer of light trucks found that a popular U.S. model the manufacturer wanted to sell in Europe required 100 unique parts, an additional $42 million in design and development costs, incremental testing of 33 vehicle systems, and 133 additional people to develop. EU manufacturers face similar issues in reverse when considering selling an EU-designed model in the United States. The United States is reportedly searching for possibilities for recognizing equivalence of regulatory approaches, which the U.S. auto industry supports, and developing a harmonization process to facilitate adopting new regulations, and cooperating on automobile safety research.

Note: For a more comprehensive list of industry sectors being discussed in regulatory negotiations, see **Table 2** (based on European Commission public information).

Sources: Elfriede Bierbrauer, *The Transatlantic Trade and Investment Partnership (TTIP): The Sluggish State of Negotiations*, European Parliament, Directorate General For External Policies, DG EXPO/B/PolDep/Note/2015_285, October 2015. CRS Report RS22673, *Chemical Regulation in the European Union (EU): Registration, Evaluation, and Authorization of Chemicals*, by Jerry H. Yen. Klaus Berend, Chemicals in TTIP – What is Under Discussion? What Will it Mean for REACH? European Commission, June 19, 2015; EC, *EU Position Paper: Proposed Methodology for Automotive Regulatory Equivalence.,* released January 7, 2015.

As mentioned above, some U.S. and EU regulatory differences relate to divergent public preferences and values. For example, many European consumers prefer "naturally produced" foods, while American consumers tend to be more accepting of products made by alternative

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

[160] Ibid.

forms of agricultural production (e.g., GMO foods).[161] In addition, the United States and the EU also operate two different systems of risk management. In the United States, regulators tend to work cooperatively with industry—which leads them to engage in science-based, cost-benefit analysis, and be supportive of technological innovation. Farmers, industry, and many U.S. government officials favor this approach. In the EU, regulators support a more precautionary principle which often leads to more stringent risk regulation.[162]

When addressing regulations for existing products, industry representatives have proposed several methods, including: (1) promoting transparency in the development and implementation of regulations and regulatory practices; (2) providing for public stakeholder consultations when assessing the impact of regulatory changes; (3) reducing costs associated with unnecessary regulatory differences by working to eliminate them; and (4) seeking regulatory cooperation mechanisms to foster exchange of information and to develop joint standards for new products where appropriate.[163] Proposed T-TIP language aims for regulatory cooperation in issues such as duplication in procedures, inconsistent product requirements, and double testing. Negotiators also are reportedly working on a set of shared "good regulatory practices," including informing counterparts early on in the process of any regulatory measure being developed which might have an impact on trade.[164]

U.S. and EU negotiators, regulators, and industry representatives reportedly have been actively involved in regulatory cooperation, and possibly enhanced convergence, in nine key sectors: automobiles, chemicals, pharmaceuticals, medical devices, cosmetics, textiles, information technology (ICT), engineering, and pesticides.[165] Discussions relating to these sector-specific matters are reportedly advancing at different speeds, depending on the area of cooperation.[166]

Negotiators also are discussing "horizontal regulatory issues," or the legislative/regulatory systems that each side uses to ensure that proposed regulations undergo detailed impact assessments, and are instituted with transparency, due process, and stakeholder input.[167] A particular challenge is finding ways for regulators to cooperate bilaterally, especially when crafting regulations and standards for new products (e.g., electric cars and nanotechnology).[168]

Standards Development

U.S. officials have expressed concern that the EU's methodology and institutional strategy regarding the development of regulatory standards, and its efforts to encourage governments around the world to adopt its approach, continues to represent a "strategic challenge" to the

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

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

[163] USTR, *U.S. Objectives, U.S. Benefits in the Transatlantic Trade and Investment Partnership: A Detailed View*, March 2014, https://ustr.gov/ttip. European Commission.

[164] Elfriede Bierbrauer, *The Transatlantic Trade and Investment Partnership (TTIP): The Sluggish State of Negotiations*, European Parliament, Directorate General For External Policies, DG EXPO/B/PolDep/Note/2015_285, October 2015.

[165] European Commission, *Report of the Ninth Round of Negotiations for the Transatlantic Trade and Investment Partnership*, April 2015.

[166] Bierbrauer, October 2015.

[167] Richard Parker and Alberto Alemanno, *Towards Effective Regulatory Cooperation under TTIP: A Comparative Overview of the EU and US Legislative and Regulatory Systems*, May 13, 2014, paper written under contract for the European Commission.

[168] Bierbrauer, October 2015.

United States.[169] The EU approach, as cited in a 2007 European Commission strategy paper, recommended that the EU "promote greater global regulatory convergence," by favoring the "adoption of European standards internationally through international organizations and bilateral agreements."[170]

One of the ways that the EU promotes European standards is through "New Approach Directives," that define "essential requirements related to health, safety, and environmental issues." EU standards bodies[171] harmonize these standards by ensuring that new standards developed meet the "essential requirements" of the Directives.[172] The EU promotes these standards internationally through: (1) its relationships with the EU international standards bodies; and (2) requiring the adoption of EU standards as a condition of providing assistance to, or affiliation with, other countries.[173]

These practices are of concern to U.S. stakeholders, who assert that U.S. entities are unable to directly participate or vote in the deliberative processes of EU standards-creating organizations, and are also limited in their ability to influence or comment on them. In addition, while other standards—for example, those endorsed by the American National Standards Institute (ANSI)—may be used to meet EU essential requirements, U.S. exporters report that the costs and uncertainty associated with demonstrating that alternative standards fulfill EU requirements can be prohibitive. Thus, U.S. producers assert that they feel compelled to use relevant EU standards when making products for the EU market.[174] In addition, the international promotion of EU standards could harm U.S. producers in other country markets in which the EU also has ties.

U.S. administering agencies, in contrast, are subject to considerable public input when proposing regulations and standards, in large part due to the requirements of the U.S. Administrative Procedures Act (APA),[175] the Freedom of Information Act (FOIA),[176] and the Government in the Sunshine Act; and many other laws, executive orders and bulletins that ensure that public input, transparency, and due process remain part of the regulatory process. Federal agencies must publish proposed rules and public comments, as well as the supporting justification and analysis for any promulgated final regulations.[177] In addition, more standards development is private sector-driven, and private U.S. standards organizations, such as Underwriters Laboratories (UL) and American National Standards Institute (ANSI) also provide opportunities for all interested parties to participate in the standards development process.[178]

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[169] USTR, *2014 Technical Barriers to Trade (TBT) Report*, March 2012, p. 48

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

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

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

[173] Ibid.

[174] Ibid., p. 44.

[175] 5 U.S.C. §551, *et seq.* CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey.

[176] 5 U.S.C. §552 et seq. See CRS Report R41933, *The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues*, by Wendy Ginsberg.

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

[178] Underwriters Laboratories, http://www.ul.com; and American National Standards Institute, http://www.ansi.org.

Approaches to Transatlantic Regulatory Cooperation

Traditional forms of transatlantic regulatory cooperation have included "horizontal" information exchanges/dialogues between regulators, Mutual Recognition Agreements (MRAs), and harmonization of regulatory standards. U.S. and EU regulators have been actively engaged in these information exchanges since 1998, when the *Transatlantic Economic Partnership* (TEP) action plan called for both sides to identify and implement general government guidelines for effective regulatory cooperation.[179] These efforts were reinforced during annual U.S.-EU summits beginning in 2004 with the first *Roadmap for EU-U.S. Regulatory Cooperation and Transparency,* and in a *Common Understanding on Regulatory Principles and Best Practices* in June 2011.[180] Arguably, EU-U.S. discussions are also strengthened by mutual participation in international regulatory fora on specific sectors, including the International Medical Devices Regulators Forum (IMDRF).[181]

Since 2005, U.S. and EU senior officials have also engaged in High-Level Regulatory Cooperation Forums designed to build effective mechanisms to promote better quality regulations and minimize regulatory divergences.[182] The Transatlantic Economic Council (TEC), established in 2007, also actively engages in regulatory cooperation.[183] These groups have made substantial progress in some former areas of contention; for example, signing a mutual recognition decision on U.S. and EU "trusted trader" programs, and advancing transatlantic collaboration on testing methods for electric vehicles and nanotechnology.[184] However, many in the business community hold that more intensive transatlantic regulator-to-regulator cooperation efforts are needed to remove the regulatory barriers that stand in the way of expanding transatlantic trade, investment, and incomes.[185]

Mutual Recognition Arrangements (MRAs) are a stronger form of cooperation in which regulators agree to accept products or services from another jurisdiction under specified conditions, so that actors complying with the regulations in one jurisdiction will be considered to be in compliance with the rules in another jurisdiction. MRAs operate using "tested once" criteria, where product testing conducted in one market is considered to have been tested in both markets. In 1998, a transatlantic MRA was completed on testing and certification requirements for certain sectors, including telecommunications equipment, recreational craft, and medical devices.[186] In 2011, the two sides concluded a transatlantic MRA on safety certification for civil aircraft (see **text box**). Regulators and negotiators state that MRA negotiations are extremely

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

[180] Ibid.

[181] International Medical Device Regulators Forum website, http://www.imdrf.org.

[182] See archived CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn.

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

[184] U.S. Department of State, "Transatlantic Economic Council (TEC) Facilitators Report to Stakeholders," press release, April 12, 2013, http://www.state.gov/p/eur/rls/or/2013/210510.htm.

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

[186] Ibid.

time-consuming, and that leadership and guidance from policymakers are essential to the process.[187]

The strongest form of regulatory cooperation involves harmonization of standards or rules applied across jurisdictions. U.S. and EU negotiators appear to be most interested in seeking greater compatibility of standards for new and future technologies, such as electric cars and nanotechnology. At the conclusion of the 11th T-TIP negotiating round, Assistant USTR Dan Mullaney reported that the nine sector negotiating teams had continued intensive discussions in their respective groups, and that U.S. negotiators had introduced textual proposals on regulatory coherence and technical barriers to trade. Chief EU negotiator Ignacio Bercero praised the progress made on regulatory compatibility and cooperation in the individual negotiating teams.[188]

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

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

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

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

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

Investment

The United States and EU (as a whole) have among the most open, business-friendly investment environments in the world, which have helped to facilitate high levels of transatlantic investment.[189] Broadly speaking, the two sides share similar investment policy goals, seeking to reduce restrictions on foreign investment and protect investor rights, while balancing other policy interests.

The United States negotiates investment commitments in FTAs on the basis of a U.S. "Model Bilateral Investment Treaty" ("Model BIT"). In addition to specific market access commitments, U.S. investment agreements typically include substantive protections for investors and investments enforceable by investor-state dispute settlement (ISDS) (see **text box**).

[187] Discussions with European Commission officials.

[188] U.S. Trade Representative, *Remarks by U.S. and EU Chief Negotiators from the Miami Round of T-TIP Negotiations*, October 23, 2015.

[189] For background, see CRS Report R43052, *U.S. International Investment Agreements: Issues for Congress*, by Shayerah Ilias Akhtar and Martin A. Weiss; and CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar.

On the EU side, the negotiation of investment treaties—a competence previously shared by the European Commission and member states—is now the exclusive competence of the commission under its Common Commercial Policy through the Lisbon Treaty, which entered into force on December 1, 2009.[190] The EU-Canada Comprehensive Economic and Trade Agreement (CETA), concluded in October 2013, is the first occasion for EU-wide rules on investment as part of a broad trade agreement. CETA includes investment rules on fair, equitable, and nondiscriminatory treatment; expropriation, including "indirect" expropriation; and ISDS on a post-establishment basis.[191] However, the EU approach, particularly on ISDS, is evolving (see next section), and there are differences in views and approaches in other areas as well.

Substantive Protections Common to U.S. Investment Agreements

Market access **for investments.**

Non-discriminatory treatment of foreign investors and investments compared to domestic investors and investments (national treatment) and to those of another country (most-favored-nation treatment) for the full life-cycle of an investment (from its establishment or acquisition, through its management, operation and expansion, to its disposition).

Minimum standard of treatment (MST) in accordance with customary international law, including fair and equitable treatment and full protection and security.

Prompt, adequate, and effective ***compensation for expropriation,*** both direct and indirect, recognizing that, except in rare circumstances, non-discriminatory regulation is not an indirect expropriation.

Timely ***transfer of funds*** into and out of the host country without delay using a market rate of exchange.

Limits on ***performance requirements*** that, for example, condition approval of an investment on using local content.

Investor-State Dispute Settlement (ISDS) for binding international arbitration of private investors' claims against host country governments for violation of investment obligations, along with requirements for transparency of ISDS proceedings.

Exceptions for national security and prudential interests, among others.

According to the HLWG final report, the goal of transatlantic investment negotiations should include "investment liberalization and protection provisions based on the highest levels of liberalization and highest standards of protection that both sides have negotiated to date."[192] The United States and EU also could use transatlantic investment commitments secured through T-TIP to shape global investment rules.

In the absence of a comprehensive multilateral agreement on investment rules, transatlantic investment flows are governed by an "incomplete" network of bilateral investment treaties (BITs). The United States has over 40 BITs in force worldwide, including nine with EU members (Bulgaria, Croatia, the Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania, and Slovakia); and two with EU candidates (Turkey and Albania).[193] EU member states have around 1,300 active BITs with non-EU countries.[194] At the same time, no BIT exists between the United

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[190] European Commission, "EU takes key step to provide legal certainty for investors outside Europe," press release, December 12, 2012; Official Journal of the EU, *Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries*, December 12, 2012, pp. L 351/40-46.

[191] Government of Canada, *Technical Summary of Final Negotiated Outcomes: Canada-European Union Comprehensive Economic and Trade Agreement,* Agreement in Principle.

[192] Ibid.

[193] Trade Compliance Center, "Bilateral Investment Treaties Currently in Force," http://tcc.export.gov/.

[194] United Nations Conference on Trade and Development (UNCTAD), "Investor-State Dispute Settlement: An Information Note on the United States and the European Union," June 2014, http://unctad.org/en/PublicationsLibrary/webdiaepcb2014d4_en.pdf.

States and the EU (as a whole), though the two partners have established several mechanisms over the years to negotiate on investment issues.[195]

Investor-State Dispute Settlement (ISDS)

A major area of debate in T-TIP is treatment of ISDS and the investor protections which ISDS aims to protect.[196] The investor community argues that ISDS is critical for protecting investments in foreign markets, while some civil society groups contend that it can have a "chilling effect" [197]on government regulatory measures for the public interest. Other contested issues include the transparency of ISDS proceedings, rules for arbitral qualifications and conduct, and the coherence of outcomes of ISDS cases. Given the already strong overall levels of U.S. and EU investor protections, some question T-TIP's need for ISDS. Others argue that such commitments would allow for common investor protections across the U.S.-EU relationship and have precedential value for future trade negotiations.[198]

The European Commission's T-TIP negotiating mandate from its member states includes ISDS. Yet, several EU countries, such as Germany and France, have pushed to exclude ISDS from the negotiations, in part based on concerns that ISDS would infringe on sovereign regulatory ability. Other EU members favor the inclusion of ISDS in T-TIP.[199] A flashpoint in EU public debates has been certain high-profile ISDS cases, such as the investment treaty claim filed by Vattenfall, a Swedish energy company, against Germany after the latter initiated a phase-out of its nuclear power program. Other investment debates also have shaped the T-TIP debate, notably the ISDS claim brought in 2011 by a Philip Morris subsidiary under the Australia-Hong Kong BIT challenging Australia's plain packaging requirement for tobacco as an uncompensated expropriation and a violation of MST obligations. In December 2015, a tribunal ruled that it lacked jurisdiction to consider the claim.[200] Attention may now shift to TransCanada's notice in January 2016 of its intent to challenge the Administration's Keystone XL pipeline decision under NAFTA Chapter 11's ISDS mechanism.

In November 2015, the European Commission released its official initial proposal on investment in T-TIP. The proposal calls for creating a new public Investment Court System, including a standing body of judges to hear disputes and a standing appellate body, to replace the current ISDS model.[201] The proposal is intended to address concerns raised by the Parliament and civil society about the traditional ISDS model, for example, with respect to its fairness, impartiality, and transparency. The release of the Investment Court System proposal followed, among other

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

[196]CRS Report R44015, *International Investment Agreements (IIAs): Frequently Asked Questions*, coordinated by Martin A. Weiss; and CRS Report R43988, *Issues in International Trade: A Legal Overview of Investor-State Dispute Settlement*, by Brandon J. Murrill and Daniel T. Shedd.

[197] For example, see Glyn Moody, "Corporate Sovereignty's Chilling Effect," *Techdirt*, November 25, 2015.

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

[199] Letter to Cecilia Malmström, Then-Commissioner-designate for Trade, European Commission, jointly from 14 EU Member States, October 21, 2014.

[200] In December 2015, the Permanent Court of Arbitration in Singapore, in a unanimous decision, declined jurisdiction to hear the merits of Philip Morris' claim against Australia. See "Philip Morris Loses Latest Case Against Australia Cigarette-Pack Laws," *The Wall Street Journal*, December 18, 2015.

[201] U.S. trade negotiating objectives have included seeking to provide an appellate body or similar mechanism to provide coherence to interpretations of investment provisions in trade agreements.

things, the European Parliament's July 2015 non-binding T-TIP resolution, which called for replacing ISDS with a new system to resolve investor-state disputes.[202]

U.S. government officials have expressed skepticism the proposal, favoring ISDS to protect investors while balancing other public policy interests.[203] Businesses argue that the proposal will erode investor protections. For example, the U.S. Chamber of Commerce contends that it would narrow the scope of investment protections.[204] Civil society groups say it does not resolve their concerns with the current ISDS system.[205] The 12th round of T-TIP negotiations marked the beginning of U.S.-EU discussions on the EU's Investment Court System proposal.[206]

The United States may closely monitor how the EU employs the Investment Court System proposal in its other trade negotiations. For example, the EU-Vietnam free trade agreement, published on February 1, 2016, includes the main provisions of the Investment Court System proposed by the EU.[207] More recently, on February 29, 2016, the European Commission announced that the EU and Canada had agreed to include the main elements of the EU's new approach on investment in the finalized CETA text.[208]

Other Investment Issues

Other investment issues that could also be of interest in T-TIP including the following.

- **Nondiscriminatory Treatment:** Through T-TIP, the United States and EU may seek to liberalize additional sectors for investment which currently are not subject to national treatment or MFN treatment. Although the United States is generally open to investment, foreign companies face U.S. restrictions on ownership in certain sectors such as aviation, communications, government contracting, maritime, mining, and natural resources—the underlying rationale often being to protect national security.[209] The EU imposes restrictions on certain foreign investments, and individual member states sometimes maintain more stringent policies and practices, such as subjecting foreign investments to additional licensing requirements for approval in certain sectors.[210] Other issues

[202] European Parliament, "TTIP: ease access to US market, protect EU standards, reform dispute settlement," press release, August 8, 2015.

[203] Krista Hughes and Philip Blenkinsop, "U.S. Wary of EU Proposal for Investment Court in Trade Pact," Reuters, October 29, 2015.

[204] Peter Chase and Sean Heather, "Investment Protection: If It Ain't Broke, Why "Fix" It?", U.S. Chamber of Commerce, October 1, 2015.

[205] Ibid; and Jorge Valero, "Commission proposes public court to settle investment disputes," *EurActiv*, September 17, 2015.

[206] European Commission, "Statement by the EU Chief Negotiator Ignancio García Bercero Following the Conclusion of the 12th TTIP Negotiation Round."

[207] European Commission, "EU-Vietnam Free Trade Agreement Now Available Online," press release, February 1, 2016.

[208] European Commission, "CETA: EU and Canada Agree on New Approach on Investment in Trade Agreements," press release, February 29, 2016.

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

[210] USTR, *2015 National Trade Estimate Report on Foreign Trade Barriers*, March 2015, p. 142. USTR has expressed concerns about investment restrictions in certain EU member states for certain economic sectors, such as air transport, banking and insurance, broadcasting, development and exploitation of natural resources, and mining.

include entry conditions for investors—i.e., conditions under which foreign investors can establish a business in another country.[211] Questions also may arise about issues related to maintaining an open investment environment while allowing for safeguards to protect other interests, such as national security and prudential exception provisions in investment agreements.

- **Expropriation:** Customary international law permits governments to expropriate (or take) private property under certain conditions. "Direct" expropriation occurs when an investment is nationalized or otherwise directly taken through formal transfer of title outright seizure. "Indirect" expropriation occurs when a government action, such as a regulatory decision, has the equivalent effect of direct expropriation without formal transfer of title or outright seizure. U.S. and European BITs generally provide foreign investors with prompt, adequate, and effective compensation for expropriation. However, there are debates about what constitutes indirect expropriation, to what extent compensation is required, and its coverage under ISDS. Such debates raise questions about the appropriate balance between protecting the rights of investors and the right of national governments to regulate in the public interest.
- **Free Capital Transfers:** The United States and EU seek the free flow of payments and investment-related capital movements, but one area of potential divergence is the extent to which investment rules should include safeguard provisions for capital controls. The international financial crisis that began in 2008 raised questions about the importance of allowing states to use capital controls to help prevent or mitigate financial difficulties, such as balance of payments problems. While supporters say that such flexibility is needed to avoid destabilizing financial situations, others argue that capital account liberalization promotes economic growth and that capital controls lead to inefficiencies.

Intellectual Property Rights (IPR)

The protection and enforcement of IPR are key trade negotiating objectives for the United States and EU, due to the importance of IPR to innovation, economic growth, and competitiveness, and the potentially negative commercial, health and safety, and security consequences associated with counterfeiting and piracy.[212] The United States and EU subscribe to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), and generally seek "TRIPS-plus" provisions in their FTA negotiations. However, the HLWG's findings suggest that it may be difficult for the United States and EU to reconcile differences on the IPR obligations that each side typically includes in its FTAs. The final report recommended that "both sides explore opportunities to address a limited number of significant IPR issues of interest to either side, without prejudice to the outcome."[213]

Some stakeholders question whether an IPR chapter is needed in T-TIP, arguing that it could open up the negotiations to controversial issues that could stall their progress. Debates could emerge

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

[212] For background, see CRS In Focus IF10033, *Intellectual Property Rights (IPR) and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson; and CRS In Focus IF10033, *Intellectual Property Rights (IPR) and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

[213] HLWG Final Report.

about the appropriate balance between IPR protection and enforcement with other public policy goals, such as access to medicines in poor or developing countries and the free flow of information. Others argue that IPR commitments secured in T-TIP are critical to providing the United States and EU leverage for addressing IPR issues in third countries and multilaterally. In addition, certain sectors, such as the pharmaceutical brand name sector, contend that there are opportunities for greater enhancements of the EU's IPR regime through T-TIP. Moreover, the U.S. government remains concerned about the adequacy and effectiveness of IPR practices in specific EU member states.[214]

What follows is a discussion of certain possible IPR issues in the T-TIP negotiations.

Geographical Indications

Geographical indications (GIs) are geographical names that act to protect the quality and reputation of a distinctive product originating in a certain region; the benefit does not accrue to a sole producer, but rather to the producers of a region.[215] GIs, generally negotiated as part of IPR chapters in U.S. FTAs, also are a prominent agriculture issue (see above).

Under the WTO TRIPS Agreement, the United States and EU have committed to providing a minimum standard of protection for GIs (i.e., protecting GI products to avoid misleading the public and to prevent unfair competition) and an "enhanced level of protection" to wines and spirits that carry a geographical indication, subject to certain exceptions.[216] Beyond this, the U.S. and EU approaches to protecting GIs differ noticeably: the U.S. IPR system tends to protect GIs through trademark law, while EU IPR systems tend to offer more specific protections for GIs.[217] Because of their commercial value, the protection of GIs is a major priority for the EU. However, terms that the EU recognizes as GIs often are considered to be generic versions of trademarks in the United States.[218] From the U.S. perspective, the EU approach raises national treatment concerns and adversely affects trademarks and widely accepted generic terms for food products.[219]

Differences in U.S. and EU approaches to GIs are evident in their trade policies and indicative of potential positions on the issue in the T-TIP. For example, while the U.S. FTA with South Korea protects geographical products through trademark law, the EU FTA with South Korea provides for specific GI protections, establishes a GI register for agricultural products, foodstuffs, and wines; specifically designates certain EU and South Korean products to be given GI protection,

[214] The USTR's Special 301 "watch list" for 2014—which is used to identify countries whose IPR policies and practices warrant U.S. concern—included EU member states Bulgaria, Greece, and Romania, as well as EU candidate country Turkey. U.S. concerns included high levels of Internet piracy and lack of adequate IPR enforcement. See USTR, *2014 Special 301 Report*.

[215] Examples of GIs include Parmesan cheese and Parma ham from the Parma region of Italy, Champagne from the region of the same name in France, and Irish whiskey.

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

[217] U.S. Patent and Trademark Office, *Geographical Indication Protection in the United States*; and Alfred Radauer et al., *Transatlantic IPR Collaboration*, June 29, 2009, p. 58.

[218] For instance, in the United States, "feta" is considered the generic name for a type of cheese, though it is protected as a GI in Europe.

[219] USTR, *2014 National Trade Estimate Report on Foreign Trade Barriers*, March 31, 2014, p. 111.

and provides for additional enforcement measures related to GIs.[220] Other examples include the Canada-EU Comprehensive Economic and Trade Agreement (CETA, concluded in October 2013), under which Canada agreed to recognize GIs, for instance, on certain cheeses that are generally viewed as common food names in the United States. This has led to concern on the part of some Members of Congress and U.S. companies about U.S. market access in Canada.

The proposed TPP, on the other hand, includes a number of measures that, from the U.S. perspective, are intended to address the risk of inappropriately or excessively protecting GIs in ways constrain market access for U.S. agricultural and food producers. These include provisions related to administrative procedures, guidelines for determining whether a term is generic in its market, grounds for opposing or canceling GIs, and safeguards for owners of trademarks already in existence. TPP further requires certain transparency and other measures with respect to GIs that TPP parties recognize or protect through international agreements (under specified conditions and subject to exceptions).[221]

U.S.-EU differences on GIs also are apparent in multilateral venues. In the WTO, debate continues about establishing a multilateral system for notifying and registering GIs for wines and spirits, as well as extending the higher level of GI protection given to wines and spirits to other products. In WIPO, the United States opposed the adoption of the Geneva Act in May 2015, which expanded the WIPO Lisbon Agreement for the Protection of Appellations of Origins and their International Registration to also include GIs.[222] Seven EU member states are members of the Lisbon Agreement; the EU as a whole currently is not, but it is possible that it could join the Agreement.[223]

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

Copyright Protection

The United States and EU have sought strong copyright standards in past FTAs. For example, their respective FTAs with South Korea provide an additional 20 years of copyright protection after the death of the author, beyond the minimum 50 years required under the TRIPS Agreement. They also include IPR protections related to the digital environment, including anti-circumvention provisions that prohibit altering technologies intended to prevent piracy and unauthorized distribution over the Internet. More recently, the proposed TPP increases copyright terms to life plus 70 years with phase-in periods for countries currently providing life plus 50 years of protection.

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[220] *EU-South Korea Free Trade Agreement: A Quick Reading Guide*, October 2010, p. 8, http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145203.pdf; and Jeffery J. Schott and Cathleen Cimino, *Crafting a Transatlantic Trade and Investment Partnership: What Can Be Done*, Peterson Institute for International Economics, Policy Brief Number PB13-8, March 2013.

[221] The United States concluded side letters to TPP with several countries (Chile, Malaysia, Mexico, and Vietnam) confirming the understanding that each Party's government "will act in good faith and in a manner not contrary to the objects and purposes of Article 18.36, which relates to the protection or recognition of geographical indications under international agreements."

[222] "U.S. Statement on the Adoption of the Geneva Act of the Lisbon Agreement," May 20, 2015.

[223] Permanent Delegation of the European Union to the UN Office and other international organisations in Geneva, "Q&A with the EU on the Benefits of Amending the Lisbon Agreement," May 5, 2015.

U.S. and EU differences could emerge on the liability of Internet Service Providers (ISPs) for infringing content over their networks—a reportedly contentious issue during the ACTA negotiations. Many IPR-based industries argue that increasing ISP involvement in IPR enforcement is critical to combating online piracy. However, critics contend that requiring ISPs to filter communication places undue burdens on them. Some civil liberties groups have expressed concern about what they perceive as a low threshold for terminating consumers' Internet access; they assert that proof of online piracy, not allegations, should be the requirement for termination of Internet accounts.[224] Treatment of copyright enforcement in TPP may inform the T-TIP negotiations. TPP, among other things, extends copyright enforcement commitments to the digital environment, provides "safe harbors" for ISPs, and adopts U.S.-style "notice and takedown" provisions to address ISP liability (though allowing certain existing alternative systems for specific countries).

A long-standing debate in copyright protection and enforcement is the balance between granting copyright holders exclusive rights to control their works and providing certain limitations on that right for "fair use" (e.g., criticism, comment, news reporting, teaching, scholarship, and research). Such questions have emerged in T-TIP. Of interest may be that the proposed TPP would be the first U.S. FTA to include language encouraging countries to achieve an appropriate balance between users and rights holders in copyright systems (i.e., "fair use" in the United States).

Patents

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

- **Patent term extensions:** The United States and EU, in their trade agreements with other countries, generally have provided for patent term extensions to compensate for regulatory delays in the granting of patent approval, beyond the TRIPS Agreement obligation of patent protection terms of twenty years from the filing date. In contrast to the EU, the United States also offers patent term extensions based on delays in the patent examination process. The length of time for extensions can differ as well. For example, although both the U.S. and EU FTAs with South Korea provide for patent term extensions, the EU FTA restricts the extension to a maximum of five years, while the U.S. FTA does not place any such limits. The TPP includes mandatory patent term extensions.
- **Protection of "test" data:** Both partners provide for the protection of data submitted to obtain marketing authorization for pharmaceutical products, such as "test" data demonstrating the safety and efficacy of the products. Data exclusively for biologics (i.e., medical preparations derived from living organisms, but generally not considered distinct from traditional pharmaceuticals in U.S. intellectual property law) may be a particularly contested in T-TIP. In the TPP negotiations, the United States sought a 12-year data exclusivity provision for biologic products, as enshrined in U.S. law.[225] The concluded TPP, however,

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

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

provides countries with a choice of an eight-year data exclusivity period for biologics or, alternatively, at least five years with possible additional measures that could "deliver a comparable market outcome." For new drugs since 2005, the EU has a maximum 11 year period of protection—an eight-year data exclusivity period and a ten-year period of marketing exclusivity, with an additional one year of marketing exclusivity possible for new therapeutic indications (often referred to as an "8+2+1" formula).[226]

- **Patent linkage:** Patent linkage is the process whereby regulatory approval for the marketing of a generic drug is tied with the patent status of its brand name counterpart. Under U.S. law, government regulators must check to see whether a new drug would violate an existing patent before granting marketing approval (except in the case of biologics). The United States has negotiated mandatory patent linkage provisions in many of its FTAs, and optional patent linkage provisions in others. The proposed TPP gives parties an option of employing a system to provide notice to a patent holder when a generic version of its product has been submitted for regulatory approval while a patent is in force and to provide procedures for resolving disputes about the validity or infringement of the patent, among other things. In contrast, the European Commission allows for marketing authorizations for medicinal products for human use, stating that these authorization procedures can be carried out without affecting the protection of industrial and commercial property interests (i.e., removing patent linkage). The authorization holder of a generic drug is not allowed to place a product on the market before the patent on the reference product has expired.[227] Patent linkage practices vary across EU member states vary.

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

Additionally, the debate over access to medicines encompasses other issues beyond pharmaceutical patent protections. The U.S. pharmaceutical industry, for example, has raised concerns about market access and government pricing and reimbursement systems in a number of European countries. Concerns identified regarding certain EU countries include government cost-containment measure, situations where U.S. companies must accept price reductions to compete with generic pharmaceuticals, delays in reimbursements for products, and non-transparent pricing and reimbursement policies.[228] Such concerns may raise questions about governments' regulatory

(...continued)

Stat. 119).

[226] Article 10(4) of 2001/83/EC Directive and Regulation (EC) No 726/2004.

[227] Europa, "Pharmaceuticals: Commission calls on Italy to comply with EU rules on marketing authorisation of generic drugs," press release, January 26, 2012.

[228] USTR, *2014 National Trade Estimate Report on Foreign Trade Barriers*, March 31, 2014, p. 106.

interests and policy goals to provide incentives for innovation while encouraging access to medicines. Further, a range of social, economic, and political factors can also affect public health.

Trade Secrets

Trade secrets have emerged as an active area of discussions in IPR as well as in other areas of the T-TIP negotiations. A trade secret is any type of valuable information, including a "formula, pattern, compilation, program device, method, technique, or process," that derives independent economic value from not being generally known or readily ascertainable and is subject to reasonable efforts by the owner to maintain its secrecy.[229]

The TRIPS Agreement provides that member states shall protect "undisclosed information" against unauthorized use, specifically, requiring members to allow for persons to "have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices" so long as the information is secret, has commercial value because it is secret, and has been subject to reasonable steps to keep its secrecy (Article 39). Trade secrets, though not expressly mentioned in TRIPS, are considered "undisclosed information."

The United States and some EU member states protect against the theft of trade secrets, and seek to strengthen such protections through trade policy discussions. Both the United States and EU express concern about trends suggesting increased instances of trade secret misappropriation internationally, due in part to increased cybercrime. The USTR has highlighted China as of major concern as a growing source of trade secret theft.[230] The increased use of technology, combined with requirements that data be stored locally ("localization," see discussion below), have contributed to trade secret theft. U.S. and European companies that are involved in global value chains may face greater vulnerability to trade secret theft, as their business models often require them to share sensitive and valuable trade secrets overseas. U.S. and European companies face millions of dollars in damages from the loss of trade secrets and potential threats to their competitiveness.[231]

The Obama Administration's strategy on mitigating the theft of U.S. trade secrets, released in February 2013, includes seeking, in U.S. trade negotiations, new criminal remedy provisions for trade secret theft—similar to remedies provided in U.S. law.[232] For example, the proposed TPP requires parties to establish criminal procedures and penalties for trade secret theft, including through cyber theft. U.S. and EU business groups jointly have called for specific provisions in the T-TIP on trade secrets.[233] Trade secrets protections in T-TIP could be a prototype to heighten standards internationally.

The United States and EU also could seek to address forced technology transfer requirements related to trade secrets in certain countries. For example, the "indigenous innovation" policies of

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[229] Uniform Trade Secrets Act, §1(4).

[230] USTR, *2013 Special 301 Report*, May 2013, p. 13.

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

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

[233] Letter from Jay Timmons, President and CEO, National Association of Manufacturers, Tim Bennett, Director General, Transatlantic Business Council, and Markus Beyrer, Director General, Business Europe, to Honorable Karel de Gucht, Member of the European Commission, and Honorable Michael Froman, United States Trade Representative, October 23, 2013.

certain countries, such as China and India, may require the transfer of technology as a condition for allowing access to a market or for a company to continue to do business in the market.

Trade Facilitation

Trade facilitation[234] is the simplification or harmonization of import and export procedures, including collecting, presenting, and processing the data necessary for the movement of goods across borders. Addressing trade facilitation issues can expand trade generally and support global supply chains specifically, including by removing unnecessary "red tape" and costs to trade and improving the predictability and efficiency of supply chains. An example of potential benefits to U.S. businesses is provided by UPS, which estimates that "an ambitious and successful T-TIP, which moves beyond tariff barriers to encompass a broad range of nontariff, regulatory and supply chain barriers to trade" could boost the company's trade volume by 131 million packages and support 24,000 jobs over 10 years.[235]

Trade facilitation is a priority issue that the United States and EU are pursuing on multiple fronts. In the WTO, the two sides negotiated the December 2013 WTO multilateral Trade Facilitation Agreement that will go into effect once two-thirds of the WTO membership has formally accepted the Agreement.[236] The United States and EU also are each seeking binding disciplines in other FTA negotiations, such as TPP. In addition, the United States, EU, and other members of the World Customs Organization (WCO) are encouraging the use of electronic systems to expedite the clearance of merchandise entries and to ensure effective customs controls. U.S. officials are leading international efforts to implement WCO-developed best practices, such as "single window" data systems so that importers can enter data, and multiple cross-border regulatory agencies can use the "window" to clear merchandise entries, as well as transportation carriers, equipment, and workers.[237]

Development of a single window was also the subject of Executive Order 13659, "Streamlining the Export Import Process for America's Businesses." The Executive Order required the completion of the International Trade Data System (ITDS), which was intended to become the "single window," by December 31, 2016.[238] The Trade Facilitation and Trade Enforcement Act of 2015 (H.R. 644), signed by the President on February 24, 2016, requires the Commissioner of Customs to report to Congress no later than December 31, 2016, on the implementation of CBP automated programs, incorporation of all core trade processing capabilities, components that have not been implemented, and additional components needed to realize the full implementation and operation of the program. A further update must be reported by September 30, 2017.

U.S. officials voice long-standing concern with the EU's treatment of imports. Customs agencies in each EU member state are responsible for customs responsibilities, including proper classification, valuation, and tariff collection.[239] Thus, even though there are uniform EU customs laws and a common tariff, there is no assurance for U.S. exporters that those laws will be

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[234] For more information on trade facilitation, see CRS Report R43014, *U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security*, by Vivian C. Jones and Lisa Seghetti.

[235] UPS, "UPS Commends United States and the European Union on the Launch of Transatlantic Trade Talks," press release, June 17, 2013.

[236] See CRS In Focus IF10002, *The World Trade Organization*, by Ian F. Fergusson and Rachel F. Fefer. See also https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm.

[237] World Customs Organization, http://www.wcoomd.org.

[238] 79 *Federal Register* 10657, February 19, 2014.

[239] USTR, *National Trade Estimate Report on Foreign Trade Barriers*, March 2013.

interpreted or administered in a consistent manner across member states. Although some discrepancies may be referred to the EU Customs Code Committee (an entity consisting of member state representatives and chaired by a European Commission representative to assist in reconciling differences), success in resolving them has been limited. Legal issues involving customs laws are handled through individual courts in each member state. U.S. officials have raised these concerns numerous times, including through WTO dispute settlement.[240]

EU officials mention potential implementation of U.S. laws requiring "100% scanning" of maritime cargo containers as possibly injurious to EU exports. This U.S. legislation seeks to reduce potential terrorist threats to maritime shipments by pre-scanning containers prior to arrival in U.S. ports.[241] U.S. shippers have also expressed concern about implementation of the law.[242]

Labor and the Environment

The United States and EU maintain high levels of protection for workers and the environment in their domestic economies.[243] As such, U.S. labor and environmental concerns associated with prior FTA negotiations do not appear to be as pronounced for T-TIP.[244] Nevertheless, several U.S. and EU non-governmental organizations, including those representing labor and environmental interests, have expressed concern that a potential T-TIP with "regulatory harmonization" provisions could facilitate deregulation that is harmful to certain consumer protections, worker rights, environmental regulations, and other areas of public interest.[245] At the same time, certain civil society groups may consider the negotiations as an opportunity to harmonize U.S. and EU protections for labor and the environment.

Recent U.S. FTAs, including TPP, contain labor and environmental commitments that are enforceable under FTA dispute settlement procedures.[246] In contrast, the EU tends to take a more consultative approach to resolve differences.[247] The HLWG's final report recommends that the two sides "explore opportunities to address these important issues [labor and the environment], taking into account work done in the Sustainable Development Chapter of EU trade agreements and the Environmental and Labor Chapters of U.S. trade agreements."

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

[241] Implementation of this U.S. law has been delayed until 2016. See CRS Report R43014, *U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security*, by Vivian C. Jones and Lisa Seghetti.

[242] Mark Szakonyi, "Shippers Fail to Kill Overseas Container Scanning Plan," *Journal of Commerce*, June 6, 2012.

[243] For background, see CRS In Focus IF10046, *Worker Rights Provisions in Free Trade Agreements (FTAs)*, by Mary Jane Bolle and Ian F. Fergusson.

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

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

[246] The "May 10th Agreement" was agreed to by a bipartisan group of congressional leaders and the Bush Administration on May 10, 2007. Based on its principles, labor and environmental provisions are fully enforceable under U.S. FTAs with Colombia, Peru, Panama, and South Korea.

[247] CRS In Focus IF10046, *Worker Rights Provisions in Free Trade Agreements (FTAs)*, by Mary Jane Bolle and Ian F. Fergusson; CRS In Focus IF10166, *Environmental Provisions in Free Trade Agreements (FTAs)*, by Richard K. Lattanzio and Ian F. Fergusson; and CRS Report R41534, *The EU-South Korea Free Trade Agreement and Its Implications for the United States*, by William H. Cooper et al.

Localization Barriers to Trade

Localization barriers to trade function as a type of nontariff barrier to market access. "Forced" localization measures generally refer to those designed to protect, favor, or stimulate domestic industries, service providers, or intellectual property at the expense of imported goods, services, or foreign-owned or foreign-developed intellectual property. Localization barriers can take a number of forms, such as requirements for: service providers to process data in the foreign country as a condition of market access; businesses to transfer technology and intellectual property as a condition of approval of foreign investments; or firms to use local content as a condition for manufacturing or for government procurement. According to the USTR, these measures can distort trade, inhibit FDI, and lead other countries to follow suit.[248]

Certain localization barriers have been addressed in previous multilateral trade negotiations. For instance, the WTO Agreement on Trade-Related Investment Measures (TRIMs) prohibits "local content" requirements imposed in a discriminatory manner with respect to foreign investment.[249] Other localization barriers, particularly with respect to the digital environment, are considered to be newer trade issues. The proposed TPP prohibits countries from blocking cross-border data flows, including prohibiting forced localization of data centers. It provides some exceptions to these prohibitions in limited circumstances, and notably does not extend protections against forced localization to financial services—the latter being a major point of debate in potential congressional consideration of TPP.

In terms of T-TIP, the HLWG's final report recommends that the two partners seek to reach bilateral agreement on globally relevant rules, principles, or modes of cooperation related to localization barriers to trade. For the United States, a key issue in T-TIP is addressing EU localization barriers to trade. According to a USITC survey, U.S. firms identified the EU as the second leading location where they experience localization barriers that limited their ability to conduct business online—second after China for large U.S. firms and second after Canada for small- and medium-sized enterprises.[250] Certain EU member countries mandate or encourage local content. For example, they require companies to store or maintain data on local servers. Other examples include audiovisual quotas by certain EU member states that cap the number of foreign films that can enter the market or the percent of time that radio or television states play foreign content.[251] The EU's 2007 Audiovisual Media Services Directive[252] encourages production of and access to European works. However, the EU's future regulation of audiovisual content is unclear.[253] U.S. companies are concerned that the disclosure of NSA surveillance activity could lead to European demands for restrictions on cross-border data flows and possible localization barriers, for example, requiring that servers be located in the EU for data privacy reasons. Potential U.S.-EU commitments on localization barriers to trade could set the stage for addressing such issues with respect to China and other emerging economies in the future. Of joint

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[248] USTR, *2014 National Trade Estimate Report on Foreign Trade Barriers*, March 31, 2014, p. 2.

[249] As defined by USTR, "local content" requirements are requirements to purchase domestically-manufactured goods or domestically-supplied services.

[250] ITC, *Digital Trade in the U.S. and Global Economies, Part 2*, Publication Number 4485, Investigation Number 332-540, August 2014, p. 83.

[251] ITC, *Digital Trade in the U.S. and Global Economies, Part 1*, Investigation No. 332-531, USTIC Publication 4415, July 2013, p. 5-6.

[252] Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007, OJ L 332/27, December 18, 2007.

[253] ITC, *Digital Trade in the U.S. and Global Economies, Part 1*, Investigation No. 332-531, USTIC Publication 4415, July 2013, p. 5-6.

U.S. and EU concern are localization barriers to trade and indigenous innovation policies in China and other emerging economies.[254]

Energy and Raw Materials

The EU has called for a specific T-TIP energy chapter to develop trade and investment rules that facilitate access to energy and raw materials and diversify energy supplies in a nondiscriminatory, transparent, competitive, and sustainable manner.[255] The EU has an interest in access to U.S. crude oil and natural gas. Increased tension with Russia has elevated energy diversification as an EU priority, given the dependence of some EU countries on oil and gas from Russia. From the EU perspective, T-TIP rules on energy and raw materials could serve as a model for future negotiations on these issues with other countries.

The United States reportedly has not reached a conclusion on "whether energy and raw materials specific provisions or a chapter is necessary."[256] With respect to energy, the typical U.S. approach is to grant a national interest presumption for U.S. liquefied natural gas (LNG) exports to U.S. FTA trading partners.[257] Specifically, exports of LNG are presumptively considered "in the public interest" for U.S. FTA partners, and applications for U.S. LNG exports to FTA partners receive expedited processing.[258] In Congress, there was debate over allowing greater expedited processing for LNG exports and lifting restrictions on exports of domestically produced crude oil, given declining oil prices and growth in U.S. energy production. The FY2016 Consolidated Appropriations Act lifts the restriction on U.S. crude oil exports (Sec. 101, P.L. 114-113). How this development may affect the dynamics of the T-TIP negotiations remains to be seen.

State-Owned Enterprises (SOEs)

The United States and EU seek to address competitive challenges associated with the rise of SOEs and state-supported enterprises (SSEs) in the global economy. SOEs are businesses in which the government has significant control, through full, majority, or significant minority ownership. Governments often provide SOEs with specific privileges, such as subsidies, preferential financing, preferential access to government procurement, trade protection, and other immunities, that may not be available to nondomestic counterparts in the private sector.[259] This presents concerns over potential anti-competitive behavior related to SOEs and discriminatory treatment of U.S. and European private counterparts operating in foreign countries.

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

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[254] Ibid.

[255] European Commission, *Factsheet on Energy and Raw Materials*.

[256] Adam Behsudi, "Official: Next four months critical for TTIP completion," *Politico*, October 23, 2015.

[257] CRS Report R42074, *U.S. Natural Gas Exports: New Opportunities, Uncertain Outcomes*, by Michael Ratner et al.

[258] For background, see CRS Report R42074, *U.S. Natural Gas Exports: New Opportunities, Uncertain Outcomes*, by Michael Ratner et al.

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

by state influence in relation to commercial enterprises... and work to coordinate their approaches to address these challenges."[260]

International disciplines on SOEs are limited. The United States has sought to address the potential unfair competitive element of SOEs through FTAs. For instance, several U.S. FTAs contain provisions related to national treatment, nondiscrimination, and transparency provisions, while maintaining the right of countries to establish and maintain SOEs. The TPP contains more comprehensive disciplines to ensure that SOEs operate on commercial terms.[261] In addition, the 2012 U.S. Model Bilateral Investment Treaty clarifies that investment obligations apply to SOEs.[262] In the T-TIP negotiations, debate about SOEs provisions likely would include consideration of the wider applicability of such provisions to third countries.

Small- and Medium-Sized Enterprises (SMEs)

In 2012, SMEs accounted for the majority of all firms involved in U.S. international trade, but a significantly smaller share of U.S. exports and import value. SMEs also participate in trade indirectly as suppliers of intermediate goods and services in supply chains for final products that are traded. The EU is an important trading partner for U.S. SMEs. U.S. SMEs accounted for, by *number* of firms, nearly 70% of all U.S. firms exporting to and importing from the EU, and by, *value*, more than one-fifth of U.S. exports to and imports from the EU.[263]

Although they hold significant exporting potential, SMEs may face greater challenges than larger firms in accessing information about foreign markets, connecting with potential overseas buyers, and securing export financing. U.S. SMEs report a range of barriers to the EU market, including standards-related measures and "difficulties involving trade secrets, patenting costs, and logistical challenges, especially involving customs requirements, Harmonized System classification, and the EU's value-added tax system," as well as industry-specific barriers.[264] The United States and EU have cooperated to increase participation of U.S. and EU small businesses in the transatlantic market, including through efforts to reduce transatlantic regulatory and other barriers to trade, increase access to trade financing and trade promotion activities, improve information on standards, and address IPR issues.[265]

[260] "Statement of the European Union and the United States on Shared Principles for International Investment," April 2012; and OECD, *Competitive Neutrality: Maintaining a Level Playing Field Between Public and Private Business,* August 30, 2012.

[261] CRS Insight IN10443, *CRS Products on TPP*, by Ian F. Fergusson and Brock R. Williams.

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

[263] CRS analysis based on data from U.S. Census Bureau, *A Profile of U.S. Importing and Exporting Companies, 2012 – 2013*, April 7, 2015. Using Census data, the number of companies and value of exports/imports are calculated based on "known values" (portion of U.S. total exports that could be matched to specific companies) and number of identified exporters. SME shares reflect companies with less than 500 employees. They exclude identified exporters with an unknown number of employees.

[264] ITC, *Trade Barriers that U.S. Small and Medium-Sized Enterprises Perceived as Affecting Exports to the European Union*, Investigation No. 332-541, Public 4455, March 2014.

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

SMEs have been a long-running focus of U.S. export assistance efforts, as well as an increasing focus of U.S. trade policy more generally. For instance, the TPP released text includes a specific chapter focused on enhancing SMEs' ability to take advantage of trading opportunities through the trade agreement.[266] In terms of T-TIP, the HWLG's final report recommended that the two sides seek to reach bilateral agreement on globally relevant rules, principles, or modes of cooperation related to SMEs.

Dispute Settlement

U.S. and EU trade agreements with other countries generally include provisions for resolving government-to-government disputes stemming from their commitments under the agreements. Likewise, any final T-TIP will likely include government-to-government dispute settlement provisions, separate from any investor-state dispute settlement mechanism that may also be included. Through T-TIP, the United States seeks to "establish fair, transparent, timely, and effective procedures to settle disputes on matters arising under a trade and investment agreement with the EU, including through early identification and settlement of disputes through consultation."[267]

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

Issues for Congress

Negotiating a Comprehensive and High-Standard Agreement

The T-TIP negotiations present Congress with the issue of whether the United States and the EU will be able to conclude a final agreement that is "comprehensive and high standard." Such an outcome depends on a number of factors. The United States and the EU, like all economies, have offensive and defensive interests. These include recognition that some sectors are import-sensitive, which may constrain the level of ambition in the T-TIP negotiations. Both sides also have identified certain issues that they prefer not to address through trade agreement negotiations, such as financial services regulations on the U.S. side and audiovisual cultural exceptions on the EU side. The ability to negotiate a "comprehensive and high standard" T-TIP also depends on the political momentum for the negotiations. Some stakeholders have expressed concern that the negotiations have not advanced as quickly as hoped and that political momentum and public support for T-TIP has waned. Others argue the 2015 grant of TPA and the conclusion of the TPP negotiations inject new momentum into the T-TIP negotiations. Still others contend that U.S. policymakers' focus on T-TIP may lessen, at least temporarily, as Congress considers TPP and its potential implementing legislation.

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[266] CRS Insight IN10443, *CRS Products on TPP*, by Ian F. Fergusson and Brock R. Williams.

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

U.S. Economic Implications

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

An issue confronting policymakers is the difficulties in estimating the effects of a potential T-TIP. While estimates on the potential benefits and costs of trade agreements may help to inform trade policy debates, it can be highly complex and challenging to estimate such economic effects. Economic analyses can be constrained by a lack of data and other theoretical and practical issues associated with econometric analyses. In addition, estimates of economic effects of FTAs are often imprecise and highly sensitive to the assumptions that are used. Moreover, a range of factors beyond trade policy can affect U.S. economic performance, including global economic growth and exchange rates.[268]

U.S. Trade Policy Implications

The T-TIP negotiations raise a number of questions about U.S. trade policy. Among the more prominent questions that Congress could examine as part of oversight include the following.

- ***How may T-TIP address U.S. trade negotiating objectives?*** A potential T-TIP agreement could be eligible to receive expedited legislative consideration under the June 2015 grant of Trade Promotion Authority (TPA, P.L. 114-26) if it is concluded while TPA is in effect and if Congress determines that the Administration has advanced the TPA negotiating objectives and met various notification and consultation requirements. Of likely interest to Congress is to what extent T-TIP may address U.S. trade negotiating objectives. These may include newer "21st century" objectives added to TPA, such as on cyber theft, localization barriers to trade, and SOEs.
- ***What is T-TIP's relationship to other U.S. and EU trade agreements and negotiations?*** Congress may examine how U.S. and EU trade agreements and negotiations with other countries affect T-TIP. Areas of inquiry may include how the proposed TPP, the EU-Canada Comprehensive Economic and Trade Agreement (CETA), and plurilateral negotiations such as on the potential Trade in Services Agreement (TiSA) affect T-TIP, including in terms of negotiating positions and dynamics.
- ***What is T-TIP's potential impact on the multilateral trading system?*** Analysts debate how T-TIP may affect the multilateral trading system. Supporters assert that U.S.-EU consensus in T-TIP could provide momentum for resolving long-standing issues in the WTO and advancing new trade rules and disciplines that could be incorporated multilaterally. They also assert that T-TIP's competitive

[268] See CRS In Focus IF10161, *International Trade Agreements and Job Estimates*, by James K. Jackson.

pressures on countries not a part of the negotiations may provide further impetus for trade liberalization. Critics say that T-TIP may undermine multilateral trade liberalization by shifting focus and resources away from multilateral efforts in favor of regional and bilateral negotiations, and weakening the legitimacy of the WTO. T-TIP's impact may evolve as the United States and other WTO members consider the future role of the WTO.

Stakeholder Transparency of the Negotiations

Congress may consider the balance between, on one hand, ensuring confidentiality to engage effectively on issues in T-TIP and, on the other hand, allowing for sufficient transparency for meaningful stakeholder input. As is its practice, the U.S. government has not released publicly any proposed or consolidated texts in the T-TIP negotiations. In general, the Administration tends to use existing FTAs as the starting point for future negotiations. Thus, KORUS and TPP could offer general insight into U.S. initial positions and approaches in T-TIP negotiations. With respect to the specific proposals in negotiations, the USTR's position has been that that confidentiality enables negotiators to communicate with each other more effectively. At the same time, congressional consultation and public engagement are a part of the U.S. trade policy process. Among other things, the USTR shares negotiating texts with Members of Congress and cleared advisors, meets with the public during negotiating rounds, holds public hearings and posts T-TIP resources such as issue-by-issue discussions on its website, among other things.[269] Nevertheless, some observers express distrust of T-TIP negotiations because they say that trade officials have released general statements without any real detail with regard to specific negotiating positions.[270] Debate over transparency has grown in light of the European Commission's initiative to publish some initial EU proposals for the T-TIP, noting that the "actual text in the final agreement will be a result of negotiations" between both sides.[271] While some have welcomed this initiative, calls continue from some stakeholders for increased transparency, such as through the publication of consolidated negotiating texts as available.[272]

Potential Future T-TIP Membership

Congress may consider whether the potential T-TIP should be expanded to include other countries. Currently, the U.S. position is that the T-TIP negotiations are already complex, and including additional trading partners may further complicate the negotiations and prospects for concluding it at the envisioned level of ambition. Congress could examine the implications of other countries joining (or not joining) the T-TIP, including the impact on T-TIP's economic and broader strategic value.

Countries may pursue T-TIP membership for a variety of reasons, including to: gain preferential access to U.S. and EU large market, reduce competitive pressures on their economies due to any trade diversion caused by T-TIP, pursue market-oriented reforms, enhance their leverage in other

[269] See USTR web page on T-TIP, https://ustr.gov/ttip; and USTR, *2015 Trade Policy Agenda*, p. 46.

[270] Glyn Moody, "European Commission Announces Major Transparency Initiative for TAFTA/TTIP," *Techdirt*, January 8, 2015.

[271] European Commission, "European Commission publishes TTIP legal texts as part of transparency initiative," press release, January 7, 2015; and European Commission, "Now online – EU negotiating texts in TTIP."

[272] See for example, Letter from Ed Mierzwinski, U.S. Co-Chair of Transatlantic Consumer Dialogue, and Monique Goyens, EU Co-Chair of Transatlantic Consumer Dialogue, to Ambassador Michael Froman, United States Trade Representative, and Commissioner Cecilia, Malmström, European Commission, January 30, 2015.

trade negotiations, and take advantage of T-TIP's broader strategic value. To date, certain countries have shown interest in joining T-TIP. For example, Turkey (an official candidate for EU membership), has expressed in interest in participating in the T-TIP discussions. Under the current rules of the Customs Union that Turkey has with the EU, countries with which the EU has signed FTAs have access to Turkey's market without having to reciprocate (e.g., the United States, if T-TIP is concluded). In order to gain market access to those countries, Turkey must negotiate its own FTAs with them. Turkey also has raised the possibility of parallel FTA negotiations with the United States.[273] Other countries that may wish to join the T-TIP negotiations include Canada and Mexico. Mexican officials, in particular, have shown interest in joining T-TIP.[274] Both Canada and Mexico may be well-positioned to join in any potential T-TIP expansion; Canada and Mexico are a part of NAFTA and the proposed TPP, and the EU has a bilateral FTA in force with Mexico and EU-Canada Comprehensive Economic and Trade Agreement (CETA) is pending entry into force.

Broader Strategic Implications

Congress may examine T-TIP's potential strategic implications for the transatlantic relationship and how to weigh these implications against other considerations. Many in Congress have long supported close U.S.-European political and economic ties, and view cooperation with the EU as supporting and advancing U.S. interests. Both sides of the Atlantic share common values, and face a broad set of common economic and strategic challenges. Despite concerns from some stakeholders that the transatlantic relationship is less important to the United States than it was during the Cold War, the United States and EU cooperate closely on an increasingly wide range of foreign policy, international security, and economic issues.[275] A T-TIP agreement could provide a framework to potentially enhance the largest trading and investment relationship in the world. On the other hand, setbacks to the negotiations could raise questions about the strength of the transatlantic relationship.

Looking Forward

The T-TIP negotiations continue to evolve. Policy debates surrounding the more politically sensitive issues in T-TIP, as well as the economic and broader strategic implications of T-TIP, will likely continue to intensify. Congressional oversight of the T-TIP negotiations may be shaped by the broader U.S. trade agenda, which includes possible consideration of implementing legislation for TPP and oversight of other ongoing U.S. international trade agreements and negotiations.

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

[274] For example, see Carl Meacham, *The Trans-Atlantic Trade and Investment Partnership: Mexico Wants In—Why Not?*, Center for Strategic & International Studies, July 25, 2013.

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

Appendix. United States and EU: Average Bound and Applied Tariff Rate Comparison by Product Group, 2015

Product Groups	United States Tariffs		European Union Tariffs	
	Bound	Applied	Bound	Applied
Animal products	2.3	2.2	20.4	17.7
Dairy products	16.6	17.2	45.3	42.1
Fruit, vegetables, plants	4.9	4.7	10.4	10.9
Coffee, tea	3.3	3.3	6.1	6.1
Cereals and preparations	3.5	30	19.4	14.9
Oilseeds, fats, and oils	4.4	7.3	6.8	6.8
Sugars and confectionery	12.3	11.7	25.6	25.2
Beverages and tobacco	14.8	18.6	20.8	20.7
Cotton	4.8	48	0.0	0.0
Other agricultural products	1.1	1.0	3.5	4.3
Fish and fish products	1.0	0.8	11.0	12.0
Minerals and metals	1.7	1.8	2.0	2.0
Petroleum	7.	1.3	2.0	2.5
Chemicals	2.8	2.8	4.6	4.6
Wood, paper, etc.	0.5	0.5	0.9	0.9
Textiles	8.0	7.9	6.5	6.5
Clothing	11.6	12.0	11.5	11.4
Leather, footwear, etc.	3.9	3.8	4.2	4.1
Non-electrical machinery	1.2	1.2	1.7	1.9
Electrical machinery	1.7	1.7	2.4	2.8
Transport equipment	30	3.1	4.1	4.3
Manufactures, not otherwise specified	23	2.5	2.5	2.6

Source: World Trade Organization Tariff Download Facility.

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

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