



# Just the (T)TIP of the iceberg?

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**T**he on-going Transatlantic Trade and Investment Partnership (TTIP) negotiations have faced an unprecedented level of civic interest, becoming subject to heated public debates. Media and civil society organisations are in a state between support and protest. A supporting stance is evoked by the prospects for jobs and economic growth that are expected from a successfully concluded deal, whilst the threat of lowering standards - fomented by infamous reports of chlorine-washed chickens flooding European markets - is met with strong opposition from consumers.

Given existing US-EU trade convergence, why has the TTIP elicited such a debate? Aside from the economic size of the two partners, it is about the nature of the TTIP, which is more an all-encompassing regulatory agreement, rather than a classical trade deal. Taking a closer look at its structure, we could break it down into three parts:

- The first part is a classical market access approach whereby, in line with other free trade agreements, it encompasses tariffs and public procurement.
- The second part comprises the regulatory component, which seeks to harmonise certain industrial and product norms. TTIP opponents argue against this, as they call it, 'deregulation' or 'uniformisation' of standards, while its supporters claim that the existence of different rule sets constitute the real barrier to trade, especially for SMEs.
- The third part concerns basic agreements on rules, such as labour, the environment, and investment. It can thus be perceived as a basic agreement to prevent dumping, and at the same time: an attempt to establish an ambitious template introducing such rules at international level. The difficulties in assessing the real economic impact underlying TTIP results from the complex nature of the agreement, which is anything but a standard bilateral trade deal.

What lies beneath these headlines? Is the information available just the (T)TIP of the iceberg and anti-TTIP demonstrations seizing European capitals merely an expression of citizens' fear of the unknown?

To understand this, the TTIP debate needs to be de-dramatised. The concerns voiced are diverse. Some opponents of the agreement see dangers to democracy emanating from the planned establishment of an Investor-State Dispute Mechanism, others fear the import of shale gas and its environmental impact as well as the unwanted introduction of GMOs, while another group of protesters focuses on a wide scope of health issues.

The variety of doubts reflects the complexity of the agreement and leads us to the main issue: transparency.

## Behind closed doors

The EU negotiating team insists that the TTIP negotiations are the most transparent trade talks in the history of the Union and that it is due to their unfortunate start in June 2013, which coincided with the NSA scandal, that the level of suspicion is so high. If that is the case, taking into consideration the level and complexity of the agreement already debated, the European Commission should further develop the steps already taken in the area of transparency and citizens' involvement, by strengthening civil dialogue and conducting open consultations at every stage of the negotiation talks.

The Commission should build upon the momentum that was generated by the Council's decision to make the negotiating mandate public on 9 October 2014, especially after missing the opportunity to enter into the dialogue with citizens, when they voiced their concerns via the self-organised European Citizens' Initiative (ECI) against TTIP and the Comprehensive Economic and Trade Agreement (CETA) with Canada. The ECI 'Stop TTIP' was declared inadmissible by the Commission for legal reasons, but gained considerable support among the public. Even if the Commission acted correctly in the legal sense, it indeed lost a significant possibility to engage into a dialogue with the stakeholders.

If the Commission is truly committed to transparency on TTIP, it must now grant broader access to the negotiating documents. Regular publication of texts should include more detailed information on the content of the TTIP, as current information is predominantly based on leaked, rather than officially released documents. Only a few Members of the European Parliament and members of the TTIP Advisory group currently have access to this content - accessed via the medieval practice of reading rooms.

Moreover, the selected group of TTIP readers cannot disclose the substance of what has been studied. To fully exercise its watchdog's role and supervise the process of recognising concerns and incorporating relevant amendments, the European Parliament must be granted full access to the negotiation texts.

Also, as voiced by the members of the TTIP Advisory group, the reading room practice does not allow all members to have equal access to its content, disqualifying those not based in Brussels. Hence they call for digital access as well as the establishment of additional specialised advisory committees in each of the relevant Commission's Directorates, which could be directly asked for expertise.

The Commission defends the reading room practice by providing an American example and stating that it cannot grant more access than the negotiating counterpart. As for the latter suggestion, the solution is still being considered, but it is constantly mentioned that it would be necessary to take confidentiality requirements into account. The European Ombudsman was sufficiently alarmed by the growing negative reactions following the closure of the 7<sup>th</sup> round of negotiations in Washington DC, to open a public consultation on the transparency of the TTIP-negotiations - the official outcome of which is expected to be published in early 2015.

Given the wave of protests, Commission representatives claim that TTIP has revived the anti-globalization movement, which is leading a fear campaign against free trade. In response, the Commission organises stakeholders' meetings after every single negotiation round. The Commission recognises the trust problem in European institutions, as every debate on substance leads to the distrust argument. From the negotiators' perspective, NGOs do not engage with the Commission by asking for meetings – that is to say they do not go to the decision-makers and give substantive positions and opinions - but they mobilise the public instead.

At the same time, the Directorate General for Trade openly admits that the Commission is not used to liaising with the public and still has a lot of room for improvement in this field. Indeed, negotiation teams need to take into consideration the concerns that repeatedly arise in debates amongst non-governmental organisations, civil society organisations, consumer groups and labour organisations, and to ensure that they are well represented at the negotiation table. Concurrently, we are drawn to the core of the communication problem: the Commission is not a pan-European communicator. This gap could be filled by encouraging national governments to better engage in the TTIP communications, which should go way beyond the big European capitals.

The negotiations should not fail for the wrong reason, which is the transparency dispute. Yet, without achieving a satisfactory level of communication with stakeholders, the level of trust needed to successfully back the deal will not be achieved.

### TTIP legacy and a brand new approach

The call for general transparency and enhanced communications was backed by the new Commission President Juncker, who stated that the new College of Commissioners is going to be more 'media-friendly', when officially taking office on 1 November. During the hearing of the (then) Trade Commissioner designate, Cecilia Malmström, the European Parliament received assurances that efforts would be made to improve transparency and access to negotiating documents, as well as communication with the European Parliament, national parliaments, and, first and foremost: the European citizens. The increasing role of trade for Europe's jobs and growth was emphasised, "Trade [...] clearly shows the added value of Europe working together".



The two main challenges Malmström undoubtedly has to face, inheriting De Gucht's legacy, are the burning issues of transparency and investment protection provisions. A number of suggestions for a new approach have already been made at the last meeting of the TTIP Advisory Group. These include: more positive engagement with civil society and citizens in general, as well as greater access to documents; pro-active engagement in the public debate by presenting the benefits of TTIP, rather than only tackling the myths which can come across as defensive; and scrapping the reading room in favour of a secure electronic system for use by the advisory group, similar to that used in the US for cleared advisors.

In sum these provisions would ensure greater access to documents for all Members of the European Parliament. One positive step taken by the new Commission was Cecilia Malmström's announcement of measures in the framework of a broader transparency initiative coordinated by the first vice-president of the Commission, Frans Timmermans.

Responding to the very controversial issue of including the Investor-State Dispute Settlement (ISDS) in the TTIP during her Parliamentary hearing, Malmström answered diplomatically, "[W]hether ISDS will stay in TTIP, I don't know, it is too early to say". We need to bear in mind that the S&D Group openly stated its lack of support for the TTIP if it includes ISDS provisions, whilst the Greens have voiced their general opposition to the deal.

The new Commissioner's remarks on the possibility of designing "a new system that addressed all people's concerns", maintaining an open tone and offering room to manoeuvre, were praised by Bernd Lange, Chair of the International Trade Committee at the European Parliament. Recalling that there are thousands of investment treaties already functioning, with EU corporations involved in over 60% of ISDS cases world-wide, we need to think carefully about the entire system. No discussions on investment protection or investor-to-state dispute settlement were included in the last negotiation round on 29 September – 3 October 2014, which focussed on the technical regulatory issues covering roughly all products.

### American TTIP story

Another widely debated issue revolves around standards and consumer protection. In this particular context it is interesting to take a look at the 'more relaxed' American perspective. US civil

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society organisations are briefed on a regular basis - following each respective negotiation round, there are advisory committees which are provided access to the texts via reading rooms, and regular meetings with a plethora of stakeholders chaired by Ambassador Michael Froman.

During his speech delivered in Rome on 14 October 2014, the US Chief Negotiator strongly addressed the issue of standard lowering, continuously raised by the European actors, *“Americans don’t want lower standards. Europeans don’t want lower standards. We won’t negotiate that kind of agreement. And our legislatures wouldn’t approve such a thing. And the only reason we are negotiating this agreement is because we believe that, on balance, we share a similar commitment to strong levels of health, safety and environmental protection – even if our regulators get to the answer through somewhat different approaches.”* The US thus shows a high level of political commitment to TTIP and the understanding that separate systems will be maintained.

Stakeholders on both sides of the Atlantic need to understand that there is nothing like a ‘one size fits all’ regulation and focus instead on the differences that pose obstacles to trade, mainly for SMEs, as the negotiators claim. The US’ initial offer was based on the elimination of all tariffs, which is not an option for the political establishment in Europe. American negotiators remind their European counterparts of the mistakes made early on whereby the apparent secrecy of the trade talks led to ill-feeling and suspicion from citizens that has been allowed to grow, rather than being countered by policy makers. Once again, the communications’ problem appears to prevail. The American stakeholders state that the EU and the US have a chance to shape globalization through the TTIP. The alternative is to let ourselves be shaped by globalization.

### **Towards a transatlantic energy alliance**

Shadowed by exhausting energy talks with Russia and the Ukrainian crisis, many ask if TTIP can help to solve Europe’s energy-supply situation via US sourced fossil fuel exports. Commentators, such as *Forbes*, have said Ukraine needs an American-style shale gas revolution. The recent boom in unconventional energy supply from oil and gas on the other side of the Atlantic provoked many questions about its potential impact on the global energy markets, the security of energy supply, especially crucial in light of the on-going talks with Russia, as well as its environmental impact.

Within these debates the question of European energy security emerged: how and whether the old continent can develop its own resources and what the potential consequences of unconventional hydrocarbon production would be. The possible adverse environmental impact of such a switch has

to be taken into account. Europe’s 2020 climate and energy policy (which imposes strict carbon emission limitations: 20% reduction in comparison to 1990), rightly focuses on renewables and not fossil fuels. France, Bulgaria and the Czech Republic have banned fracking. Germany continues research without issuing any fracking permits. In the UK, it is permitted under strong regulations. Poland, due to the on-going energy concerns related to the situation on the Eastern border, remains one of the shale gas supporters. A leaked document on TTIP, published by *The Huffington Post* in May 2014, revealed the EU negotiation position ‘on raw materials and energy’. Article C of the document provides that no restrictions should apply to the ‘exports of energy goods’ between the transatlantic trade partners.

### **Transatlantic renaissance**

Institutional changes in Brussels and Washington will undoubtedly pose new challenges to the TTIP negotiations due to the on-going political transition on both sides of the Atlantic. However, a successful TTIP agreement could herald a ‘transatlantic renaissance’; still, it could only be achieved as a result of a multi-stakeholder dialogue, where the concerns of all interested parties are carefully examined and taken into consideration.

Concerns that should be further addressed in the stakeholders’ dialogue should not only tackle the issues outlined above, but also touch upon the impact of TTIP on EU partners. That is to say, candidate and potential candidate countries, states in the wider European Free Trade Area, as well as those EU member states that have been hardest hit by the economic crisis – themes which tend not to be widely discussed at the negotiation table. The Commission needs to improve the communications system, preferably through boosting the national channels and by involving European governments. As such information should not only be broadcast from within the European Bubble in Brussels, but should reach other audiences and stakeholders, and allow them to voice their concerns at the negotiation table. Such an approach would deliver a more effective deal that safeguards European citizens’ interests, and that would gain the support, rather than opposition of, civil society.

Only by embracing views from all parts of Europe and its citizens will the joint transatlantic TTIP venture be considered truly successful. The concept of stakeholders’ consultations need to be further explored and understood correctly to fully emphasise the importance of intensifying economic and political cooperation between the world’s two leading open and democratic market economies. The promise of boosting markets, flourishing trade and investment as well as increased wages should not overshadow the issue of regulatory convergence and cooperation being pursued openly and not leading to lower standards. It should serve the purpose of promoting fair competition and economic openness in the world economy and safeguard the environment, fundamental principles and rights at work.

This agreement is wanted and needed, but not at any cost – it should be a result of wide consultations, careful examination of concerns, and implementation of necessary amendments. The goal of the on-going negotiations should be to make TTIP a deal that truly intensifies cooperation among Western democracies and settles precedential trade standards in the globalized world. ■