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**THE EVOLUTION OF THE EU’S FOREIGN TRADE POLICY AND THE POTENTIAL EU-USA TRADE DEAL; IS THE EU MOVING IN THE RIGHT DIRECTION?**

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**LIST OF ABBREVIATIONS:**

ACP – African, Caribbean and Pacific Group of States

BIT – Bilateral Investment Treaties

CARIFORUM - Caribbean Forum of African, Caribbean and Pacific States

DCFTA – Deep and Comprehensive Free Trade Areas

ENP – European Neighbourhood Policy

EPA – Economic Partnership Agreements

EU – European Union

Euromed – Euro-Mediterranean Partnership

FDI – Foreign Direct Investment

FTA - Free Trade Agreement

GMO - Genetically Modified Organism

HLWG - High Level Working Group on Jobs and Growth

IP - Intellectual Property

IPR – Intellectual Property Rights

ISDS – Investor-State Dispute Settlement

MS – European Union Member State

PTA - Preferential Trade Area

SAA - Stabilisation and Association Agreement

SAP - Stabilisation and Association Process

SME - Small and Medium Sized Entrepreneurs

SPS - Sanitary and Phytosanitary

TBT - Technical Barriers to Trade

TTIP – Transatlantic Trade and Investment Partnership

USA - United States of America

WTO – World Trade Organisation

“*Europe needs the US and the US needs Europe. When we speak with a common voice, no challenge is too great. When we speak with a common voice, we are truly an indispensable partnership.*”

Jose Manuel Barosso

# 1. INTRODUCTION

It is spring 2014, the former Ukrainian president Yanukovych has fled his country after the Maidan revolution. Russian troops are occupying the geopolitically strategic territory of Crimea. Public unrest and separatist protests are unfolding in Eastern and Southern Ukraine. British Foreign Secretary William Hague calls the situation the biggest crisis facing Europe in the 21st century.[[1]](#footnote-1) And there at the heart of the Maidan Revolution was a trade pact. For a year, President Viktor Yanukovych insisted he was intent on signing a historical political and trade agreement with the European Union (hereinafter: EU). But on 21 November 2013, after pressure from the Russian government, he decided to suspend talks with the EU. In return, President Vladimir Putin offered closer economic ties, offered to sell gas to Ukraine for a cheaper price and to buy $15 billion in Ukrainian debt by investing in its national welfare fund.

In the meantime, EU and the United States of America (hereinafter: USA) vigorously negotiate on a comprehensive transatlantic free trade agreement called Transatlantic Trade and Investment Partnership (hereinafter: TTIP). The agreement between the EU and the USA would be unprecedented in terms of its sheer dimension. The EU and the USA are the world's major global traders and investors. In fact, the EU is the largest economy in the world, representing 25.1% of world GDP and 17.0% of world trade and the US is the second largest economy accounting for 21.6% of world GDP and 13.4% of world trade.[[2]](#footnote-2) Together, the EU and the USA account for almost half of the world GDP and one third of total world trade.[[3]](#footnote-3) The TTIP would create a free trade area representing nearly 50% of global economic output, with only 11.8% of the world population.[[4]](#footnote-4) Both the EU and the USA hope that the new free trade agreement (hereinafter: FTA) would enfeeble the influence of emerging markets such as China, Russia, Brazil, India and South Africa.[[5]](#footnote-5)

If one thinks of trade policy and FTAs as merely a subject-matter only for economist and lawyers, he/she should think twice. Trade policy is much more than just economics of import and export; it has become a major political weapon with great social, environmental and cultural consequences. The TTIP would have not just a great effect on the EU and its Member States but also on everyday lives of its citizens.

In this paper, there will be answers to the following three main questions:

1. How did the EU's foreign trade policy develop through the years and what were the motives behind the evolution?

2. How comprehensive is the TTIP and how is it different from the other FTAs concluded by the EU?

3. What are the arguments *pro et contra* on the most controversial issues in the negotiations of the TTIP and what is the authors take on those topics?

The authors analyze the past, the present and the potential future of the EU’s foreign trade policy. The past and the present of the EU’s foreign trade policy are scrutinized in the first part via answering the first two questions, while the future is discussed by virtue of answering the third question. In that sense, the paper consists of two different parts and contributes in two different ways. The answers for the first and the second question are reached by means of research and legal and political analysis. In particular, the authors have done a research and analysis of all of 31 EU FTAs that are currently in force, with the addition of the FTA concluded with the Republic Croatia which is no longer in force. The exception for EU-Croatia FTA has been made because of its significance to Croatian scholars and practitioners.

First of all, the paper wants to come to the answer how did FTAs concluded by EU develop through the years, in order to give an answer to the second question. The authors believe that it is important to know the past so one could understand the present and discuss the potential future. But since there are 32 different FTAs with different rationales, scopes, political and economic motivations, there could not be one unique answer but 32 different answers for every FTA with which the TTIP is compared. To make things more articulate and understandable, all FTAs concluded by the EU are classified into five groups, *i.e.* generations. The classification as a whole represents the evolution of the EU FTAs.

Afterwards, as an answer to the second question, the paper presents the state of the negotiations on the TTIP, explains the negotiating areas, goals of the negotiators and particular problems of the *status quo* for the parties and for trade in general. Moreover, in that chapter there is an in-depth comparison between TTIP and certain stages of the evolution of EU’s foreign trade policy, *i.e.* previous EU agreements.

In the second part, the paper takes into account differences between the USA and the EU and tackles the most controversial issues which threaten to derail the negotiations or issues which seem dubious from the perspective of the general public. For those issues, the authors present the best arguments from both sides of the pond. Moreover, since the authors of this paper believe that there should be a broad debate on the potential of the EU-USA trade deal which would be of great consequences, they give their own arguments and pass their own judgement on the most controversial issues.

# 2. THE EVOLUTION OF THE EU'S FOREIGN TRADE POLICY

This chapter will analyze the EU's foreign trade policy *ab ovo usque ad mala.* Foreign trade policy (also called foreign commercial policy or international trade policy) is a governmental policy governing trade with third countries. This covers tariffs, trade subsidies, import quotas, voluntary export restraints, and restriction on the establishment of foreign-owned businesses, regulation of trade in services and other barriers to international trade. An important tool of the trade policy is the FTA, which is, in short, an agreement substantially aimed at liberalising trade and providing for the absence or elimination of substantially all discrimination between or among parties thereto through the elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time frame.[[6]](#footnote-6)

In the following subheading there will be a short introduction to EU's foreign trade policy and in the next five subheadings there will be a presentation of the evolution of EU's foreign trade policy, *i.e.* EU's free trade agreements. The classification consists of five different generations of FTA’s. Four out of five groups were put together because of the EU’s equal or similar political and commercial motivation regarding those FTAs in the same group. For instance, EU had a similar motivation when it concluded FTAs with Algeria, Tunisia, Egypt, etc, so the authors classified them in the same group. One of the groups is called “*Others*” and it serves as an exception for all the FTAs that have a specific political and commercial motivation and cannot be associated with other groups. Similar motivations and common denominators for different groups will be further analysed in the beginning of each subheading, *i.e.* in the beginning of each particular group of FTAs which represent a single stage of the evolution. The analysis of political and commercial motivations of each generation of FTAs is important to understand on what basis was the classification made and to have a better grasp of the facts and the context of international politics and trade.

But that is only the half of the story; the order of the presentation of those five groups of FTAs was made taking into account the degree of development and the date of signing of the FTA. More or less, the degree of development of particular groups followed the date of signing of agreements, so the authors took those two criteria cumulatively. In the later groups which are more developed, the presentation will mostly look only on the things that are new or to that are an upgrade the previous FTAs because usually the new generations have most or all of the provisions from the previous groups. Because of that, the provisions that already appear in the previous groups will not be again and again elaborate in the later groups, unless there is a significant difference or upgrade.

The reader must bear in mind that every FTA is different and that exceptions are possible and that certain FTAs that come from less developed groups can be more advanced than the ones from more developed groups, or that certain FTAs which have a later date of singing could be less developed than some earlier agreements. No matter that, the authors still believe that when you look at a certain group as a whole, you can see that the similarities of the agreements put together in the same group and the differences in the development of different groups outweigh any exceptions to the classification of this paper.

## **2.1. AN INTRODUCTION TO EU'S FOREIGN TRADE POLICY**

The European Union manages trade relations with countries outside the EU through its foreign trade policy. Common external trade policy, pursuant to Article 207 of the Treaty on the Functioning of the European Union, is an exclusive competence of the EU, meaning that the EU and not member states negotiate international trade agreements.[[7]](#footnote-7) The dominant aim of European trade policy is sustained economic growth,[[8]](#footnote-8) and further opening of market is one of the instruments for achieving that, since the “*open economies tend to grow faster than closed economies*”.[[9]](#footnote-9) Article 21 of the Treaty on European Union declares that the Union shall “*encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade*”.[[10]](#footnote-10) Pursuantly, in trade policy serving Europe 2020 long term strategy for smart, sustainable and inclusive growth special emphasis was given to concluding ambitious FTAs, securing greater market access, and deepening regulatory cooperation with major trade partners.[[11]](#footnote-11)

The European Union has already trade agreements in place with some 50 partners, making it the WTO member with most extensive network of preferential trade areas.[[12]](#footnote-12) Opening up market opportunities by negotiating trade agreements is a key priority for the EU, since according to International Monetary Fund estimates, over the next years 90% of the world demand will be generated outside of the EU.[[13]](#footnote-13)Assuming that all ongoing negotiations are successfully concluded, about half of the EU’s external trade will be covered with free trade agreements, and according to the EU Commission that would add up to 0.5% to EU GDP.[[14]](#footnote-14)

## **2.2. THE FIRST GENERATION OF THE EU’S FREE TRADE AGREEMENTS**

We start the evolution from the oldest FTAs that are still in force and the ones that are the least developed. Some of the first FTAs that the EU signed, and that are still in force today, date back to 1973, including Norway, Iceland and Switzerland.[[15]](#footnote-15) The agreement with Faroe Islands from 1997 belongs to the same group of these FTAs and was concluded 34 years later, but has almost all of its content matched with these three FTAs. Customs Union Agreements concluded with Andorra and San Marino in 1991 and 1992 also belong to this group, but at the same time with singing them, the countries entered into customs union with the EU.[[16]](#footnote-16)

In some cases, a FTA is one of the rare instruments that can bring a country close to the EU's market as much as it is necessary and beneficial to both sides, without it actually joining the EU. This is certainly the case with Switzerland, which had no interest in joining the European Community at the time of the conclusion of the first FTA with EU and neither has such interest today.[[17]](#footnote-17) In other cases like Norway and Iceland,[[18]](#footnote-18) it is the temporary solution, until the country makes its own mind about whether its goal is to join the EU or not, so the country would assimilate as much as possible to the market of the EU and wouldn't get behind on the tempo of the rapid economic growth within it.[[19]](#footnote-19)

It isn't a coincidence that the EU concluded some of the first FTAs with countries that are most similar to it and fit into its political, economical and social frame. Because of that, there was no fear that standards of products that are available in the EU might drop, and that the economy of the EU or of the other party might not be affected positively. Hence, regulating such areas became obsolete and the content of the FTAs is confined only to necessary provisions that secure free trade in industrial and some agricultural products.

FTAs from this group were not comprehensive at all and are considered to be baby steps in what is to become a large and expansive EU foreign trade policy. Although they aren't vast in scope,[[20]](#footnote-20) they comprise the basic content that can be found in each following FTA that EU signed in the years to come, with some variations in that basic content from case to case that either act as a remedy to the problems that occurred as consequence of vague provisions in previous FTAs, either they are specific for certain countries[[21]](#footnote-21) or were the result of broadening the scope of the agreements.[[22]](#footnote-22)

Seeing that FTAs were a new experience for the EU and the results could hardly be predicted, neither the EU nor the other party were keen on making unnecessary experiments, so they were confined to the establishing just one freedom in trade between the countries – free movement of industrial goods as well as some agricultural products, and articles that were necessary to secure free movement of these products, rather than including three more freedoms that exist in many FTAs that EU signed in the years to come.[[23]](#footnote-23)

All FTAs from this group have almost identical content,[[24]](#footnote-24) with some minor, not so relevant exceptions. The content of the FTAs can be divided into following groups, concerning the common goal of each group:[[25]](#footnote-25) aims, the removal of barriers to trade, protection of member states of EU, free movement of payments, justifications for measures, measures not in question, safeguard measures, institutional provisions and the denouncement of the agreement.

Aims are the first part of the FTAs and they serve two main purposes. Through them the contracting parties express goals that they want to achieve by signing the agreement. Moreover, they are used for interpretation of certain provisions in the agreement, in case that there may be some doubts about their meaning.[[26]](#footnote-26)

The most important part of the FTAs is the removal of barriers to trade (for industrial and some agricultural products). This is the very core of each agreement, because without this part, the free trade could not be established.

Four barriers, which are considered main obstacles to free trade, are to be removed:

* import customs;
* export customs;
* quantitative restrictions and measures having equivalent effect;
* discriminatory taxation.[[27]](#footnote-27)

Provisions that protect the Member States of EU are the ones that consist of securing that Member States of the EU will have the equal or more favourable treatment in comparison with the other contracting party at hand.[[28]](#footnote-28) Later FTAs did not include such provision.[[29]](#footnote-29)

The following part of the FTAs is regulating the free movement of payments and credits covering commercial transactions.[[30]](#footnote-30) Such provisions are necessary for establishing free trade, since free movement of goods in trade is naturally linked with free movement of payments for those goods.[[31]](#footnote-31)

Justifications for measures that prohibit or restrict the trade of certain products are also included in the agreement, allowing the contracting parties to impose restrictions to trade.[[32]](#footnote-32) Similar to justifications, measures not in question are also added to the FTAs.[[33]](#footnote-33) Safeguard measures are the part of the agreements that consists of situations where contracting party can undertake certain actions with the goal of protecting against cases of breach of contract, forbidden actions, dumping, serious disturbances in the economy, or the detrimental increase of import.[[34]](#footnote-34)

Institutional part of the FTAs is the one that is concerned with setting up Joint Committee,[[35]](#footnote-35) a body established for securing the enforcement of the FTAs that is „*responsible for the administration of the Agreement and shall ensure its proper implementation.*“[[36]](#footnote-36)

The last section of the FTAs, the denouncement of the agreement, is the *ultima linea* means that a contracting party can use if it isn't satisfied with the way agreement is carried out by the other side, or if it has decided that the further maintaining the agreement in force could be detrimental either to its economy or to some other important interests.[[37]](#footnote-37)

In the years to come after the conclusion of these first agreements, when the European Union was convinced that good can come from free trade agreements, many more of them will be signed with a variety of countries from all over the world. These FTAs to come after the first generation will liberalize not only the movement of goods, but workers, services and capital, as well as establish cooperation in a number of fields, thus making the EU market grow ever stronger and ever bigger, as will be shown in the following chapters. All in all, the first generation of the free trade agreements was the safest approach to trying out new ways of improving trade of the Community and its economy.

## **2.3. THE MEDITERRANEAN REGION**

The first big step in the evolution of the EU's foreign trade policy came on the doorsteps of Europe - the Mediterranean region. The following countries in that region have a FTA (that is in force) with the EU: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Occupied Palestinian Territory, Syria, Tunisia, and Turkey.[[38]](#footnote-38)

The fact that the EU has such a large amount of FTAs with neighbouring countries is not a coincidence, because politics, more than economy, was a key motive in pursuit of these agreements.[[39]](#footnote-39) One could ask oneself, is the region one of the EU's biggest trade partners? No, it is not. Do FTAs with those countries have more economic impact than for instance FTAs with the countries from North America or Asia? No, they do not.[[40]](#footnote-40) So what does Europe get in return for every euro it invests directly or indirectly in the Mediterranean region? The answer is, in short, a peaceful neighbourhood.

For the EU, the more the neighbouring countries develop, the less it will have illegal or unwanted legal immigration; the more EU promotes democracy[[41]](#footnote-41) and human rights the more politically stabile[[42]](#footnote-42) the region will be and the bigger economic growth it will have, the more consumers will be able to buy EU goods and services and the more firms will be able to invest in EU.

The EU has two main instruments to achieve that goal. The first one is the European Neighbourhood Policy (hereinafter: ENP), and the second one is the Euro-Mediterranean Partnership (hereinafter: Euromed).[[43]](#footnote-43) The objective of the ENP is to share the benefits of the EU with neighbouring countries, thus helping to strengthen stability, security and well-being for all concerned.[[44]](#footnote-44) The ENP is designed to prevent the emergence of new dividing lines between the enlarged EU and its neighbours, and to offer them the chance to participate in various EU activities, through greater political security, economic and cultural co-operation.[[45]](#footnote-45)

The key objective of the Euromed trade partnership is the creation of a deep Free Trade Area, which aims at removing barriers to trade and investment between both the EU and the Southern Mediterranean countries and between the Southern Mediterranean countries themselves.[[46]](#footnote-46) From the standpoint of intra-regional trade in the Arab Mediterranean world, the first step toward the economic and social integration came on 25 February 2004. A FTA was concluded between Jordan, Egypt, Morocco and Tunisia. This agreement, known as the Agadir Declaration,[[47]](#footnote-47) can be seen as an additional step toward the achievement of the Euromed free trade area.[[48]](#footnote-48) The EU strongly applauded the move and offered to negotiate Deep and Comprehensive Free Trade Areas (hereinafter: DCFTA) with Jordan, Egypt, Morocco and Tunisia.[[49]](#footnote-49) In the short run, the main objective of these DCFTAs would be the participation of these partners in the EU single market.[[50]](#footnote-50) But, even more important, in the long run, the main objective would be to achieve political and economical success with the DCFTAs and persuade the other countries in the region to accept the EU’s twofold plan: to remove the barriers to the trade and investment between all countries in the region, and to the trade and investment between all countries in the region, and to remove the barriers to the trade and investment between EU and the region.

Agreements from this group generally contain all provisions and areas mentioned in the previous chapter such as: aims, the removal of barriers to trade, free movement of payments, justifications for measures, measures not in question, safeguard measures, *etc*. In comparison with the first generation of the EU’s FTAs there are a lot of new provisions in place. The first difference is that the provisions regarding services, the right of establishment and movement of workers are added to the agreements. The majority of Euromed agreements have an aim to establish the conditions for the gradual liberalisation of trade, *inter alia*, in services.[[51]](#footnote-51) Also, the parties agree to widen the scope of the agreement to cover the right of establishment[[52]](#footnote-52) of firms of one party in the territory of another party.[[53]](#footnote-53) Furthermore, citizens workers of Moroccan, Tunisian and Algerian nationality employed in EU’s territory shall have treatment which is free from any discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals and *vice versa*.[[54]](#footnote-54) Although, some of these provisions are basic and others are very vague, one thing is quite clear, and that is a wish for a new direction in trade relations.

The second upgrade in trade relations is from the perspective of capital, investment promotion and taxation. Almost all[[55]](#footnote-55) Euromed parties have agreed to include movement of capital in their FTAs.[[56]](#footnote-56) As capital and investment go hand in hand, so the corresponding articles go hand in hand in (most of) the Euromed agreements. More precisely, objective of cooperation is the creation of a favourable and stable environment for investment in the countries of the contracting parties.[[57]](#footnote-57) For instance, EU and Egypt have agreed to establish mechanisms for encouraging and promoting investments.[[58]](#footnote-58) What’s more, the EU-Turkey FTA includes provisions regarding direct and indirect taxation.[[59]](#footnote-59)

Third example of novelties in the Euromed agreements is: the liberalisation of public procurement, the cooperation on standardisation and customs cooperation that broaden the scope of the FTA and deepen the trade relation. Firstly, it has been agreed that there is an objective of reciprocal and gradual liberalisation of public procurement contracts.[[60]](#footnote-60) This objective will open yet another market in the Mediterranean region for EU firms and ensure equal or more equal treatment in the tender process. Secondly, one important step closer to mutual recognition and integration is the provision on cooperation in standardisation and conformity assessment.[[61]](#footnote-61) Cooperation in standardisation is not just important from the perspective of the removal of barriers to trade but it is also significant for quality control and by that itself, for quality improvement. Thirdly, the parties have agreed to develop customs cooperation to ensure that the provisions on trade are observed.[[62]](#footnote-62) Such mutual assistance will allow the parties to improve the exchange of information to prevent, investigate, and punish operations in breach of customs legislation.[[63]](#footnote-63)

Finally, unlike the first generation of FTAs, the second generation of the FTAs has a broad range of general provisions on: economic, technical and financial cooperation;[[64]](#footnote-64) cooperation in social and cultural matters, environment, tourism, money laundering;[[65]](#footnote-65) energy;[[66]](#footnote-66) cooperation on audiovisual matters, information and communication[[67]](#footnote-67); regional cooperation,[[68]](#footnote-68) *et cetera*.

To sum up, we can conclude that the FTAs with the countries from the Mediterranean region are a bigger,[[69]](#footnote-69) more comprehensive, more detailed and a deeper version than the FTAs from the first generation. But, there's still a long way to go.

## **2.4. WESTERN BALKANS**

After the Mediterranean region, the next group comprises countries from the Western Balkans. This group brings different EU’s political and commercial motivations to the table, but also more developed FTAs with an (in average) later date of signing. The third generation of the FTAs consists of the ones that are concluded with following countries: Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia. The main goal of this group of FTAs is to prepare candidate-countries for accession to the EU,[[70]](#footnote-70) *inter alia*, through progressive establishment of a free trade area between the EU and the candidate countries.

Preparations for EU accession are done through the Stabilisation and Association Process (hereinafter: SAP),[[71]](#footnote-71) which is „*European Union’s policy towards the Western Balkans established with the aim of eventual EU membership*“.[[72]](#footnote-72) A key instrument in this EU policy is Stabilisation and Association Agreement (hereinafter: SAA) which is in its core an elaborate free trade agreement with some provisions on cooperation and development of certain areas which are deemed important for accession, such as improving the legal framework or level of human rights. The SAP is important for all Western Balkan countries: official candidates for the EU, which are the Former Yugoslav Republic of Macedonia, Montenegro and Serbia, applicant-country Albania and potential candidates: Bosnia and Herzegovina and Kosovo. To this group belonged the former candidate country, Croatia which has not been a part of SAP policy since its accession into EU on 1 July 2013. [[73]](#footnote-73)

It is beneficial and more secure for all Western Balkans countries that “…*market liberalisation and restriction of regulatory autonomy take place gradually, over several basic stages – WTO membership, conclusion of the Stabilisation and Association Agreement, accession negotiations, and finally full membership in the EU*”.[[74]](#footnote-74) Since the life of EU regulation depends on regulatory framework and legal mentality of a country as a whole, some time is needed to introduce EU ways to Western Balkans countries, because in previous years they had less contact with EU than they have today.

SAAs with the Former Yugoslav Republic of Macedonia, Albania,[[75]](#footnote-75) Montenegro,[[76]](#footnote-76) and Serbia[[77]](#footnote-77) are currently in force. The trade part of the SAA is in force through the Interim Agreement on Trade and Trade Related Matters with Bosnia and Herzegovina. This country already signed SAA, and although ratified by all EU member states, the entry into force of SAA has been delayed by the EU since Bosnia has yet to meet the preconditions set by the EU.[[78]](#footnote-78) Ongoing negotiations between EU and Kosovo about SAA will determine the contents and date of signing. Since the Treaty of Accession of Croatia to the EU entered into force it is implied that the SAA with Croatia is no longer applied.[[79]](#footnote-79)

SAAs are a new kind of mixed agreements[[80]](#footnote-80) that EU concludes with third parties of the Western Balkans, bigger and different from Association Agreements,[[81]](#footnote-81) also known as the „*Europe Agreements*“, with countries of Middle and Eastern Europe.[[82]](#footnote-82) Interim Agreements on Trade and Trade Related Issues serve as some kind of pre-SAA temporary instruments,[[83]](#footnote-83) and they usually comprise only the free movement of goods until SAA comes into force.

SAAs generally contain all provisions and areas mentioned in previous two chapters, such as free movement of goods, workers, capital and investment, services and right of establishment, public procurement provisions, cooperation on standardisation and customs cooperation, as well as all provisions necessary to ensure functioning of the Agreement, which are specified in the first chapter.

Provisions that are new as a consequence of the goal of SAAs, and appear for the first time in these FTAs are: regional cooperation, approximation of laws and law enforcement, justice and home affairs (freedom and security), new areas of cooperation and financial cooperation (grants and loans from the EU).

Provisions that concern regional cooperation oblige the contracting country to cooperate with other countries that signed the SAA,[[84]](#footnote-84) with countries that are included in SAP, and with countries-candidates for EU accession, that are not part of the SAP.[[85]](#footnote-85)

Approximation of laws and law enforcement is the part not strictly related to trade, but since the legal system of a country makes a frame in which trading occurs, rule of law and reliable legal systems are one of the pre-requisites for the fluent economic exchange to take place. New provisions that can be found here are the ones related to public contracts, public undertakings, consumer protection, intellectual, industrial and commercial property, working conditions and equal opportunities. Articles concerning competition and standardisation, metrology, accreditation and conformity assessment can already be found in agreements of the previous generation.[[86]](#footnote-86) These provisions reflect the desire of EU to gradually assimilate legal system of the contracting party to the *acquis communautaire*.

Justice and home affairs is the area similar to the previously mentioned, but it is different in so far as they tackle domestic issues of justice, freedom and security, such as: reinforcement of institutions and rule of law; cooperation in the area of movement of persons;[[87]](#footnote-87) cooperation on money laundering; financing of terrorism and illicit drugs; cooperation in criminal matters and provisions concerning protection of personal data.[[88]](#footnote-88)

A number of new areas of cooperation are added, which do not exist in prior agreements.[[89]](#footnote-89) Seeing that one of the most important aims of the SAA is preparing a country to eventually join the EU, extensive cooperation is necessary for it to assimilate to the EU's legal, political, economic and social system as much as possible, so the accession itself would be as less turbulent as possible for both parties.

Financial cooperation that concerns grants and loans given by the EU is definitely the part of the SAA that makes it stand out among other agreements. They are certainly important stimulation for the countries to cooperate with the EU in the SAP policy, and are the part of the agreements that differentiates SAAs from other FTAs the most.

It can be said that SAAs are just temporary agreements with a clear goal in mind: getting a candidate-country ready to eventually join the EU. Once the country has accessed to the EU, SAA is no longer in force, and fundamental contracts of EU take over its place in economic provisions, and non trade related articles get replaced by the directives, and other relevant legal documents. Since we see them for what they really are, a temporary solution, we can conclude that they act as a starting point from which a candidate-country builds and improves with the purpose of joining the EU. As can be seen in the case of Croatia that joined the EU, the SAA served its purpose well.

## **2.5. OTHERS**

In this chapter the paper analyses five different FTAs which as a whole represent an anomaly in the evolution. Those agreements are with: Papua New Guinea and Fiji (together); numerous African states; South Africa; Mexico and Iraq. They as group entered into force later than the agreements from the Western Balkans, but it cannot be said that they as a whole are definitely more advanced than the previous agreements and that they are the next step in the evolution. Despite some deficiencies in content of certain FTAs from this group, they do contribute to the evolution of FTAs and will be analyzed.

Their common denominator is that there is no common denominator between them and any other group of FTAs, *i.e.* stage of the evolution. These five agreements cannot be classified as one coherent group because they vary in the stage of development and the EU has different political and commercial motivations for these FTAs. This should not come as a surprise, since they come from different geographical positions. These five agreements are divided into following three subheadings: 1. African states, 2. Mexico, and 3. Iraq.

### 2.5.1. AFRICAN STATES

This section will examine trade agreements concluded between the EU and some African, Caribbean and Pacific (hereinafter: ACP) states – the area occupying seventy-nine countries divided into seven ACP regions.[[90]](#footnote-90) Trade and development agreements with this group of states are called Economic partnership agreements (hereinafter: EPAs). All Economic partnership agreements are part of wider development agenda and have their origins in the trade chapter of the Cotonou agreement – a broad agreement building a framework for political dialogue, development support and economic and trade cooperation with an objective of “…*reducing and eventually eradicating poverty*”.[[91]](#footnote-91) Other than the name, the purpose of Economic partnership agreements is also specific: 1) promoting sustainable development and growth, 2) poverty reduction, 3) better governance and 4) the gradual integration of ACP countries into the world economy.[[92]](#footnote-92) In short, EPAs are used as a tool for growth, jobs and development considering that “…*trade is development*”.[[93]](#footnote-93)

Since EPAs are primarily focused on ACP development they go beyond conventional FTAs by offering some benefits: while they provide full and immediate free access to the EU states, ACP countries can gradually open their market in the period of 15, and up to 25 years, while they can keep permanent protection for the most sensitive 20% of imports.[[94]](#footnote-94) That means no quotas and no duties for ACP exporters to the market of half a billion people. Asymmetry is present in numerous other obligations, as well as flexibility in implementation and unilateral help in achieving the above stated objectives. In order to ensure that ACP exports comply with strict EU standards (i.e. food safety), all EPAs include technical support, training and measures to promote knowledge transfer and strengthen public services and infrastructure.[[95]](#footnote-95) Economic partnership agreements are therefore considered as the “…*most generous trade partnerships the EU has ever offered to any trading partner*”, offering “…*best possible trade conditions*“.[[96]](#footnote-96)

Even though EU and ACP states have agreed to take all the necessary measures to ensure the conclusion of Economic Partnership Agreements,[[97]](#footnote-97) only four EPAs with total of twenty-two states have been concluded so far: with South Africa, Caribbean Group of ACP States (hereinafter: CARIFORUM),[[98]](#footnote-98) Eastern and Southern African States[[99]](#footnote-99) and with Papua New Guinea and Fiji. Eastern and Southern African States and Papua New Guinea and Fiji have concluded only interim agreements intended to serve as a framework for negotiating full EPA (currently being negotiated with both regions)*,* and therefore are deficient in some areas. In the following analysis EPA with CARIFORUM will not be examined because considering complexity of its provisions and new areas covered this agreement belongs in the latest stage of the evolution.

When comparing EPAs with previous stages of the evolution, three major novelties are introduced. The first difference we can perceive when examining EPAs is development cooperation:[[100]](#footnote-100) a great number of provisions aiming to satisfy social, democratic and economic development needs of ACP states, supporting regional integration, enhancing competitiveness, insertion to world economy, strengthening rule of law and democratic society in which human rights and their freedoms are respected. The cooperation is conducted in numerous fields in the form of financial and non-financial support. Having in mind that all EPAs are concluded primarily to help ACP states to develop, the chapter on development cooperation did not came as a surprise.

Further, and most significant advancement brought by EPA is an elaborate dispute settlement mechanism,[[101]](#footnote-101) with the objective to avoid and settle any dispute between the signatory parties with a view to arriving at mutually agreed solution. Means for resolution of disputes are present from the first generation of agreements, but provisions are basic and serve more as waymarks, which is not the case here. The rules regulating rights of the parties, modalities and deadlines for consummation of those rights are precisely given. Although there are some differences between the agreements, parties are obliged to do essentially the same: first of all they shall “*endeavour to resolve any dispute concerning the interpretation and application of this Agreement by entering into consultations in good faith with the aim of reaching an agreed solution*”.[[102]](#footnote-102) In case that the consultations do not succeed either party may request a settlement of the dispute by arbitration.[[103]](#footnote-103) Each party to the dispute is bound to take measures necessary to carry out the decision of the arbitrators.

Technical barriers to trade[[104]](#footnote-104) (hereinafter: TBT) and sanitary and phytosanitary (hereinafter: SPS) measures[[105]](#footnote-105) are for the first time thorougly regulated with the distinct chapter in Economic Partnership Agreements.[[106]](#footnote-106) Both TBTs and SPSs are usually introduced by government authorities with a legitimate public policy objective in mind.[[107]](#footnote-107) Nevertheless, they often have powerful impact to trade and competitiveness of exporters, since complying with those regulations often demands serious expenses, which is why there is an increased interest nowadays for the reduction of TBTs and SPSs, and other non-tariff barriers.[[108]](#footnote-108) The objective of these rules is the cooperation of the parties in order to “*facilitate and increase trade in goods between them, by identifying, preventing and eliminating obstacles to trade arising from TBT and SPS measures*”.[[109]](#footnote-109)

### 2.5.2. MEXICO

Mexico was the first Latin American country to sign an FTA with EU and the EU’s first ever transatlantic FTA, and “*proved to be a pathfinder for others in the region*”.[[110]](#footnote-110) Trade agreement with Mexico has been concluded in two parts: first one regulating trade in goods (including regular high-level political dialogue on bilateral and international issues),[[111]](#footnote-111) and second one regulating services and some other trade-related issues.[[112]](#footnote-112)

EU and Mexico have “*strong and longstanding*” relationship with important economic links.[[113]](#footnote-113) The EU is Mexico’s second biggest export market after the US and Mexico’s third largest source of imports after the United States and China.[[114]](#footnote-114) Flow of investment between EU and Mexico is also significant. However, despite these long and solid links, trade between the parties declined sharply in the 1990s.[[115]](#footnote-115) This decline is often identified as a consequence of NAFTA[[116]](#footnote-116) and some other FTAs concluded by Mexico.[[117]](#footnote-117) FTA concluded with Mexico is therefore considered to be motivated primarily with the purpose to neutralize trade diversion, with the objective of gaining NAFTA equivalent access to the Mexican market, as EU’s “*NAFTA parity*”.[[118]](#footnote-118)

FTA with Mexico is broad and comprehensive. Apart from very substantial coverage of the trade in goods,[[119]](#footnote-119) the trade in services and number of other market access issues inherent for “*developed*” FTAs are included,[[120]](#footnote-120) all with a short transition period. Although the FTA with Mexico in some aspects went further than EU’s many previous and future FTAs, no new significant areas are regulated, and as a consequence this agreement won’t be further analysed.

### 2.5.3. IRAQ

Trade and Cooperation Agreement from 2012,[[121]](#footnote-121) marks the first ever contractual relation between the EU and Iraq. The EU is the major trading partner for Iraq, second in importance after USA, with its trade predominantly characterized by oil exports, making it important strategic energy partner for the EU.[[122]](#footnote-122)

When analysing the agreement we can see two aspects of it.[[123]](#footnote-123) First one is non-trade related,[[124]](#footnote-124) while the second one is regulating trade and investment.[[125]](#footnote-125) Essentially non-preferential and quite simple trade agreement mainly incorporates basic WTO rules, since Iraq is not yet a member of WTO, thus helping Iraq to prepare for eventual WTO accession.[[126]](#footnote-126) Agreement improves and clarifies trade relations between Iraq and the EU, covering trade in goods, trade in services and few trade related issues.

Only significant novelty brought by this agreement, where preferential market access is given to EU companies is public procurement.[[127]](#footnote-127) Public procurement has already been brought up by several previous FTAs, but only basic provisions could be found, while Partnership and Cooperation Agreement with Iraq offered at that time the most detailed provisions on this topic. All public procurements are covered, except cases explicitly set out.[[128]](#footnote-128) General principle is that each party, including its procuring entities shall offer “*treatment no less favourable*” than treatment given to domestic goods, services and suppliers.[[129]](#footnote-129) Rules of conducting procurement are precisely given in order to ensure that procurement is held in a “*transparent and impartial manner that avoids conflicts of interest and prevents corruptive practices*”,[[130]](#footnote-130) and that implies the accurately prescribed obligations for the parties.[[131]](#footnote-131)

## **2.6. THE LATEST STAGE OF THE EVOLUTION**

In the last group of FTAs, we have the most advanced EU FTAs being in force at the moment when this paper has been written. In the latest stage of the evolution of the EU's foreign trade policy there are FTAs with Chile, CARIFORUM States,[[132]](#footnote-132) Colombia and Peru (together), Central America[[133]](#footnote-133) and South Korea. The question is - what was the motivation of the EU to conclude (such advanced) FTAs with countries that are at least more than 5,000 kilometres away from Europe? Unlike in the case of Western Balkan countries, the Mediterranean region, African states and (in part) the first generation of the FTAs; these FTAs where overwhelmingly motivated by pure commercial and economic factors.

These FTAs are the most comprehensive free trade agreements ever negotiated by the EU. Albeit, they fall short to some FTAs concluded by other countries, such as NAFTA and USA-Korea FTA that have investor state dispute settlements (hereinafter: ISDS);[[134]](#footnote-134) these agreements are unprecedented for EU both in their scope and in the speed at which trade barriers were removed. By the end of the transitional periods, virtually all import duties between the two economies have been removed.[[135]](#footnote-135) Exporters and importers of all industrial products and almost all agricultural products are able to trade without having to pay duties. Additionally, the FTAs break new ground in tackling significant non-tariff barriers to trade, with a specific focus on the automotive, pharmaceuticals, medical devices and electronics sectors.[[136]](#footnote-136) These agreements also create new opportunities for market access in services and investments, and lead to major advances in areas such as intellectual property, government procurement and competition policy.[[137]](#footnote-137)

One can identify three mostly commercial motivations for these FTAs: forging strategic links with countries or regions experiencing rapid economic growth; enforcement of international trade rules (such as intellectual property rights);[[138]](#footnote-138) and neutralizing potential trade diversion resulting from FTAs between third countries.[[139]](#footnote-139) For instance, after the USA concluded the FTA with Chile, the EU-Chile FTA was motivated by promotion of EU relations with Latin America and by a desire to neutralize the potential trade diversion in favour of the USA by ensuring equivalent access for EU exporters and service providers.[[140]](#footnote-140) Other EU FTA initiatives, such as the EU–Central America FTA and EU–South Korea FTA, have also followed FTAs negotiated or envisaged with the USA and to a lesser extent Japan.[[141]](#footnote-141)

The EU- South Korea FTA is the most ambitious trade agreement ever negotiated by the EU; it is also the EU’s first trade deal with an Asian country. The agreement is expected not only to boost bilateral trade and economic growth in both the EU and South Korea, but also to have a wider impact in Asia and elsewhere by signalling the EU’s openness to doing business with third countries and its commitment to free trade.[[142]](#footnote-142)

Agreements from this generation contain (more or less) all provisions and areas mentioned in the previous chapters. Yet these FTAs are more voluminous and nuanced than the previous trade agreements.[[143]](#footnote-143) And that is nowhere more true than in the intellectual property chapter. Although protection of intellectual property rights was mentioned in previous EU agreements, the authors think that it did not deserve to be mentioned, at least until now. The reason for this is that the FTAs did not bring anything new to the intellectual property rights (hereinafter: IPR, or just: IP for intellectual property) protection; they only made a reference to the international standards and international treaties. In contrast, the rest of the new generation FTAs has detailed provisions regarding copyright and related rights, duration of authors’ rights,[[144]](#footnote-144) trademarks,[[145]](#footnote-145) geographical indications,[[146]](#footnote-146) designs,[[147]](#footnote-147) patents,[[148]](#footnote-148) plant varieties and protection of undisclosed information.[[149]](#footnote-149)

The new generation of FTAs goes a step further in IP protection and includes provisions on enforcement of IPR.[[150]](#footnote-150) The means for enforcement of IPR are: seizure, penalties, damages, confiscation, liability of legal persons, liability of online service providers - “*mere conduit*”, border measures, codes of conduct and criminal sanctions.

Besides provisions on enforcement of IPR, the FTAs in the latest stage of the evolution moved away from proclamations and generic words, such as “*cooperation*”, “*dialogue*”, “*promotion*” and offered more substance on enforcement and implementation of the agreements in general. For instance, the EU-Korea FTA foresaw the establishment of a six specialised committees[[151]](#footnote-151) and seven working groups[[152]](#footnote-152) between the two parties to monitor the implementation for ensuring the proper operation of the EU-Korea FTA, while the Trade Committee may decide to establish other specialised committees and working groups in order to assist its tasks.[[153]](#footnote-153) On a higher level, meeting annually, the Trade Committee co-chaired by the Minister for Trade of Korea and the Member of the European Commission responsible for Trade or their respective designees will manage the agreement.[[154]](#footnote-154) These different bodies provide an opportunity both to seek resolution of market access concerns and to engage in closer regulatory cooperation.[[155]](#footnote-155)

Another upgrade from the previous agreements is articles on services. The scope of these FTAs includes diverse services sectors: international maritime transport services,[[156]](#footnote-156) financial services,[[157]](#footnote-157) telecommunication services,[[158]](#footnote-158) postal and courier services,[[159]](#footnote-159) computer services,[[160]](#footnote-160) tourism services,[[161]](#footnote-161) electronic commerce,[[162]](#footnote-162) professional services such as legal, accounting, engineering and architectural services, and a large variety of other business services. The most advanced agreement, the EU-Korea FTA commits parties to market access liberalisation in more than 100 sectors.[[163]](#footnote-163) These provisions ensure that EU service suppliers and investors will benefit from the growing need of countries for imports of services and long-term foreign direct investment.[[164]](#footnote-164) The FTAs preferentially open the services market and provide the important legal certainty that EU services suppliers and investors will not be discriminated against *vis-à-vis* their domestic competitors.

The FTAs bring a new approach on trade and sustainable development. The parties recognise that it is not their intention in these FTAs to harmonise the labour or environment standards of the parties, but to strengthen their trade relations and cooperation in ways that promote sustainable development.[[165]](#footnote-165) Yet, the new FTAs commit parties to consulting and cooperating as appropriate on trade-related labour and employment issues of mutual interest and with respect to negotiations on trade-related environmental issues of mutual interest.[[166]](#footnote-166)

# 3. THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP IN COMPARISON

The TTIP is a proposed comprehensive free trade agreement being negotiated between the EU and the USA. The aim of the ambitious Transatlantic Trade and Investment Partnership is to liberalize the trade and investment between the two blocs as much as possible. This chapter will discuss how the partnership started, what is the current relation between the parties, what are the main negotiating areas and how they stand in comparison with the previous EU FTAs.

## **3.1. DEVELOPMENT OF TRANSATLANTIC INTEGRATION**

The idea of transatlantic economic integration is not new. Since the Second World War the relationship between Europe and United States has become one of the most important ones in world politics and in 1990s, a process of building institutional framework for dialogue and cooperation began. The first step was the adoption of the Transatlantic Declaration where both sides expressed, *inter alia*, their “…*determination further to strengthen their partnership*”, and willingness to “…*support further steps towards liberalisation, transparency, and the implementation of GATT and OECD principles concerning both trade in goods and services and investment”*.[[167]](#footnote-167) Considering numerous agreements following the Transatlantic Declaration,[[168]](#footnote-168) all with an objective of promoting stronger economic and political ties, TTIP seems like a logical further development of already integrated markets.[[169]](#footnote-169)

The reason why this agreement could be incomparably more comprehensive than the ones so far examined, and thus, have greater economic impact can be found mainly in the changed global context, which can be considered as favourable for such an agreement.[[170]](#footnote-170) Firstly, transatlantic integration at the moment seems like a valuable help in prevailing impacts of the recent economic crisis. From 2008 both economies have suffered a significant decline, and considering positive economic estimates of a new partnership, TTIP could be an opportunity to accelerate present fragile economic recovery at both sides of the Atlantic.

Secondly, the world economy and world trade have undergone profound changes in the recent past. Economic growth of China and other developing economic powers such as India, Brazil and Turkey is significant. The TTIP could increase competitiveness and serve as an instrument for the EU and the USA to cope more successfully with emerging global challenges and maintain the positions of globally dominant economic powers.

Thirdly, at the time of the start of the negotiations, there were repeated failures of the multilateral negotiations on international trade under WTO umbrella that have shifted focus towards bilateral agreements as an “…*imperfect but functional option, in anyway better than stagnation*“.[[171]](#footnote-171) Having in mind such global background this agreement is intended to serve as a “…*stepping-stone, rather than as a stumbling block for multilateral liberalisation*”,[[172]](#footnote-172) since this would send a signal of promoting open market and free trade and investment flows.

The first tangible step toward further transatlantic economic integration was taken during the 28 November 2011 Summit meeting, when President José Manuel Barroso, President Herman Van Rompuy and President Barack Obama established the High Level Working Group on Jobs and Growth (hereinafter: HLWG), with its main task to “…*identify and assess options for strengthening the EU-USA economic relationship*”.[[173]](#footnote-173) In its final report of 13 February 2013 HLWG specified the extent to which parties agree on the scope and shared ambition of the future partnership and reached the conclusion that a “…*comprehensive agreement*”…”*would provide the most significant mutual benefit*”.[[174]](#footnote-174) In accordance with HLWG recommendations leaders of the EU and the USA announced initiation of the internal procedures necessary to launch negotiations,[[175]](#footnote-175) after which the European Commission drafted the negotiation mandate,[[176]](#footnote-176) which the Council of the European Union has adopted.[[177]](#footnote-177) In its October 2012 resolution the European Parliament called for negotiations to be launched in the first half of 2013.[[178]](#footnote-178)

First round of TTIP negotiations was held the week of 8th July 2013 in Washington, DC, where the main objective was met: substantive round of talks on the full range of topics that are intended to be covered in this agreement.[[179]](#footnote-179) The round was accompanied with various stakeholder events, and talks were based on thorough review of stakeholders views expressed. Second round was held the week of 7th October 2013 in Brussels, where the two sides continued where they left off in July. “*Good and steady progress*” has been made “…*across the broad range of issues*” stated later EU Trade Commissioner Karel De Guch.[[180]](#footnote-180) In Brussels on 20 December 2013, where the third round was completed, both sides again discussed all the topics they wished to see covered in the TTIP, along with public consultations.[[181]](#footnote-181) The progress was made on the three core parts of the TTIP: market access, regulatory aspects and trade related rules - and these were the focus of the fourth round of talks concluded on 14 March 2014.[[182]](#footnote-182) In the majority of these areas, the EU now expects to start discussing the wording of proposals. Since the negotiations on TTIP are not public, this information is based on publications and press releases circulated by negotiating sides.

## **3.2. CURRENT EU-USA TRADE RELATIONS**

The transatlantic economic relationship is considered to be one of the most open and integrated in the world, the “…*backbone of the world economy* “.[[183]](#footnote-183) The transatlantic economy is accounting for over 50% of World GDP and about 30% world trade, making it the largest and wealthiest market in the world.[[184]](#footnote-184) The EU – USA trade in goods is estimated to be worth $650 billion in 2012 and the two economies are also the leading service economies in the world.[[185]](#footnote-185) Most foreigners working for European companies outside the EU are American and contrary – most foreigners working for USA companies outside the USA are Europeans.[[186]](#footnote-186) The two sides have investments of more than $3.7 trillion in each other’s economies.[[187]](#footnote-187) It is estimated that the transatlantic economy generates over $5.3 trillion in total commercial sales a year and employs up to 15 million workers in “*on shored*” jobs on both sides of Atlantic.[[188]](#footnote-188) EU is the first trading partner of the USA with 17.6% of trade in goods, and the USA is EU’s second largest trading partner with 13.9% of the EU’s total trade in goods.[[189]](#footnote-189) All of these figures endorse that EU and USA are each other’s most important commercial partners when it comes to trade in goods, services, and investment. To put it simply: “*no other commercial artery in the world is as integrated and fused together as the transatlantic economy*”.[[190]](#footnote-190)

However, despite strong economic ties, present trade relations are far from being fully exploited. In the past decade, a trend of stagnation and relative decline can be noticed: the share of the USA in total EU goods exports declined from 28.1% to 16.9%.[[191]](#footnote-191) Meanwhile, the purchases of goods from the USA represented 20.8% of the total import of the EU in 2000 and they only accounted for 11.1% in 2011.[[192]](#footnote-192) There are several problem drivers hindering transatlantic relations to reach its full potential.[[193]](#footnote-193) Firstly, tariffs: although low, they still impose costs that are not negligible. Other market access issues, such as public procurement, services and investment also need to be taken into account.[[194]](#footnote-194) Secondly, the biggest obstacle to trade is the divergence of standards and regulations across the Atlantic, and the main focus of this agreement will be to tackle those barriers.[[195]](#footnote-195) Thirdly, shaping future business environment by developing new global rules and standards will help strengthen transatlantic trade and investment links.[[196]](#footnote-196) The EU and the USA share common values, similar legal systems, and high standards of labour and environmental protection, and should exploit these synergies for mutual benefit.

## **3.3. THREE-DIMENSIONALITY OF THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP**

The TTIP is a trade agreement that will potentially differ from the current EU and USA standard trade agreements because of its three different but interlinked components: ambitious market access on tariffs, services, procurement and investment; ambitious regulatory adjustment and other non-tariff barriers; and trade related rules. Thereby the analysis of the comparison of the TTIP will be divided into the following three subheadings: [[197]](#footnote-197)

* Market Access;
* Regulatory Issues;
* Trade-related Rules.

Each subheading will analyze the planned content of TTIP and compare it to the content of FTAs previously concluded by the EU. This comparison represents the link between the two parts of this paper and it will demonstrate differences and similarities between the TTIP and other agreements that EU have so far concluded.

### 3.3.1. MARKET ACCESS

Market access is already considered to be in advanced state. Interventions will be required in the sense of improving the existing situation. Both the EU and the USA already have relatively low tariffs: EU applies average tariff rate of 5.2% and USA applies average tariff rate of 3.5%.[[198]](#footnote-198) Such rates do not represent great impediment to trade, but apart from the low average tariffs, sectorial differences can be noticed. In some sensitive sectors, such as processed foods, agriculture, forestry, fisheries, and motor vehicles average rates may reach up to 50%, with tariff peaks considerably higher.[[199]](#footnote-199) Substantial economic gains from further elimination and reduction of tariffs can be expected in such sensitive areas, while in others, the economic increase will be noticed given the dimensions of the EU–USA trade relations.

Current TTIP proposal aims at elimination of all tariffs on bilateral trade.[[200]](#footnote-200) Complete tariff coverage will be starting point of negotiations, and all but the most sensitive tariffs are planned to be removed in a short time period.[[201]](#footnote-201) Although removal of tariffs is often mentioned as “*low hanging fruit*”, it is expected that negotiation on most restrictive trade tariffs will be a challenge.

The removal of tariffs is included in every FTA we have examined in the evolution chapter, seeing that without tariff removal free trade could not be established. Extent to which parties have agreed to lower or remove tariffs is different in every agreement, and not always symmetrical.

In order to ensure that tariff elimination is applied to desired goods, negotiations will aim at reconciling the EU and USA approaches to rules of origin[[202]](#footnote-202) in a manner that facilitates trade between the parties and that takes into account the rules of origin of the EU and the interests of the EU producers.[[203]](#footnote-203) The negotiations also aim at ensuring that administrative errors regarding rules of origin are dealt with appropriately.[[204]](#footnote-204)

The two markets are not entirely opened for services either. While the limited cross-border service providing is partly result of natural barriers, trade barriers also play a major role.[[205]](#footnote-205) Restrictions are particularly burdensome in several key areas, such as foreign ownership in air and maritime transport,[[206]](#footnote-206) postal and courier services, insurance regulation and some professional services (for instance lawyers, architects, engineers etc.).[[207]](#footnote-207) These market access barriers have serious negative effects on EU and USA businesses. The TTIP is planned to achieve “…*the highest level of liberalisation*” that each side has so far achieved in its trade agreements, while seeking to achieve new market access, recognizing the sensitive nature of certain sectors.[[208]](#footnote-208) Binding commitments should provide transparency, impartiality, and due process with regard to licensing and qualification requirements and procedures.[[209]](#footnote-209) The expected economic gains from liberalisation of services may be significantly higher when greater direct foreign investment that would accompany service liberalisation is taken into account.

Services are frequently regulated by FTAs concluded by EU. They appear as early as Mediterranean group of FTAs, and are included in almost every FTA after with some exceptions.[[210]](#footnote-210)

Along with liberalization of services, the TTIP is planned to provide right of establishment. The parties are negotiating to grant treatment no less favourable for the establishment in their territory of companies, subsidiaries or branches of the other party than that accorded to their own companies, subsidiaries or branches, taking due account of the sensitive nature of certain specific sectors.[[211]](#footnote-211) In this aspect, the TTIP would not bring anything new, because all of EU’s FTAs that have provisions liberalizing services also have provisions on freedom of establishment, with the exception of EU-Mexico FTA.

Public procurement is another significant area where the trade should be further liberalized.[[212]](#footnote-212) The EU has already opened its procurement market through extensive commitments under the WTO Government Procurement Agreement and in its bilateral FTAs. Restrictions are possible by specific derogations and reciprocity clauses. On the other hand, the USA has very limited internationally binding commitments in this area where only about 32% of the USA procurement market is open to the EU businesses.[[213]](#footnote-213) The USA public procurement market is closed, unless specific binding commitments are taken in its international agreements. Barriers are particularly met at sub-federal level. TTIP should aim at improving EU firms’ access to procurement opportunities in the USA by increasing the coverage of federal and sub-federal procurement, and persuading USA to eliminate those trade barriers to cross-border procurement (such as “*Buy American*” provisions giving preferential treatment to USA business).[[214]](#footnote-214)

Provisions regarding liberalisation of public procurement can be found for the first time in the Mediterranean group of FTAs and continue to be present in the Western Balkans group. More advanced provisions on public procurement and precise defining of terms can be found for the first time in EU-Iraq FTA and are also present in the latest stage of the evolution.[[215]](#footnote-215)

The wish of the negotiators is to include provisions on the full liberalisation of current payments, capital movements and investment, and include a standstill clause.[[216]](#footnote-216) It would entail carve-out provisions (*e.g.* in case of serious difficulties for monetary and exchange rate policy, or for prudential supervision and taxation), which would be in accordance with the provisions of the EU Treaty on the free movement of capital.

In comparison, provisions that allow trade related payments to move freely between contracting parties are necessary for establishing free trade, and thus can be found in every FTA so far concluded by EU. Furthermore, provisions that concern capital movements can be found as early as Mediterranean group of FTAs. Afterwards, they appear in almost every FTA, with some exceptions.[[217]](#footnote-217) Investment provisions found their way in the FTAs for the first time in Mediterranean group, in which they were promoted and protected inside economic cooperation title.Promotion and protection of investments continues to be included in the agreements in the Western Balkans group as part of the cooperation policies. Elaborate provisions on investments can be found in more recent FTAs, with the same goals as previous ones, but more detailed.

According to the negotiation mandate, the agreement will also include a general exception clause based on Articles XX and XXI GATT.[[218]](#footnote-218) The agreement will not preclude the enforcement of exceptions on the supply of services justifiable under the relevant WTO rules (Articles XIV and XIVbis GATS).[[219]](#footnote-219) The Commission should also ensure that nothing in the agreement prevents the parties from applying their national law, regulations and requirements regarding entry and stay, provided that, in doing so, they do not nullify or impair the benefits accruing from the agreement.[[220]](#footnote-220) The EU and Member States' laws, regulations and requirements regarding work and labour conditions shall continue to apply.[[221]](#footnote-221)

Furthermore, the agreement will highly likely include a clause on anti-dumping and countervailing measures[[222]](#footnote-222) acknowledging that any of the parties may take appropriate measure against dumping and/or countervailing subsidies in accordance with the WTO rules.[[223]](#footnote-223) The negotiators seek to make an agreement which would establish some other trade defence measures as well: the TTIP is planned to contain a bilateral safeguard clause by which either party may remove, in part or in full preferences where a rise in imports of a product from the other party is causing or threatening to cause serious injury to its domestic industry.[[224]](#footnote-224) Such safeguard measures appear in all FTAs that EU has signed. Those provisions define the measures that the parties are entitled to take in cases provided under the agreements.[[225]](#footnote-225)

### 3.3.2. REGULATORY ISSUES

The present TTIP proposal goes far beyond elimination of tariffs and other market access barriers. Regulatory issues and other non-tariff barriers are nearly uniformly considered in numerous studies, surveys and public consultations as the core of TTIP negotiations and their resolving will be a key objective, potentially “*making or breaking the agreement*”.[[226]](#footnote-226) As the regulatory differences act as a greatest impediment to trade and investment,[[227]](#footnote-227) it is clear that the highest potential economic benefit lies in removing those barriers. The purpose of such regulations on both sides of the Atlantic is to protect people from risks to their health, safety, environment and financial security. But, those regulations were created and developed by legislators without considering international impact, creating great differences and consequently cost.[[228]](#footnote-228) In order to bridge those differences numerous agreements were already concluded,[[229]](#footnote-229) mostly regulating certain areas, not fully implemented in practice and all with a limited success.

In the immense variety of different regulations that constitute barriers to trade, several can be pointed out as most financially burdensome. Technical barriers to trade (TBT)[[230]](#footnote-230) are by far the most commonly used regulatory measures.[[231]](#footnote-231) Particularly onerous are divergences in key sectors of economy such as aerospace, automotive, chemicals, electrical machinery, etc.[[232]](#footnote-232) The parties seek to establish provisions that build on and complement commitments under the WTO Agreement on TBT, with a view to facilitate access to each other’s markets, and establish mechanism for improved dialogue and cooperation for addressing bilateral TBT issues.[[233]](#footnote-233) The objectives of these provisions would be to yield greater openness, transparency and convergence in regulatory approaches, requirements and related standards-development processes.[[234]](#footnote-234) Consideration would also be given to provisions on labelling and means of avoiding misleading information for consumers.[[235]](#footnote-235)

Further barriers to trade arise from the use of disparate standardization.[[236]](#footnote-236) Apart from some areas where the use of international standards is widespread, the barriers arise from different standard setting practices: in Europe voluntary harmonized standards play a formally recognized role in supporting the application of EU policies and legislation, while the USA has a more decentralized system with several mostly private bodies having authority of standard setting, and there is no established link between voluntary standard development and regulatory policy in the USA.[[237]](#footnote-237)

When analysing so far concluded FTAs by the EU, detailed provisions on TBT can be found for the first time in the FTAs with African, Caribbean and Pacific states. The biggest and the most complete chapter can be found later in the South Korea FTA.[[238]](#footnote-238) On the other hand, standardization provisions appear for the first time in the Mediterranean group of FTAs where it is stated that the parties shall take appropriate steps to promote the use by non-EU party of Community technical rules and European standards for industrial and agricultural food products and certification procedures. Cooperation is promoted in standardization and conformity assessment on all sorts of fields.[[239]](#footnote-239) In most FTAs, the EU requires that the party at hand gradually conforms to EU standards.[[240]](#footnote-240)

Apart from TBT and standardization, regulatory barriers arise also from different sanitary and phytosanitary measures (SPS).[[241]](#footnote-241) SPS regulates food safety and animal and plant health standards. Since this is a very sensitive area, the differences here are particularly burdensome and time consuming, even though the EU and the USA have comparable level of consumer protection.[[242]](#footnote-242)

SPS first appears in the Economic Partnership Agreements with African, Caribbean and Pacific countries. More elaborate provisions can be found in EU-Iraq FTA and in the latest stage of the evolution. For the purpose of the discussion part of this paper,[[243]](#footnote-243) we want to point out that genetically modified organisms (hereinafter: GMO) [[244]](#footnote-244) as a part of SPS is not explicitly mentioned in any FTA so far concluded by EU.[[245]](#footnote-245)

In its final report, HLWG stated that TTIP should: “*reduce unnecessary costs and administrative delays stemming from regulation, while achieving the levels of health, safety, and environmental protection that each side deems appropriate, or otherwise meeting legitimate regulatory objectives*”.[[246]](#footnote-246) Achieving this goal will be a challenging task: unlike tariffs, the regulation cannot just be removed because it has its purpose.[[247]](#footnote-247) However, this divergent regulation often have a same goal,[[248]](#footnote-248) and TTIP should find a way to make rules more compatible, while keeping the same level of protection for people. It is also unrealistic to assume that all divergences will be harmonized because some of them are driven by geography, language, preferences, culture or history.[[249]](#footnote-249) In ECORYS study, where the most thorough research concerning the regulation and non-tariff measures has been conducted so far, it was estimated that – ambitiously – around 50% of all non-tariff barriers are actionable.[[250]](#footnote-250)

Two steps have to be taken for achieving the goal of reconciling differences in regulatory framework: working on the present regulation, and future coordination when making new laws.[[251]](#footnote-251) The existing regulation can be tackled in different ways. One way to do it is by mutual recognition. If the two sides could formally acknowledge that some different rules are achieving the same regulatory goal, companies could comply with just one set of rules in order to sell in both markets. Another way would be cooperation in making of new rules acceptable for both sides. New rules can be reached by concessions and compromises while finding the *ratio legis* of differing rules. Solutions for a part of these differences could be agreed within the main TTIP negotiation, while the complexity of some issues may need longer time to be resolved within built-in work programs. Equally important part of dealing with regulatory differences is better future coordination when creating rules for new products (especially in emerging growth sectors and on new technologies, e.g. electric vehicles and nanotechnology), or updating rules for the existing ones, because it is clearly easier to make rules compatible in the very beginning by cooperation of the regulatory bodies, then to change things when complex regulatory systems are in place.

Reducing unnecessary differences in regulation would lower the cost of doing business across the Atlantic, since it would be a lot easier for companies to comply with both laws at a same time. According to before mentioned ECORYS study, annual potential gain could reach up to €122 billion in the EU, and €41 billion in the USA.[[252]](#footnote-252) Apart from that, cooperation could create better and more effective regulation, since the two sides could share knowledge and learn from each other’s experiences. Also, considering the importance of the EU and the USA, such compatible regulation would without doubt have a global impact. Since European and American are vital export markets for many countries, it is expected that shared regulation approaches would be followed by producers around the world, making these rules global. In that case, primarily setting of the model to be followed would liberate the EU and USA businesses from conforming to third country rules while exporting.

### 3.3.3. TRADE-RELATED RULES

In this section, we will continue comparing the TTIP and the previous EU FTAs and take a look at some trade-related rules such as those regarding intellectual property rights, competition policy, state aid, *etc*.

The negotiators from both sides hope that the agreement shall cover issues related to intellectual property rights.[[253]](#footnote-253) The agreement will reflect the high value placed by both parties on IPR protection and build on the existing EU-USA dialogue in this sphere.[[254]](#footnote-254) Negotiations should, in particular, address areas most relevant for fostering the exchange of goods and services with IPR content, with a view to supporting innovation. The negotiations aim to provide for enhanced protection and recognition of EU Geographical Indications through the agreement, in a manner that complements and builds upon the TRIPS,[[255]](#footnote-255) also addressing the relationship with their prior use on the USA market with the aim of solving existing conflicts in a satisfactory manner.[[256]](#footnote-256) After prior consultation with the Trade Policy Committee additional IPR issues shall be considered in the negotiations. The agreement shall not include provisions on criminal sanctions.[[257]](#footnote-257)

The IPR are no stranger to EU’s FTAs. Out of 31 EU’s FTAs that are currently in force, a big majority, more precisely, 23 FTAs contain provision about IP protection.[[258]](#footnote-258) While FTAs with South Korea, Central America, Colombia and CARIFORUM states stand out with their very detailed and nuanced protection of IPR.

The EU and the USA generally have open investment regimes,[[259]](#footnote-259) though there are some restrictions. Multilateral framework on investment is not developed sufficiently and, in the absence of that, investment flows are mainly regulated by bilateral and regional investment treaties, along with investment chapters in FTAs, all with the key goal of promoting and protecting investors of one state in territory of another.[[260]](#footnote-260) The fact that those agreements are the primary source of international investment law, caused incomplete network of such treaties between certain EU member states and the USA.[[261]](#footnote-261)

The aim of negotiations about investments will be to negotiate investment liberalisation and protection provisions including areas of mixed competence, such as portfolio investment, property and expropriation aspects, on the basis of the highest levels of liberalisation and highest standards of protection that both parties have negotiated to date.[[262]](#footnote-262) After prior consultations with Member States and in accordance with the EU treaties,[[263]](#footnote-263) the inclusion of investment protection[[264]](#footnote-264) and ISDS will depend on whether a satisfactory solution meeting the EU interest concerning the issues is achieved.[[265]](#footnote-265) On the other side of the pond, the USA Chamber of Commerce insists that EU and USA include robust provisions on ISDS.[[266]](#footnote-266)

If the ISDS finds its way to the final version of the TTIP it would be a novelty for EU, since EU till this date does not have even one ISDS in its FTAs that are in force. However, EU is at the moment also negotiating with India, Singapore and Canada to include the ISDS provision in their FTA. In contrast, the USA is no stranger to ISDS provisions.[[267]](#footnote-267)

The EU aims at including provisions on competition policy, antitrust, mergers and state aids.[[268]](#footnote-268) Furthermore, the EU wishes to address state monopolies, state owned enterprises and enterprises entrusted with special or exclusive rights.[[269]](#footnote-269) Provisions that protect competition are present in the first generation of FTAs. More detailed ones are present in the Western Balkans[[270]](#footnote-270) and they continue to develop as the evolution proceeds.

Both sides hope that the agreement will include provisions addressing trade and investment related aspects of energy and raw materials. Negotiations aim at ensuring an open, transparent and predictable business environment in energy matters and at ensuring an unrestricted and sustainable access to raw materials.[[271]](#footnote-271)

If all goes well with the negotiations, the agreement will include provisions to facilitate trade between the parties, while ensuring effective controls and anti-fraud measures.[[272]](#footnote-272) To this end it shall include, *inter alia*, commitments on rules, requirement, formalities and procedures of the parties related to import, export and transit, at a high level of ambition, going beyond commitments negotiated in the WTO.[[273]](#footnote-273) These provisions should promote modernisation and simplification of rules and procedures, standard documentation, transparency, mutual recognition of standards and cooperation between customs authorities.[[274]](#footnote-274)

As an evidence of awareness of the 21st century social and environmental problems, the parties hope that the agreement will include commitments by both parties in terms of the labour and environmental aspects of trade and sustainable development.[[275]](#footnote-275) Consideration will be given to measures to facilitate and promote trade in environmentally friendly and low carbon goods, energy and resource-efficient goods, services and technologies, including through green public procurement and to support informed purchasing choices by consumers.[[276]](#footnote-276) The EU also hopes that the agreement will include provisions to promote adherence to and effective implementation of internationally agreed standards and agreements in the labour and environmental domain as a necessary condition for sustainable development.[[277]](#footnote-277)

Labour issues are firstly regulated in the Mediterranean group of the FTAs in a way of establishing dialogue on social matters. More attention is given to this topic in the latter stages of the evolution.

Environment appears for the first time in the Mediterranean group of the FTAs, as a form of cooperation[[278]](#footnote-278) and it continues to be included in the Western Balkans group, where it gets more frequently represented in provisions that do not directly concern environmental protection.[[279]](#footnote-279) In the newer FTAs, more attention is given to environmental provisions.[[280]](#footnote-280)

# 4. DISCUSSION

William Shakespeare once said: “*for there is nothing either good or bad, but thinking makes it so*”.[[281]](#footnote-281) The TTIP has sparked an outcry on both sides of the Atlantic Ocean. This chapter will present the five most controversial issues of the EU-USA trade deal that could prove to be toxic for the negotiations. The topics will be analyzed from opposing perspectives and finally the authors will give their own arguments and opinions.

## **4.1. *L'EXCEPTION CULTURELLE***

Aurélie Filippetti, the French Minister of Culture has forged an alliance with ministers of culture from 14 more EU states to take the audiovisual sector[[282]](#footnote-282) off the negotiating agenda.[[283]](#footnote-283) The EU Parliament underscored these -demands in a resolution calling for “*exclusion of cultural and audiovisual services, including those provided online*”.[[284]](#footnote-284) Ultimately France made its approval of the European Commission’s negotiating mandate dependent on adoption of *l’exception culturelle[[285]](#footnote-285)* and won the day to the delighted plaudits of Germany’s cultural sector.[[286]](#footnote-286) The French offensive was a success. The present mandate explicitly excludes audiovisual services from the negotiating mandate[[287]](#footnote-287) and in various places also commits itself to the safeguarding of cultural diversity with direct reference to the UNESCO Convention.[[288]](#footnote-288)

EU trade Commissioner Karel de Gucht in a press conference was quick to point out that while audiovisual was not in the planned chapter on “*trade in services and establishment*” for the time being, it was agreed that the Commission could “*come back*” to the issue to ask for a new mandate on it.[[289]](#footnote-289) Although the EU negotiators described *l’exception culturele* as a “*not in, not out*” formula, the new mandate would require a unanimous vote and the French Minister of Culture insisted that they would again say „*No*“.[[290]](#footnote-290) The authors believe that the negotiating team used the mentioned formula as a way to satisfy the French and to try to dissuade the USA from retaliation, because the USA negotiators could say that if the EU is excluding a certain sectors from the very beginning, then the USA can also exclude a certain sector that is valuable to them.

If the liberalisation of the audiovisual sector ends up in the TTIP it would be the first EU’s trade agreement to contain such a provision.[[291]](#footnote-291) From the very start, it proved to be a very controversial topic that showed a division in the EU itself.[[292]](#footnote-292) For instance, Manuel Barosso, the President of the European Commission, when referring to the proponents of *l’exception culturele* was quoted as saying: “*some say they belong to the left, but in fact they are culturally extremely reactionary and have an anti-global agenda*“.[[293]](#footnote-293) Opponents of the exception have repeatedly warned that excluding any economic sector could hand the USA an early bargaining chip in what promises to be tough negotiations. Since the EU audiovisual and cultural market is already relatively open for USA companies while USA market access is still very limited for European companies,[[294]](#footnote-294) one could say that the EU loses the economic gains by excluding the audiovisual sector and risks losing more economic gains from other excluded sectors if the USA retaliates.

Although there are two different opinions regarding the exception, both sides use the same argument - cultural diversity. Opponents argue that the trading of cultural products may be expected to have an influence on the perceptions, values and norms of the importing society.[[295]](#footnote-295) At the same time, trade in cultural products also contributes to cultural diversity within a society, because it increases the range of available cultural products.[[296]](#footnote-296) Additionally, the belief is that the trade in cultural products opens horizons and broadens our perspectives and there is also a sentiment of belonging to the same mankind, which is a very important concept against all forms of narrow nationalism and [protectionism](http://topics.nytimes.com/top/reference/timestopics/subjects/p/protectionism_trade/index.html?inline=nyt-classifier).[[297]](#footnote-297)

In contrast, proponents argue that Hollywood’s supremacy in the audiovisual sector would harm the cultural diversity and national identity of MSs.[[298]](#footnote-298) Moreover, they stress out that USA repertoire already represents around 50% of overall airplay and downloads in pan-European charts.[[299]](#footnote-299) Besides, many EU cultural markets, including the music sector, are based on very specific regulatory frameworks and are subject to well-functioning national and European support schemes.[[300]](#footnote-300) The EU music sector is also less homogeneous and less concentrated than the USA market, especially in the field of digital access and distribution.[[301]](#footnote-301) For these reasons, including the sector in the European Commission’s mandate would neither have contributed to reinforce European players on the EU market, nor would it have resulted in growing exports of European productions or services in the USA.

The authors believe that there already exists a cultural diversity in the EU, because there are a lot of cultural products coming from, *inter alia,* the USA. So if we preserve the *status quo* we will not deprive ourselves from foreign culture, especially not from the USA cultural products. In the present time, the EU audiovisual sector is worth 17 billion euros and provides jobs for a million people.[[302]](#footnote-302) The United States of America already sells the European Union far more music, movies, radio and television programs than it buys from Europe. Its net surplus for the sector averaged 1.5 billion Euros a year from 2004 to 2011.[[303]](#footnote-303) The authors fear the imbalance will only increase under a trade deal as digital and Internet services,[[304]](#footnote-304) already dominated by USA technology companies, become ever more popular. Although, the EU would profit from a further liberalisation of the USA audiovisual sector is, because of Hollywood’s dominance, the authors believe that the liberalisation of the audiovisual sector would bring more costs than gains to the EU. If the EU wants to keep its cultural diversity and national identity it will have to preserve an adequate balance. On the basis of the arguments mentioned above, the authors support the exclusion of the audiovisual sector from the chapter on trade in services and establishment.

## **4.2. GENETICALLY MODIFIED ORGANISMS**

GMOs are one of the most controversial issues concerning SPS within the TTIP negotiations, and are a part of the second section of negotiations – regulatory issues and non tariff barriers. Although GMO is not explicitly mentioned in Commission's directives for the negotiation on TTIP, SPS measures are included and tacitly the question of allowing GMO products to enter the EU arises, while giving an answer to it becomes inevitable.

Allowing GMO produced in the USA to freely roam the EU market[[305]](#footnote-305) puts a chill on back of the most Europeans when they first hear that such an option could ever be possible.[[306]](#footnote-306) Such an attitude coming from the EU citizens is certainly cause of a difference in regulatory approach[[307]](#footnote-307) which is deeply enrooted in the EU market system[[308]](#footnote-308) and is a consequence of setting high standards and low risk paths that the EU citizens seek to take,[[309]](#footnote-309) which somewhat differs from the one that the USA citizens have.[[310]](#footnote-310)

Difference in EU's and USA's opinions when it comes to GMO can be seen in a survey that authors of this paper undertook among students from both the EU (University of Zagreb) and the USA (New York University). The survey in Croatia was carried out at 3 different faculties: Faculty of Law, School of Medicine and Faculty of Food, Technology and Biotechnology. It is interesting that no major difference in opinion occurred when surveying these different faculties. Only 64,80% examinees from Europe claim that they have tried GMO food, but in the USA that number comes down to 45,71%. Either this is a stunning fact, considering that in the USA the GMO food is much more common and widespread, either it only goes to show how misinformed and unaware the USA consumers are. In favour of the second notion goes the fact that in the EU, 62,85% of surveyed students say that they read the labels on food in order to know the ingredients and their origin, while in USA that number is as low as 28,57%.

According to a survey, in the EU only 34,92% examinees would buy the product for which they are aware is a GMO, whilst in the USA that percentage rises to a 51,43%. Also, in the EU 69,83% of examinees consider the GMO food to be unsafe, and in the USA that percentage goes down to 57,14%. Both sides also rule in favour of buying non-GMO at higher price than cheaper GMO product, and while in EU the part of those who would choose so goes up to 78,77%, in the USA it is 68,57%. About 85% of examinees on both sides think that USA does not do enough to protect its citizens from the GMO. At the same time, 76,54% of EU students think that the EU and their country aren't doing enough to protect them from disadvantages of GMO, and what is astonishing, 94,29% of USA examinees approve of EU's more protective attitude towards the consumer. This leads to the conclusion that even in the USA the level of protection does not correspond to the level that its consumers would want it on. On the other hand, the EU citizens do not think that the level of protection from GMO food that EU offers is not enough to protect them, going only to show the caution and doubt with which the EU citizens view on the new and unexplored products, from which it can be seen why the EU uses its precautionary principle in the first place. It can be concluded that there is some difference in opinions between EU and US examinees, but not as big as the difference between our two regulatory systems would lead you to believe.

The Commission however, when giving directions in negotiations about regulatory issues and non-tariff barriers, states that „*regulatory compatibility shall be without prejudice to the right to regulate in accordance with the level of health, safety, consumer, labour and environmental protection and cultural diversity that each side deems appropriate, or otherwise meeting legitimate regulatory objectives*“.[[311]](#footnote-311) With the given nature of such instruction we can conclude that Commission wants to have leeway so it can avoid giving full access to GMOs into the EU market. When specifically referring to SPS measures Commission wants „*measures based on science and on international standards or scientific risk assessments, while recognising the right for the parties to appraise and manage risk in accordance with the level of protection that each side deems appropriate…applied only to the extent necessary to protect human, animal, or plant life or health*“.[[312]](#footnote-312) Moreover, the EU has the intention to unite with the USA with the goal of becoming international standard setters, and not to lower the existing world standards that are currently being applied.[[313]](#footnote-313)

Americans are aware that this is going to be one of the most contentious topics that they need to negotiate about.[[314]](#footnote-314) Although the USA could benefit from having provision that allows for free circulation of GMO food, it is yet uncertain how they will respond to the EU’s defensive stance when it comes to this topic.

Difference in regulatory approaches between the negotiating parties can be seen in the processes which food and other consumer products must undergo in order to enter the market. In the EU, the precautionary principle[[315]](#footnote-315) is applied, which means that „*producers have to demonstrate the safety of GM crops and food products before they can be approved for sale*“.[[316]](#footnote-316) Here in the precautionary principle, an example of EU's „*better safe than sorry*“ approach[[317]](#footnote-317) can be seen, as the EU regulation won't allow for any food or other consumables to circulate its market unless proven that they are absolutely healthy and not even a little place for taking risks is left.[[318]](#footnote-318) As a contrast to the EU approach, in the USA „*regulators generally see GM foods as substantially equivalent to unmodified products, and give them no additional oversight in the absence of scientific proof that any harm is caused by their sale and consumption*“.[[319]](#footnote-319)

There are two ways in which the two systems are to achieve regulatory compatibility when it comes to GMO as part of the SPS measures. One is harmonisation,[[320]](#footnote-320) and the other mutual recognition.[[321]](#footnote-321) Harmonisation would require more in-sync mindset and similar mentality between regulation makers and their protection policies, which is not likely to happen in the near future when it comes to the EU and the USA. On the other hand, mutual recognition allows each party to have its own system of regulation, but at the same time, the party has agreed to recognize and approve the regulatory system of the other party, thus accepting products coming from it.

Although both systems have more or less the same goal, it is very unlikely that the USA would ever agree to the harmonisation of regulation which would lead to increased standards and stricter regulation when it comes to GMO. Second variant, the mutual recognition system is more likely to happen, in which a consumer would be warned which regulatory system the product has undergone, and could decide for himself what suits him most. It wouldn't be a surprise if EU food producers would get a better deal if mutual recognition is applied, since Americans aren't so keen to the GMO food after all (according to a survey that the authors of the paper undertook) and EU citizens seem to share their opinion. In that case, it would come down to the responsible and informed consumer to decide on this important topic,[[322]](#footnote-322) which would not be so bad after all, since informed and cautioned consumer should know what is best for him. But if he doesn't care that much at all, how can he at the same time demand to be protected?

Proponents of GMO argue that if the entrance of the GMO products to EU market is given freely, the prices of food could generally go down, since the GMO products have a lot cheaper way of producing.[[323]](#footnote-323) Thus not only those products will arrive at EU market cheaper, but also the existing, regular products will have to go down in price in order to compete with cheap GMO food from USA.[[324]](#footnote-324) Secondly, GMO produced food is known to be better looking, can be tastier if modified to be such, and certain minerals and vitamins from the food can be boosted with the usage of genetic modification,[[325]](#footnote-325) making the overall quality of the food higher, if we don't take into account possible threats coming from consuming GMO products, which have not occurred yet in more serious form that would require their withdrawal from the USA market.

On the other side, opponents take the same argument and turn it the other way: they think because GMO produced food isn't proven to be without any serious threats[[326]](#footnote-326) there is a still slight chance that side effects may occur later down the line of product consumption, in the decades to come.[[327]](#footnote-327) To prove that point, an argument is invoked that here is currently no scientific consensus on GMO safety.[[328]](#footnote-328) Here EU applies its strict precautionary principle, as explained before, which would have to change, since there is no way to prove that GMO products do not alter human body over the longer period of usage.[[329]](#footnote-329) Also, the said GMO cheapness may ruin European agriculture industry, by lowering prices of food and forcing the EU to adopt similar GMO regulations as the ones in the USA, and at the same time pressuring EU food producers to produce GMO food or drop out of the game. Thus the whole ordeal could be reduced down to regulatory „*race to the bottom*“,[[330]](#footnote-330) in which each side would reduce as much precautionary measures as it possibly can in order to maintain steady agriculture industry. Also, there is a chance that lobbying industry will see „*TTIP as an opportunity to renew Europe’s regulatory framework*“,[[331]](#footnote-331) so the assignment of introducing GMO in the EU that the lobbying groups are still failing to fulfil, may finally be achieved by this new revision of regulatory systems in the form of TTIP.

In the end, after reviewing all the benefits and downsides, authors are still not convinced that taking neither the harmonisation, neither the mutual recognition path of regulatory synchronization can be beneficial for the EU, without too much risk taking place, and would rather not introduce GMO to the EU’s market through TTIP. Maybe the answer to this dilemma can be found in the *status quo*, letting the time and science tell whether GMO is safe to consume, which would satisfy tough and careful EU legislators.

## **4.3. ENVIRONMENT**

Although environment is not a standalone topic of negotiations,[[332]](#footnote-332) according to the negotiating mandate of the Commission,[[333]](#footnote-333) nevertheless, the question of level of environmental protection does arise in several areas of TTIP, explicitly or tacitly, such as its preamble, objectives, regulatory issues and non tariff barriers to trade, and in every other area where environmental policies should be taken into consideration. [[334]](#footnote-334)

Both sides of the pond argue that business and jobs are to go up even more significantly. If that is the case, it can hardly be said that no harm would be done to the environment in the process of such expanding of the economy. In favour of that fact goes the recently held Intergovernmental Panel on Climate Change (2013) that concluded that there are “*multiple lines of evidence that the climate is changing across our planet, largely as a result of human activities*”,[[335]](#footnote-335) and certainly not for better. Currently, the negative results of environmental recklessness can be seen in shrinking of the Arctic ice, the rise of the sea level, progressive desertification and the greater frequency of the extreme weather events,[[336]](#footnote-336) which only goes to show that future holds no safer world, unless a large effort is given in that direction. Best chance that we have at directing the western world to a greener path is that the environmentally more conscious EU draws attention to the matter and convinces the USA to pay more attention towards a sustainable world, and what better opportunity is there than to do so through negotiating about TTIP.

It can be said that the environment is an important topic for the EU, since in the negotiating mandate, Commission states that environmental protection should be part of the preamble,[[337]](#footnote-337) objectives[[338]](#footnote-338) and of the regulatory issues and non tariff barriers to trade of the TTIP.[[339]](#footnote-339) The defensive guard of the EU can also be seen in the following statement by the European Trade Commissioner, Karel de Gucht, when he was talking about TTIP negotiations: “…*environmental standards will under no circumstances be lowered…“.[[340]](#footnote-340)* The EU's so-called 2020 climate and energy plan,[[341]](#footnote-341) that is one of the most ambitious, comprehensive and concrete plan for sustainable development, already paves the way for more environmentally friendly future in the EU. Also, providence of the Commission and caution given to counter USA's reckless environmental approach can be seen in its own impact assessment of TTIP, which concludes that „*every scenario under the FTA and the intermediary policy option increases trade and thus the need for resources for production. This may increase waste and may pose dangers for both natural resources and the preservation of biodiversity.”[[342]](#footnote-342)*

On the other hand, the EU's big business thinks that environmental policies which EU promotes harms its competitiveness on the global market,[[343]](#footnote-343) and they ask for more similar environmental regulations in the EU and the USA.[[344]](#footnote-344) The USA companies, on the other hand, have already begun to prey European shale gas reserves and might use TTIP to bypass national bans.[[345]](#footnote-345)

In contrast, the difference of the USA’s environmental policy to the EU’s provokes numerous scientific research and papers.[[346]](#footnote-346) This only goes to show that not only that the USA environmental policy is much less protective, but also that there is doubt as to why it is so, since both the USA and the EU regulatory systems come from western, modern, developed and environmentally conscious surroundings.

All in all, seeing that the two parties look at environmental protection with a different viewpoint, the authors believe that there is a rare opportunity in TTIP. It consists in making a compromise between the profit oriented and efficient USA industry and sustainable and environmentally cautious EU approach.[[347]](#footnote-347) In the wedding of those two behaviours that see an economic and environmental future differently, the golden mean could be found where both efficiency and sustainability could be represented in the talks about future growth of economy. Caution must be given so no party caves in to the other, thus accepting a single approach to the development, without giving regard to view of the other party. By accepting the middle road, the parties could become standard setters of the world, since they together have a leading role in the world economy, and also an immense impact on the world as a whole. The alternative is that both parties keep their environmental regulations as they currently are, therefore not including any environmental topics in TTIP. This option would be the best of both worlds because the EU would not have to lower its environmental standards, but would gain more trade, and USA can keep the approach that they think is the best for their economy.

## **4.4. INVESTOR STATE DISPUTE SETTLEMENT**

ISDS is the most important and by far the most controversial part of TTIP negotiations on trade-related rules. In the general public, concerns have been raised that the ISDS provisions in the TTIP will undermine the power of national governments to act in the interest of their citizens.[[348]](#footnote-348) For this controversial part of the TTIP proposal there are arguments on both sides. The proponents argue that:

● investment protection and ISDS lead to attraction of foreign direct investment;

● it increases the opportunity to convince other trading partners to have ISDS;

● it fosters certainty, predictability and impartiality.

Those in favour say that investment protection provisions, including ISDS, are important for investment flows. They say that investment leads to economic growth and more jobs.[[349]](#footnote-349) They believe that this is particularly the case in the EU, where the economy is very much based on being open to trade and investment.[[350]](#footnote-350) The belief is that investment is a key in creating and maintaining businesses and jobs. Through investment, companies build the global value chains that play an increasing role in the modern international economy; they not only create new opportunities for trade but also value-added, jobs and income.[[351]](#footnote-351)

Another argument is that these provisions in the TTIP will open the door for similar provisions in future FTAs concluded by the USA and EU. That goal could be achieved either via bilateral negotiations with third countries or with the possibility to influence the multilateral context, *i.e.* through the United Nations Commission on International Trade Law, where the EU has created new rules on transparency that will apply beyond the EU's own investment agreements.[[352]](#footnote-352) These provisions are especially important in the developing countries and in the third world countries because of their weaker property rights protection and less efficient domestic court system.

According to the European Commission, the main reason for having an ISDS mechanism is because in many countries investment agreements are not directly enforceable in domestic courts.[[353]](#footnote-353) Therefore, an investor who finds him or herself discriminated against or whose investment is expropriated cannot invoke investment protection rules before the domestic court to get redress, unless there is consent from the country for solving disputes at the International Centre for Settlement of Investment Disputes.[[354]](#footnote-354) In international investment law[[355]](#footnote-355) there are two types of procedures to enforce the rights for protection of investment. First one is the state-to-state arbitration. Investor needs to contact its state and convince it to commence the arbitration proceeding against the state that received the investment on the basis of infringement of rights guaranteed by the investment agreement.[[356]](#footnote-356) The second possibility is that the investor, himself, files a protest against the state in which he invested (investor-to-state arbitration).[[357]](#footnote-357) ISDS allows investors to rely directly on the rules that were specifically designed to protect their investments. By creating legal certainty and predictability for companies, investment protection is also a tool for states around the world to attract and maintain foreign direct investment (hereinafter: FDI) to underpin their economy.[[358]](#footnote-358)

On the other side, there is an argument which is invoked by both sides and that is the neutrality and impartiality of judges. Proponents of the ISDS argue that the arbitrators are in average more neutral, independent and impartial than national judges in the domestic court system when there is a case of investment protection against the state which received the investment.[[359]](#footnote-359) Proponents of the ISDS question national judge’s neutrality and impartiality because a domestic judge is a national of the state against which a complaint is filed, he is a servant of the state, receives salaries and promotions from the domestic court system and the state, and is, *eo ipso,* more exposed to direct or indirect influences to vote in favour of the state.[[360]](#footnote-360)

On the contrary, opponents could say that even if a national judge is biased it does not mean that he would automatically judge unreasonably against the investor, because the state also has an interest to attract FDI and not to act in a repulsive manner to the investors. Moreover, the opponents also use the arguments on neutrality and impartiality against the arbitrators. ISDS has been accused of inherent bias towards investors.[[361]](#footnote-361) Concerns about neutrality also arise from the arbitrator’s ability to act as a judge in one case and an advocate in another.[[362]](#footnote-362) Arbitrating panels are not necessarily drawn from a permanent roster of arbitrators, but are generally drawn from what might be called the international commercial arbitration bar.[[363]](#footnote-363) This is especially the case for the third arbitrator selected as President of the panel.[[364]](#footnote-364) As a result, the arbitrators can be deciding cases on one file, and arbitrating on behalf of clients in other files facing similar legal issues. Decisions they make as arbitrators may impact the positions of their own clients or of colleagues in their firms or through other contacts.[[365]](#footnote-365)

The point here is not that the arbitrators lack personal integrity, but simply that the system for the selection of arbitrators permits individuals to argue for broad interpretations of the treaty rights on behalf of clients, at the same time as those individuals might be acting as arbitrators in other treaty claims.[[366]](#footnote-366) The most basic legal principle of any legal process, that justice must be blind, is clearly not at play here.[[367]](#footnote-367)

A different opinion would be that even if there is a certain degree of bias, it is not because arbitrators directly want to benefit their clients, but because they mostly come from the world of commercial arbitration and look and the relation between the investor and state in a different light, *i.e*. they look at the relation between investor and state as a purely commercial one, which is in accordance with the investment treaties. Hence, if their interpretation benefits more investors it is because that tend to think more like commercial law lawyers than for example international law lawyers who tend to look at the bigger picture of law.

ISDS has also been accused of lacking core judicial safeguards of transparency and independence,[[368]](#footnote-368) and of investing immense power in a small core of professional arbitrators who dominate the ISDS.[[369]](#footnote-369) One recent report labelled ISDS the “*world’s worst judicial system*”.[[370]](#footnote-370) In the end, we can conclude that neither side could take the argument on neutrality and impartiality as a clear advantage.

Proponents go by the logic “*the end justifies the means*”[[371]](#footnote-371). The goal is the economic growth, and the means is the ISDS which attracts the FDI. Opponents[[372]](#footnote-372) could argue that:

● the goal will not be achieved in a satisfactory amount;

● the means are not justified;

● there is a better alternative.

Firstly, the argument which the European Commission uses is that “*the companies investing abroad do encounter problems which - for a variety of reasons - cannot always be solved through the domestic legal system. These problems range from the rare, but dramatic, occurrences of expropriations by the host country by force, discrimination, expropriation without proper compensation, revocation of business licences and abuses by the host state such as lack of due process to not being able to make international transfers of capital*.”[[373]](#footnote-373) Surely, the described situation happens in the world, but how many of them happen in the EU and USA? Is the domestic court system in those countries so unable and biased that it is holding back investors from investing in the EU or USA? The authors disagree with that notion, and think that the burden of proof is on the proponents to prove otherwise.

Secondly, the authors believe that the notion that bilateral investment treaties (hereinafter: BIT) lead to more FDI, is taken as an axiom by the proponents. Moreover, when you analyze twenty years of bilateral FDI flows from one county to another, you can found little evidence that BITs have stimulated additional investment.[[374]](#footnote-374) Recent studies by the World Bank and Yale University have found that BITs on their own do not attract investment.[[375]](#footnote-375) If there is no grave breach of investor rights in EU in the *status quo*, the question is why would the investments go up in a significant amount?

Thirdly, even if the BIT makes a difference, and it attracts investment, it is still not safe to say that there will be more economic growth. Although there is a widespread belief among policymakers that FDI generates positive productivity externalities for host countries, the empirical evidence fails to confirm this belief.[[376]](#footnote-376) Scholars alike have similar conclusions such as: “*FDI does not exert any influence on growth*”[[377]](#footnote-377) In the particular case of developing countries, both the micro and macro empirical literatures consistently find either no effect of FDI on the productivity of the host country firms and/or aggregate growth or negative effects.[[378]](#footnote-378) Similarly, an empirical analysis using cross-country data for the period 1981-1999 suggests that total FDI exerts an ambiguous effect on growth on developed countries.[[379]](#footnote-379) Foreign direct investments in the primary sector, however, tend to have a negative effect on growth, while investment in manufacturing a positive one and the evidence from the service sector is ambiguous.[[380]](#footnote-380)

The means are not justified because the ISDS would constitute a new legal order which would limit the sovereignty of the state by undermining government policies enacted in a democratic procedure. If the EU already limits its sovereignty, it should definitely get something more significant in return, rather than just a possibility of economic growth.

The means are also not justified because ISDS puts an additional cost on the state and risks a “*regulatory chill*”. The number of ISDS claims is in a rapid rise,[[381]](#footnote-381) and in most cases MS would have to pay an arm and a leg for each ISDS claim.[[382]](#footnote-382) Even when ISDS claims are unsuccessful, there is widespread concern that the vast cost of defending ISDS cases may deter states from pursuing future policy goals or taking regulatory measures that may have a potential impact on foreign investors - often described as “*regulatory chill*”.[[383]](#footnote-383) Investors have made claims of up to USD$114 billion, and 2012 saw the highest ever award for an ISDS claim, of USD$1.77 billion.[[384]](#footnote-384)

All in all, the authors believe that the ISDS should not be a part of the TTIP because it is questionable if the ISDS would achieve its goal (of attracting FDI and leading to economic growth) in a satisfactory manner. Furthermore, after analyzing the arguments of both sides, the opinion is that there are more losses than gains from ISDS in EU-USA trade deal and that the means for achieving the goal are not justified. Since, both EU and USA have a very strong domestic court systems and property rights protections the authors conclusion is that there is a better alternative in the *status quo*.

## **4.5. INTELLECTUAL PROPERTY RIGHTS**

As mentioned before, the IPR protection is no stranger to EU’s FTAs. Out of 31 EU’s FTAs that are currently in force, a big majority, more precisely, 23 FTAs contain provision about IP protection. But, the mere fact that the IPR is a usual suspect in FTA negotiations did not stop the civil society from declaring it a controversial and a sensitive topic.[[385]](#footnote-385) The debate rages on whether to include IP chapter in TTIP or not. The proponents of that idea stress the positive aspects of IP rights. The primary, well-known function of an IP right is to give its holder a competitive advantage in its commercial activities, by preventing unauthorised exploitation by others.[[386]](#footnote-386) This is especially important for small and medium sized entrepreneurs (hereinafter: SME), which IP rights provide with powerful weapons to compete with much larger companies.[[387]](#footnote-387) There are plenty of benefits of IPR;[[388]](#footnote-388) but the big question is - why to include it in the TTIP?

Proponents could offer two main arguments in favour of inclusion. The first one is to enforce the notion that the chapter on IPR is an integral part of the trade agreements. IPR protection in EU and USA might be on a high level, but the goal is to engage other countries (such as China, India, Brazil or Thailand)[[389]](#footnote-389) to follow their lead and either ramp up the protection of IPR in the domestic system or to include an IPR chapter in the trade agreements.[[390]](#footnote-390) The second main argument is to make the EU and USA IPR systems more compatible and harmonised, and decrease the transaction costs by removing non-tariff barriers. *E*.g. in trademark law, there are differences between the systems, USA follows the use-based system, whereas EU has always based trademark protection on registration as such. If the systems were more compatible, there would be a decrease in transaction costs.

But the opponents could beg to differ on the last point. Although differences in the systems do exist, they are marginal and the transaction costs are minimal.[[391]](#footnote-391) There might be a need to consult the lawyer for the advice on the differences, but because of frequent trade between EU and USA they are well known so they do not make a meaningful impediment to trade. *Eo ipso*, if the differences are small, so will also be the benefits. The authors do not believe that the differences are a strong argument for an IPR chapter in TTIP.

On the other side of the scale,IP protection is already high in both EU and USA. Both parties are exceeding the TRIPS minimum and have a lot of TRIPS-Plus elements.[[392]](#footnote-392) So the argument on strengthening IP protection can hardly be made.

Including IP standards in the TTIP necessarily locks in these standards between the EU and the USA. Even if these standards comply with what we are used to now, they will restrict us in the future if we want to reform.[[393]](#footnote-393) And that is not a theoretical argument. Reform is very much in the air nowadays, both in the USA and in the EU, particularly in the field of copyright. There are discussions going on in the United States Congress,[[394]](#footnote-394) the Register of Copyrights of the United States has urged Congress to reform,[[395]](#footnote-395) there are discussion in the European Parliament about the scope and extent of the copyright protection.[[396]](#footnote-396) If we lock in now, we will regret it because we cannot rollback easily if in the meantime higher standards are reached. The authors believe that this is the killer argument against IPR chapter.

The next argument comes from the perspective of pragmatism. No matter how many times the negotiators stressed out that the TTIP is different to the highly controversial ACTA[[397]](#footnote-397) and no matter how different it really will be, the public still equalizes those two.[[398]](#footnote-398) If the negotiators wish to minimize the risk of the TTIP being rejected as ACTA was, then they should leave the IPR out of the TTIP negotiations, just as they did with data protection.[[399]](#footnote-399)

Moreover, as the European Generic Medicines Association points out, “*any attempt to make IPRs stronger would have a negative impact on the penetration of generic medicines in the markets*”[[400]](#footnote-400) as it would reduce competition for cheaper and more effective drugs and, consequently, have an impact on patients’ access to affordable medicines.[[401]](#footnote-401)

In conclusion, from the line of argumentation it should be no surprise to the reader that the authors propose that the IPR chapter should be excluded from the TTIP negotiation.

# 5. CONCLUSION

In the end, we can conclude that the EU's foreign trade policy has gone through an evolution in the last 40 years. With the exception of a couple of anomalies, the comprehensiveness and the far-reaching impact of the FTAs have developed as the time passed by. A great example of this are provisions on services, which were not even a part of the FTAs at the very start, but became later a frequent component and subsequently became more and more detailed as they went through the different stages of the evolution. After the research and the legal and political analysis of 32 EU FTAs, the paper comes to the conclusion that the EU uses the trade policy not just for commercial reasons but also as a powerful political weapon. The EU customizes and offers different FTAs to different countries depending on their development level and EU’s economic and political goals.

If it is to be judged on the basis of the EU negotiation mandate and the current state of the negotiations, the results of the comparison suggest that the TTIP will be one of the most comprehensive FTA ever concluded by the EU, and by that very factthe next step in the evolution of the EU’s foreign trade policy. However, the TTIP is not just another FTA. Unlike all the other EU FTAs, this agreement is negotiated with a partner of similar political and economic strength which makes the negotiations even more challenging and enhances the possibility for the increase of the comprehensiveness and the far-reaching impact of the EU-USA trade deal.

Exactly because of that there should be a broad debate on its justifiability. The TTIP brings a lot of new things to the table of discussion such as liberalisation of the audiovisual sector, inclusion of the ISDS and a greater access of GMOs on the EU market. No other EU FTA has brought so much interest and scrutiny from the civil society, various NGOs and academics. The authors of this paper have taken a cautious stance towards the most controversial issues and provided arguments and advised not to allow a greater access to the EU market for GMO, not to include ISDS, chapter on protection of intellectual property rights and proposed to allow *l’exception culturelle,* while at the same time urged to be very aware of the potential environmental consequences of the TTIP.

Although, the authors understand that it is much easier to cherry-pick in a theoretical discussion than in the real world politics of a negotiation of the biggest bilateral trade deal in the history, the authors believe that the broad public should be informed in great detail about the *pro et contra*. It is unquestionable that there will be economic benefits from the TTIP, but the question is what will we sacrifice for them and is it worth it? The answer to the last question, the authors leave to the reader.

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# 7. ANNEXES

## **7.1. ANNEX 1 - ANALYSIS OF THE SURVEY ON GMO**

The authors undertook a survey on 393 students as a part of this paper. The survey was done using an online form, among students from both the EU (University of Zagreb) and the USA (New York University) and had a goal of answering a question whether there is difference of opinion in student populations of the USA and the EU. It is interesting that only 64,80% examinees from Europe claim that they have tried GMO food, but in the USA that number comes down to 45,71%. Either that is a stunning fact, considering that in the USA the GMO food is much more common and widespread, either it only goes to show how misinformed and delusional the USA consumers are. In favour of the second notion goes the fact that in EU 62,85% of surveyed students say that they read the labels on their food in order to know the ingredients and their origin, while in USA that number is as low as 28,57%. Furthermore in the EU only 34,92% would buy the product for which they are aware is a GMO, whilst in the USA that percentage rises to a 51,43%, which more corresponds to the number of people who claim that they have tried the GMO than it does in among EU students.

While in EU 69,83% of examinees consider the GMO food to be unsafe, in the USA that percentage goes down to 57,14%. Interestingly enough both the EU (51,68%) and the USA (71,43%) students agree that the main benefit of the GMO food is the price, rather than health or taste, while in the EU percentage of those who consider that there is no benefit is 31,28%, which is double the percentage of examinees in the USA (14,29%). Without any doubt, both sides consider health reasons to be the main disadvantage of the GMO food, in USA that percentage is flat 80%, while in Europe 74,02% examinees think so. With the same high percentage, both the USA students (77,14%) and the EU ones (91,62%) claim that scientific research would convince them most that GMO food is safe to consume, rather than the massive consumption or the government approval.

Both sides also rule in favour of buying non-GMO at higher price than cheaper GMO product, and while in the EU the part of those who would choose so goes up to 78,77%, in the USA it is 68,57%. When asked if the USA does enough to protect its citizens from the GMO, 84,36% EU examiners think it does not, which is almost the exact percentage of the USA students that thinks the same, 85,71%. At the same time, 76,54% of EU students think that the EU and their country aren't doing enough to protect them from disadvantages of GMO food and in the absolute twist, 94,29% of USA examinees approve of EU's protective attitude towards the consumer when it comes to the GMO food. Leading to the conclusion that even in the USA the level of protection does not correspond to the level that its consumers would want it on, so we can ask ourselves: why the USA GMO food market could be allowed to freely roam the EU when at the same time its own citizens do not feel well protected and are not satisfied with the situation in the USA as it is? On the other hand, the EU citizens do not think that the level of protection from GMO food (one of the highest in the world) that EU offers is not enough to protect them, going only to show the caution and doubt with which the EU citizens view on the new and unexplored products, from which it can be seen why the EU uses its precautionary principle in the first place.

And the last question: „*Do you think lobbying has anything to do with GMO being so widespread*“, 87,15% of the EU students think it does and a little higher percentage of USA students (88,57%) agrees. This leads to the conclusion that consumers on both sides are not completely satisfied with regulatory systems that they have and are in a need of a revision and re-examinations of regulation which protects them when it comes to the GMO. If so, why rush to force GMO products from the USA to the EU, while USA's own consumers do not approve of the current situation when it comes to GMO?

We can certainly conclude that there is some difference in opinions between EU and US examinees, but not as big as the difference between our two regulatory systems would lead you to believe. Furthermore, when looking at this survey, it can be said that there are grounds for harmonising our two systems, only if they would correspond more to the needs of the people they seek to protect. The survey in Croatia was carried out at 3 different faculties: Faculty of Law, School of Medicine and Faculty of Food, Technology and Biotechnology. It is interesting that no major difference in opinion occurred when surveying all faculties, going only to show that people of all professions stand more or less united in their opinion about GMO, regardless of their type of education.

## **7.2. ANNEX 2 - SURVEY ON GMO**

**GENERAL INFORMATION:**

A) Gender - male; female

B) Age -

C) University -

D) Faculty -

**GMO RELATED QUESTIONS:**

1. Have you tried GMO products? - yes; no

2. Do you read labels on products in order to know whether it is a GM or not? - yes; no

3. Would you try products with labels that clearly indicate that they are GMOs? - yes; no

4. Do you consider GMO products to be safe for your health? - yes; no

5. What do you think is the main benefit of GMO? -health -price -taste -other (write it down) - none of the above

6. What do you think is the main disadvantage of GMO? -health -price -taste - other (write it down) - none of the above

7. What would convince you the most that GMO is safe or unsafe?

- government approval -scientific research -widespread use of GMO - other (write it down)

8. In your opinion, should free for all, non-controlled GMO be allowed? - yes; no

9. If you have a choice between GMO product at lower price and non-GMO product at higher, which would you purchase? - a) GMO, b) non-GMO

10. Do you feel as if the USA government is protective enough towards consumers when it comes to GMOs? - yes; no

11. Do you approve of Europe being so protective?

12. Do you think lobbying has anything to do with a widespread of GMO products? -yes; -no

13. By your opinion, would GMO in future be more or less popular with the consumers? -yes; no

## **7.3. ANNEX 3 - OVERVIEW OF THE EUROPEAN UNION’S FREE TRADE AGREEMENTS**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Free trade agreement | Year | Basic content found in first generation | Dispute settlement | Services | Establishment | Movement of workers | Capital, investment promotion and protection | Public procurement | Standardization | Regional cooperation | Approximation of law and law enforcement | Justice and home affairs | Grants and loans | Development cooperation | TBT and SPS | Intellectual property | Environment |
| Iceland | 1972 | present |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Norway | 1973 | present |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Switzerland | 1973 | present |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Andorra | 1990 | present | basic |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| San Marino | 1991 | present | basic |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Faroe Islands | 1996 | present | basic |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Syria | 1977 | present |  |  |  |  |  |  | present |  |  |  |  |  |  |  |  |
| Israel | 1995 | present | basic | basic | basic | present | present |  | present |  |  |  |  |  |  | \* | basic |
| Tunisia | 1995 | present | basic | basic | basic | present | present |  | present | present |  |  |  |  |  | \* | basic |
| Turkey | 1995 | present | basic |  |  |  |  |  |  |  | present |  |  |  |  | \* |  |
| Morocco | 1996 | present | basic | basic | basic | present | present |  | present | present |  |  |  |  |  | \* | basic |
| Palestine | 1997 | present | basic |  |  |  | present |  | present | present |  |  |  |  |  |  | basic |
| Jordan | 1997 | present | basic | basic | moderate |  | present |  | present |  |  |  |  |  |  |  | basic |
| Egypt | 2001 | present | basic | basic | basic | present | present |  | present |  |  |  |  |  |  | \* | basic |
| Algeria | 2002 | present | basic | moderate | moderate | present | present | basic | present |  |  | present |  |  |  | \* | basic |
| Lebanon | 2002 | present | basic | basic | basic | present | present |  | present |  |  |  |  |  |  | \* | basic |
| Croatia | 2001 | present | basic | basic | moderate | present | present | basic | present | present | present | present | present |  |  | \* | basic |
| Macedonia | 2001 | present | basic | moderate | moderate | present | present | basic | present | present | present | present | present |  |  | \* | basic |
| Albania | 2006 | present | basic | moderate | advanced | present | present | basic | present | present | present | present | present |  |  | \* | basic |
| Montenegro | 2007 | present | basic | basic | moderate | present | present | basic | present | present | present | present | present |  |  | \* | basic |
| Serbia | 2008 | present | basic |  |  |  |  |  |  | present | present | present | present |  |  | \* |  |
| Bosnia and Herzegovina | 2008 | present | basic |  |  |  |  |  |  | present |  |  |  |  |  | \* |  |
| Mexico | 1997/99 | present | moderate | advanced |  |  | present | basic |  | present |  | present |  |  | present | \* | present |
| South Africa | 1999 | present | moderate | basic | basic |  | present | basic | present | present |  |  | present | present | present | \* | basic |
| Eastern and Southern African States | 2009 | present | moderate |  |  |  |  |  |  |  |  |  | present | present | present |  | moderate |
| Papua New Guinea and Fiji | 2009 | present | advanced |  |  |  |  |  |  | present |  |  |  | present | present |  | basic |
| Iraq | 2012 | present | moderate | moderate | moderate |  | present | advanced | present | present |  | present | present | present | present | \* | basic |
| Chile | 2002 | present | advanced | advanced | moderate |  | present | advanced |  | present |  |  |  |  | present | \* | basic |
| CARIFORUM | 2010 | present | advanced | advanced | advanced |  | present | advanced | present | present |  |  |  | present | present | advanced | moderate |
| South Korea | 2010 | present | advanced | advanced | advanced |  | present | basic | present |  |  |  |  |  | present | advanced | advanced |
| Central America | 2012 | present | advanced | moderate | advanced |  | present | advanced | present | present |  | present |  |  | present | advanced | advanced |
| Columbia and Peru | 2012 | present | advanced | advanced | advanced |  | present | advanced | present | present |  |  |  |  | present | advanced | moderate |

\*parties obligation is accession to existing multilateral agreements

# 8. REFERENCES:

**8.1. BOOKS AND ARTICLES:**

1. Aaron Cosbey and others, ‘Investment and Sustainable Development: A Guide to the Use and Potential of International Investment Agreements’ (2004) 6 IISD
2. Abdel-Hameed M. Bashi, ‘Foreign Direct Investment and Economic Growth in Some MENA Countries: Theory and Evidence’ (1999) TMENAE
3. Alan V. Deardorff, Robert M. Stern, ‘Measurement of Non-Tariff Barriers’ (OECD Economics Department Working Papers No. 179) (1997) ˂http://www.oecd-ilibrary.org/docserver/download/5lgsjhvj865f.pdf?expires=1394372726&id=id&accname=guest&checksum=3C489EBC3D3DDC6AF142D987490B3CBE˃
4. Andrea Licata, ‘The TAFTA/TTIP: “Old” and unsustainable?’ (*The Transatlantic Colossus*) [2013] BFGPISC
5. Anne-Célia Disdier and others, ‘Bilateral Trade of Cultural Goods’ (2010) RWE 575-595
6. Annie Zaven Tortian, ‘International Investment Agreements and their Impact on Foreign Direct Investment’ (Doctoral dissertation) [2007]
7. Arvind Panagariya, ‘EU Preferential Trade Arrangements and Developing Countries’ (2002) WJ 1415-1432
8. Barnali Choudhury, ‘Recapturing Public Power: Is Investment Arbitration’s Engagement of the Public Interest Contributing to the Democratic Deficit?’ (2008) VJTL 775-832
9. Betrand de Largentaye, ‘Challenges and Prospects of a Transatlantic Free Trade Area’ [2013] NEJDI

˂http://www.notre-europe.eu/media/challengesprospectstransatlanticfreetradearea.pdf?pdf=ok˃

1. Bond R. Stephen, ‘Current Issues in International Commercial Arbitration: The International Arbitrator: From the Perspective of the ICC International Court of Arbitration’ (1991) NJILB 1-23
2. Bruno Manzanares Bastida, ‘The Independence and Impartiality of Arbitrators in International Commercial Arbitration’ (2007) (1) ME
3. Centar za demokratiju, ‘Evropski standardi u Srbiji’

<http://www.centaronline.org/postavljen/60/Zbornik\_za%20web.pdf>

1. Charles N. Brower, ‘A Crisis of Legitimacy’ (2002) NLJ
2. Ciaran Cross, ‘The Treatment of Non-Investment Interests in Investor-State Disputes: Challenges for the TTIP Negotiations’ (2013) (*The Transatlantic Colossus*) BFGPISC 76-79
3. Daniel S. Hamilton, Joseph P. Quinlan, ‘The Transatlantic Economy 2013: Annual Survey of Jobs, Trade and Investment between the United States and Europe’ [2013] CTR
4. Davor Babić, ‘Pravičan i pošten tretman ulaganja u međunarodnom investicijskom pravu’ (2011) 1 ZPFZG 397-415
5. Directorate General for Trade, ‘European Union, Trade in goods with Iraq’ [2013]

˂http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\_113405.pdf˃

1. Directorate General for Trade, ‘Trade negotiations step by step’ [2013]

˂http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc\_149616.pdf˃

1. European Commission, ‘Commission Staff Working Document: Impact Assessment Report on the future of EU-US trade relations Accompanying the document Recommendation for a Council Decision authorising the opening of negotiations on a comprehensive trade and investment agreement, called the Transatlantic Trade and Investment Partnership, between the European Union and the United States of America’ [2013]

European Commission, ‘Europe 2020: A European strategy for smart, sustainable and inclusive growth’ (Communication from the Commission) [2010]

˂http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf˃

1. European Commission, ‘EU-US Transatlantic Trade and Investment Partnership: Trade and Sustainable development’ [2013]

˂http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\_151626.pdf˃

1. European Commission, ‘EU-US Transatlantic Trade and Investment Partnership: Raw materials and energy’ [2013]

˂http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\_151624.pdf˃

1. European Commission, ‘Fact sheet on the interim Economic Partnership Agreements: Eastern and Southern Africa’ [2012]

˂http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc\_142193.pdf˃

European Commission, ‘Global Europe: competing in the World: a contribution to the EU’s growth and jobs strategy’ (Commission staff working document October 2006)

˂<http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130370.pdf>˃

1. European Commission, ‘How economic partnership agreements benefit both consumers and producers in Europe and developing countries’ [2013]

<http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\_151010.pdf>

1. European Commission, ‘Intellectual Property: Positive aspects of IP rights’ ˂<http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142108.pdf>˃
2. European Commission, ‘Investment Protection and Investor-to-State Dispute Settlement in EU agreements’ (Fact sheet November 2013)

˂<http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151916.pdf>˃

1. European Commission, ‘Overview of EPA Negotiations’ [2013] ˂http://trade.ec.europa.eu/doclib/docs/2009/september/tradoc\_144912.pdf˃
2. European Commission, ‘Sanitary and Phytosanitary (SPS) Issues’ [2013]

˂http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\_150986.pdf˃

1. European Commission, ‘Technical barriers to trade’ [2013]

˂http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\_150987.pdf˃

European Commission, ‘The EU-Korea Free Trade Agreement in practice’ POEU ˂http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc\_148303.pdf˃

1. European Commission, ‘Trade Policy as a Core Component of the EU’s 2020 Strategy’ [2010] TGWA

˂http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc\_146955.pdf˃

1. European Commission, ‘Transatlantic Trade and Investment Partnership: The Regulatory Part’ [2013]

˂http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\_151605.pdf˃

1. Ferdi De Ville, ‘Why the TAFTA/TTIP will not live up to its promises’ (*The Transatlantic Colossus*) [2013] BFGPISC
2. Florin Bonciu, ‘Transatlantic Economic Relations and the Prospects of a New Partnership’ (2013) RJEA
3. Gabriel Felbermayr and others, ‘Dimensions and effects of transatlantic free trade agreement between EU and USA’ (Study) [2013] IFOI
4. Gavin Thompson, ‘The Transatlantic Trade and Investment Partnership (TTIP)’ (House of Commons Library SN/EP/6688) [2014]
5. Gordana Đurović, Sonja Rožnatović, Nikola Milović, ‘Obaveze Crne Gore po Sporazumu o Stabilizaciji i Pridruživanju u dijelu unutarnjeg tržišta’

<http://www.tehnologijaidrustvo.org/Prilozi/zbornik14.pdf>

1. Henning Meyer, Chris Luenen, ’Transatlantic Economic Cooperation: A Reader’ [2008] GPI
2. Herald Shenker, ‘The Stabilisation and Association Process: An Engine of European Integration in Need of Tuning’

<http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2008/issue%201/1-2008-Schenker.pdf>

1. High Level Working Group on Jobs and Growth, ‘Final Report - High Level Working Group on Jobs and Growth’ [2013]

˂http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc\_150519.pdf˃

1. High Level Working Group on Jobs and Growth, ‘Interim Report to Leaders from the Co-Chairs EU-U.S. High Level Working Group on Jobs and Growth’ [2012]

˂http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc\_149557.pdf˃

1. Iris Goldner Lang, Tamara Perišin, ‘Gradual Liberalisation of Movement of Goods and Persons in Croatia and Macedonia – Before and After Accession to the EU’ (2011) 61 ZPFZG 613-642
2. Joakim Reiter, ‘The EU-Mexico Free Trade Agreement: Assessing the EU approach to regulatory issues’ (2003) RMEI 62 – 99
3. Katharina Knoll, Michaela Zinke and Jutta Jaksche, ‘Safeguarding consumer rights and protection in TTIP’ (The Transatlantic Colossus) BFGPISC

Kevin P. Gallagher, Melissa B.L. Birch, ‘Do Investment Agreements Attract Investment? Evidence from Latin America’ (2006) JWIT

1. Kim Bizzarri, ‘A Brave New Transatlantic Partnership’ [2013] S2B

˂<http://corporateeurope.org/sites/default/files/attachments/brave_new_transatlantic_partnership.pdf>˃

1. Koen G. Berden and others, ‘Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis’ [2009] ECORYS
2. Laura Alfaro and others, ‘Does Foreign Direct Investment Promote Growth? Exploring the Role of Financial Markets on Linkages’ (2009) JDE
3. Laura Alfaro, ‘Foreign Direct Investment and Growth: Does the Sector Matter?’ (2003) JES
4. Lee Miles, *The European Union and the Nordic Countries* (1996)
5. Lyroudi Katerina Papanastasiou, Vamvakidis Athanasios, 'Foreign Direct Investment And Economic Growth In Transition Economies' (2008) JDE
6. Maria A. Pallante, ‘The Next Great Copyright Act’ (2013) CJLA 315-344
7. Markus A. Kirschschlager, ‘In Between Curious Economics and L'Exception Culturelle: Implications of TAFTA/TTIP for the Cultural Sector’ (*The Transatlantic Colossus*) (2013) BFGPISC 80-83
8. Martin Khor, ‘The World’s Worst Judicial System?’ (2013) NLJ
9. Mary Hallward-Driemeier, ‘Do Bilateral Investment Treaties Attract FDI? Only a bit…and they could bite’ (2003) World Bank DECRG
10. Michael Hann, ‘A Clash of Cultures? The UNESCO Diversity Convention and International Trade Law’ (2006) JIEL 515–552
11. Mona vom Endt, ‘Is TTIP a race to the bottom in regulatory standards?: The case of hormone-treated beef’ (The Transatlantic Colossus) BFGPISC 99-102

Monica Garcia-Salmones, ‘Walther Schucking and the Pacifist Traditions of International Law’ (2011) 3 EJIL

1. Müftüler-Baç Meltem, Cihangir Damla, ‘European Integration and Transatlantic Relations’ (Working Paper No. 5) [2012] TRFGG
2. Nicloas Pèridy, ‘Toward a Pan-Arab Free Trade Area: Assessing Trade Potential Effects of the Agadir Agreement’ (2005) 3 DE 329-345
3. Nicolo Machiavelli, *The Prince* (Bantam Dell, New York 1996)
4. Paul Craig, Gráinne de Búrca, *EU Law: Text, Cases and Materials* (4th edn, OUP, Oxford 2008)
5. Peter Hoeller, Nathalie Girouard, Alessandra Colecchia, *The European Union's Trade Policies and Their Economic Effects* (OECD, 2000)
6. Pia Eberhardt, Cecilia Olivet, ‘Profiting from Injustice: How Law Firms, Arbitrators and Financiers are Fuelling an Investment Arbitration Boom’ (2012) CEO/TI
7. René Schwok, *Switzerland - European Union: An Impossible Membership?* (PIE, 2009)
8. Shayerah Ilias Akhtar, Vivian C. Jones, ‘Proposed Transatlantic Trade and Investment Partnership (TTIP): In Brief’ [2013] CRS
9. Shayerah Ilias Akhtar, Vivian C. Jones, ‘Transatlantic Trade and Investment Partnership (TTIP) Negotiations’ [2014] CRS
10. Simon Lester, ‘Tackling regulatory trade barriers in the transatlantic trade and investment partnership’ (*The Transatlantic Colossus*) (2013) BFGPISC 84-88
11. Stephen Woolcock, ‘European Union policy towards Free Trade Agreements’ (2007) 3 ECIPE

Ulrich Cubasch and others, *Climate Change 2013: The Physical Science Basis* (CUP, Cambridge 2013)

1. United Nations Conference on Trade and Development, ‘Non-tariff Measures to Trade: Economic and Policy Issues for Developing Countries’ [2012] DCITS
2. Vilborg Asa Gudjonsdottir, ‘Iceland in the European Union: Will it ever happen?’ [2007] EUMA
3. William Sheakspear, *Hamlet* (Washington Square Press, New York 1992)
4. Yiannis Zahariadis, ‘The Effects of the Albania-EU Stabilisation and Association Agreement: Economic Impact and Social Implications’

<http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2527.pdf>

**8.2. INTERNATIONAL AGREEMENTS:**

1. Agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part **(signed 06 December 1996, entered into force 01 January 1997) OJ L 053**
2. **Agreement between the European Economic Community and the Kingdom of Norway (signed 14 May 1973, entered into force 01 July 1973) OJ L 171**
3. **Agreement between the European Economic Community and the Republic of Iceland (signed 22 July 1972, entered into force 01 April 1973) OJ L 301**
4. **Agreement between the European Economic Community and the Swiss Confederation (signed 22 July 1972, entered into force 01 January 1973) OJ L 300**
5. Agreement Establishing an Association between Central America, on the one hand, and the European Union and its Member States, on the other (signed 29 June 2012) OJ L 346
6. Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part (signed 18 November 2002, entered into force 01 March 2005) OJ L 352
7. **Agreement in the form of an exchange of letters between the European Economic Community and the Principality of Andorra (signed 28 Juan 1990, entered into force 01 January 1990) OJ L 374**

Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part (signed 11 October 1999, entered into force 01 May 2004) OJ L 311

1. Agreement setting up a free trade area between the Arab Mediterranean countries (Agadir agreement) (signed 25 February 2004, entered into force 6 July 2006)
2. Cooperation Agreement between the European Economic Community and the Syrian Arab Republic (signed 18 January 1977, entered into force 01 November 1978) OJ L 269
3. Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (adopted 22 December 1995) OJ L 35
4. Decision No 2/2001 of the EU-Mexico Joint Council of 27 February 2001 implementing Articles 6, 9, 12(2)(b) and 50 of the Economic Partnership, Political Coordination and Cooperation Agreement (adopted 24 November 1999, entered into force on 1 March 2001) OJ L 70
5. Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part (signed 15 December 2010) OJ L 289
6. Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part (signed 8 December 1997, entered into force 20 March 2000) OJ L 276
7. Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part (signed 22 April 2002, entered into force 01 September 2005) OJ L 265
8. Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part (signed 25 June 2001, entered into force 01 June 2004) OJ L 304
9. Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part (signed 20 November 1995, entered into force 01 June 2000) OJ L 147
10. Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part (signed 24 November 1997, entered into force 01 May 2002) OJ L 129
11. Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part (signed 17 June 2002, entered into force 01 April 2006) OJ L 262
12. Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (signed 26 February 1996, entered into force 01 March 2000) OJ L 70
13. Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part (signed 17 May 1995, entered into force 01 March 1998) OJ L 097
14. Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part (signed 24 February 1997, entered into force 01 July 1997) OJ L 187
15. Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (signed 06 December 2010, entered into force 01 July 2011) OJ L 12
16. General Agreement on Tariffs and Trade (adopted 30 October 1947, entered into force 1 January 1948)

Interim agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part (signed August 2009) OJ L 111

1. **Interim agreement on trade and customs union between the European Economic Community and the Republic of San Marino OJ L 359**
2. Interim Agreement on Trade and Trade-Related Matters between the European Community, of the one part, and Bosnia and Herzegovina, of the other part (signed 16 June 2008) OJ L 169

Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (signed 30 July 2009, entered into force 20 December 2009) OJ L 272

1. North America Free Trade Agreement [1994] (signed 17 December 1992, entered into force 1 January 1994)
2. Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part (signed 11 May 2012) OJ L 204
3. Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part (signed 9 April 2001, entered into force 1 April 2004) OJ L 84
4. Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Republic of Albania, of the other part (signed 12 June 2006, entered into force 1 April 2009) OJ L 107
5. Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part (signed 29 October 2001, entered into force 01 February 2005) OJ L 26
6. Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part (signed 15 October 2007, entered into force 01 May 2010) OJ L 108
7. Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part (signed 29 April 2008, entered into force 01 September 2013) OJ L 278

The Cotonou Agreement (ACP – EU) (signed 23 June 2000, entered into force in April 2003, revised 22 June 2010) OJ L 287

1. Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part (signed 26 June 2012, entered into force 01 August 2013) OJ L 354
2. Transatlantic Declaration on EC - US Relations (December 1990)
3. U.S. Korea Free Trade Agreement [2012] (signed 30 June 2007, entered into force 15 March 2012)

**8.3. EU PARLIAMENT ACTS:**

1. Parliament Motion (EP) 2013/2558 for a Resolution to Wind up the Debate on the Statements by the Council and the Commission on EU trade and Investment Negotiations with the United States of America [2013]
2. Parliament Resolution (EP) 2012/2149 of 23 October 2012 on trade and economic relations with the United States [2003]
3. Parliament Recommendation (EP) 0411/2012 of 11 December 2012 on the draft Council decision on the conclusion of a Partnership and Cooperation Agreement with Iraq [2012] OJ L71

**8.4. NEWSPAPER ARTICLES:**

1. --, ‘EU ebnet Weg für Freihandelsgespräche’ Zeit Online, (Hamburg 15 June 2013) ˂<http://www.zeit.de/wirtschaft/2013-06/freihandelszone-verhandlungen-usa-eu-mandat>˃
2. --, ‘Press: Bosnia-EU relations put on hold’ (Zagreb 26 April 2011)

<http://daily.tportal.hr/124423/Press-Bosnia-EU-relations-put-on-hold.html>

1. Andreas Kämpf, ‘Europa eine Seele geben? Eine halbwegs funktionierende europäische Zivilgesellschaft wäre ja auch schon etwas’ Politik & Kultur (Berlin September/October 2013) 11

˂<http://www.kulturrat.de/dokumente/puk/puk2013/puk05-13.pdf>˃

1. Andrew Higgins, ‘European Official Takes on the French’ The New York Times (New York 16 June 2013)

˂<http://www.nytimes.com/2013/06/17/business/global/european-union-divided-before-g-8-meeting.html?_r=0>˃

1. Doug Palmer, Robin Emmott, ‘U.S. trade deal could be a lot for Europe to swallow’ Reuters (Washington 11 December 2012)

<http://www.reuters.com/article/2012/12/11/us-usa-eu-trade-idUSBRE8BA05Y20121211?irpc=932>

1. Economist, ‘Trade negotiations between America and the European Union will not be smooth’ Economist (Washington 6 July 2013)

<http://www.economist.com/news/finance-and-economics/21580512-trade-negotiations-between-america-and-european-union-will-not-be>

1. Graf Alexander von Lambsdorff, ‘Interview with Alexander Wolkers, TTIP-Verhandlungen: Pro und Contra’ *ARTE Journal* (Berlin 31 May 2013) ˂<http://www.arte.tv/de/ttip-verhandlungen-pro-undcontra/7532172,CmC>=7532074.html˃
2. Philip Blenkinsop, Robin Emmott, ‘France nacks EU-U.S. trade talks after culture clash’ Reuters (London 14 June 2013) ˂<http://www.reuters.com/article/2013/06/14/us-eu-us-trade-idUSBRE95D0BE20130614>˃

**8.5. WEBSITES:**

1. --, ‘About Geographical Indications’,

˂http://www.wipo.int/geo\_indications/en/about.html˃

1. --, ‘Countries and regions: Israel’ ˂http://ec.europa.eu/trade/policy/countries-and-regions/countries/israel/˃
2. --, ‘EU reaches deal on French „cultural exception“’

˂<http://www.france24.com/en/20130615-eu-deal-french-cultural-exception-usa-trade/>˃

1. --, ‘EU/USA Free Trade Agreement: Exclusion of the Audiovisual Sector’  [˂http://www.musicexport.at/euusa-free-trade-agreement-exclusion-of-the-audiovisual-sector/](file:///C:\Users\Stefan\Desktop\18%20June%202013,%20http:\www.musicexport.at\euusa-free-trade-agreement-exclusion-of-the-audiovisual-sector\)˃
2. --, ‘Integration of the Western Balkans in the Internal Market’

<http://www.westernbalkans.info/htmls/save\_pdf2.php?id=550˃

1. --, ‘Switzerland rejects Croatia free movement deal after immigration referendum’ ˂<http://rt.com/news/switzerland-croatia-movement-reject-277/>˃
2. Adi Robertson, ‘Free speech doesn't mean free stuff': Congress begins copyright reform with a plea for civility’

˂<http://www.theverge.com/2013/5/17/4341038/congress-starts-copyright-hearings-with-a-plea-for-civility>˃

1. Caribbean Community and Common Market, ‘What is CARIFORUM?’ (2011) ˂http://www.caricom.org/jsp/community\_organs/cariforum/cariforum\_main\_page.jsp?menm=cob˃
2. Caribbean Community and Common Market, ‘What is CARIFORUM?’, 2011,

˂<http://www.caricom.org/jsp/community_organs/cariforum/cariforum_main_page.jsp?menu=cob>˃

1. Catherine Ashton, ‘Remarks by High Representative Catherine Ashton following the signature of EU-Iraq Partnership & Cooperation Agreement’ (Speech in Brussels on 11 May 2012 European Union External Action website 2012) ˂http://eeas.europa.eu/delegations/iraq/documents/press\_corner/news\_2012/110512\_pca\_signature\_press\_release.pdfaccessed˃
2. Colombian Industry, Business and Tourism Ministry, ‘Customs cooperation, a key gain for Colombia in trade agreement with Panama’

˂<http://www.mincit.gov.co/englishmin/publicaciones.php?id=8025>˃

1. Council of the European Union, ‘Council approves launch of trade and investment negotiations with the United States’ (Press Release 10919/13) (2013) ˂http://www.consilium.europa.eu/uedocs/cms\_data/docs/pressdata/EN/foraff/137485.pdf˃
2. Council of the European Union, ‘EU-US Summit joint statement’ (Press release) (2011) ˂http://www.whitehouse.gov/the-press-office/2010/11/20/eu-us-summit-joint-statement˃
3. European Commission, ‘Africa, Caribbean, Pacific (ACP)’ (2010) ˂http://ec.europa.eu/trade/policy/countries-and-regions/regions/africa-caribbean-pacific/˃
4. European Commission, ‘Agreements’ ˂<http://ec.europa.eu/trade/policy/countries-and-regions/agreements/#_europe>˃
5. European Commission, ‘Countries and regions: Euro-Mediterranean partnership’ ˂<http://ec.europa.eu/trade/policy/countries-and-regions/regions/euro-mediterranean-partnership/>˃
6. European Commission, ‘Countries and Regions: Iraq’

˂http://ec.europa.eu/trade/policy/countries-and-regions/countries/iraq/˃

1. European Commission, ‘Countries and regions: Mexico’ (European Commission web site 19 November 2013) ˂http://ec.europa.eu/trade/policy/countries-and-regions/countries/mexico/˃
2. European Commission, ‘EU Chief Negotiator says EU-US trade deal not about deregulation, as third round of talks end in Washington’ (Press release) [2013] ˂http://europa.eu/rapid/press-release\_IP-13-1306\_en.pdf˃
3. European Commission, ‘European Neighbourhood Policy’

˂http://ec.europa.eu/economy\_finance/international/neighbourhood\_policy/index\_en.htm˃

1. European Commission, ‘First Round of TTIP negotiations kicks off in Washington DC’ (Press release) (2013)

˂http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\_151595.pdf˃

1. European Commission, ‘Member States endorse EU-US trade and investment negotiations’ (Press release Memo 13/564) [2013] ˂http://europa.eu/rapid/press-release\_MEMO-13-564\_en.htm˃
2. European Commission, ‘Statement from United States President Barack Obama, European Council President Herman Van Rompuy and European Commission President José Manuel Barroso’ (Press Release Memo 13/94) (2013)

˂http://europa.eu/rapid/press-release\_MEMO-13-94\_en.pdf˃

1. European Commission, ‘The Cotonou Agreement’, (2012)

˂http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/˃

1. European Commission, ‘Trade with Jordan’

˂http://ec.europa.eu/trade/policy/countries-and-regions/countries/jordan/˃

1. European Commission, 'Stabilisation and Association Process',

˂<http://ec.europa.eu/enlargement/policy/glossary/terms/sap_en.htm>˃

1. European Commission, 'Western Balkans' <http://ec.europa.eu/trade/policy/countries-and-regions/regions/western-balkans/˃
2. European Union, ‘How the EU works: History’ ˂<http://europa.eu/about-eu/eu-history/1970-1979/1973/index_en.htm>˃

French Embassy in London, ‘EU-US Free Trade: France not alone in Upholding Cultural Exception’ ˂<http://www.ambafrance-uk.org/France-not-alone-in-upholding>˃

1. Karel De Guch, ‘EU and US conclude second round of TTIP negotiations in Brussels’ (News archive) [2013] ˂http://trade.ec.europa.eu/doclib/press/index.cfm?id=988˃
2. Karel de Gucht, ‘A negotiating mandate for a trade and investment agreement with the United States’ (European Commission Memo/13/212 2013)

˂http://europa.eu/rapid/press-release\_MEMO-13-212\_en.pdf˃

1. Karel De Gucht, ‘Economic Partnership Agreements (EPAs) - State of Play, Future Perspectives and Implementation’ (Speech 13/812 European Commission Trade website 2013) ˂http://europa.eu/rapid/press-release\_SPEECH-13-812\_en.pdf˃
2. Karel de Gucht, ‘Open for business: The European Union's relations with Mexico in a changing world’ (Speech on EU relationship with Mexico in Mexico City, speech 12/825 European Commission Trade website 2012)

˂http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc\_150094.pdf˃

1. Karel de Gucht, ‘Remarks by EU Trade Commissioner Karel De Gucht on the Transatlantic Trade and Investment Partnership’ (Speech in Brussels Memo 13/96 Europa website 2013) ˂http://europa.eu/rapid/press-release\_MEMO-13-96\_en.pdf˃
2. Monika Ermert, ‘Controversial Debate on TTIP Mandate in EU Council fo Ministers’ ˂<http://www.ip-watch.org/2013/06/14/audiovisual-sector-out-of-eu-mandate-for-ttip/>˃
3. Nick Robinson, ‘Ukraine crisis: UK warns Russia over Crimea incursion,’

˂<http://www.bbc.com/news/uk-politics-26415789>˃

1. Pascal Lamy, ‘Mexico and the EU: Married Partners, Lovers, or Just Good Friends?’ (Speech at Institute of European Integration Studies in Mexico City, European Commission Trade website 2002)

˂http://trade.ec.europa.eu/doclib/docs/2004/september/tradoc\_118831.pdf˃

1. United Nations Conference on Trade and Development, ‘Research and Policy Analysis’ ˂<http://www.unctad.org/en/pages/DIAE/International%20Investment%20Agreements%20%28IIA%29/Research-and-Policy-Analysis.aspx>˃
2. US Chamber of Commerce, ‘Statement of the U.S. Chamber of Commerce on the Transatlantic Trade & Investment Partnership to the Office of the U.S. Trade Representative’ (Statement May 2013)

˂<http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0241>˃

1. World Trade Organization, ‘Accessions: Iraq’

˂http://www.wto.org/english/thewto\_e/acc\_e/a1\_iraq\_e.htm˃

1. World Trade Organization, ‘European Union: Tariffs and imports: Summary and duty rages’ (WTO statistics) [2013] ˂http://stat.wto.org/TariffProfiles/E27\_e.htm˃
2. World Trade Organization, ‘Participation in Regional Trade Agreements: European Union’ (04 December 2014)

˂http://rtais.wto.org/UI/PublicSearchByMemberResult.aspx?MemberCode=918&lang=1&redirect=1˃

1. World Trade Organization, ‘United States: Tariffs and imports: Summary and duty rages’ (WTO statistics) [2013] ˂http://stat.wto.org/TariffProfiles/US\_e.htm˃

**8.6. OTHER:**

1. Bernt Hugenholtz, (Round table on the topic) ‘What should be the role for Intellectual Property Rights in the TTIP’ (21 May 2013)

<http://www.youtube.com/watch?v=q9X_fN015yc&noredirect=1>˃

1. General Secretariat of the Council, ‘Directives for the negotiation of the Transatlantic Trade and Investment Partnership between the European Union and the United States’ (EU negotiation mandate June 2013)

˂<http://www.s2bnetwork.org/fileadmin/dateien/downloads/EU-TTIP-Mandate-from-bfmtv-June17-2013.pdf>˃

1. Statement by US Trade Representative Michael Froman (Open letter to Commissioner for Trade Karel de Gucht on 16 December 2013)

˂http://www.eeb.org/EEB/?LinkServID=A2B98635-5056-B741-DB90148289C557DB&showMeta=0˃

1. Treaty on European Union (Consolidated version 2010) OJ C 83
2. Treaty on the Functioning of the European Union (Consolidated version 2012) OJ C 115

# 9. SAŽETAK

U ovome znanstveno-istraživačkom i raspravnom radu, istražit će se odgovori na sljedeća tri glavna pitanja: 1. Kako se je razvijala vanjska trgovinska politika EU i koji su bili motivi za njezinu evoluciju? 2. Koliko je sveobuhvatan potencijalni ugovor o slobodnoj trgovini (u daljnjem tekstu: UST) između EU i SAD-a i koliko je drukčiji u odnosu na sve ostale UST-ove EU? 3. Koji su argumenti *pro et contra* u svezi s najkontroverznijim pitanjima koja se pojavljuju tijekom pregovora i koji je stav autora ovog rada? Odgovor na prvo pitanje postignut je pomoću istraživanja te pravne i političke analize svih UST-ova EU koji su na snazi, uz dodatak UST-a između EU i RH koji više nije na snazi. Autori smatraju da je važno poznavati prošlost kako bi se moglo razumijeti sadašnjost i raspravljati o potencijalnoj budućnosti. Radi toga, rad započinje klasifikacijom svih trgovinskih ugovora EU koji imaju različite ciljeve, djelokruge, političke i ekonomske motivacije. Klasifikacija kao cjelina predstavlja evoluciju UST-a EU i samim time, općenito evoluciju vanjske trgovinske politike EU. Nakon toga, rad opisuje trenutačno stanje pregovora oko UST između EU i SAD-a, objašnjava pojedinačna područja pregovora, ciljeve pregovarača i konkretne probleme u *statusu quo* za obje stranke i za trgovinu općenito. Nadalje, prikazana je detaljna usporedba potencijalnog transatlantskog UST i pojedinih etapa evolucije, *i.e.* prošlih trgovinskih ugovora EU. U zadnjem dijelu rada, uzimaju se u obzir razlike između SAD-a i EU i obrađuju se najkontroverznija pitanja koja prijete obustavom pregovora, kao i pitanja koja se čine dvojbenima iz perspektive šire javnosti. Za ta pitanja, autori predstavljaju najbolje argumente s obje strane Atlantika. Štoviše, autori daju vlastite argumente i donose vlastiti sud o najkontroverznijim pitanjima.

**Ključne riječi:** ugovor o slobodnoj trgovini, trgovinska politika, investicijska arbitraža, GMO, prava intelektualnog vlasništva.

# 10. SUMMARY

In this scientific research and discussion paper, there will be answers to following three main questions: 1. How did the EU's foreign trade policy developed through the years and what were the motives behind the evolution? 2. How comprehensive is the potential EU-USA free trade agreement (hereinafter: FTA) and how it is different from the other free trade agreements concluded by the EU? 3. What are the arguments *pro et contra* on the most controversial issues in the negotiations of the potential EU-USA free trade agreement and what is the authors take on those topics? The answer to the first questions is reached by a research and legal and political analysis of all of 31 EU FTAs that are currently in force, with the addition of the FTA concluded with the Republic Croatia which is no longer in force. The authors believe that it is important to know the past so one could understand the present and discuss the potential future. For this purpose the paper starts with a classification of 32 FTAs which have different rationales, scopes, political and economic motivations. The classification as a whole represents the evolution of the EU FTAs and by that mere fact, the evolution of the EU’s foreign trade policy in general. Afterwards, the paper presents the state of the negotiations on the transatlantic free trade agreement called Transatlantic Trade and Investment Partnership (hereinafter: TTIP), explains the negotiating areas, goals of the negotiators and particular problems of the *status quo* for the parties and for trade in general. Moreover, there is an in-depth comparison between TTIP and certain stages of the evolution of EU’s foreign trade policy, *i.e.* previous EU agreements. In the last part, the paper takes into account differences between the USA and the EU and tackles the most controversial issues which threaten to derail the negotiations or issues which seem dubious from the perspective of the general public. For those issues, the authors present the best arguments from both sides of the pond. Furthermore, the authors give their own arguments and pass their own judgement on the most controversial issues.

**Key words:** free trade agreement, trade policy, investor-to-state dispute settlement, GMO, intellectual property rights.

1. Nick Robinson, ‘Ukraine crisis: UK warns Russia over Crimea incursion’ ˂http://www.bbc.com/news/uk-politics-26415789˃ accessed 13 March 2014 [↑](#footnote-ref-1)
2. European Commission, ‘Commission Staff Working Document: Impact Assessment Report on the future of EU-US trade relations Accompanying the document Recommendation for a Council Decision authorising the opening of negotiations on a comprehensive trade and investment agreement, called the Transatlantic Trade and Investment Partnership, between the European Union and the United States of America’ [2013], 2 [↑](#footnote-ref-2)
3. Ibid [↑](#footnote-ref-3)
4. Gabriel Felbermayr and others, ‘Dimensions and effects of transatlantic free trade agreement between EU and USA’ (Study) [2013] IFOI 1 [↑](#footnote-ref-4)
5. See more: Marc Venhaus, ‘The Transatlantic Trade and Investment Partnership as a New Strategy to Marginalize Emerging Powers: a Divided Free Trade Order in the Making?’ (*The Transatlantic Colossus*) BFGPISC 59-62 [↑](#footnote-ref-5)
6. See for instance: Agreement with Eastern and Southern African States OJ L 111/7 art 16 [↑](#footnote-ref-6)
7. Although for certain areas Council shall act unanimously: in the fields of trade in services and the commercial

   aspects of intellectual property, as well as foreign direct investment where such agreements include provisions for which unanimity is required for the adoption of internal rules, in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity, in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organization of such services and prejudicing the responsibility of Member States to deliver them; Treaty on the Functioning of the European Union (Consolidated version 2012) OJ C 115/140 art 207 [↑](#footnote-ref-7)
8. Apart from that, the EU concludes some of the trade agreements in its effort to suppress poverty and help the developing countries. Examples can be found in chapters “*Others*” and “*the Mediterranean region*”. See more: Arvind Panagariya, ‘EU Preferential Trade Agreements and Developing Countries’ (2002) BPL 1415 - 1432 [↑](#footnote-ref-8)
9. European Commission, ‘Trade Policy as a Core Component of the EU’s 2020 Strategy’ [2010] TGWA 4 [↑](#footnote-ref-9)
10. Treaty on European Union (Consolidated version 2010) OJ C 83/28 art 21 [↑](#footnote-ref-10)
11. European Commission, ‘Europe 2020: A European strategy for smart, sustainable and inclusive growth’ (Communication from the Commission) (2010) 26; Trade Policy as a Core Component of the EU’s 2020 Strategy, 11 [↑](#footnote-ref-11)
12. A preferential trade area (hereinafter: PTA) is a trading bloc that gives preferential access to certain products from the participating countries. This is done by reducing tariffs but not by abolishing them completely. A PTA can be established through a trade pact. It is the first stage of economic integration. The line between a PTA and a FTA may be blurred, as almost any PTA has a main goal of becoming a FTA in accordance with the General Agreement on Tariffs and Trade. Official list of regional trade agreements notified to WTO is available online: World Trade Organization, ‘Participation in Regional Trade Agreements: European Union’ (04 December 2014)

    ˂http://rtais.wto.org/UI/PublicSearchByMemberResult.aspx?MemberCode=918&lang=1&redirect=1˃ accessed 8 December 2013 [↑](#footnote-ref-12)
13. Trade Policy as a Core Component of the EU’s 2020 Strategy, 4 [↑](#footnote-ref-13)
14. Ibid 10 [↑](#footnote-ref-14)
15. All three FTAs entered into force during 1973: with Switzerland and Norway on 1st of July, with Iceland on 1st of April; For the full list of EU Trade Agreements still in force see: European Commission, ‘Agreements’

    ˂http://ec.europa.eu/trade/policy/countries-and-regions/agreements/#\_europe˃ accessed 6 March 2014. Other FTAs that entered into force in 1973, and are part of this so called first group of FTAs were with Austria, Portugal and Sweden, which later became members of the EU, thus derogating FTAs with EU by becoming member states of the EU. See more: European Union, ‘How the EU works: History’

    ˂http://europa.eu/about-eu/eu-history/1970-1979/1973/index\_en.htm˃ accessed 6 March 201 [↑](#footnote-ref-15)
16. A customs union is a type of a trade bloc which is composed of a free trade area with a common external tariff on imports from non-member countries. [↑](#footnote-ref-16)
17. See more: René Schwok, *Switzerland - European Union: An Impossible Membership?* (PIE, 2009) [↑](#footnote-ref-17)
18. See more: Vilborg Asa Gudjonsdottir, ‘Iceland in the European Union: Will it ever happen?’ [2007] EUMA [↑](#footnote-ref-18)
19. See more: Lee Miles, *The European Union and the Nordic Countries* (1996) [↑](#footnote-ref-19)
20. The FTAs with Norway and Switzerland have 36 articles, the Agreement with Iceland has 37 and Faroe Islands FTA has 40 Articles. [↑](#footnote-ref-20)
21. Like for example, conservation of exhaustible natural resources as a justification, found in Lebanon's FTA with the EU. [↑](#footnote-ref-21)
22. Free trade in goods is going to consist of all goods, not just industrial and agricultural products. [↑](#footnote-ref-22)
23. Those three more freedoms are: freedom of services, capital and workers. See more: Peter Hoeller, Nathalie Girouard, Alessandra Colecchia, *The European Union's Trade Policies and Their Economic Effects* (OECD, 2000) [↑](#footnote-ref-23)
24. Exceptions are the agreements with Andorra and San Marino, which are even more general and vague, since the one with Andorra has 26 articles, and the one with San Marino 21. [↑](#footnote-ref-24)
25. Such sections are not explicitly named in any version of the agreements, and the authors made them with a view of a common goal that the groups of provisions are to achieve. [↑](#footnote-ref-25)
26. Aims of the first group of FTAs are: 1) the development of economic relations, thus fostering economic activity, the improvement of living and employment conditions, increased productivity and financial stability; 2) providing fair conditions for trade competition; 3) the development and expansion of world trade. Agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part (signed 06 December 1996, entered into force 01 January 1997) OJ L 053 art 1 [↑](#footnote-ref-26)
27. Agreement between the European Economic Community and the Republic of Iceland (signed 22 July 1972, entered into force 01 April 1973) OJ L 301 art: 3, 4, 5, 6, 7, 13 and 19. [↑](#footnote-ref-27)
28. It secures that that „*products originating from the party may not enjoy a more favorable treatment when imported into the Community than that applied by the member states of the Community between themselves*“. Agreement between the European Economic Community and the Kingdom of Norway (signed 14 May 1973, entered into force 01 July 1973) OJ L 171 art 16 [↑](#footnote-ref-28)
29. As can be seen in the agreement EU signed with Faroe Islands. The articles concerning this area were removed. [↑](#footnote-ref-29)
30. Iceland’s FTA didn’t cover short and medium term credits covering commercial transactions in which a resident participates; Agreement between the European Economic Community and the Republic of Iceland (signed 22 July 1972, entered into force 01 April 1973) OJ L 301 art 20 [↑](#footnote-ref-30)
31. Agreement between the European Economic Community and the Swiss Confederation (signed 22 July 1972, entered into force 01 January 1973) OJ L 300 art 19 [↑](#footnote-ref-31)
32. The grounds on which a measure of prohibition or restriction on import, export or good in transit can be justified, are: „*public morality, law and order or public security, protection of life and health of humans, animals or plants, the protection of national treasures of artistic, historic or archaeological value, the protection of industrial and commercial property, or rules relating to gold or silver*“. Agreement between the European Economic Community and the Republic of Iceland art 21 [↑](#footnote-ref-32)
33. Such measures are: the ones necessary to prevent the disclosure of information contrary to its essential security interests; which relate to trade in arms, munitions or war materials or to research, development or production indispensable for defense purposes and those which the contracting party considers essential to its own security in time of war or serious international tension. Agreement between the European Economic Community and the Kingdom of Norway art 21 [↑](#footnote-ref-33)
34. Agreement between the European Economic Community and the Swiss Confederation art 22,23,24,25,26 and 27. What is specific when it comes to Customs Union Agreements is the arbitration procedure. Agreement in the form of an exchange of letters between the European Economic Community and the Principality of Andorra (signed 28 Juan 1990, entered into force 01 January 1990) OJ L 374 art 18 [↑](#footnote-ref-34)
35. Name of a body that secures the enforcement of the FTAs varies from agreement to agreement, *e.g.* Association Committee, Interim Committee *etc*., but the merit stays the same, with minor variations. In the case of San Marino Customs Union Agreement the institutional body is called Cooperation Committee. Interim agreement on trade and customs union between the European Economic Community and the Republic of San Marino, [1992] OJ L359, Art 13 [↑](#footnote-ref-35)
36. Agreement between the European Economic Community and the Republic of Iceland art 30 [↑](#footnote-ref-36)
37. Agreement between the European Economic Community and the Republic of Iceland art 35 [↑](#footnote-ref-37)
38. Turkey, unlike all the other states in the region, has a customs union. [↑](#footnote-ref-38)
39. *E.g*. in 2012 EU imports of goods from the Occupied Palestinian Territory were worth 0.016 billion euros, and EU exports of goods were worth 0.1 billion euros, while EU imports of goods from South Korea were worth 37.9 billion euros, and EU exports of goods were worth 37.8 billion euros. [↑](#footnote-ref-39)
40. The Mediterranean region represents 8.6% of total EU external trade. For instance Association of South East Asian Nations is the EU's 3rd largest trading partner outside Europe (after the US and China) with more than €206 billion of trade in goods and services in 2011. [↑](#footnote-ref-40)
41. See more: Hanno Scholtz, Frank Schimmelfennig, ‘EU Democracy Promotion in the European Neighbourhood:

    Political Conditionality, Economic Development and Transnational Exchange’ (2008) (2) EUP 187-215 [↑](#footnote-ref-41)
42. See more: Judith Kelley, ‘New Wine in Old Wineskins: Promoting Political Reforms through the New European Neighbourhood Policy’ (2006) JCMS 29-55 [↑](#footnote-ref-42)
43. See more: Yves Broudet, Maria Perrson, ‘Reaping the Benefits of Deeper Euro-Med Integration Through Trade Facilitation’ (2011) RIIE 1-26; Alejandro Lorca, Gonzalo Escribano, ‘The Euromediterranean Free Trade Area: From Competition to Integration’ Seventh Economic Research Forum International Conference,

    ˂<http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan013747.pdf>˃ accessed 7 January 2014; Ivan Martin, ‘The Social Impact of Euro-Mediterranean Free Trade Areas: A First Approach with Special Reference to the Case of Morocco’ (2004) MP 422-458 [↑](#footnote-ref-43)
44. European Commission, ‘European Neighbourhood Policy’

    ˂http://ec.europa.eu/economy\_finance/international/neighbourhood\_policy/index\_en.htm˃ accessed 30 December 2013 [↑](#footnote-ref-44)
45. Ibid [↑](#footnote-ref-45)
46. European Commission, ‘Countries and regions: Euro-Mediterranean partnership’

    ˂http://ec.europa.eu/trade/policy/countries-and-regions/regions/euro-mediterranean-partnership/˃ accessed 1 January 2014 [↑](#footnote-ref-46)
47. See more: Agreement setting up a free trade area between the Arab Mediterranean countries (Agadir agreement) (signed 25 February 2004, entered into force 6 July 2006) [↑](#footnote-ref-47)
48. Nicloas Pèridy, ‘Toward a Pan-Arab Free Trade Area: Assessing Trade Potential Effects of the Agadir Agreement’ (2005) 3 DE 329-345 [↑](#footnote-ref-48)
49. European Commission, ‘Trade with Jordan’ ˂<http://ec.europa.eu/trade/policy/countries-and-regions/countries/jordan/>˃ accessed 1 January 2014 [↑](#footnote-ref-49)
50. Preparations for these negotiations have already started. [↑](#footnote-ref-50)
51. Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part (signed 17 May 1995, entered into force 01 March 1998) OJ L 097 art 1 [↑](#footnote-ref-51)
52. The crucial features of establishment are the “*stable and continuous basis*” on which the economic or professional activity is carried on, and the fact that there is an established professional base within the host Member State. For the provision of services, the temporary nature of the activity is to be determined by reference to its “*periodicity, continuity and regularity*”, and providers of services will not be deemed to be ”*established*” simply by virtue of the fact that they equip themselves with some form of infrastructure in the host Member State. See more: Paul Craig, Gráinne de Búrca, *EU Law: Text, Cases and Materials* (4th edn, OUP, Oxford 2008) 793-94 [↑](#footnote-ref-52)
53. Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (signed 26 February 1996, entered into force 01 March 2000) OJ L 70 art 31 [↑](#footnote-ref-53)
54. Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part (signed 22 April 2002, entered into force 01 September 2005) OJ L 265. All Euromed partners have that provision except Lebanon, Syrian Arab Republic and the Palestinian Authority. [↑](#footnote-ref-54)
55. Syrian Arab Republic and Lebanon do not have those provisions. [↑](#footnote-ref-55)
56. Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part (signed 20 November 1995, entered into force 01 June 2000) OJ L 147 art 31. The movement of capital and promotion of investment is very valuable for EU, especially in trade relations with Israel. For instance, in 2011 Israel has invested 29.3 billion euros in EU, thus making it the biggest investor from the Mediterranean region. In comparison, EU invested „only“ 7.5 billion euros in Israel; see more: --, ‘Countries and regions: Israel’ ˂http://ec.europa.eu/trade/policy/countries-and-regions/countries/israel/˃ accessed 20 April 2014 [↑](#footnote-ref-56)
57. Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part (signed 24 November 1997, entered into force 01 May 2002) OJ L 129 art 67. Ibid, the cooperation will entail the development of: harmonised and simplified administrative procedures; co-investment machinery, especially for small and medium-sized enterprises of both Parties; and information channels and means of identifying investment opportunities a legal environment conducive to investment between the production, two Parties, where appropriate through the conclusion by the Member States and Euromed country of investment protection agreements and agreements to prevent double taxation, access to the capital market for the financing of productive investments, joint ventures between the contracting party and Community business. [↑](#footnote-ref-57)
58. Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part (signed 25 June 2001, entered into force 01 June 2004) OJ L 304 art 46 [↑](#footnote-ref-58)
59. Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (adopted 22 December 1995) OJ L 35 art 49 and 50 [↑](#footnote-ref-59)
60. Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part (signed 24 February 1997, entered into force 01 July 1997) OJ L 187 art 34 [↑](#footnote-ref-60)
61. Euro-Mediterranean Agreement with Morocco art 51: “...*the Parties shall cooperate in developing: (a) the use of Community rules in standardisation, metrology, quality control and conformity assessment; (b) the updating of Moroccan laboratories, leading eventually to the conclusion of mutual recognition agreements for conformity assessment; (c) the bodies responsible for intellectual, industrial and commercial property and for standardisation and quality in Morocco*.” [↑](#footnote-ref-61)
62. EU-Lebanon Interim Agreement, [2002] OJ L 262/7, Art 31. For this purpose they shall establish a dialogue on customs matters. Cooperation shall focus on the simplification of controls and procedures concerning the customs clearance of goods, and shall take the form of exchange of information among experts and vocational training. Mutual assistance between administrative authorities in customs matters shall take place in accordance with the provisions of Protocol 5 of the agreement. [↑](#footnote-ref-62)
63. Some countries, such as Colombia, conclude FTA's with the primary objective of gaining customs cooperation and mutual assistance. See more: Colombian Industry, Business and Tourism Ministry, ‘Customs cooperation, a key gain for Colombia in trade agreement with Panama’

    ˂http://www.mincit.gov.co/englishmin/publicaciones.php?id=8025˃ accessed 6 January 2014 [↑](#footnote-ref-63)
64. Cooperation Agreement between the European Economic Community and the Syrian Arab Republic (signed 18 January 1977, entered into force 01 November 1978) OJ L 269 art 6 [↑](#footnote-ref-64)
65. Euro-Mediterranean Agreement with Tunisia art 61 [↑](#footnote-ref-65)
66. Euro-Mediterranean Agreement with Morocco art 57 [↑](#footnote-ref-66)
67. Euro-Mediterranean Agreement with Israel art 58 [↑](#footnote-ref-67)
68. Euro-Mediterranean Agreement with Jordan art 62 [↑](#footnote-ref-68)
69. Agreements from the first generation have in average 37.25 articles, while the second generation agreement has in average 83.56 articles. [↑](#footnote-ref-69)
70. See more: --, ‘Integration of the Western Balkans in the Internal Market’

    <http://www.westernbalkans.info/htmls/save\_pdf2.php?id=550˃ accessed 7 March 2014 [↑](#footnote-ref-70)
71. The Stabilization and Association process was created by the European Union in 1999 as its primary contribution to the Stability Pact for Southeast Europe. See more: Herald Shenker, ‘The Stabilisation and Association Process: An Engine of European Integration in Need of Tuning’

    <http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2008/issue%201/1-2008-Schenker.pdf> 1-19 [↑](#footnote-ref-71)
72. European Commission, 'Stabilisation and Association Process',

    ˂http://ec.europa.eu/enlargement/policy/glossary/terms/sap\_en.htm˃ accessed 6 March 2014 [↑](#footnote-ref-72)
73. Almost all of these countries are members of WTO, except Serbia and Bosnia and Herzegovina, which are currently just observer countries that applied for membership in WTO with full support from the EU. EU signed bilateral agreement on Bosnia and Herzegovina's accession to the World Trade Organisation in 2012, which is a key step for the country to become a WTO member. See more: European Commission,

    'Western Balkans' <http://ec.europa.eu/trade/policy/countries-and-regions/regions/western-balkans/>

    accessed 7 March 2014 [↑](#footnote-ref-73)
74. Iris Goldner Lang, Tamara Perišin, ‘Gradual Liberalisation of movement of goods and persons in Croatia and Macedonia – Before and After Accession to the EU’ (2011) 61 ZPFZG 613-642 [↑](#footnote-ref-74)
75. Detailed analysis of the Albanian SAA is available in: Yiannis Zahariadis, ‘The Effects of the Albania-EU Stabilisation and Association Agreement: Economic Impact and Social Implications’

    <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2527.pdf> 1-92 [↑](#footnote-ref-75)
76. See more: Gordana Đurović, Sonja Rožnatović, Nikola Milović, ‘Obaveze Crne Gore po Sporazumu o Stabilizaciji i Pridruživanju u Dijelu Unutarnjeg Tržišta’

    <http://www.tehnologijaidrustvo.org/Prilozi/zbornik14.pdf> 16-34 [↑](#footnote-ref-76)
77. See more: Centar za demokratiju, ‘Evropski standardi u Srbiji’

    <http://www.centaronline.org/postavljen/60/Zbornik\_za%20web.pdf> [↑](#footnote-ref-77)
78. --, ‘Press: Bosnia-EU relations put on hold’ (Zagreb 26 April 2011) <http://daily.tportal.hr/124423/Press-Bosnia-EU-relations-put-on-hold.html> accessed 7 March 2014 [↑](#footnote-ref-78)
79. Statement by Iris Goldner Lang (Personal email correspondence 18 March 2014) [↑](#footnote-ref-79)
80. Mixed agreements are the ones that contain both articles that concern with establishing free trade area and other articles that aren't important for establishing free trade area. [↑](#footnote-ref-80)
81. Greece 1961, Turkey 1963, Malta 1970, Ciprus 1972, all countries of Easter and Central Europe which became members of EU in 2004 and 2007. [↑](#footnote-ref-81)
82. See more: Siniša Rodin, ‘Sporazum o Stabilizaciji i Pridruživanju u Pravnom Poretku Europske Zajednice i republike Hrvatske’ <http://www.pravo.unizg.hr/\_download/repository/Rodin\_Zbornik\_SSP.pdf> 1-20 [↑](#footnote-ref-82)
83. All contracting countries of SAAs have signed in about the same time The Interim Agreements on Trade and trade related matters that came into force very quickly after signing. [↑](#footnote-ref-83)
84. The main elements of such cooperation are: 1) political dialogue, 2) establishment of free trade areas, 3) mutual concessions concerning the movement of workers, establishment, supply of services, current payments and movement of capital, 4) provisions on cooperation in other fields whether or not cov­ered by this Agreement; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part (signed 9 April 2001, entered into force 1 April 2004) OJ L 84 art 12 [↑](#footnote-ref-84)
85. Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Republic of Albania, of the other part (signed 12 June 2006, entered into force 1 April 2009) OJ L 107 art 15 [↑](#footnote-ref-85)
86. Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part (signed 15 October 2007, entered into force 01 May 2010) OJ L 108 art 77 [↑](#footnote-ref-86)
87. Specifically, this area concerns: visa, border control, asylum, migration, prevention and control of illegal immigration and readmission. This is an area which is very important for the EU, seeing that EU wants to stops unwanted immigrants from gaining EU citizenships through becoming citizens of candidate-country with low requirements for gaining citizenship, prior to country's accession to the EU. Thus EU wants to control standards and requirements for gaining citizenship of candidate-country so it would prevent massive intake of new EU citizens which weren't born in EU country, and are fresh citizens themselves of the country, and came from the 3rd country, not part of the EU. [↑](#footnote-ref-87)
88. Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part (signed 29 October 2001, entered into force 01 February 2005) OJ L 26 art 75 [↑](#footnote-ref-88)
89. Areas of cooperation in SAAs : Economic policy, Statistical cooperation, Banking, insurance and other financial services, Investment promotion and protection Industrial cooperation, Small and medium-sized enterprises, Tourism, Customs, Taxation, Social cooperation, Agriculture, and the agro-industrial sector, Fisheries, Education and training, Cultural cooperation, Information and communication, Cooperation in the audio-visual field-Electronic Communications Infrastructure and Associated, Services, Information Society, Transport, Energy, Nuclear safety, Public administration, Environment, Cooperation in Research and Technological Development and Local Development; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part (signed 29 April 2008, entered into force 01 September 2013) OJ L 278 art 88 [↑](#footnote-ref-89)
90. ACP is group of countries created by a Georgetown Agreement in 1975. ACP contains 48 countries from south of the Sahara in Africa, 16 from the Caribbean, and 15 from Pacific; 39 of the world’s 49 least-developed countries are ACP countries, most of them in Africa;European Commission, ‘The Cotonou Agreement’, 12 September 2012, ˂http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/˃ accessed 8 January 2014 [↑](#footnote-ref-90)
91. The Cotonou Agreement (ACP – EU) (adopted 23 June 2000, entered into force in April 2003, revised 22 June 2010) OJ L 287/48 art 1 [↑](#footnote-ref-91)
92. European Commission, ‘Africa, Caribbean, Pacific (ACP)’ 06 May 2010

    ˂http://ec.europa.eu/trade/policy/countries-and-regions/regions/africa-caribbean-pacific/˃,

    accessed 9 January 2014 [↑](#footnote-ref-92)
93. European Commission, ‘How economic partnership agreements benefit both consumers and producers in Europe and developing countries’ [April 2013],

    <http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\_151010.pdf> accessed 9 January 2014, p 2 [↑](#footnote-ref-93)
94. See more: ‘How economic partnership agreements benefit both consumers and producers in Europe and developing countries’ 2; Ian Townsend, ’Economic Partnership Agreements (EPAs) between the EU & African, Caribbean and Pacific countries’ [2009] HCL ˂http://www.parliament.uk/briefing-papers/SN03370.pdf˃

    accessed 10 January 2014 [↑](#footnote-ref-94)
95. Ibid [↑](#footnote-ref-95)
96. Karel De Gucht, ‘Economic Partnership Agreements (EPAs) - State of Play, Future Perspectives and Implementation’ (Speech 13/812 European Commission Trade website 2013) <http://europa.eu/rapid/press-release\_SPEECH-13-812\_en.pdf>, accessed 25 December 2013 [↑](#footnote-ref-96)
97. The Cotonou Agreement, OJ L 287/48, art 36 [↑](#footnote-ref-97)
98. „*The Forum of the Caribbean Group of African, Caribbean and Pacific States is the body that comprises Caribbean ACP States for the purpose of promoting and coordinating policy dialogue, cooperation and regional integration, mainly within the framework of the Cotonou Agreement between the ACP and the European Union*.“ There are sixteen Participating States and all of them are signatories to both the Cotonou Agreement and Economic Partnership Agreement, with the exception of Cuba; Caribbean Community and Common Market, ‘What is CARIFORUM?’, 2011,

    ˂http://www.caricom.org/jsp/community\_organs/cariforum/cariforum\_main\_page.jsp?menu=cob˃ accessed 15 January 2014 [↑](#footnote-ref-98)
99. This includes: Union of Comoros, The Republic of Madagascar, The Republic of Mauritius, The Republic of Seychelles, The Republic of Zambia, and the Republic of Zimbabwe. Despite the fact that all six countries were engaged in negotiations, agreement was finally signed by only four countries (Madagascar, Mauritius, Seychelles and Zimbabwe); European Commission, ‘Fact sheet on the interim Economic Partnership Agreements: Eastern and Southern Africa’, [2012],

    ˂http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc\_142193.pdf˃ accessed 16 January 2014 [↑](#footnote-ref-99)
100. Agreement on Trade, Development and Cooperation between the European Community and its Member

     States, of the one part, and the Republic of South Africa, of the other part (adopted 11 October 1999, entered into force 01 May 2004) OJ L 331/23 art 65; Interim agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part (adopted August 2009) OJ L 111/8 art 19; Interim economic partnership agreement with Papua New Guinea and Fiji does not have such chapter, but it is planned once the full EPA is be concluded. [↑](#footnote-ref-100)
101. Agreement with South Africa OJ L 311/25 art 77, OJ L 311/30 art 104; Agreement with Eastern and Southern African States OJ L 111/23 art 54; Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (adopted 30 July 2009, entered into force 20 December 2009) OJ L 272/16 art 47 [↑](#footnote-ref-101)
102. Agreement with Eastern and Southern African States OJ L 111/23 art 54 [↑](#footnote-ref-102)
103. Agreement with Fiji and Papua New Guinea enables intervention of the mediator: „*If consultations fail to produce a mutually agreed solution, the Parties to the dispute may, by agreement, seek recourse to a mediator*”… “*The mediator’s opinion may include a recommendation on how to resolve the dispute consistent with the provisions of this Agreement. The mediator’s opinion is non-binding*” OJ L 272/16 art 50 [↑](#footnote-ref-103)
104. Technical barriers to trade refers to the “…*mandatory technical regulations and voluntary standards that define specific characteristics that a product should have, such as its size, shape, design, labelling, marking, packaging, functionality or performance*”; European Commission, ‘Technical barriers to trade’ [2013]

     ˂http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\_150987.pdf˃ accessed 28 January 2014 [↑](#footnote-ref-104)
105. Sanitary and phytosanitary measures include “…*all relevant laws, decrees, regulations, requirements and procedures*” that are “…*applied to protect human, animal or plant life or health within the territory of a country from risks arising from plant pests (insects, bacteria, virus), additives, residues (of pesticides or veterinary rugs), contaminants (heavy metals), toxins or disease-causing organisms in foods, beverages or feedstuffs, and diseases carried by animals*”; European Commission ‘Sanitary and phytosanitary (SPS) issues‘ [2013]

     ˂http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\_150986.pdf˃ accessed 29 January 2014 [↑](#footnote-ref-105)
106. Agreement with Fiji Island and Papua New Guinea OJ L 272/12 art 33 [↑](#footnote-ref-106)
107. For example protecting human life and safety, animal and plant life, protection of costumers, *etc.* [↑](#footnote-ref-107)
108. Alan V. Deardorff, Robert M. Stern, ‘Measurement of Non-Tariff Barriers’ (1997) OECD Economics Department Working Papers, No. 179 ˂http://www.oecd-ilibrary.org/docserver/download/5lgsjhvj865f.pdf?expires=

     1394372726&id=id&accname=guest&checksum=3C489EBC3D3DDC6AF142D987490B3CBE˃ accessed 7 March 2014 [↑](#footnote-ref-108)
109. Agreement with Fiji Island and Papua New Guinea OJ L 272/12 art 34 [↑](#footnote-ref-109)
110. Pascal Lamy, ‘Mexico and the EU: Married Partners, Lovers, or Just Good Friends?’ (Speech at Institute of European Integration Studies in Mexico City, European Commission Trade website 2002)

     ˂http://trade.ec.europa.eu/doclib/docs/2004/september/tradoc\_118831.pdf˃ accessed 12 February 2014 [↑](#footnote-ref-110)
111. The agreement covers political dialogue, trade relations in goods and cooperation; Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part (adopted 8 December 1997, entered into force 20 March 2000) OJ L 276 [↑](#footnote-ref-111)
112. This agreement was brought by the Joint Mexico-EU Council by Decision No 2/2001 of the EU-Mexico Joint Council of 27 February 2001 implementing Articles 6, 9, 12(2)(b) and 50 of the Economic Partnership, Political Coordination and Cooperation Agreement (adopted 24 November 1999 entered into force on 1 March 2001) OJ L 70. Apart from services, the agreement contains provisions on intellectual property, capital flows and international payments and dispute settlement. The negotiations began in the latter part of 1998 and after nine negotiating rounds were concluded by the end of 1999, making it the fastest trade negotiations concluded by the EU and a third party. [↑](#footnote-ref-112)
113. Karel de Gucht, ‘Open for business: The European Union's relations with Mexico in a changing world’ (Speech on EU relationship with Mexico in Mexico City, speech 12/825 European Commission Trade website 2012) ˂http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc\_150094.pdf˃ accessed 14 February 2014 [↑](#footnote-ref-113)
114. European Commission, ‘Countries and regions: Mexico’ (European Commission web site 19 November 2013) ˂http://ec.europa.eu/trade/policy/countries-and-regions/countries/mexico/˃ accessed 14 February 2014 [↑](#footnote-ref-114)
115. “*Our share of total Mexican trade, fell from nearly 11% in 1991 to 6% in 1999, and for the first half of the booming 1990s, EU-Mexico trade barely increased at all even in absolute terms. Whether this was trade diversion, trade distraction, trade delusion, I don't know*.”; ‘Mexico and the EU: Married Partners, Lovers, or Just Good Friends?’ 3 [↑](#footnote-ref-115)
116. The North American Free Trade Agreement (hereinafter: NAFTA) is an agreement signed by Canada, Mexico and the United States, creating a trilateral based trade bloc in North America. The agreement came into force on January 1, 1994. It superseded the Canada-United States Free Trade Agreement. [↑](#footnote-ref-116)
117. Mexico also has FTAs with Bolivia, Chile, Columbia, Peru, Uruguay, Venezuela and others. [↑](#footnote-ref-117)
118. ‘Mexico and the EU: Married Partners, Lovers, or Just Good Friends?’ 3; See more: Joakim Reiter, ‘The EU-Mexico Free Trade Agreement: Assessing the EU approach to regulatory issues’ (2003) RMEI 62 - 99 [↑](#footnote-ref-118)
119. 95 per cent of current total trade is covered; Joakim Reiter, ‘The EU-Mexico Free Trade Agreement: Assessing the EU approach to regulatory issues’ 72 [↑](#footnote-ref-119)
120. Such as: investment and related payments, intellectual property, public procurement, competition, advanced dispute settlement procedure and framework for future negotiation. [↑](#footnote-ref-120)
121. The agreement is in force provisionally until the ratification procedures for the whole agreement are completed. [↑](#footnote-ref-121)
122. Mineral fuels, lubricants and related materials constitute 99,7% of total trade flows, making €8,1 billion surplus in favour of Iraq. Total bilateral trade between the EU and Iraq amounted to over €13 billion; Directorate General for Trade, ‘European Union, Trade in goods with Iraq’ [2013]

     ˂http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\_113405.pdf˃ accessed 2 March 2014. [↑](#footnote-ref-122)
123. Cf. Parliament Recommendation (EP) 0411/2012 of 11 December 2012 on the draft Council decision on the conclusion of a Partnership and Cooperation Agreement with Iraq [2012] OJ L71 [↑](#footnote-ref-123)
124. This part includes the introduction of an annual dialogue at ministerial and senior official level on many topics, including democracy, rule of law, peace, reconciliation, human rights, foreign and security policy, and regional security, as well as topics regarding some present issues, such as combating the terrorism, prevention of the illegal arms trade, countering proliferation of weapons of mass destruction, *etc*.; After the signing ceremony High Representative of the EU for Foreign Affairs and Security Policy Catherine Ashton said that “*this agreement is above all a symbol of the EU’s wish to be a positive partner for Iraq in its democratic efforts”* Catherine Ashton, ‘Remarks by High Representative Catherine Ashton following the signature of EU-Iraq Partnership & Cooperation Agreement’ (Speech in Brussels on 11 May 2012 European Union External Action website 2012) [↑](#footnote-ref-124)
125. Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part (signed 11 May 2012) OJ L 204/22 art 8 [↑](#footnote-ref-125)
126. Iraq applied for the WTO accession in September 2004. Accession efforts are being supported by EU, since it is believed that „*a WTO membership will contribute to enhancing structural reform in the country as well as Iraq's reintegration into the multilateral trading system*”. Working Party is still examining Iraq's foreign trade regime; European Commission, ‘Countries and Regions: Iraq’ ˂http://ec.europa.eu/trade/policy/countries-and-regions/countries/iraq/˃ accessed 5 March 2014; World Trade Organization, ‘Accessions: Iraq’

     ˂http://www.wto.org/english/thewto\_e/acc\_e/a1\_iraq\_e.htm˃ accessed 5 March 2014 [↑](#footnote-ref-126)
127. Partnership and Cooperation Agreement OJ L 204/30 art 41; It must be noted that because of its development, financial and trade needs, Iraq will benefit from the transitional ten year time period of asymmetrical application Ibid OJ L 204/37 art 59 [↑](#footnote-ref-127)
128. Ibid OJ L 204/31 art 42 [↑](#footnote-ref-128)
129. Ibid OJ L 204/32 art 43 [↑](#footnote-ref-129)
130. Ibid [↑](#footnote-ref-130)
131. Ibid OJ L 204/30 art 41 - OJ L 204/37 art 59 [↑](#footnote-ref-131)
132. As aforementioned, although EU had political and economic motivations for the FTA with CARIFORUM States similar to ones with the EPAs, the FTA with CARIFORUM States will be elaborated in this group because of its complexity and developed provisions. [↑](#footnote-ref-132)
133. Countries referred to as belonging to the „*Central America*“ are: the Republic of Costa Rica, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, the Republic of Nicaragua and the Republic of Panama. [↑](#footnote-ref-133)
134. ISDS are provisions in trade treaties and investment agreements that allow investors to bring proceedings against a foreign government that is a party to the treaty. Importantly, these proceedings are brought under international law, thereby providing more certainty that the investor will have their claim adjudicated in an impartial manner. If the government is found to be in breach of its treaty obligations, the harmed investor can receive monetary compensation or other forms of redress. [↑](#footnote-ref-134)
135. European Commission, ‘The EU-Korea Free Trade Agreement in practice’ (2011) POEU 1 [↑](#footnote-ref-135)
136. Ibid [↑](#footnote-ref-136)
137. Ibid [↑](#footnote-ref-137)
138. The EU and the USA advocate enforcement of intellectual property rights because they are big producers, while their commercial partners are big consumers of goods protected by intellectual property rights such as medicines, industrial products, IT, software, films, books, *etc*. [↑](#footnote-ref-138)
139. Stephen Woolcock, ‘European Union policy towards Free Trade Agreements’ (2007) 3 ECIPE 1, 3 [↑](#footnote-ref-139)
140. Ibid [↑](#footnote-ref-140)
141. Ibid [↑](#footnote-ref-141)
142. ‘The EU-Korea Free Trade Agreement in practice’ 1 [↑](#footnote-ref-142)
143. These FTAs have in average 285,6 articles, while all the other FTAs have in average only 80,6 articles. [↑](#footnote-ref-143)
144. See more: EU-South Korea FTA [2011] OJ L 127/44 art 10.6 [↑](#footnote-ref-144)
145. See more on trademark provisions: Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part (signed 15 December 2010) OJ L 289/I/48 art 144 [↑](#footnote-ref-145)
146. See more on geographical indications provisions: Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part (signed 26 June 2012, entered into force 01 August 2013) OJ L 354/65 art 207 [↑](#footnote-ref-146)
147. See more on industrial design provisions: Agreement Establishing an Association between Central America, on the one hand, and the European Union and its Member States, on the other (signed 29 June 2012) OJ L 346/73 [↑](#footnote-ref-147)
148. See more on patents provisions: EU-South Korea FTA OJ L 127/50 and OJ L 127/51. [↑](#footnote-ref-148)
149. See more: EU-Colombia and Peru Trade Agreement OJ L 354/63 art 196 [↑](#footnote-ref-149)
150. See more: General Obligations: 1. The Parties reaffirm their rights and commitments under the TRIPS Agreement and in particular of its Part III, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights. Those measures, procedures and remedies shall be fair, proportionate and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays (1). 2. Those measures and remedies shall also be effective and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. [↑](#footnote-ref-150)
151. Specialised committees: Committee on Trade in Goods, Committee on Sanitary and Phytosanitary Measures, Customs Committee, Committee on Trade in Services, Establishment and Electronic Commerce, Committee on Trade and Sustainable Development, Committee on Outward Processing Zones on the Korean Peninsula, Committee on Cultural Cooperation. [↑](#footnote-ref-151)
152. Working groups: Working Group on Motor Vehicles and Parts, Working Group on Pharmaceutical Products and Medical Devices, Working Group on Chemicals, Working Group on Trade Remedy Cooperation, Working Group on Mutual Recognition Agreements on Services, Working Group on Government Procurement, Working Group on Geographical Indications, Enforcement of trade contracts. [↑](#footnote-ref-152)
153. European Commission, ‘The EU-Korea Free Trade Agreement in practice’ (2011) POEU 17 [↑](#footnote-ref-153)
154. EU-South Korea FTA OJ L 127/69 art 15.1 [↑](#footnote-ref-154)
155. ‘The EU-Korea Free Trade Agreement in practice’ 17 [↑](#footnote-ref-155)
156. EU-Chile Association Agreement OJ L 352/35 art 106 [↑](#footnote-ref-156)
157. EU-CARIFORUM States Economic Partnership Agreement OJ L 289/I/37 art 103 [↑](#footnote-ref-157)
158. EU-Central America Association Agreement OJ L 346/52 art 185 [↑](#footnote-ref-158)
159. EU-South Korea Free Trade Agreement OJ L 127/34 art 7.26 [↑](#footnote-ref-159)
160. EU-Central America Association Agreement OJ L 346/51 art 180 [↑](#footnote-ref-160)
161. EU-CARIFORUM States Economic Partnership Agreement OJ L 289/I/40 art 110. Only this FTA has provisions on „tourism services“. The reason for this is a dominant position of tourism industry in the economies of CARIFORUM states. [↑](#footnote-ref-161)
162. See more on electronic commerce provisions: EU-Colombia and Peru Trade Agreement OJ L 354/51 art 162. [↑](#footnote-ref-162)
163. ‘The EU-Korea Free Trade Agreement in practice’ 16 [↑](#footnote-ref-163)
164. Ibid [↑](#footnote-ref-164)
165. EU-South Korea FTA OJ L 127/62 art 13.1 [↑](#footnote-ref-165)
166. Ibid, Art 13.4 and 13.5 [↑](#footnote-ref-166)
167. Transatlantic Declaration on EC - US Relations (December 1990) 2; “*The Transatlantic Declaration was essentially a statement of principles, emphasizing the signatories’ continued commitment to shared norms, values and goals. A more measurable result was the institutionalization of consultation mechanisms*.” Henning Meyer, Chris Luenen, ’Transatlantic Economic Cooperation: A Reader’ [2008] GPI 7 - 9 [↑](#footnote-ref-167)
168. Some of the most important ones are: New Transatlantic Agenda (NTA) in 1995, Transatlantic Economic Partnership (TEP) in 1998, Transatlantic Legislators Dialogue in 1999, and establishment of Transatlantic Economic Council (TEC) in 2007. This short and incomplete list does not include numerous other agreements concerning certain issues. [↑](#footnote-ref-168)
169. See more about past EU–USA relations: Transatlantic Economic Cooperation: A Reader; Müftüler-Baç, Meltem, Cihangir Damla, ‘European Integration and Transatlantic Relations’ Working Paper No. 5 [2012] TRFGG p 1 - 23 [↑](#footnote-ref-169)
170. Cf. Florin Bonciu, ‘Transatlantic Economic Relations and the Prospects of a New Partnership’ (2013) RJEA 20, 25; Gabriel Felbermayr and others, ‘Dimensions and effects of transatlantic free trade agreement between EU and USA’ (Study) [2013] IFOI 2 [↑](#footnote-ref-170)
171. Transatlantic Economic Relations and the Prospects of a New Partnership 21 [↑](#footnote-ref-171)
172. European Commission, ‘Commission Staff Working Document: Impact Assessment Report on the future of EU-US trade relations Accompanying the document Recommendation for a Council Decision authorising the opening of negotiations on a comprehensive trade and investment agreement, called the Transatlantic Trade and Investment Partnership, between the European Union and the United States of America’ [2013] 24 [↑](#footnote-ref-172)
173. Council of the European Union, ‘EU-US Summit joint statement’ (Press release) [2011]

     ˂http://www.whitehouse.gov/the-press-office/2010/11/20/eu-us-summit-joint-statement˃

     accessed 19 December 2013; High Level Working Group on Jobs and Growth, ‘Interim Report to Leaders from the Co-Chairs EU-USA High Level Working Group on Jobs and Growth’ [2012] 1

     ˂http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc\_149557.pdf˃ accessed 19 December 2013 [↑](#footnote-ref-173)
174. High Level Working Group on Jobs and Growth, ‘Final Report - High Level Working Group on Jobs and Growth’ [2013] 1 ˂http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc\_150519.pdf˃ accessed 19 December 2013 [↑](#footnote-ref-174)
175. See more: European Commission, ‘Statement from United States President Barack Obama, European Council President Herman Van Rompuy and European Commission President José Manuel Barroso’ (Press Release Memo 13/94) (2013) ˂http://europa.eu/rapid/press-release\_MEMO-13-94\_en.pdf˃ [↑](#footnote-ref-175)
176. See more: Karel de Gucht, ‘A negotiating mandate for a trade and investment agreement with the United States’ (European Commission Memo/13/212 2013) ˂http://europa.eu/rapid/press-release\_MEMO-13-212\_en.pdf˃ [↑](#footnote-ref-176)
177. Council of the European Union, ‘Council approves launch of trade and investment negotiations with the United States’ (Press Release 10919/13) [2013]

     ˂http://www.consilium.europa.eu/uedocs/cms\_data/docs/pressdata/EN/foraff/137485.pdf˃ [↑](#footnote-ref-177)
178. Although the European Parliament does not have a formal role in approving the negotiating mandate, it can adopt resolution; Parliament Resolution (EP) 2012/2149 of 23 October 2012 on trade and economic relations with the United States [2003] [↑](#footnote-ref-178)
179. European Commission, ‘First Round of TTIP negotiations kicks off in Washington DC’ (Press release) [2013]

     ˂http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\_151595.pdf˃ [↑](#footnote-ref-179)
180. Progress was made in identifying areas of common ground in order to start preparing for text-based discussions in rounds ahead; Karel De Guch, ‘EU and US conclude second round of TTIP negotiations in Brussels’ (News archive) [2013]

     ˂http://trade.ec.europa.eu/doclib/press/index.cfm?id=988˃ accessed 22 December 2013 [↑](#footnote-ref-180)
181. “*This followed unprecedented efforts by the EU to negotiate as openly as possible and reach out to the widest possible range of interests*”; European Commission, ‘EU Chief Negotiator says EU-US trade deal not about deregulation, as third round of talks end in Washington’ (press release) [2013]

     ˂http://europa.eu/rapid/press-release\_IP-13-1306\_en.pdf˃ [↑](#footnote-ref-181)
182. Office of the United States Trade Representative, ‘Statement By U.S. Trade Representative Michael Froman at the Close of the Fourth Round Transatlantic Trade and Investment Partnership Negotiations’ (press release) [2014]

     ˂http://www.ustr.gov/about-us/press-office/press-releases/2014/March/Statement-by-USTR-Froman-at-close-of-fourth-round-TTIP-negotiations˃ accessed 29 March 2014 [↑](#footnote-ref-182)
183. Final Report - High Level Working Group on Jobs and Growth 1 [↑](#footnote-ref-183)
184. Daniel S. Hamilton, Joseph P. Quinlan, ‘The Transatlantic Economy 2013: Annual Survey of Jobs, Trade and Investment between the United States and Europe’ [2013] CTRI, 18 [↑](#footnote-ref-184)
185. Ibid ix [↑](#footnote-ref-185)
186. Ibid xi [↑](#footnote-ref-186)
187. Ibid vii [↑](#footnote-ref-187)
188. Ibid 12 [↑](#footnote-ref-188)
189. China being the first; See more: Commission Staff Working Document: Impact Assessment Report, Annex 4 [↑](#footnote-ref-189)
190. The Transatlantic Economy 2013: Annual Survey of Jobs, Trade and Investment between the United States and Europe 26 [↑](#footnote-ref-190)
191. Commission Staff Working Document: Impact Assessment Report 10 [↑](#footnote-ref-191)
192. Ibid [↑](#footnote-ref-192)
193. There are also some factors causing trade decline that are less likely to be affected by trade policy (such as geographical distance, and consumer attitudes and preferences), and thus, won’t be considered in this paper. [↑](#footnote-ref-193)
194. This will be examined in 3.3.1. Market access subheading [↑](#footnote-ref-194)
195. This will be examined in 3.3.2. Regulatory issues subheading [↑](#footnote-ref-195)
196. This will be examined in 3.3.3. Trade-related rules subheading [↑](#footnote-ref-196)
197. This classification can be found in numerous papers, official publications and press releases from both EU and USA. [↑](#footnote-ref-197)
198. World Trade Organization, ‘European Union: Tariffs and imports: Summary and duty rages’ (WTO statistics) (2013) ˂http://stat.wto.org/TariffProfiles/E27\_e.htm˃ accessed 27 December 2013; World Trade Organization, ‘United States: Tariffs and imports: Summary and duty rages’ (WTO statistics) [2013]

     ˂http://stat.wto.org/TariffProfiles/US\_e.htm˃ accessed 27 December 2013 [↑](#footnote-ref-198)
199. Ibid [↑](#footnote-ref-199)
200. Final Report - High Level Working Group on Jobs and Growth 3 [↑](#footnote-ref-200)
201. Ibid [↑](#footnote-ref-201)
202. Rules of origin are the criteria needed to determine the national source of a product. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports.  
     There is wide variation in the practice of governments with regard to the rules of origin. While the requirement of substantial transformation is universally recognized, some governments apply the criterion of change of tariff classification, others the *ad valorem* percentage criterion and yet others the criterion of manufacturing or processing operation. In a globalizing world it has become even more important that a degree of harmonization is achieved in these practices of Members in implementing such a requirement. [↑](#footnote-ref-202)
203. European Commission, ‘Member States endorse EU-US trade and investment negotiations’ (Press release Memo 13/564) [2013] ˂http://europa.eu/rapid/press-release\_MEMO-13-564\_en.htm˃ accessed 16 March 2014 [↑](#footnote-ref-203)
204. Ibid [↑](#footnote-ref-204)
205. Services represent 70% of world output, but only one fifth of world trade; Trade Policy as a Core Component of the EU’s 2020 Strategy 6 [↑](#footnote-ref-205)
206. Foreign airlines cannot hold more than 25% of an US carrier market, while US cabotage market is totally closed to EU businesses both in air and maritime transport. The EU does not have similar restrictions; Commission Staff Working Document: Impact Assessment Report 20 [↑](#footnote-ref-206)
207. Ibid 21 [↑](#footnote-ref-207)
208. Final Report - High Level Working Group on Jobs and Growth 3 [↑](#footnote-ref-208)
209. Ibid [↑](#footnote-ref-209)
210. Those are FTAs with Syria, Palestine, Turkey, Bosnia and Herzegovina, Serbia, African States [↑](#footnote-ref-210)
211. Betrand de Largentaye, ‘Challenges and Prospects of a Transatlantic Free Trade Area’ [2013] NEJDI 21

     ˂http://www.notre-europe.eu/media/challengesprospectstransatlanticfreetradearea.pdf?pdf=ok˃ accessed 16 March 2014 [↑](#footnote-ref-211)
212. Total EU public procurement market is estimated to be worth 2088 bln €, with 16% share in GDP. Total US public procurement market is estimated to be worth 1077 bln €, with 11% share in GDP; Trade Policy as a Core Component of the EU’s 2020 Strategy 21 [↑](#footnote-ref-212)
213. Commission Staff Working Document: Impact Assessment Report 13 [↑](#footnote-ref-213)
214. Ibid 23 [↑](#footnote-ref-214)
215. Agreement with Iraq art 41-59; Agreement with Colombia and Peru art 172 - 194 [↑](#footnote-ref-215)
216. Shayerah Ilias Akhtar, Vivian C. Jones, ‘Transatlantic Trade and Investment Partnership (TTIP) Negotiations’ [2014] CRS 31; Standstill clause is a provision in an agreement that forbids a party from changing conditions to the detriment of the applicant from how they stand at the time of entry into force of the agreement. [↑](#footnote-ref-216)
217. Those are SSA with Bosnia and Serbia, Euro-Mediterranean Agreements with Syria and Turkey and EPAs with African States. [↑](#footnote-ref-217)
218. The Mandate was adopted by the EU Foreign Affairs Council. The document is officially confidential but has been leaked online; General Secretariat of the Council, ‘Directives for the negotiation of the Transatlantic Trade and Investment Partnership between the European Union and the United States’ (EU negotiation mandate June 2013) ˂http://www.s2bnetwork.org/fileadmin/dateien/downloads/EU-TTIP-Mandate-from-bfmtv-June17-2013.pdf˃; See more on general exception clause: General Agreement on Tariffs and Trade (adopted 30 October 1947, entered into force 1 January 1948) art 20 [↑](#footnote-ref-218)
219. Directives for the negotiation of the Transatlantic Trade and Investment Partnership 18 [↑](#footnote-ref-219)
220. Ibid [↑](#footnote-ref-220)
221. Ibid [↑](#footnote-ref-221)
222. Countervailing measures are measures that country can impose in order to counter the effects of subsidies. It is usually agreed that country can use a dispute-settlement procedure to seek the withdrawal of the subsidy or the removal of its adverse effects, or the country can launch its own investigation and ultimately charge extra duty (“countervailing duty”) on subsidized imports that are found to be hurting domestic producers; World Trade Organization, ‘Subsidies and Countervailing measures’ [2014] ˂http://www.wto.org/english/tratop\_e/scm\_e/scm\_e.htm˃ accessed 28 April 2014 [↑](#footnote-ref-222)
223. Agreement on Implementation of Article VI of the GATT or the WTO Agreement on Subsidies and Countervailing Measures [↑](#footnote-ref-223)
224. Ibid [↑](#footnote-ref-224)
225. Most common ones are cases of breach of contract, forbidden actions, serious disturbances in the economy, the detrimental increase of import, anti-dumping provisions, countervailing measures, *etc.* [↑](#footnote-ref-225)
226. Shayerah Ilias Akhtar, Vivian C. Jones, ‘Proposed Transatlantic Trade and Investment Partnership (TTIP): In Brief’ [2013] CRS 6 [↑](#footnote-ref-226)
227. Regulatory differences are non-tariff measures which can be defined as „*all non-price and non-quantity restrictions on trade in goods, services and investment, at federal and state level. This includes border measures*

     *as well as behind-the-border measures flowing from domestic laws, regulations and practices”...*“*this is a broad definition that includes any regulatory divergence that exists due, for example, to the fact that two different regulatory systems co-exist”;* Koen G. Berden and others, ‘Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis’ [2009] ECORYS 2 [↑](#footnote-ref-227)
228. Very good example of divergent rules that create unnecessary cost are the rules regarding the car safety: even though similar cars are sold in both markets, safety regulation differs widely. Different but similar safety standards are required for lights, door-locks, brakes, steering, seats, seat-belts, wiper blades and electric windows. Formally recognizing that two regulations are broadly the same is safe terms and prevailing those differences would result in increase of export by 10.7% for the EU and 9.1% for the US per year (national income effects yield €12.0 billion for the EU and €1.6 billion per year for the US); Non-Tariff Measures in the EU-US Trade and Investment – An Economic Analysis 30, 52 [↑](#footnote-ref-228)
229. Overview of some milestones in transatlantic cooperation efforts can be found at: ibid 4-6 [↑](#footnote-ref-229)
230. See footnote 104 [↑](#footnote-ref-230)
231. Average country imposes TBTs on about 30% of products and trade. With coverage on about 15% of trade, sanitary and phytosanitary measures are second most commonly used; United Nations Conference on Trade and Development, ‘Non-tariff Measures to Trade: Economic and Policy Issues for Developing Countries’ [2012] DCITS 4 [↑](#footnote-ref-231)
232. Commission Staff Working Document: Impact Assessment Report 18 [↑](#footnote-ref-232)
233. European Commission, ‘EU-US Transatlantic Trade and Investment Partnership: Trade and Sustainable development’ [2013] 2 ˂http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\_151626.pdf˃ accessed 16 March 2014 [↑](#footnote-ref-233)
234. Ibid [↑](#footnote-ref-234)
235. Ibid [↑](#footnote-ref-235)
236. Ibid 18 [↑](#footnote-ref-236)
237. Ibid [↑](#footnote-ref-237)
238. FTA with South Korea art 4.1 - 4.10 [↑](#footnote-ref-238)
239. *E.g*. financial services, agriculture and fisheries, transport, telecommunications and information technology; ibid art 51, 53, 54, 55, 56 [↑](#footnote-ref-239)
240. *E.g.* SAA with Macedonia art 73: ”*the former Yugoslav Republic of Macedonia shall take the necessary measures in order to gradually achieve conformity with Community technical regulations and European standardisation, metrology, accreditation and conformity assessment procedures*”; Such provisions cannot be expected in TTIP, where the EU and the USA will have to find different ways to prevail differences – see page 40 [↑](#footnote-ref-240)
241. See footnote 105 [↑](#footnote-ref-241)
242. EU-US Transatlantic Trade and Investment Partnership: Trade and Sustainable development 20 [↑](#footnote-ref-242)
243. See 4.2. Genetically modified organisms [↑](#footnote-ref-243)
244. Genetically modified organism is an organism whose genetic material has been altered using genetic engineering techniques. Often such alterations are made for the purpose to enhance certain attributes of the organism needed for special purpose *e.g.* faster growth, poisons resistance, skin colour; See more: Andrew Tarantola, ‘What are GMO foods, and are they okay to eat?’ <http://gizmodo.com/what-are-gmo-foods-and-are-they-okay-to-eat-1524547249> accessed 7 March 2014 [↑](#footnote-ref-244)
245. That means that the parties can freely introduce measures that are justified on the grounds of protection of life and health of humans, animals or plants. This gives leeway for excluding GMO products from entering market of the parties. [↑](#footnote-ref-245)
246. Final Report - High Level Working Group on Jobs and Growth 3 [↑](#footnote-ref-246)
247. For example: there are numerous obligations imposed by regulations concerning food safety that food producers have to satisfy in order to legally sell their products. Those obligations are often costly, but cannot be removed without risk for consumers. [↑](#footnote-ref-247)
248. *E.g.*to protect people from risks to their health, safety, environment and financial security, etc. [↑](#footnote-ref-248)
249. Good example of divergences in public preferences and values is genetically engineered foods. While most European consumers are reluctant by the idea of greater liberalisation in that area and prefer food that has not been genetically engineered, American consumers tend to be far more accepting of such production. [↑](#footnote-ref-249)
250. Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis XVIII [↑](#footnote-ref-250)
251. Cf. European Commission, ‘Transatlantic Trade and Investment Partnership: The Regulatory Part’ [2013] ˂http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\_151605.pdf˃ 3-4 accessed 28 December 2013 [↑](#footnote-ref-251)
252. These are results for the ambitious scenario where around 50% of the NTMs and regulatory divergences are aligned; Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis XIV [↑](#footnote-ref-252)
253. See more: Directives for the negotiation of the Transatlantic Trade and Investment Partnership [↑](#footnote-ref-253)
254. Ibid [↑](#footnote-ref-254)
255. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization that sets down minimum standards for many forms of intellectual property regulation as applied to nationals of other WTO Members. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade in 1994. See more: \_\_, ‘Frequently asked questions about TRIPS’ ˂<http://www.wto.org/english/tratop_e/trips_e/tripfq_e.htm>˃ accessed 18 February 2014 [↑](#footnote-ref-255)
256. Directives for the negotiation of the Transatlantic Trade and Investment Partnership 29 [↑](#footnote-ref-256)
257. Ibid 30 [↑](#footnote-ref-257)
258. The 9 exceptions are FTAs with Norway, Iceland, Switzerland, Faroe Islands, Andora, San Marino, Syrian Arab Republic, Eastern and Southern African States, Papua New Guinea and Fiji. 6 of them come from the year 1992 or earlier. [↑](#footnote-ref-258)
259. See more: \_\_, ‘EU-US open investment statement’ ˂http://europa.eu/rapid/press-release\_MEMO-08-301\_en.htm?locale=en˃ accessed 29 April 2014 [↑](#footnote-ref-259)
260. See more: Annie Zaven Tortian, ‘International Investment Agreements and their Impact on Foreign Direct Investment’ [2007] 88 - 128 [↑](#footnote-ref-260)
261. EU member states that have concluded investment treaties with US: Bulgaria (1992), Croatia (1996), Czech Republic (1991), Estonia (1994), Latvia (1995), Lithuania (1998), Poland (2000), Romania (1992), Slovakia (1991); table with all US bilateral investment treaties: Shayerah Ilias Akhtar, Martin A. Weiss, ‘US International Investment Agreements: Issues for Congress’ [2013] CRS 12 - 13 [↑](#footnote-ref-261)
262. Ibid [↑](#footnote-ref-262)
263. Treaty on the Functioning of the European Union (Consolidated version 2012) OJ C 115 art 207 [↑](#footnote-ref-263)
264. As regards investment protection, according to the leaked negotiation mandate, the objective of the respective provisions of the agreement should: provide for the highest possible level of legal protection and certainty for European investors in the US; provide for the promotion of the European standards of protection which should increase Europe's attractiveness as a destination for foreign investment; provide for a level playing field for investors in the US and in the EU; build upon the MS' experience and best practice regarding their bilateral investment agreements with third countries; and should be without prejudice to the right of the EU and the MS to adopt and enforce, in accordance with their respective competences, measures necessary to pursue legitimate public policy objectives such as social, environmental, security, stability of the financial system, public health and safety in a non-discriminatory manner; the Agreement should respect the policies of the EU and its MS for the promotion and protection of cultural diversity. [↑](#footnote-ref-264)
265. Directives for the negotiation of the Transatlantic Trade and Investment Partnership [↑](#footnote-ref-265)
266. „*While some argue that ISDS need not be part of the TTIP given the demonstrated USA and EU commitment to the rule of law, the Chamber insists that the United States and the EU must include these provisions as a signal to the world of our willingness to commit to the same set of rules that we urge other commercial partners to uphold*.” US Chamber of Commerce, ‘Statement of the USA Chamber of Commerce on the Transatlantic Trade & Investment Partnership to the Office of the USA Trade Representative’ (Statement May 2013) ˂http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0241˃ accessed 18 January 2014 [↑](#footnote-ref-266)
267. *E.g.* North America Free Trade Agreement [1994] (signed 17 December 1992, entered into force 1 January 1994) Chapter 11 and USA Korea Free Trade Agreement [2012] (signed 30 June 2007, entered into force 15 March 2012) Chapter 11 [↑](#footnote-ref-267)
268. Directives for the negotiation of the Transatlantic Trade and Investment Partnership [↑](#footnote-ref-268)
269. Ibid [↑](#footnote-ref-269)
270. In Western Balkans group of FTAs competition law was a part of harmonization with the *acquis communautaire* which is not the case with other FTAs. [↑](#footnote-ref-270)
271. European Commission, ‘Technical barriers to trade’ [2013] 1

     ˂http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\_150987.pdf˃ accessed 17 March 2014 [↑](#footnote-ref-271)
272. ’Member States endorse EU-US trade and investment negotiations’ ibid [↑](#footnote-ref-272)
273. ‘Challenges and Prospects of a Transatlantic Free Trade Area’ ibid [↑](#footnote-ref-273)
274. Ibid [↑](#footnote-ref-274)
275. European Commission, ‘EU-US Transatlantic Trade and Investment Partnership: Raw materials and energy’ [2013] 3 ˂http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\_151624.pdf˃ accessed 17 March 2014 [↑](#footnote-ref-275)
276. Ibid [↑](#footnote-ref-276)
277. Ibid [↑](#footnote-ref-277)
278. The aim of cooperation is to prevent deterioration of the environment, to improve the quality of the environment, to protect human health and to achieve rational use of natural resources for sustainable development. The Parties undertake to cooperate in areas including: (a) soil and water quality; (b) the consequences of development, particularly industrial development (especially safety of installations and waste); (c) monitoring and preventing pollution of the sea; Euro-Mediterranean Agreement with Tunisia art 48 [↑](#footnote-ref-278)
279. *E.g.* industrial cooperation, transport cooperation, energy cooperation, financial cooperation. See more: SAA with Serbia art 94, 108, 109, 116 [↑](#footnote-ref-279)
280. *E.g.:* environmental services, environmental standards in tourism, cooperation on eco-innovation and renewable energy and elaborate provisions on standards, scientific information, consultation, monitoring and sustainable development. [↑](#footnote-ref-280)
281. William Shakespeare, *Hamlet* (Washington Square Press, New York 1992) 99 [↑](#footnote-ref-281)
282. The term “*audiovisual*” refers to cultural products: motion pictures, television, home video, musical recordings, *etc*. [↑](#footnote-ref-282)
283. French Embassy in London, ‘EU-US Free Trade: France not alone in Upholding Cultural Exception’ ˂http://www.ambafrance-uk.org/France-not-alone-in-upholding˃ accessed 12 February 2014 [↑](#footnote-ref-283)
284. Parliament Motion (EP) 2013/2558 for a Resolution to Wind up the Debate on the Statements by the Council and the Commission on EU trade and Investment Negotiations with the United States of America [2013] [↑](#footnote-ref-284)
285. Cultural exception policy includes quotas and subsidies for such productions, which promote locally and regionally produced content. [↑](#footnote-ref-285)
286. --, ‘EU ebnet Weg für Freihandelsgespräche’ Zeit Online, (Hamburg 15 June 2013) ˂http://www.zeit.de/wirtschaft/2013-06/freihandelszone-verhandlungen-usa-eu-mandat˃ accessed 12 February 2014; Andreas Kämpf, ‘Europa eine Seele geben? Eine halbwegs funktionierende europäische Zivilgesellschaft wäre ja auch schon etwas’ Politik & Kultur (Berlin September/October 2013) 11 ˂http://www.kulturrat.de/dokumente/puk/puk2013/puk05-13.pdf˃ accessed 12 February 2014 [↑](#footnote-ref-286)
287. ‘Directives for the negotiation of the Transatlantic Trade and Investment’ 21 [↑](#footnote-ref-287)
288. Ibid 6, 9 [↑](#footnote-ref-288)
289. Monika Ermert, ‘Controversial Debate on TTIP Mandate in EU Council fo Ministers’ ˂http://www.ip-watch.org/2013/06/14/audiovisual-sector-out-of-eu-mandate-for-ttip/˃ accessed 12 February 2014 [↑](#footnote-ref-289)
290. --, ‘EU reaches deal on French „cultural exception“’ ˂http://www.france24.com/en/20130615-eu-deal-french-cultural-exception-usa-trade/˃ accessed 12 February 2014 [↑](#footnote-ref-290)
291. The cultural industry, and in particular the audiovisual industry, has never featured in a commercial treaty in the world. It is hardly surprising that the “*cultural exemption*” has been around ever since talk of trade liberalisation first began. Article 4 of the very first version of the GATT in 1948 gave states the possibility of introducing quotas for “*films of national origin*” in the audiovisual sector (WTO 1986, 8; Hahn 2006, 522). Furthermore, Article 20 sanctions government measures “*necessary to protect public morals*” and “*national treasures of artistic, historic or archaeological value*” (WTO 1986). Even though the GATT has never enshrined any general exemption for cultural products, it is visible that the cultural sector does indeed play a special role in free trade agreements. As an example, one can look at how most states used the provisions of the GATS to leave their cultural sectors out of the scope of free trade regulations; See more: Jonas M. Grant, ‘„Jurassic“ Trade Dispute: The Exclusion of the Audiovisual Sector from the GATT’ (1995) ILJ 1334-1365 [↑](#footnote-ref-291)
292. See more on this topic: Venkatesh Bala, Ngo Van Long, ‘International Trade and Cultural Diversity with Preference Selection’ (2005) EJPE p 143-162; Clive Crook, John Micklethwait, ‘Globalisation: Making Sense of an Integrating World’ (2002) 56 TES; Deutscher Bundestag, Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Dr. Petra Sitte, Ulla Lötzer, Dr. Kirsten Tackmann und der Fraktion DIE LINKE: Das geplante Freihandelsabkommen TTIP/TTIP zwischen den USA und der Europäischen Union und seine Auswirkungen auf die Bereiche Kultur, Landwirtschaft, Bildung, Wissenschaft und Datenschutz, Drucksache 17/14734, Berlin, 09/11/2013; Gabriel Felbermayr, Benedikt Heid, Sybille Lehwald, Sybille, ‘Die Transatlantische Handels und Investitionspartnerschaft. Wem nutzt ein transatlantisches Freihandelsabkommen’, Teil 1: Makroökonomische Effekte, Bertelsmann Stiftung, Gütersloh, (2011); Silvia Formentini, Lelio Lapadre, ‘Cultural Diversity and Regional Trade Agreements: The Case of Audiovisual Services’ (2007) UNU-CRIS WP W-2007/4; Pierre Sauvé, Karsten Steinfatt, ‘Towards Multilateral Rules in Trade and Culture: Protective Regulation or Efficient Protection?’, in: Productivity Commission and The Australian National University (eds*.), Achieving Better Regulation of Services* (2002), p 323-337; James E. Rauch, Vitor Trindade, ‘Neckties in the Tropics: A Model of International Trade and Cultural Diversity’, (2005) NBER WP No. 11890. [↑](#footnote-ref-292)
293. Andrew Higgins, ‘European Official Takes on the French’ The New York Times (New York 16 June 2013) ˂http://www.nytimes.com/2013/06/17/business/global/european-union-divided-before-g-8-meeting.html?\_r=0˃ accessed 12 February 2014 [↑](#footnote-ref-293)
294. Graf Alexander von Lambsdorff, ‘Interview with Alexander Wolkers, TTIP-Verhandlungen: Pro und Contra’ *ARTE Journal* (Berlin 31 May 2013) ˂http://www.arte.tv/de/ttip-verhandlungen-pro-undcontra/7532172,CmC

     =7532074.html˃ accessed 13 February 2014 [↑](#footnote-ref-294)
295. Anne-Célia Disdier and others, ‘Bilateral Trade of Cultural Goods’ (2010) RWE 575-595 [↑](#footnote-ref-295)
296. Michael Hann, ‘A Clash of Cultures? The UNESCO Diversity Convention and International Trade Law’ (2006) JIEL 515, 537 [↑](#footnote-ref-296)
297. ‘European Official Takes on the French’ [↑](#footnote-ref-297)
298. Markus A. Kirschschlager, ‘In Between Curious Economics and L'Exception Culturelle: Implications of TAFTA/TTIP for the Cultural Sector’ (*The Transatlantic Colossus*) (2013) BFGPISC 80-83; Greek-French movie director Costa Gavras and French actress Berenice Bejo were part of a film-industry delegation that showed up at the European Parliament in Strasbourg, France, to say the “*cultural exception*” isn’t negotiable. “*We risk seeing only American works*” told Gavras to reporters in the 27-nation European Union assembly. “*It’s a cultural invasion. We don’t want that*”. [↑](#footnote-ref-298)
299. --, ‘EU/USA Free Trade Agreement: Exclusion of the Audiovisual Sector’ ˂http://www.musicexport.at/euusa-free-trade-agreement-exclusion-of-the-audiovisual-sector/˃ accessed 12 February 2014 [↑](#footnote-ref-299)
300. Ibid [↑](#footnote-ref-300)
301. Ibid [↑](#footnote-ref-301)
302. Philip Blenkinsop, Robin Emmott, ‘France backs EU-USA trade talks after culture clash’ Reuters (London 14 June 2013) ˂http://www.reuters.com/article/2013/06/14/us-eu-us-trade-idUSBRE95D0BE20130614˃ accessed 13 February 2014; *E.g.* France, widely considered to be the birthplace of cinema, has a proud tradition of more than a century of publicly and critically acclaimed movies and pumps in more public funds to its film industry than any other EU member. Cinema-goers pay a levy on each ticket to help fund the French film industry, which many believe could not survive without such support in the face of Hollywood's dominance. French television stations are required to air at least 40-percent home-produced content, with another 20 percent coming from Europe before American TV soap operas even get a look in; --, ‘EU reaches deal on French „cultural exception“’ ˂http://www.france24.com/en/20130615-eu-deal-french-cultural-exception-usa-trade/˃ accessed 12 February 2014 [↑](#footnote-ref-302)
303. ‘France backs EU-USA trade talks after culture clash’ [↑](#footnote-ref-303)
304. Additionally, no-one today with the best faith in the world can tell what will be the future contents and media supports for audiovisual and cultural policies [↑](#footnote-ref-304)
305. About 70% of all processed foods sold in US supermarkets contain GMO. By contrast, almost no GMO food is on sale in EU supermarkets, and all food that contains GMO ingredients must be labelled as such; See more: John Hillary, ‘TTIP: Charter for deregulation and attack on jobs’ 18-20 <http://www.bilaterals.org/?ttip-a-charter-for-deregulation-an> accessed 8 March 2014 [↑](#footnote-ref-305)
306. “*Europeans are prickly about American agricultural practices, like the use of genetically modified foods*“; Economist, ‘Trade negotiations between America and the European Union will not be smooth’ <http://www.economist.com/news/finance-and-economics/21580512-trade-negotiations-between-america-and-european-union-will-not-be> accessed 7 March 2014 [↑](#footnote-ref-306)
307. EU law allows GMOs, but only after strict safety assessment by the European Food Safety Authority, and not near as much as the USA does, and not to such extent. Food legislation frameworks in the EU and the US often differ considerably in terms of hygiene and control systems, labelling standards, underlying cultural, ecological and ethical values. The European consumers enjoy labelling of genetically modified foods and ingredients, but no similar labelling scheme exists in the US. The issues include the EU bans on genetically modified foods, EU raw milk cheese, hormone-treated beef, antimicrobial resistance, chlorine-washed poultry and food products from cloned animals. While the EU lifted the ban for lactic acid before the negotiations, the USA followed with lifting the ban on EU beef in advance of the second round of trade talks. The first example shows how consumer standards are aggregated in TTIP; Katharina Knoll, Michaela Zinke and Jutta Jaksche, ‘Safeguarding consumer rights and protection in TTIP’ (*The Transatlantic Colossus*) BFGPISC 28-33 [↑](#footnote-ref-307)
308. EU legislation generally recognises that food has a broader dimension of social, ethical and economic aspects that need to be considered; ibid [↑](#footnote-ref-308)
309. EU has blocked imports of US genetically modified corn and soybeans, poultry treated with chlorine dioxide, beef treated with lactic acid to kill pathogens and pork produced from hogs fed ractopamine, which promotes lean meat growth. [↑](#footnote-ref-309)
310. See more: European Commission, ‘GMO Evaluation’

     <http://ec.europa.eu/food/food/biotechnology/evaluation/index\_en.htm> accessed 7 March 2014 [↑](#footnote-ref-310)
311. ‘Directives for the negotiation of the Transatlantic Trade and Investment Partnership between the European Union and the United States’ [↑](#footnote-ref-311)
312. Ibid 11 [↑](#footnote-ref-312)
313. See more: Economist, ‘A historic trade pact between America and Europe needs saving’ (2013) <http://www.economist.com/news/united-states/21576704-historic-trade-pact-between-america-and-europe-needs-saving-transatlantic> accessed 7 March 2013 [↑](#footnote-ref-313)
314. This can be seen in the following statement: "*Food safety as exemplified by GMOs (genetically-modified organisms) has been probably one of the most problematic, controversial areas of the EU-US economic relationship*" said Peter Chase, a vice president at the USA Chamber of Commerce. Doug Palmer, Robin Emmott, ‘USA trade deal could be a lot for Europe to swallow’ Reuters (Washington 11 December 2012) <http://www.reuters.com/article/2012/12/11/us-usa-eu-trade-idUSBRE8BA05Y20121211?irpc=932> accessed 7 March 2014 [↑](#footnote-ref-314)
315. The precautionary principle applies when in a policy or action there is a suspected risk to consumers, animals, or the environment that lacks sufficient scientific evidence to prove its harm. Until scientific proof of the hazards of the product has been provided, the precautionary principle justifies the decision to stop the distribution or the withdrawal from the market of certain products. This principle has been ratified by the WTO and has been applied by the EU in the hormone-meat dispute; Mona vom Endt, ‘Is TTIP a race to the bottom in regulatory standards?: The case of hormone-treated beef’ (*The Transatlantic Colossus*) BFGPISC 99-102 [↑](#footnote-ref-315)
316. Simon Lester, ‘Tackling regulatory trade barriers in the transatlantic trade and investment partnership’ (*The Transatlantic Colossus*) (2013) BFGPISC 84-88 [↑](#footnote-ref-316)
317. The precautionary principle is seen as “*an antidote to industrialization, globalization and Americanization*”; ‘Is TTIP a race to the bottom in regulatory standards?: The case of hormone-treated beef’ [↑](#footnote-ref-317)
318. In the US, for instance, the genetically modified foodstuff can be sold, something for what the european consumers have rather a sceptic view: “*The majority of European consumers regard gene technology with scepticism*.” See more: ‘Safeguarding consumer rights and protection in TTIP’ 28-33 [↑](#footnote-ref-318)
319. ‘Tackling regulatory trade barriers in the transatlantic trade and investment partnership’ 84,86 [↑](#footnote-ref-319)
320. Harmonization implies the alignment of regulations to a single best practice. It could be based on international standards from a standard-setting body, or simply involve coordination among nations. Countries basically agree to converge on a single standard or regulation. This is usually the most difficult way to achieve regulatory cooperation. See more: ibid 84-88 [↑](#footnote-ref-320)
321. Ibid 88: “*Mutual Recognition can be achieved through mutual recognition agreements or the acknowledgement of regulatory equivalence. Mutual recognition agreements approve testing and certification processes of other countries as acceptable for allowing sale in the importing country. This method is especially useful in eliminating duplicative testing and certification processes. Equivalence simply acknowledges that different technical regulations can still achieve the same objectives or outcomes; sometimes there are just different methods of doing the same thing, and they should be treated as equivalent*” [↑](#footnote-ref-321)
322. Viviane Reding, European Commission Vice-President and the EU’s Justice Commissioner stated: “*Consumers, therefore, must be as much centre stage of EU policies as businesses. We need confident consumers to drive forward the European economy*.” ‘Safeguarding consumer rights and protection in TTIP’ [↑](#footnote-ref-322)
323. See more: --, ‘Foods from genetically modified crops’

     <http://brown.edu/ce/adult/arise/resources/docs/GMFoodsBrochure.pdf> accessed 7 March 2014 [↑](#footnote-ref-323)
324. Even Neven Mimica, Commissioner for Consumer Protection, thinks that „*consumers would benefit from more product* diversity *and lower prices due to increased competition in the market*”; ‘Safeguarding consumer rights and protection in TTIP’ [↑](#footnote-ref-324)
325. Amy Norton, ‘Genetically modified rice a good vitamin A source’ Reuters (New York 15 August 2012) ˂ http://www.reuters.com/article/2012/08/15/us-genetically-modified-rice-idUSBRE87E0RO20120815˃ accessed 8 March 2014; Christina Sarich, ‘3 GMO Foods Likely in Your Multi-Vitamins’ ˂http://naturalsociety.com/3-gmo-foods-likely-in-your-multi-vitamins/˃ accessed 8 March 2014 [↑](#footnote-ref-325)
326. Minor threats to human health can already be seen: Robin Mather, ‘The Threats From Genetically Modified Foods’ <http://www.motherearthnews.com/homesteading-and-livestock/genetically-modified-foods-zm0z12amzmat.aspx> accessed 7 March 2014 [↑](#footnote-ref-326)
327. See more: David Oakenfull, ‘Genetically modified food risks’ ˂http://www.choice.com.au/reviews-and-tests/food-and-health/food-and-drink/safety/gm-food.aspx> accessed 7 March 2014 [↑](#footnote-ref-327)
328. See more: --, ‘Statement: No scientific consensus on GMO safety’ <http://www.ensser.org/increasing-public-information/no-scientific-consensus-on-gmo-safety/> accessed 7 March 2014. Different opinions can be found: --, ‘How GMO foods alter organ functions and pose a very real health threat to humans’

     <http://www.occupyforanimals.org/how-gmo-foods-alter-organ-function-and-pose-a-very-real-health-threat-to-humans.html> accessed 7 March 2014 [↑](#footnote-ref-328)
329. This isn't provable in the satisfactory manner for the EU because GMO products exist only since 1970s and there is still no notion about the effects they might cause if consumed during entire lifetime, since no one consumed it since birth to death of an average human lifetime. [↑](#footnote-ref-329)
330. See more: ‘Is TTIP a race to the bottom in regulatory standards?: The case of hormone-treated beef’ 99-102 [↑](#footnote-ref-330)
331. See more: ‘Safeguarding consumer rights and protection in TTIP’ 28-33 [↑](#footnote-ref-331)
332. Or better said, the environmental protection, which is a practice of protecting the natural environment on individual, organizational or governmental levels, for the benefit of both the natural environment and humans. [↑](#footnote-ref-332)
333. See more: General Secretariat of the Council, ‘Directives for the negotiation of the Transatlantic Trade and Investment Partnership between the European Union and the United States’ [↑](#footnote-ref-333)
334. In regulatory issues and non-tariff barriers to trade, environmental question tacitly arises in following areas of negotiation: sanitary and phytosanitary measures, technical regulations, standards and conformity assessment procedures, regulatory coherence. See more: ibid [↑](#footnote-ref-334)
335. Ulrich Cubasch and others, *Climate Change 2013: The Physical Science Basis* (CUP, Cambridge 2013) 119, 121 [↑](#footnote-ref-335)
336. Andrea Licata, ‘The TAFTA/TTIP: “Old” and unsustainable?’ (*The Transatlantic Colossus*) [2013] BFGPISC 89, 89 [↑](#footnote-ref-336)
337. The Commission states that preamble should refer to „*the commitment of the Parties to sustainable development and the contribution of international trade to sustainable development in its economic, social and environmental dimensions, including… the protection and preservation of the environment and natural resources*“. Also in the preamble should be stated the „*right of the Parties to take measures necessary to achieve legitimate public policy objectives on the basis of the level of protection of … the environment“*;‘Directives for the negotiation of the Transatlantic Trade and Investment Partnership between the European Union and the United States’ [↑](#footnote-ref-337)
338. The Commission wants one of the objectives to be sustainable development and that Parties should „*aim at ensuring and facilitating respect of international environmental”…”agreements and standards while promoting high levels of protection for the environment “;* ibid 4 [↑](#footnote-ref-338)
339. Trade and sustainable development is an entire chapter within negotiating mandate from the Commission that mentions environmental aspects of trade and sustainable development, and measures that facilitate and promote trade in „*environmentally* *friendly and low carbon goods, energy and resource-efficient goods, services and technologies, including through green public procurement…*“; ibid 14. The Commission even introduces Sustainability Impact Assessment to examine environmental, social and economic impacts that would involve civil society and would be undertaken parallel with the negotiations. The goal of SIA would be to clarify the effects of the TTIP on sustainable development and to propose measures to maximise benefits of TTIP and to prevent or minimise its potential detrimental impact. See more: Analysis of environmental impacts in ‘Impact Assessment Report on the future of EU-US trade relations’ 1-60

     <http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc\_150759.pdf> [↑](#footnote-ref-339)
340. Ferdi De Ville, ‘Why the TAFTA/TTIP will not live up to its promises’ (*The Transatlantic Colossus*) [2013] BFGPISC 13, 13 [↑](#footnote-ref-340)
341. This plan was proposed by the European Commission on 3 March 2010. It is the EU's plan for sustainable development of economy to be carried out until year 2020, which has an aim to achieve a 20% reduction in EU greenhouse gas emissions from 1990 levels, to raise the share of EU energy consumption produced from renewable resources to 20% and to achieve up to 20% improvement in the EU's energy efficiency. See more: European Commission, ‘The 2020 climate and energy package’

     <http://ec.europa.eu/clima/policies/package/index\_en.htm> accessed 13 March 2014 and European Commission, ‘Europe 2020’, <http://ec.europa.eu/europe2020/index\_en.htm>, accessed 13 March 2014 [↑](#footnote-ref-341)
342. Analysis of environmental impacts in: European Commission, ‘Commission Staff Working Document: Impact Assessment Report’ [↑](#footnote-ref-342)
343. See more: William Fulton, ‘Do Environmental Regulations Hurt the Economy?’

     <http://www.governing.com/columns/eco-engines/Do-Environmental-Regulations-Hurt.html>, accessed 13 March 2014; Bill Chameides, ‘Business Leaders Weigh In on Environmental Regulations’

     <https://blogs.nicholas.duke.edu/thegreengrok/competitiveness/>, accessed 13 March 2014 and Pietro S. Nivola, ‘Inside Outsourcing: More Bad News from Business Regulation?’

     <http://www.brookings.edu/research/papers/1996/11/regulation-nivola>, accessed 13 March 2014 [↑](#footnote-ref-343)
344. Cf.: Kim Bizzarri, ‘A Brave New Transatlantic Partnership’ [2013] S2B

     ˂http://corporateeurope.org/sites/default/files/attachments/brave\_new\_transatlantic\_partnership.pdf˃ 1, 11 [↑](#footnote-ref-344)
345. Ibid 12 [↑](#footnote-ref-345)
346. # There is a heated debate on the difference of EU’s and USA’s environmental policies and regulation. See more: Bob Evans, ‘US and European energy policies: Why so different?’

     # <http://www.neurope.eu/kn/article/us-and-european-energy-policies-why-so-different>, accessed 13 March 2014; Elisabeth Rosenthal, ‘What Makes Europe Greener than the USA?’

     # <http://e360.yale.edu/feature/what\_makes\_europe\_greener\_than\_the\_us/2193/>, accessed 13 March 2014; David Vogel, Michael Toffel, Diahanna Post and Nazli Z. Uludere Aragon, ‘Environmental Federalism in the European Union and the United States’ <http://www.hbs.edu/faculty/Publication%20Files/10-085.pdf>; Peter Baldwin, ‘Europe Vs. America: Some Inconvenient Environmental Truths’

     # ˂http://www.theglobalist.com/europe-vs-america-some-inconvenient-environmental-truths/>, accessed 13 March 2014 and R. Daniel Kelemen, ‘Trading Places: The US and EU in International Environmental Politics’. <https://www.princeton.edu/~smeunier/kelemen%20vogel%20trading%20places%20sept%2007.pdf>

     [↑](#footnote-ref-346)
347. See more: Michael D. LaFaive ‘Environmental Protection vs. Corporate Profits’, 1997,

     <http://www.mackinac.org/673>, accessed 13 March 2014; --, ‘Economic Profit versus Environmental Safety’,

     <http://www.philforhumanity.com/Economic\_Profit\_versus\_Environmental\_Safety.html>, accessed 13 March 2014 and Stephen M. Meyer, ‘The Economic Impact of Environmental Regulation’

     <http://web.mit.edu/polisci/mpepp/Reports/Econ%20Impact%20Enviro%20Reg.pdf> accessed 13 March 2014 [↑](#footnote-ref-347)
348. Gavin Thompson, ‘The Transatlantic Trade and Investment Partnership (TTIP)’ (House of Commons Library SN/EP/6688) [2014] 6; See also: George Monbiot, ‘This Transatlantic trade deal is a full-frontal assault on democracy’*, Guardian*, (London 4 November 2013)

     *˂*http://www.theguardian.com/commentisfree/2013/nov/04/us-trade-deal-full-frontal-assault-on-democracy˃ accessed 18 January 2014; Seattle to Brussels Network, ‘A Transatlantic Corporate Bill of Rights’, October 2013,

     ˂http://corporateeurope.org/sites/default/files/attachments/transatlantic-corporate-bill-of-rights-oct13.pdf˃ accessed 18 January 2014; 175 NGOs have signed a letter to EU Commissioner for Trade Karel de Gucht and to United States Trade Representative Michael Froman to express their opposition to the inclusion of the ISDS in the TTIP. 119 of those NGOs come from Europe, while two come from Slovenia and none from Croatia. See more: ˂http://www.eeb.org/EEB/?LinkServID=A2B98635-5056-B741-DB90148289C557DB&showMeta=0˃ [↑](#footnote-ref-348)
349. Abdel-Hameed M. Bashi, ‘Foreign Direct Investment and Economic Growth in Some MENA Countries: Theory and Evidence’ (1999) TMENAE 5; See more: Olajide S. Oladipo, Belem I. Vásquez Galán, ‘The Controversy about Foreign Direct Investment as a Source of Growth for the Mexican Economy’ (2009) PDRLE 91-112; Eduardo Borensztein, Jose De Gregorio, Jong-Wha Lee, ‘How Does Foreign Direct Investment Affect Economic Growth’ (1995) NBER [↑](#footnote-ref-349)
350. European Commission, ‘Investment Protection and Investor-to-State Dispute Settlement in EU agreements’ (Fact sheet November 2013) ˂http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc\_151916.pdf˃ accessed 18 January 2014 [↑](#footnote-ref-350)
351. Ibid [↑](#footnote-ref-351)
352. Ibid [↑](#footnote-ref-352)
353. Ibid [↑](#footnote-ref-353)
354. Ibid [↑](#footnote-ref-354)
355. See more: Krešimir Sajko, ‘Arbitration Under Bilateral Treaties on Promotion and Protection of Investments Concluded Between Croatia and Other States’ (1998) (5) CAY, 123-138; Krešimir Sajko, ‘Settlement of Disputes by Bilateral Investment Treaty: the Croatian Experience’ (1998) (2) ULR 657-669; Krešimir Sajko, ‘Washington Convention on Settlement of Investment Disputes between States and Nationals of Other States’ (1999) (6) CAY 129-140; Krešimir Sajko, ‘Napomene o arbitražnom rješavanju sporova na osnovi ugovora o poticanju i uzajamnoj zaštiti ulaganja između Hrvatske i Italije’ (2003) (2) PG 7-17; Jan Paulsson, ‘International Arbitration and the Generation of Legal Norms: Treaty Arbitration and International Law’ (2007) ICCACS 1, 13; Jeffrey P. Commission, ‘Precedent in Investment Arbitration: A Citation Analysis of a Developing Jurisprudence’ (2007) JIA; Campbell McLachlan, Laurence Shore, Matthew Weiniger, *International Investment Arbitration: Substantive Principles* (3rd edn OUP, Oxford 2007); Stephen Vasciannie, ‘The Fair and Equitable Treatment Strandard in International Investment Law and Practice’ (1999) BYIL 100-104 [↑](#footnote-ref-355)
356. Cf. Davor Babić, ‘Pravičan i pošten tretman ulaganja u međunarodnom investicijskom pravu’ (2011) (1) ZPFZG 397, 400 [↑](#footnote-ref-356)
357. Ibid [↑](#footnote-ref-357)
358. European Commission, ibid [↑](#footnote-ref-358)
359. Bond R. Stephen, ‘Current Issues in International Commercial Arbitration: The International Arbitrator:

     From the Perspective of the ICC International Court of Arbitration’ (1991) (1) NJILB 1, 2 [↑](#footnote-ref-359)
360. Cf. Bruno Manzanares Bastida, ‘The Independence and Impartiality of Arbitrators in International Commercial Arbitration’ (2007) (1) ME 1 [↑](#footnote-ref-360)
361. Ciaran Cross, ‘The Treatment of Non-Investment Interests in Investor-State Disputes: Challenges for the TTIP Negotiations’ (2013) (*The Transatlantic Colossus*) BFGPISC 76, 77 [↑](#footnote-ref-361)
362. Barnali Choudhury, ‘Recapturing Public Power: Is Investment Arbitration’s Engagement of the Public Interest Contributing to the Democratic Deficit?’ (2008) VJTL 775, 820 [↑](#footnote-ref-362)
363. Aaron Cosbey and others, ‘Investment and Sustainable Development: A Guide to the Use and Potential of International Investment Agreements’ (2004) 6 IISD 1, 6 [↑](#footnote-ref-363)
364. Ibid [↑](#footnote-ref-364)
365. Ibid; in a recent example of this dynamic, a former President of the International Court of Justice acted as counsel to a multinational water firm alleging violations of BIT provisions on expropriation, “*fair and equitable treatment*” and “*protection and full security*” at the hands of the Argentine government. In other cases, the same individual was given a direct hand, as a party-appointed arbitrator, in interpreting these same treaty commitments in a dispute involving the Czech Republic and a Dutchregistered broadcasting enterprise. In so doing, he enjoyed the opportunity to help influence the direction of substantive treaty interpretation in areas of interest to his clients: ibid. [↑](#footnote-ref-365)
366. Ibid [↑](#footnote-ref-366)
367. Ibid [↑](#footnote-ref-367)
368. Charles N. Brower, ‘A Crisis of Legitimacy’, (2002) NLJ 1, 3 [↑](#footnote-ref-368)
369. Pia Eberhardt, Cecilia Olivet, ‘Profiting from Injustice: How Law Firms, Arbitrators and Financiers are Fuelling an Investment Arbitration Boom’ (2012) CEO/TI 8 [↑](#footnote-ref-369)
370. Martin Khor, ‘The World’s Worst Judicial System? ’ (2013) NLJ 1, 3 [↑](#footnote-ref-370)
371. Nicolo Machiavelli, *The Prince* (Bantam Dell, New York 1996) 122 [↑](#footnote-ref-371)
372. See more: Nathalie Bernasconi-Osterwalder, Rhea Tamara Hoffmann, ‘The German Nuclear Phase-Out Put to the Test in International Investment Arbitration?, Background to the New Dispute Vattenfall v. Germany (II) ’ (2012) IISD; Michael Waibel, Asha Kaushal et al. (eds.), *The Backlash Against Investment Arbitration: Perceptions and Reality* (Kluwer Law International, Amsterdam 2010); Jason Brickhill, Max Du Plessis, ‘Two’s Company, Three’s a Crowd: Public Interest Intervention in Investor-state Arbitration’ (Piero Foresti v. South Africa) (2011) 1 SAJHR p 152-166; Barnali Choudhury, ‘Recapturing Public Power: Is Investment Arbitration’s Engagement of the Public Interest Contributing to the Democratic Deficit?’ (2008) VJTL 775-832; Ciaran Cross, Christian Schliemann Radbruch, ‘When Investment Arbitration Curbs Domestic Regulatory Space: Consistent Solutions through Amicus Curiae Submissions by Regional Organisations’ (2013) LDR; Lise Johnson, ‘Case Note: How Chevron v. Ecuador is Pushing the Boundaries of Arbitral Authority’ (2012) IISD; Luke Eric Peterson, ‘Analysis: Tribunal’s Reading of Amicus Curiae Tests could make Life difficult for Antagonistic Amici - and those Seeking to Raise Novel Concerns such as Human Right Law’ (2012) IAR; Bruno Simma, ‘Foreign Investment Arbitration: A Place For Human Rights? ’ (2011) ICLQ 573-596 [↑](#footnote-ref-372)
373. European Commission, ibid [↑](#footnote-ref-373)
374. Mary Hallward-Driemeier, ‘Do Bilateral Investment Treaties Attract FDI? Only a bit…and they could bite’ (2003) World Bank DECRG 22 [↑](#footnote-ref-374)
375. Kevin P. Gallagher, Melissa B.L. Birch, ‘Do Investment Agreements Attract Investment? Evidence from Latin America’ (2006) JWIT 14 [↑](#footnote-ref-375)
376. Laura Alfaro and others, ‘Does Foreign Direct Investment Promote Growth? Exploring the Role of Financial Markets on Linkages’ (2009) JDE 27 [↑](#footnote-ref-376)
377. Lyroudi Katerina Papanastasiou, Vamvakidis Athanasios, 'Foreign Direct Investment And Economic Growth In Transition Economies' (2008) JDE 38 [↑](#footnote-ref-377)
378. Ibid; See more similar conclusions: Brian J. Aitken, Ann E. Harrison, ‘Do Domestic Firms Benefit from Direct Foreign Investment? Evidence from Venezuela’ (1999) 89 AER 605-618; Holger Gorg, David Greenway, ‘Much ado about nothing? Do domestic firms really benefit from foreign direct investment?’ (2003) 19 WBRO 171-197; Jonathan Haskel, Sonia Pereira, Matthew Slaughter, ‘Does Inward Foreign Direct Investment Boost the Productivity of Local Firms?’ (2001) 8433 NBER; Beata S. Javorcik, ‘Does Foreign Direct Investment Increase the Productivity of Domestic Firms? In Search of Spillovers Through Backward Linkages’ (2004) 94 AER 605-627 [↑](#footnote-ref-378)
379. Laura Alfaro, ‘Foreign Direct Investment and Growth: Does the Sector Matter?’ (2003) JES 1; Ramesh Chandra, Roger J. Sandilands, ‘Does Investment Cause Growth? A Test of an Endogenous Demand-driven Theory of Growth Applied to India 1950-96’ (2003) ONGT p 244-265 [↑](#footnote-ref-379)
380. Ibid [↑](#footnote-ref-380)
381. According to the United Nations Conference on Trade and Development, there are over 3,200 IIAs in existence; in 2012, a record 58 ISDS claims were filed and the total number of known treaty-based claims reached 514. This explosion of claims has been driven in part by the wide interpretations given to vague international investment agreement provisions. Investors are protected not just against direct expropriation of their investments by host-states. Regulatory and policy measures taken by host-states that interfere with or impact on foreign investments can amount to „*indirect expropriation*“, or breach standards of „*fair and equitable treatment“*. [↑](#footnote-ref-381)
382. The tabs racked up by elite law firms can be US$1,000 per hour, per lawyer in investment treaty cases, with whole teams handling them. The arbitrators earn daily fees of US$3,000 and more. [↑](#footnote-ref-382)
383. ‘The Treatment of Non-Investment Interests in Investor-State Disputes: Challenges for the TTIP Negotiations’ [↑](#footnote-ref-383)
384. United Nations Conference on Trade and Development, ‘Research and Policy Analysis’

     ˂http://www.unctad.org/en/pages/DIAE/International%20Investment%20Agreements%20%28IIA%29/Research-and-Policy-Analysis.aspx˃ accessed 26 January 2014 [↑](#footnote-ref-384)
385. *E.g.* Civil Society Declaration released by 47 European and International organisations, to exclude from the upcoming Trans-Atlantic Free Trade Agreement (TTIP) any provisions related to patents, copyright, trademarks, data protection, geographical indications, or other forms of so-called “intellectual property”; --, ‘IP out of TTIP’ 15 March 2013 ˂http://www.laquadrature.net/en/no-copyright-in-eu-us-trade-agreement˃ accessed 18 February 2014; Burcu Kilic, ‘First SOPA then ACTA, now TTIP - here we go again’ 18 March 2013

     ˂http://www.citizenvox.org/2013/03/18/first-sopa-then-acta-now-TTIP-here-we-go-again/˃ accessed 18 February 2014 [↑](#footnote-ref-385)
386. European Commission, ‘Intellectual Property: Positive aspects of IP rights’

     ˂http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc\_142108.pdf˃ accessed 19 February 2014 [↑](#footnote-ref-386)
387. Ibid [↑](#footnote-ref-387)
388. Many counterfeit products place our children's and citizens' safety or health at risk, for instance where vehicle spare parts or drugs are concerned. Enforcing IP rights in respect of such products guarantees at least that the products' origin is known and that the products are genuine, whereas counterfeit products often do not comply with the applicable safety standards. This is especially true for trademarks, but patent licensing contracts, for instance, may also include quality insurance clauses. Moreover, where a company has protected its products (or processes, *etc*.) by IP rights, it can derive revenues not only from their direct exploitation (by that company), but also from their indirect exploitation by third parties, under licensing contracts. These additional indirect revenues sometimes exceed the profits resulting from the direct exploitation, especially as they do not require additional internal manufacturing capacities. Such an approach may therefore be particularly relevant for SMEs. It is also important for universities and public research centres, which usually do not have any direct exploitation activities. Also, while certain procedures required for the registration of IP rights are considered to be expensive, in particular by SMEs, it should be noted that certain IP rights can be enjoyed without any formal procedure and without paying any official fees. This is in particular the case for copyright and for unregistered designs. Furthermore, even where a company (or university, *etc*.) does not intend to protect its own inventions, its staff (researchers, *etc*.) can still make use of patent information. Patents are the most prolific and up-to-date source of technological information, and contain detailed technical information which often cannot be found anywhere else: it is estimated that up to 80% of current technical knowledge can only be found in patent documents. Moreover, this information is rapidly available, as most patent applications are published 18 months after the first filing. Searches in patent literature can be conducted by anyone by using for instance the free-of-charge esp@cenet patent database. It provides access to more than 60 million patent documents from all over the world, classified by technological areas on the basis of the sophisticated International Patent Classification. What is more, patents often constitute a convenient means to not only protect but also describe in a very accurate way technologies which are the subject of technology transfer and similar agreements (licensing, assignment, *etc*.). This "*technology packaging*"/trade facilitation function justifies the fact that patents have sometimes been considered as the "*currency*" of the knowledge-based economy. (To some extent, the same reasoning also applies to IP rights other than patents). See more: ibid [↑](#footnote-ref-388)
389. See more: the International IP Index which ranks the countries on their IP environment, *i.e.* on their protection of copyrights, patents *etc.;* USA Chambers of Commerce, ‘GIPC International IP Index’ ˂<http://www.theglobalipcenter.com/gipcindex/>˃ accessed 20 February 2014. [↑](#footnote-ref-389)
390. See more: Tamara Kovziridze, ‘Differences in Regulatory Approach between the EU and the US: Transatlantic Trade and Investment Partnership (TTIP) and its Impact on Trade with Third Countries’ (*The Transatlantic Colossus*) BFGPISC 47-50; Vasilis Trigkas, ‘The Strategic Implications of TTIP: “Will it Engage or Contain China?”’ (*The Transatlantic Colossus*) BFGPISC 50-54; Philani Mthembu, ‘A Transatlantic Partnership with Ripples Across the Oceans: What Does Africa Stand to Gain or Lose?’ (*The Transatlantic Colossus*) BFGPISC 54-59; Marc Venhaus, ‘The Transatlantic Trade and Investment Partnership as a New Strategy to Marginalize Emerging Powers: A Divided Free Trade Order in the Making?’ (*The Transatlantic Colossus*) BFGPISC 59-63 [↑](#footnote-ref-390)
391. Examples of differences between systems: In the patent field, the difference used to be quite substantial, the US had *first to invent* structure, whereas the EU and the most of the rest of the world adopted the *first to file* system of patenting, but the US recently converted to the majority opinion so there is no major difference between systems. Another area of marginal differences is the subject matter. The US is very liberal in protecting the subject matter of the more elusive kind, like business model and software. But if you look at recent US court cases, particularly the *Bilski vs. Kappos case* decided by the Supreme court, US seems to be now more in line, with more restrictive European standards. If you look at Europe, EU for example, excludes computer programs *per se*, from patentability but does allow and in practice generously allows hardware implemented software patenting. Geographical indications (GIs) (the most contentious area) EU regulations protect geographical indications and product protection is tied to their geographical origin. The US approach is different and oriented towards the protection of trademark rather than geographical origin of the product. For example, whereas the EU only acknowledges the champagne produced in the respective area of France called Champagne and prohibits sale of any products called champagne not produced in this region of France, it is perfectly fine in the US to produce and sell Californian or other sparkling wine called champagne. In this case, not geographical origin but trademark is subject to protection under intellectual property rights regulations. The EU not only prohibits the import of such US products, but also requires from its DCFTA partners that they do the same. Because the EU strictly requires its DCFTA partner countries to adopt an EU approach in GI protection, these countries are forced to prohibit the import and sale of respective US products on their markets. Bernt Hugenholtz, (Round table on the topic) ‘What should be the role for Intellectual Property Rights in the TTIP’ (21 May 2013)

     ˂http://www.youtube.com/watch?v=q9X\_fN015yc&noredirect=1˃ accessed 20 February 2014 [↑](#footnote-ref-391)
392. In recent years, many developing countries have been coming under pressure to enact or implement even tougher or more restrictive conditions in their patent laws than are required by the TRIPS Agreement – these are known as ‘TRIPS plus’ provisions. Countries are not obliged by international law to do this, but many, such as Brazil, China or Central American states adopt these, as part of trade agreements with the United States or the European Union. Common examples of TRIPS plus provisions include extending the term of a patent longer than the twenty-year minimum, or introducing provisions that limit the use of compulsory licences or that restrict generic competition. One of these provisions is known as data exclusivity. This refers to exclusive rights, granted over the pharmaceutical test data submitted by companies to drug regulatory authorities to obtain market authorisation. It means that information concerning a drug’s safety and efficacy is kept confidential for a period of five or ten years. If a generic manufacturer wants to register a drug in that country, it is not allowed simply to show that their product is therapeutically equivalent to the originator product. Instead, it must either sit out the exclusivity period, or take the route of repeating lengthy clinical trials to demonstrate the safety and efficacy of the drug – trials that have already been undertaken; See more: Mohamed El-Said, ‘The European Union Free Trade Agreements and TRIPS-Plus Challenges and Opportunities for the Ukraine’

     ˂http://www.undp.org.ua/images/stories/IPRandAEM\_Kyiv/EU TRIPS-Plus Rules Ukraine\_ENG.doc˃; Francisco Rossi, ‘Free trade agreements and TRIPS-plus measures’ (2006) IPM 150-172; Mohamed El-Said, ‘The Road from TRIPS-Minus, to TRIPS, to TRIPS PLUS’ (2005) JWIP 53-65 [↑](#footnote-ref-392)
393. ‘What should be the role for Intellectual Property Rights in the TTIP’ [↑](#footnote-ref-393)
394. Adi Robertson, ‘Free speech doesn't mean free stuff': Congress begins copyright reform with a plea for civility’ ˂http://www.theverge.com/2013/5/17/4341038/congress-starts-copyright-hearings-with-a-plea-for-civility˃ accessed 20 February 2014 [↑](#footnote-ref-394)
395. Maria A. Pallante, ‘The Next Great Copyright Act’ (2013) CJLA 315-344 [↑](#footnote-ref-395)
396. *E.g.* Parliament Report (EP) 2012/0180 on the proposal for a directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market [2012] [↑](#footnote-ref-396)
397. The Anti-Counterfeiting Trade Agreement (ACTA) was a [multinational](http://en.wikipedia.org/wiki/Plurilateral_agreement) [treaty](http://en.wikipedia.org/wiki/Treaty) for the purpose of establishing international standards for intellectual property rights enforcement. The agreement aimed to establish an international legal framework for targeting [counterfeit](http://en.wikipedia.org/wiki/Counterfeit) goods, [generic](http://en.wikipedia.org/wiki/Generic_drug) medicines and [copyright infringement](http://en.wikipedia.org/wiki/Copyright_infringement) on the Internet, and would have created a new governing body outside existing forums, such as the [World Trade Organization](http://en.wikipedia.org/wiki/World_Trade_Organization), the [World Intellectual Property Organization](http://en.wikipedia.org/wiki/World_Intellectual_Property_Organization), or the [United Nations](http://en.wikipedia.org/wiki/United_Nations). It was rejected by the European Parliament [↑](#footnote-ref-397)
398. Civil Society Declaration, ibid [↑](#footnote-ref-398)
399. See more: Viviane Reding, ‘Towards a more dynamic transatlantic area of growth and investment’ (Speech during Conference organized by the Peterson Institute, SAIS and the EU Delegation in Washington DC, SPEECH/13/867) ˂<http://europa.eu/rapid/press-release_SPEECH-13-867_en.htm>˃ accessed 20 February 2014 [↑](#footnote-ref-399)
400. A ‘generic medicine’ is a medicine that is developed to be the same as a medicine that has already been authorised. Generic medicines are widely used in the EU in cost-effective treatment programmes and are prescribed by as effective alternatives to more expensive pharmaceuticals. [↑](#footnote-ref-400)
401. ‘A Brave New Transatlantic Partnership’ [↑](#footnote-ref-401)