BDI
The Voice of
German Industry

Transatlantic Trade and Investment Partnership (TTIP)

Myths, Facts, & Arguments

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Foreword

In June 2013, the European Union and the United States officially launched negotiations on a Transatlantic Trade and Investment Partnership (TTIP). The first round of negotiations took place in July 2013, and in February 2014 representatives from both parties met for a "stocktaking exercise" to review progress. The EU and the United States expect significant economic growth and increased employment from deeper and more comprehensive transatlantic integration. Yet in the past few months, the negotiations have drawn increasing criticism. Civil society groups warn that TTIP will lead to lower standards of consumer and environmental protection and will impose restrictions on the legislative sovereignty of the EU (including its member states) and the United States. They also claim that only large corporations will benefit from the trade agreement rather than the people, and that the risks posed by TTIP clearly outweigh the potential economic benefits.

Is there anything to this criticism? While the concerns of citizens must to be taken seriously, upon further examination of the mandate of the EU and the United States, the position papers of the negotiating partners, and the results of the negotiations to date, it becomes apparent that many of these worries are largely unfounded.

"TTIP will only benefit big business."

The fact is: *Not only large companies but also small and medium-sized enterprises (SMEs) and consumers would benefit from TTIP* – in fact, a comprehensive agreement will prove significantly more beneficial for SMEs than an agreement that just reduces tariffs. Considering that non-tariff barriers present the biggest hurdles to transatlantic trade it follows that the reduction of these NTBs could result in significant cost reductions, which would in turn translate into benefits for companies of all sizes and for consumers.

A "deep" agreement with streamlined regulations and standards would be especially advantageous for SMEs, because, unlike large companies, SMEs often cannot afford the administrative costs that come from complying with a vast array of regulations and standards. These fixed costs create barriers to market entry particularly for the smallest SMEs. For example, an electronics company reported that duplicative certification requirements cost them around $750.000 per year, which makes transatlantic trade much less profitable. A deep fryer manufacturer in Baden-Württemberg reported that before exporting a machine with a price tag of €10,000 to the United States, it first had to spend €2,000 on testing and approval. These added costs make it simply unprofitable to export specialized products like these to the United States.

According to the EU's negotiating mandate, TTIP should bring about greater transparency in competition law and public procurement. This, again, would benefit SMEs in particular as they usually do not have large legal departments at their disposal. Additionally, German SMEs are also highly innovative and invest extensively in research and development. This makes SMEs particularly vulnerable to violations of intellectual property rights and they would benefit from stronger IP protection, which is expected to be included in the agreement.

As far as customs and duties are concerned, simplified customs clearance processes and reduced tariffs would enable SMEs to substantially cut both export and import costs.[1] For example, a German food producer reported that its containers need to be inspected by four different U.S. agencies at market entry even though inspections have already been performed on the EU side. Since storage costs amount to $600-$700 per day per container, this creates considerable costs that are particularly burdensome for an SME. A German producer of welding equipment has hired a broker just to advise them on customs procedures when exporting to the United States, because the determination of tariffs and custom procedures are not transparent enough.[2] A German SME that produces bouncing castles for kids has decided to not even enter the U.S. market because costs for U.S. safety test are prohibitively high – even though the company's products have already been certified as safe in Germany.[3] Furthermore, having access to more open markets from the start would allow younger companies to reach a broader range of customers, especially if TTIP further facilitates digital commerce. The EU and United States are also planning to have a separate chapter on SMEs in the agreement specifically to further reduce the burden on these companies.[4] At the conclusion of the fourth round of negotiations, the EU's chief negotiator Ignacio Garcia-Bercero said:

> "Smaller firms employ the vast majority of people in both the EU and the US. They account for two out of every three private sector jobs in the EU. And they're the backbone of our economies, accounting for 99 percent of all businesses in the EU. TTIP would help them expand – generating jobs and growth on both sides of the Atlantic." [5]
>
> **Ignacio Garcia-Bercero, the EU's chief negotiator for TTIP**

Consumers also stand to profit from the agreement, with lower prices on the one hand and a greater selection of products on the other. This is not only because tariffs will be reduced, but also because standards and regulations will be streamlined wherever possible. According to a study by the Dutch institute Ecorys, the additional costs arising from having to duplicate product approval, testing, and conformity procedures when importing goods into the EU amount to an average mark up of 21.5 percent. Non-tariff barriers were found to increase product costs on average by about 35 percent in the cosmetics sector, 26 percent in the automotive sector, 19 percent in the textiles and clothing sector, and 57 percent in the food and beverages sector.[6] The German manufacturing industry estimates that costs for a German machine are increased by 15 to 20 percent due to redundant testing, certifications, and the production of components just for the U.S. market.[7] All of these costs could be significantly reduced for consumers through TTIP.[8]

According to estimates from the Centre for Economic Policy Research (CEPR), a comprehensive agreement would result in an extra €545 in disposable income each year for a family of four.[9] This effect will be realized in the long term, i.e. around ten years after the agreement enters into force. The figures from CEPR are based a scenario that eliminates 100 percent of all tariffs, 25 percent of all non-tariff barriers affecting goods and services, and 50 percent of all non-tariff barriers linked to public procurement. While it is difficult to forecast welfare gains for consumers with any preciseness, the study does show that disposable income would rise through TTIP.

TTIP will benefit all regions and occupational groups in Germany: A study by the Ifo Institute and the Bertelsmann Foundation shows that all German states can expect to see gains in exports to the United States. This study is based on a "deep liberalization" of trade, and uses the trade effects from existing trade agreements as a benchmark. According to the study, North Rhine-Westphalia, Baden-Württemberg, and Bavaria - the leading exporting states - would experience the largest employment gains. The positive employment effects in industrial production[10] are spread across all occupational groups. Medium-skilled workers (i.e. those with a school-leaving certificate and/or vocational training) in areas such as metal processing and chemical product manufacturing will see the largest gains, but additional jobs will also be created for low-skilled workers (those without a school-leaving certificate) in areas such as metal or tobacco processing.[11]

Another study by the Ifo Institute predicts that with this "deep liberalization", average real wages in Germany will rise by a good two percent in the long term compared with 2010 levels as German companies will export more to the United States. According to this logic, increased exports translate into increased production, resulting in higher demand for workers and thus higher wages as well. Incidentally, this would not just work to the advantage of employees, but it would also give the government more tax revenue.[12]

The actual size of the economic effects will ultimately depend on how ambitious and comprehensive the agreement is. One thing is certain: the broadening and deepening of trade and investment relations will create additional jobs at higher wages on both sides of the Atlantic, and enable companies to sell their products and services at lower prices.

1 European Commission, *Transatlantic Trade and Investment Partnership. The Opportunities for Small and Medium-Sized Enterprises*, March 2014, <http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_ 152266.pdf> (accessed on 19 March 2014).

2 "Auf Augenhöhe mit den Chlorhühnchen", in: *Wirtschaftswoche*, 26 May 2014, p. 24.

3 "Auf Augenhöhe mit den Chlorhühnchen", in: *Wirtschaftswoche*, 26 May 2014, p. 26.

4 European Commission, *EU-US Trade Negotiators Explore Ways to Help SMEs Take Advantage of TTIP, as Fourth Round of Talks Ends in Brussels*, press release, 14 March 2014, <http://europa.eu/rapid/press-release_IP-14-272_en.htm> (accessed on 22 April 2014).

5 European Commission, *EU-US Trade Negotiators Explore Ways to Help SMEs Take Advantage of TTIP, as Fourth Round of Talks Ends in Brussels*, press release, 14 March 2014, <http://europa.eu/rapid/press-release_IP-14-272_en.htm> (accessed on 22 April 2014).

6 Koen G. Berden et al. (Ecorys), *Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis*, 2009, pp. 23-24, <http:// trade.ec.europa.eu/doclib/docs/2009/december/tradoc_145613. pdf> (accessed on 25 February 2014); Klaus Günter Deutsch, Atlantic Unity in Global Competition — T-TIP in Perspective, DB Research, August 2013, p. 11, <http://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD0000000000318466/Atlantic+unity+in+global+competition%3A+T-TIP+in+perspective.PDF> (accessed on 25 February 2014).

7 "Freihandel auch mit Maschinen", in: *Frankfurter Allgemeine Zeitung*, 17 May 2014, p. 22.

8 European Commission, *In Focus: Transatlantic Trade and Investment Partnership: Questions and Answers*, <http://ec.europa.eu/trade/policy/in-focus/ttip/questions-and-answers/> (accessed on 28 November 2013).

9 Joseph Francois et al. (Centre for Economic Policy Research), *Reducing Trans-Atlantic Barriers to Trade and Investment*, March 2013, p. vii, <http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf> (accessed on 25 February 2014).

10 The services sector was not taken into account in the Bertelsmann study due to a lack of adequate data.

11 Gabriel Felbermayr et al. (Ifo Institute / Bertelsmann Foundation), Bundesländer, Branchen, Bildungsgruppen — Wirtschaftliche Folgen eines Transatlantischen Freihandelsabkommens für Deutschland, 2013, < http://www.ged-project.de/fileadmin/uploads/documents/gedshort2/TTIP_II_en.pdf> (accessed on 25 February 2014).

12 Gabriel Felbermayr et al. (ifo Institut/Bertelsmann Stiftung), *Die Transatlantische Handels- und Investitionspartnerschaft THIP. Wem nutzt ein transatlantisches Freihandelsabkommen? Teil 1: Makroökonomische Effekte*, 2013, p. 39, <http://www.bertelsmannstiftung.de/fileadmin/files/BSt/Presse/imported/downloads/xcms_bst_d-ms_38052_38053_2.pdf> (accessed on 25 February 2014).

"The EU's high standards of consumer and environmental protection are at risk. Streamlining regulations and standards can only be achieved by lowering those standards."

The fact is: Both EU Trade Commissioner Karel De Gucht and U.S. Trade Representative Michael Froman have repeatedly highlighted the importance of upholding the "right to regulate in the public interest". De Gucht emphasized this point in a statement made in Washington DC on 18 February 2014:

> "A lot of people ask: 'When you discuss the alignment of standards in TTIP you'll certainly have to accept lowering some standards in the EU.' Let me be clear on this very important point: we are not lowering standards in TTIP. Our standards on consumer protection, on the environment, on data protection and on food are not up for negotiation. There is no 'give and take' on standards in TTIP." [13]
>
> **EU Trade Commissioner Karel De Gucht**

While Froman made this priority clear in a speech in September 2013:

> "Let me be clear: there is nothing we seek to do through TTIP to undermine the determinations that each of our systems has made with regard to the appropriate level of health, safety and environmental protection of our people. When we talk about regulation and standards, we are talking about how to bridge the divergences between two well-regulated markets, not about launching a broad deregulatory agenda." [14]
>
> **U.S. Trade Representative Michael Froman**

TTIP must not be allowed to challenge the regulatory autonomy of the EU or the United States – and this is something that not only the negotiating partners agree on, but also the German business community, which has no interest in an agreement that lowers standards. "Made in Germany" is, after all, an internationally recognized seal of quality that must not be watered down. Every country has the right to enact regulations to protect consumers, public health, and the environment, and is free to set standards at the level it considers appropriate. The European Commission has stressed that it is committed to keeping standards in areas such as food safety and the environment at their current levels of strong protection. President Obama has also stated that the United States is opposed to lowering standards.[15]

Progress can be made in regulatory cooperation through the mutual recognition of existing standards so long as the other side's standard guarantees the same high level of protection. In certain cases, like in the automobile industry, it would make sense to apply the principle of mutual recognition. Cars on both sides of the Atlantic generally have a very high level of safety, but there are different standards for things such as turn signals, airbags, and mirrors. Furthermore, different types of crash test dummies are used to evaluate the safety of new models. These divergent regulations and standards require that automakers design and build different model variations for each market, which ultimately leads to unnecessary expense. According to automobile manufacturers, up to 100 individual components have to be produced separately due to regulatory divergences.[16] Another study shows that costs per car could be decreased by 7 percent if these standards would be mutually accepted.[17] However, standards should not be mutually recognized if they fail to guarantee the same level of protection.

The aviation industry is an area where the EU and the United States have already successfully agreed upon the mutual recognition of standards. In May 2011, the agreement on Cooperation in the Regulation of Civil Aviation Safety between the EU and the United States entered into force. This has led to less cumbersome technical and administrative procedures and thus reduces costs for the aviation industry. The parties agreed to the mutual recognition of certification requirements in the area of design, production, and maintenance. The agreement also set up a framework for exchanging information on an array of issues affecting aviation safety, while giving the two sides a basis for tackling urgent safety problems through joint action.[18] In 2012, the transatlantic partners also agreed to recognize each other's air cargo security regimes. Faster air cargo operations benefit not only aviation companies but also customers.[19]

The electric mobility sector has also seen advances in regulatory convergence while maintaining high standards. At the end of 2011, the EU and the United States signed a letter of intent to cooperate on electric mobility and smart grids, which laid the foundation for the establishment of two "EU-US Interoperability

Centres", one in the United States and the other in the EU. Both centers aim to promote the development of common standards in electric mobility and smart grids. The U.S. center began its operations near Chicago in 2013 and the European center will open this year at two sites in the Netherlands and Italy.[20]

Under TTIP, both sides want to commit to informing and consulting each other on new regulations at an early stage so as to prevent the establishment of new barriers to trade and to avoid redundancies from the outset. The legislative sovereignty of the EU and the United States will, however, remain intact.

For an example which shows that transatlantic regulatory cooperation can indeed raise consumer standards worldwide one need look no further than the toy industry: When reports showed that toys produced in China contained toxic material, EU and U.S. representatives discussed the jointly developed standards set forth by the EU-U.S.-Working Group on Toy Safety and Other Children's Products with their Chinese counterparts and required that these standards be respected.[21]

[13] European Commission, *Stepping Up a Gear, press statement by EU trade commissioner Karel De Gucht following the stocktaking meeting with USTR Michael Froman on the Transatlantic Trade and Investment Partnership (TTIP)*, 18 February 2014, <http://europa.eu/rapid/press-release_STATEMENT-14-12_en.htm> (accessed on 16 April 2014).

[14] Office of the United States Trade Representative, *Remarks by US Trade Representative Michael Froman on the United States, the European Union, and the Transatlantic Trade and Investment Partnership*, 30 September 2013, <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2013/september/froman-us-eu-ttip> (accessed on 16 April 2014).

[15] Euractiv, TTIP: Obama sichert EU Verbraucherschutz zu, 27 March 2014, <http://www.euractiv.de/sections/europakompakt/ttip-obamasichert-eu-verbraucherschutz-zu-301178>.

[16] "Handelsabkommen TTIP soll Kosten drücken", in *europe online magazine*, 22 May 2014, <http://www.europeonline-magazine.eu/handelsabkommen-ttip-soll-kosten-druecken_337035.html> (accessed on 22 May 2014).

[17] Daniel Hamilton, Joseph Quinlan, *The Transatlantic Economy 2014*, Volume 1/2014, p. 4, <http://transatlantic.sais-jhu.edu/transatlantic-topics/transatlantic-economy-series.htm> (accessed on 22 May 2014).

[18] European Union, *Ground Breaking Agreement on Civil Aviation Safety between the EU and the US Enters into Force*, press release, 1 May 2011, <http://europa.eu/rapid/press-release_IP-11-516_en.htm> (accessed on 24 February 2014).

[19] European Commission, *EU-US Security Agreement Allows Cheaper and Faster Air Cargo Operations*, press release, 1 December 2012, <http://europa.eu/rapid/press-release_IP-12-544_en.htm> (accessed on 20 March 2014).

[20] Joint Research Centre, *E-Vehicles and Smart Grids: First EU-US Interoperability Centre Inaugurated*, 18 July 2013, <https://ec.europa.eu/jrc/en/news/e-vehicles-and-smart-grids-first-eu-us-interoperability-centre-inaugurated-9939> (accessed on 19 March 2014).

[21] European Commission, *GD Enterprise and Industry, International Aspects*, <http://ec.europa.eu/enterprise/sectors/toys/international/index_en.htm> (accessed on 30 May 2014).

"TTIP will undermine European health and food safety standards, e.g. for genetically modified organisms and hormone-treated meat."

The fact is: There has never been an EU free trade agreement that has lowered EU health and food safety standards. Take the recently negotiated FTA with Canada (Comprehensive Economic and Trade Agreement, CETA), which stipulates that Canadian farmers will only be allowed to export beef produced without growth hormones into the EU. The European Commission has made it clear that these issues will not be handled differently in TTIP. Each side will retain the right to maintain or introduce those health and hygiene standards that it considers appropriate for the protection of consumers and the environment. This is also in keeping with the Commission's negotiating mandate, as the German Federal Ministry for Economic Affairs and Energy (BMWi) has stated:

> "Guidance is provided by the negotiating mandate adopted in June 2013, which includes the following yardsticks: […] The domestic legislation and standards of the contracting parties in the areas of environmental protection, labor law and occupational health and safety [must] be retained." [22]
>
> **Federal Ministry for Economic Affairs and Energy**

Both the majority of European Parliament members and the majority of the population have made it clear that they are strongly opposed to easing EU standards for health and food safety. Considering that TTIP must be approved by the European Parliament and probably (at least in part) ratified by EU member states as well, it is highly improbable that the EU will ease import restrictions or simplify approval procedures in areas such as genetically modified organisms or hormone-treated meat.

Case 1: Genetically Modified Organisms (GMOs)

The authorization of GMOs in the EU is strictly regulated and is only possible after the European Food Safety Authority (EFSA) has conducted an assessment, the European Commission has tabled a proposal, and the member states have given their approval by a double majority vote. According to the European Commission, this procedure will not be affected by TTIP:

> "Basic laws, like those relating to GMOs or which are there to protect human life and health, animal health and welfare, or environment and consumer interests will not be part of the negotiations." [23]
>
> **European Commission**

EFSA is responsible for assessing food safety in the EU. GMOs can only be authorized in the EU if they have passed a rigorous risk assessment. Applications for authorization of GMOs that are submitted to national authorities are forwarded to EFSA. These applications must include, among other information, studies on the safety of this GMO, comparative analyses of the GMO (e.g. its ingredients), and a proposal for the labeling of the food or feed product.

EFSA then conducts a safety assessment of the GMO based on scientific information and delivers its opinion to the Commission and member states. All applications submitted to EFSA for assessment of a GM food or feed product are publicly accessible. National authorities and the EU Reference Laboratory for Food Contact Materials also participate in EFSA consultations. EFSA only recommends authorization of a GMO food or feed product if it comes to the conclusion that the GMO product is just as safe as its conventional non-GMO counterpart – both in terms of its impact on the environment and biodiversity and its safety for human and animal health. EFSA applies the precautionary principle when making such determinations. Under this principle, the distribution or use of a product may be restricted if scientific data do not permit a complete evaluation of the risk the product (in this case the GMO) poses to human, animal or plant health, or to the environment, and if there is reason to suspect that the product may be harmful. The precautionary principle is anchored in Article 191 of the Treaty on the Functioning of the European Union (TFEU):

> "Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay."
>
> **TFEU, Article 191(2)**

In the next step, the Commission deliberates on the opinion of EFSA and drafts a proposal for granting or refusing authorization, which it submits to the member states. The Commission's proposal is voted on by the member states within the Standing Committee on the Food Chain and Animal Health, and subsequently in the Appeal Committee. Decision-making in the committees requires a "qualified majority", which is achieved only if a decision is supported by at least 55 percent of member states (15 of 28), representing at the same time at least 65 percent of the EU's population ("double majority"). If the member states are unable to obtain a qualified majority, the draft proposal of the European Commission is implemented. GMO authorizations are only granted for a maximum of ten years.[24] A total of 55 GMOs are currently authorized in the EU.[25] Authorized products must be labeled so that consumers can make an informed purchasing decision. The labeling requirement applies to products containing or consisting of GMOs, such as maize or soybean meal. It also applies to products produced from GMOs but which no longer contain detectable traces of these, for instance maize oil or lecithin.[26] The procedure described here is primarily based on EU Directive 2001/18/EC and the transposed national gene technology laws of the member states, and on EU Regulation 1829/2003 on genetically modified food and feed. According to the European Commission, this procedure will not be affected by TTIP. Although a number of cases have been brought against the EU at the WTO due to its de facto import ban on GMOs, these legal challenges have yet to result in an easing of the EU's import quotas or authorization procedure.

Case 2: Hormone-treated Meat

In the United States, animals are frequently fattened with the help of growth hormones, while in the EU the use of these hormones is banned. There are now fears that the United States will insist on market access for meat from animals that have been treated with growth hormones. The ban on this type of meat is non-negotiable and will not be part of TTIP negotiations, according to the Commission:

> "Tough EU laws, like those relating to hormones, or those which are there to protect human life and health, animal health and welfare, or environment and consumer interests will not be part of the negotiations."[27]
>
> **European Commission**

Beef from cattle treated with hormones has already been the subject of dispute settlement proceedings at the WTO. In 1996 the United States filed a complaint with the WTO years after the EU had imposed restrictions on the import of hormone-treated meat before finally banning it completely. In 1997 the WTO dispute settlement panel found that the EU's import ban did not rest on scientific evidence and was therefore not legitimate. The WTO stuck to its decision even after the EU appealed the ruling.

Instead of carrying out the body's ruling, the EU decided it would rather accept retaliatory measures from the United States. The EU and the United States were, however, able to reach a compromise in 2009 after years of negotiations. This deal increased the import quota for hormone-free beef from the United States while keeping the import ban on hormone-treated meat in place.

[22] Federal Ministry for Economic Affairs and Energy (BMWi)/Sigmar Gabriel, *Transatlantic Trade and Investment Partnership (TTIP) Abkommen: Ziele und Bedingungen für die Berücksichtigung von Nachhaltigkeit, Arbeitnehmerrechten und die Gewährleistung der Daseinsvorsorge*, p. 1, <http://www.bmwi.de/BMWi/Redaktion/PDF/S-T/ttip-abkommen-ziele-und-bedingungen-schutzstandards,roperty=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf> (accessed on 17 April 2014) (translation by author).

[23] European Commission, *In Focus: Transatlantic Trade and Investment Partnership: Questions and Answers*, <http://ec.europa.eu/trade/policy/in-focus/ttip/questions-and-answers/> (accessed on 16 April 2014).

[24] Transgen, *Zulassung in der EU: Der lange Weg vom Antrag bis zur Entscheidung*, <http://www.transgen.de/recht/gesetze/641.doku.html> (accessed on 10 February 2014); Environment Agency Austria, Zugelassene Genetisch Veränderte Organismen (GVO), <http://www.umweltbundesamt.at/umweltsituation/gentechnik/zulassungen/> (accessed on 10 February 2014); European Commission, *In Focus: Transatlantic Trade and Investment Partnership: Questions and Answers*, <http://ec.europa.eu/trade/policy/in-focus/ttip/questions-and-answers/> (accessed on 10 February 2014).

[25] Transgen, *Gentechnisch veränderte Pflanzen, Lebens- und Futtermittel: Zulassungen in der EU*, <http://www.transgen.de/zulassung/ gvo/> (accessed on 22 April 2014).

[26] Environment Agency Austria, *Kennzeichnung*, <http://www.umweltbundesamt. at/umweltsituation/gentechnik/kennzeichnung/> (accessed on 10 February 2014).

[27] European Commission, *In Focus: Transatlantic Trade and Investment Partnership: Questions and Answers*, <http://ec.europa.eu/trade/policy/in-focus/ttip/questions-and-answers/> (accessed on 16 April 2014).

"TTIP will erode Germany's high labor standards."

The fact is: The negotiating mandate of the EU explicitly prohibits lowering labor and social standards. The EU and the United States already issued a joint statement in the run-up to negotiations expressing their commitment to a high level of protection in this area. In the TTIP negotiations, they plan only to address these core topics in a chapter devoted to sustainable development and social standards, based on existing free trade agreements.[28]

The European Commission published a detailed position paper concerning sustainability topics such as labour and social standards during the first round of negotiations.[29] Key elements include:

- TTIP should neither restrict each contracting party's right to maintain its own domestic regulations (e.g. on minimum wage and job protection), provided that they are consistent with internationally agreed standards and agreements, nor prevent each party from modifying its regulations to pursue higher levels of protection.

- TTIP should make the greatest possible contribution to sustainable development.

- The parties should agree on a comprehensive and ambitious approach to trade and sustainable development issues in an integrated chapter.

- The sustainability chapter in TTIP should ensure that trade and economic activity can expand without undermining the pursuit of social and environmental policies.

- TTIP should serve as a vehicle for jointly developing high standards in competition law (e.g. with regard to respect for people and the environment), enabling these to be better enforced in dealings with other countries.

- To ensure the implementation, monitoring, and enforcement of labor, social, and environmental standards, it is crucial to incorporate robust mechanisms based on transparency, regular dialogue, and close cooperation. These mechanisms should also ensure that there are channels for involving civil society and independent third-party assessments.

With regard to impact on the labor market, a study by the Bertelsmann Foundation shows that TTIP might not only lead to more jobs in Germany, but also higher pay in all income groups.[30] A study by the International Labour Organization (ILO) also finds that preferential trade agreements create more and better-paying jobs. Trade creation increases the number of exporting firms in an economy, and these types of firms generally pay higher wages. Workers reap particularly large benefits from free trade agreements between "natural partners" who already trade heavily with each other, because these agreements result in greater trade-creation effects.[31] The EU and the United States are, without doubt, such "natural partners".

[28] High Level Working Group on Jobs and Growth, *Final Report*, 11 February 2013, p. 5, <http://trade.ec.europa.eu/doclib/docs/2013/february/ tradoc_150519.pdf>.

[29] European Commission, *EU – US Transatlantic Trade and Investment Partnership. Trade and Sustainable Development*. Initial Position Paper, 16 July 2013, p. 2, <http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151626.pdf>.

[30] Global Economic Dynamics / Bertelsmann Foundation, *Who will Benefit in Germany from a Transatlantic Trade and Investment Partnership (TTIP)?*, October 2013, <http://www.ged-project.de/fileadmin/uploads/documents/gedshort2/TTIP_II_en.pdf>.

[31] International Labor Office, *Preferential Trade Agreements and the Labour Market*, 2012, p. 31, <http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_177246.pdf>.

BDI President Ulrich Grillo on TTIP:
German industry seeks an agreement that sets high standards. TTIP is not a deregulation project, and lowering social, labor and health standards is not the objective. Demand for products “made in Germany” is high all over the world, which means we actually benefit from having high standards. What is more, the United States has no interest in seeing its standards lowered either.

"TTIP doesn't need investment protection clauses. On the contrary, these are dangerous because they would allow U.S. investors to overturn EU and German legislation on social policy and the environment."

The fact is: International investment protection and promotion agreements (IIAs) are an important instrument for stimulating foreign direct investment (FDI) in that they create safeguards that reduce risks for investors while facilitating the settlement of investment disputes through arbitration proceedings. IIAs enable investors to bring their claims to international arbitration tribunals if there are breaches of the treaty. The arbitration decisions are final and binding. At the same time, arbitration decisions cannot force lawmakers to repeal a law. The real aim is to ensure that investors receive proper compensation. Investment plays an important role in fostering economic growth and job creation. German foreign direct investment has almost doubled since 2000 and has grown fivefold since 1990.[32] In 2011, stocks of FDI totaled €1.1 trillion[33], a year when German companies directly or indirectly employed about 6.3 million people abroad through their investments.[34] An example of the growing importance of FDI is seen in the fact that the German auto industry manufactures more vehicles in foreign countries than it exports from Germany. In fact, the two-pronged strategy of exporting from Germany while producing directly in key high-growth countries through investments is a critical success factor in the German auto industry's growth goals. FDI only flows if investors are confident that they are protected from political risks. Potential risks of investing in foreign markets include nationalization, expropriation (including by indirect means), breach of undertakings, war, revolution, uprisings, terrorist acts, payment embargoes, moratoriums, and convertibility and transfer risks. Investment agreements can reduce these risks and thus promote growth. They provide four central guarantees. Firstly, and most importantly, is protection against discrimination. Secondly, IIAs protect investors against expropriation, including indirect expropriation, without compensation. Thirdly, IIAs protect investors from arbitrary and unfair treatment. Fourthly, IIAs guarantee the free transfer of capital.

Most IIAs define the investors and types of investments to which the treaty applies. More recent IIAs also include clauses that underline the right of the government to take regulatory action in the public interest, such as to protect public health and the environment.

Germany is a pioneer in the field of international investment protection and has 139 such agreements, 131 of which are in force, making it the country with the largest number of IIAs. They form an important foundation for the success of Germany's foreign trade. With the Treaty of Lisbon, the competence for concluding IIAs was transferred to the EU, which is currently negotiating an IIA with China. The CETA (Comprehensive Economic and Trade Agreement) with Canada, which is due to be signed in the coming months, is the EU's first trade agreement that contains a comprehensive chapter on investment. And TTIP also includes negotiations on investment protection and market access for investments. IIAs were originally conceived as a way to protect investments in less-developed countries that had poorly functioning legal systems. In fact, it was in part through such agreements that FDI became possible at all. Yet even in an agreement with a highly developed country like the United States, which has a reliable legal system, it makes sense to negotiate investment protection, including an investor-state dispute settlement (ISDS) mechanism. There are a number of reasons why this is so:

- Firstly, a mature investment protection chapter would set a global standard that could act as a blueprint for future IIAs.
- Secondly, deficits in existing IIAs could be addressed in TTIP.
- Thirdly, it would be an opportunity to improve existing IIAs between EU member states and the Unites States, which would be replaced by the investment protection chapter in TTIP.
- Fourthly, from the EU perspective, it would be politically problematic to treat countries differently, i.e. negotiate investor-state arbitration with some countries but not with others. A simple distinction between OECD and non-OECD countries does not make much sense here, as the case of Mexico shows. Mexico is an OECD country, and yet it has still been the fourth most frequent respondent in past arbitration proceedings. It is thus essential to provide investment protection here. The EU is currently negotiating an IAA with China; European companies believe this IAA must include investor-state arbitration. The outcome of the TTIP negotiations will also affect the investment agreement being pursued with China.

– Fifthly, for the past decades, the EU (Germany in particular) as well as the United States have been promoting the value of ISDS to the developing world. But some countries like Ecuador have started to question the legitimacy of such programs. Not including ISDS in TTIP would further undermine the global reputation and legitimacy of a system that the transatlantic partners worked hard for to put in place.

– Lastly, foreign investors might also be discriminated against in the United States. The risk that U.S. courts could give the international law created through TTIP only qualified or belated recognition cannot be ruled out. It could therefore happen that a European investor in the United States citing a provision in TTIP might lose its case in a U.S. court. An ISDS mechanism would give the investor additional security.

Overall, 514 cases had been filed worldwide as of 2012, of which 244 cases have been concluded. Of the 244 ISDS cases that have been concluded, in 42 percent the decision went in favor of the state and in 31 percent in favor of the investor. A settlement was reached in 27 percent of the cases.[35] In the past, these cases have been directed most frequently against Argentina, Venezuela, Ecuador, and Mexico. Germany has so far been sued twice through an arbitration tribunal.[36] Most of the cases filed so far worldwide were initiated by U.S. plaintiffs (123 cases, or 24 percent of all cases filed to date). Taking all EU member states together, investors from EU member states are the most frequent plaintiffs. Within the EU, German investors have used these arbitration tribunals third most frequently, after Dutch and British investors. German investors have so far brought a total of 27 cases to court. Investment protection agreements and investor-state arbitration are important instruments for safeguarding German foreign investments, but they are also plagued by a number of problems and shortcomings such as a low level of transparency, vague legal terms, susceptibility to abusive litigation, and lack of an appeal mechanism – to name a few.

The EU has recognized that reforms are necessary. In late January of this year, the European Commission suspended talks on investment protection in the TTIP negotiations in order to hold consultations with civil society organizations and the business sector. These consultations began on 27 March and will run for three months. The Commission now wants to move forward with reforms on investment agreements in close consultation with civil society, the business sector, and academia.

[32] German Bundesbank, *Time Series*, via <http://www.bundesbank.de/Navigation/EN/Statistics/Time_series_databases/Macro_economic_time_series/macro_economic_time_series_node.html> (accessed on 26 March 2014).

[33] German Bundesbank, *Bestandserhebung über Direktinvestitionen. Statistische Sonderveröffentlichung 10*, 2013, p. 25, <http:// www.bundesbank.de/Redaktion/DE/Downloads/Veroeffentlichungen/Statistische_Sonderveroeffentlichungen/Statso_10/statso_10_bestandserhebung_ueber_direktinvestitionen_2013.pdf?_blob=publicationFile>.

[34] German Bundesbank, *Bestandserhebung über Direktinvestitionen. Statistische Sonderveröffentlichung 10*, April 2013, p. 6, <http://www.bundesbank.de/Redaktion/DE/Downloads/Veroeffentlichungen/ Statistische_Sonderveroeffentlichungen/Statso_10/statso_10_bestandserhebung_ueber_direktinvestitionen_2013.pdf?_blob=publicationFile>.

[35] UNCTAD, *Recent Developments in Investor State Dispute Settlement (ISDS)*, May 2013, p. 1, <http://unctad.org/en/PublicationsLibrary/ webdiaepcb2013d3_en.pdf> (accessed on 26 February 2014).

[36] According to the UNCTAD database, three cases have been filed against Germany. The third case was terminated before a ruling was issued.

"TTIP will lead to privatization in the areas of water supply, health-care and education."

The fact is: There is no danger that public service providers will be privatized, according to the European Commission and its negotiating mandate. Privatizations are decided by governments, not free trade agreements.

> "…[T]he special status of public services is anchored in the EU Treaties; this will not be affected by the TTIP. For the same reason, the EU has no intention of negotiating the right of local government to provide public services such as the water supply." [37]
>
> **European Commission**

Furthermore, a restriction on market access to public services is contained in the WTO's services agreement (General Agreement on Trade in Services, GATS). This provision allows the EU to protect public service monopolies all the way down to municipal level.[38] This does not change through TTIP.

A mutual opening of public procurement markets is foreseen in TTIP, but will not result in privatizations. Instead, the aim is to ensure that European companies are treated the same as U.S. bidders when competing for public procurement contracts in the United States, and vice versa. There is already a WTO agreement that covers public procurement (Government Procurement Agreement, GPA); however, 13 U.S. states are not subject to this agreement. These include Indiana, Ohio, and New Mexico. Certain types of steel, motor vehicles, and coal are excluded from public procurement in numerous U.S. states, for instance Illinois, Michigan, and Pennsylvania. U.S. states that did not participate in the GPA or insisted on exceptions can discriminate between foreign and domestic companies and between foreign and domestic goods and services.

European companies therefore hope that through TTIP they will receive better access to the public procurement market in the United States, including at the sub-federal level. European procurement markets are already very open. In stark contrast to the U.S. states, EU member states have implemented the WTO GPA en bloc, including the newest EU member state, Croatia.

[37] European Commission, *EU-US Trade Agreement – The Facts*, 18 February 2014, p. 2, <http://trade.ec.europa.eu/doclib/docs/2014/february/tradoc_152204.pdf> (accessed on 26 February 2014).

[38] European Commission, *Die Transatlantische Handels- und Investitionspartnerschaft (TTIP) – aktueller Stand der Verhandlungen*, 19 March 2014, p. 5, <http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152274.pdf>.

"TTIP will weaken small-scale agriculture in the EU."

The fact is: Both the EU and the United States have strong interests in the area of agriculture. The United States wants to sell more of its agricultural commodities, such as cereals and soy, in the EU, while the EU is interested in exporting higher-value products like wine, cheese, and chocolate into the United States. One key interest of the EU is to have geographical indications of source that are protected within the EU (e.g. Bavarian beer, Swabian spätzle, Nuremberg bratwurst and Parma ham) also recognized in the United States.

The United States and the EU still impose very high tariffs on many agricultural products. The average U.S. tariff on dairy products is just under 20 percent, while beverages and tobacco are subject to an average tariff of 14 percent. The agricultural sector also experiences very high tariff peaks. For example, the highest tariff in the United States on the product group fruit, vegetables, and plants is 132 percent; on oilseeds, fats, and oils 164 percent; and on beverages and tobacco even as much as 350 percent.[39] Thus, the EU also stands to gain from the opening of markets for agricultural goods.

There is also high demand in the United States for organic agricultural products, i.e. food originating from ecological farming methods. The U.S. Department of Agriculture has developed an organic seal to certify products from ecological farming. To obtain the seal, farms and food processors have to meet a number of criteria. This requires, among other things, that they preserve natural resources and biodiversity and support animal health and welfare. Other requirements include raising animals in a free-range environment, forgoing the use of GMOs, undergoing annual inspections, and maintaining a strict separation of organic and non-organic food in the production process.[40] In light of these procedures it is safe to say that certification standards for organic products are rigorous in the United States as well. In February 2012, the EU and the United States agreed to mutually recognize one another's organic certifications; in June 2012, the arrangement went into effect. This agreement applies to all agricultural products with the exception of fish and seafood, and products that contain antibiotics. (Both the EU and the United States make some use of antibiotics in agricultural production.) The EU has concluded similar agreements that mutually recognize organic certifications with Canada, Switzerland, and Japan.

[39] WTO, *US Tariff Profile*, <http://stat.wto.org/TariffProfile/WSDBTariffPFView.aspx?Language=E&Country=US>(accessed on 10 February 2014).

[40] US Department of Agriculture, *Organic Agriculture*, <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=organic-agriculture.html> (accessed on 25 February 2014).

"TTIP will damage the multilateral trading system and other countries."

The fact is: The multilateral route is and remains the best way of achieving further trade liberalization. The agreement reached at the WTO conference in Bali in December 2013 demonstrates that the Unites States and the EU continue to negotiate at the multilateral level and are keenly interested in further multilateral trade liberalization. But there are important issues on the WTO agenda (e.g. market access for investments and services, rules for competition policy, opening of procurement markets) where progress is not being made. The EU Commission explained:

> "The EU continues to clearly favor pursuing the goal of a global, multilateral agreement – but as long as the negotiations in Geneva do not offer the perspective of an agreement in the near future, it is necessary to proceed bilaterally."[41]
>
> **European Commission**

Bilateral agreements such as TTIP can therefore provide a sensible way to supplement the multilateral process by developing rules that go beyond existing WTO standards. These rules can then serve as a basis as well as an impetus for moving the multilateral process forward. What is important is that the outcome of TTIP should be in line with WTO requirements. If this happens, the multilateral trading system will certainly benefit from TTIP.

The fact that Brazil is pushing to reach a free trade agreement with the EU and that former WTO Director-General Pascal Lamy is demanding that the WTO hold talks on regulatory barriers to trade demonstrates that the TTIP negotiations are already triggering liberalization effects beyond the transatlantic area.

It is also important to design TTIP in a way that prevents it from having negative consequences on other countries. While it is generally possible that a preferential agreement could produce trade-diverting effects with a negative impact on countries that are not party to the agreement, the likelihood of negative effects can be reduced. Accordingly, the agreement should be open to other countries that might wish to join TTIP. The agreement by the EU and the United States on mutual standards will also have a direct positive impact on producers in other countries. This will allow them to follow one common standard for both markets rather than having to comply with two different sets of regulations, as currently is the case.

Other countries could also benefit from TTIP if it is possible to establish simple rules of origin, which determine the origin of a product from the perspective of customs law. If rules of origin requirements differ between trading areas and include overly complex regulations, it makes it difficult for SMEs to take advantage of tariff benefits. Thus the German business community, with the exception of a few sectors, favors the introduction of the principle of free circulation (i.e. an elimination of preferential rules of origin) or at least a simplification of the rules of origin.

[41] European Commission, *Deutschland und TTIP – Die geplante Handels- und Investitionspartnerschaft zwischen der Europäischen Union und den Vereinigten Staaten (TTIP)*, p. 7, <http://ec.europa.eu/deutschland/pdf/131003_country_fiche_de.pdf> (accessed on 17 April 2014) (translation by author).

"TTIP is being negotiated behind closed doors."

The fact is: Transparency forms the basis of any fact-based discussion. As such, it is to be welcomed when as much information as possible about the negotiations is made public. At the same time, it is customary during international trade talks for countries not to disclose all negotiating documents.

This does not make the negotiating process secretive or undemocratic in the least: the Commission, which is leading the negotiations based upon a mandate from the European Council, briefs the member states and the Trade Committee of the European Parliament before and after every round of negotiations. The member states and national parliaments, including the German Bundestag and Bundesrat, have access to a wide range of documents.[42]

Once the negotiations are complete, the European Council and Parliament must approve or reject the agreement. It is also likely that TTIP will be a "mixed agreement", which means that the EU will not have exclusive competence and that the individual member states will also be contracting parties. If the content of the agreement falls within areas in which the member states share competency with the EU, the agreement will be considered a mixed agreement. In such cases, ratification by the member states is also required. In Germany, therefore, the German Bundestag would have to pass a law approving the international agreement. Continuously involving and obtaining the approval of elected representatives and governments guarantee an agreement's democratic legitimacy.

The European Commission has also set up a consultative panel – the TTIP Advisory Group – that is comprised of representatives from NGOs, trade unions, and business. This group will provide the Commission with expert advice during the negotiations, and will also be given access to some of the negotiating documents (in a manner that ensures confidentiality).[43] Likewise, the German Vice Chancellor and Minister of Economics, Sigmar Gabriel, has established an advisory board with members from industry (e.g. BDI), labor unions, NGOs, cultural institutions, and others.[44] Industry representatives do not have privileged access to non-public documents beyond what is allowed here, either at national or European level. The German federal government gave the following answer to a minor interpellation by members of The Left Party parliamentary group on this subject:

> "Through the activities of the economics ministry, the federal government involves a broad base of stakeholders from business associations and civil society groups in order to incorporate all relevant aspects. Statements and position papers by all associations, trade unions and interested organizations are given equal consideration when the federal government forms its opinions and decides what stance to take. […] The federal government knows nothing about any members of BUSINESSEUROPE or other groups active in Brussels having access to further negotiation documents." [45]

[42] German Bundestag, *answer of the federal government to a minor interpellation by members of The Left Party parliamentary group – Printed paper 17/14724 – Transatlantic Trade and Investment Partnership*, 24 September 2013, <http://dipbt.bundestag.de/dip21/btd/17/147/1714787.pdf> (accessed on 26 February 2014).

[43] European Commission, *Expert Group to Advise European Commission on EU-US Trade Talks*, Press release, 27 January 2014, <http://europa.eu/rapid/press-release_IP-14-79_en.htm> (accessed on 10 February 2014) Members of the TTIP Advisory Group: <http://trade.ec.europa. eu/doclib/docs/2014/january/tradoc_152102.pdf> (accessed on 10 February 2014).

[44] Bundesministerium für Wirtschaft und Energie (BMWi), *Mehr Transparenz: Neuer TTIP-Beirat berät über geplantes Freihandelsabkommen zwischen EU und USA*, 21 May 2014, <http://www.bmwi.de/DE/Themen/aussenwirtschaft,did=639398.html> (accessed on 30 May 2014).

[45] German Bundestag, *answer of the federal government to a minor interpellation by members of the Bundestag Klaus Ernst, Dr Diether Dehm, Alexander Ulrich, other members of the The Left Party parliamentary group – Printed paper 18/258 – Negotiations on the EU-USA Free Trade Agreement*, 28 January 2014, <http://dip21.bundestag.de/dip21/btd/118/ 003/1800351.pdf> (accessed on 16 April 2014) (translation by author).

Publishing information

Publisher
Federation of German Industries
Breite Straße 29
10178 Berlin
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www.bdi.eu

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Print
Das Druckteam Berlin
www.druckteam-berlin.de

Publishing Company
Industrie-Förderung GmbH, Berlin

Picture Credits
Cover: Gina Sanders / fotolia.com
Page 05: Dmitry Ersler / fotolia.com
Page 14-15: finecki / fotolia.com

Date and Number
June 2014
BDI Document-Nr. 0008