

TTIP – TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

A Family Business Appeal for Free Trade



BRIEF SUMMARY

- TTIP represents an excellent opportunity for improving prosperity in Europe and creating jobs.
- TTIP means openness to partners and is based on the European Union's own formula for success.
- Europe is falling behind when it comes to global competition. TTIP reinforces the strengths of Europe's economy without costing any money.
- TTIP makes entering the US' market exceptionally attractive for German family businesses.
- TTIP makes life easier for companies that do business directly and offers indirect benefits for many suppliers.
- The elimination of customs duties should result in some noticeable relief in individual segments and especially with regard to large trade volumes
- Non-tariff trade barriers are frequently nothing else than unnecessary bureaucracy which family businesses in particular have to pay dearly for with additional set-up costs and personnel.
- When creating new standards, the family business advocacy organization "DIE FAMILIENUNTERNEHMER" encourages the integration of a reformed International Organization for Standardization (ISO).
- Investments are an integral part of European and US trade relations. A narrowly defined investment protection offers security against regulatory arbitrariness and legal procedural barriers and shall stimulate mutual investments. Investment protection may not be construed as entitlement to compensation for any expected returns that do not materialize.
- Investment protection in free trade agreements does not go against national legislation but rather serves to facilitate compliance with agreements formed under international laws. Investment protection should only focus on cases where foreign investors are discriminated against when compared to domestic investors.
- An improved arbitration process within TTIP while applying UNCITRAL rules¹ for transparency in case of disputes relating to investment protection would create a benchmark for the global protection of property.
- The inclusion of investment arbitration in TTIP should help to overcome the gap in legal regulations within the EU.
- Global trade facilitation within the framework of the WTO is becoming increasingly difficult in spite of the partial successes made. TTIP has the potential to set high standards worldwide.
- TTIP in its final form requires in any case a broad public approval and political confirmation. This is sufficiently safeguarded by its nature as mixed EU agreement.

¹ The United Nations Commission on International Trade Law (UNCITRAL)

PROSPERITY THROUGH FREE TRADE

Many family businesses are traditionally used to trading and doing business across borders. Economic processes are nowadays conceived, planned and implemented with an international mindset as a matter of course in many industries and business segments. This does not conflict with regional trade. Family businesses can be both global players and yet still be firmly rooted in their home region.

Free trade was and is from the point of view of DIE FAMILIENUNTERNEHMER a driving force for growth and prosperity. The exchange of goods and services which has increased over the decades is the outcome of international division of labor and specialization.

Every barrier to free movement over borders represents a missed opportunity for improving prosperity. A state-regulated limitation of opportunities can only be tolerated if there is a national interest of exceptional importance. Custom duties and non-tariff trade barriers represent an obstruction to free trade and are a vestige of mercantile economic policy in many areas. In general, Germany and especially the European Union must succeed in eliminating as many of these barriers as possible with their trade partners.

It is of great concern to us that there are representatives of particular interests who are fighting against the free trade partnership by creating distorted images of globalization, decreasing consumer protection and eroding democracy. Unobjective arguments have resulted in an atmosphere of panic and distrust and make an open discussion about any possible undesirable negotiations extremely difficult.

That is why DIE FAMILIENUNTERNEHMER demand that the positive concepts which relate in general to free trade and in particular to TTIP do not become neglected. The goal is to promote growth and create jobs.

An agreement between the EU and the United States to form a Transatlantic Trade and Investment Partnership (TTIP) offers great opportunities for both economic areas, for Germany and its family businesses.

With this text, DIE FAMILIENUNTERNEHMER have taken a stand for TTIP, by formulating ideas and addressing the current challenges that free trade has to face in the 21st century.

In light of the fact that global arrangements such as the Doha-Round of the WTO have very limited prospects of success, we cannot emphasize the importance of TTIP enough. TTIP offers the opportunity to set global standards while incorporating EU member states in the process. The new EU Commission must show increased involvement in the trade policies for which it is responsible and support a broad trade partnership with the U.S. in order to bring it to fruition.

1 A PARTNERSHIP FOR FAMILY BUSINESSES

Family businesses are not a homogeneous group when it comes to industrial segment or their size. For instance, family run enterprises may be both small craftsmen's businesses as well as globally active commercial enterprises. Besides the formal requirements relating to a family having a majority share ownership, the concept of family business entails a certain mentality. The combination of business risk and liability as owner usually cause family businesses to focus on the long term. This attitude should not be interpreted, however, as a particular aversion to risks. On the contrary, family businesses do realize and know that they must stay innovative in order to be able to pass the business on to the next generation.

For family businesses that do not focus on a regional market due to their size or affiliation to a specific sector, that always entails a thorough assessment of new opportunities to grow internationally.

Internationalization is a very common option in terms of strategy and policy especially for the Germany's technology-driven small to medium-sized businesses. That explains why many of the so-called "hidden champions" are family businesses that by definition dominate the world market in most cases with a single niche product.

Even among the top companies in the world, the success of German small to medium-sized enterprises and the associated family businesses is marked by doing business beyond Germany's borders. About 50% of all small to medium-sized enterprises with an annual sales of more than EUR 2 million export.² During the course of digitization, smaller family businesses have even managed to tap markets that appealed previously only to larger companies.

Conversely it is possible to note that smaller companies with a strong connection to their region would hardly be challenged by international (U.S. in this case) competitors due to their expertise and the relatively limited size of their markets even if it is simpler to access to the market due to TTIP.

For a successful international business strategy it is frequently necessary for companies to be able to easily adapt to national and regional conditions, which is why international companies from a different economic area are frequently regarded only as foreign investors or employers.

Positive effects from new business

The greatest positive effects of a free trade agreement can be expected for companies that previously did not have any business relations with the United States due to existing tariff or non-tariff barriers.³ TTIP will open up for such companies a new market that is mainly homogeneous in terms to language, currency, legal framework, etc. when compared to many EU member states. This means that opening up the U.S. market would allow companies an opportunity to address a very large base of potential customers depending on the industry. Of course, such a serious step does involve certain business risks that may be associated, however, with the existence of TTIP. Family businesses are virtually predestined for correctly assessing the corresponding risks as a result of their ability to plan for the long term. It must be stressed that the opportunities offered by TTIP do not guarantee additional gains. It is also clear that the elimination of trade barriers also provide possibilities for companies from

² IfM Bonn (2013).

³ A transatlantic trade liberalization should primarily help any small to medium-sized companies which strive to serve the U.S. market from Germany as a result of the improved market entry conditions to grow strongly. Such firms will enjoy the greatest gains in terms of sales and employment. (ifo-Institut 2013, pg. 17).

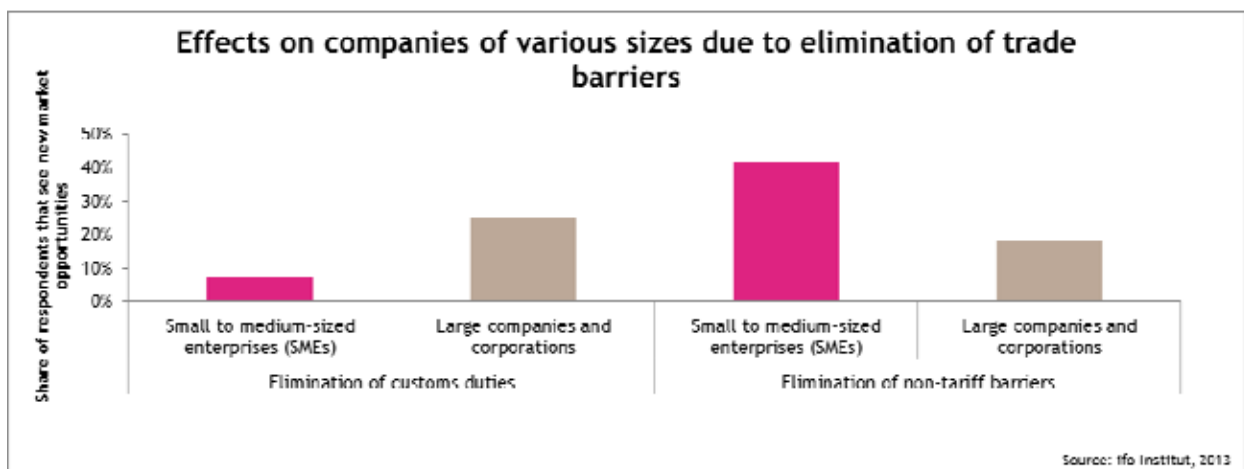
other economic regions. The level of competition will intensify for companies in Europe. The more competitive a German family business is in terms of quality and pricing, the less it has to fear such challenges. On the contrary, DIE FAMILIENUNTERNEHMER – ASU believe based on regulatory aspects that healthy competition ensures constant innovation and modernization. It is essential for the EU that the narrow-minded attitude of its member states is replaced by a global mindset. In this context, TTIP would serve as an important driving force.

Reduction of non-tariff barriers to the benefit of small and medium-sized enterprises

Every bureaucratic requirement that arises for a company in the form of statutory laws or regulations is usually associated with a business management expense. For instance, such requirements entail a significant involvement of personnel in order to be fulfilled. In addition to that, regulatory stipulations could make it necessary to satisfy, for example, quality and safety requirements.

A specific entrepreneurial commitment becomes less attractive depending on the scope of the expense associated with the regulation when taking the size of the company into account. For a company with 2,000 employees that may be manageable and may even drive performance enough to set up a business unit for monitoring compliance with regulatory requirements. Such an expenditure would not be worthwhile for a small to medium-sized company.

This means in the context of TTIP that small to medium-sized companies would benefit especially from the elimination of non-tariff barriers. An assessment that is shared by many industry experts during the course of a relevant survey conducted by associations:



Directly or indirectly affected

Besides companies which do not yet have any business relations with the U.S., there are many family businesses which already do business directly with the United States. In this case, these relations are typical import and export oriented.

TTIP would free up financial and human resources for such companies due to the elimination of both customs duties and non-tariff barriers. The funds and resources thus freed up should increase the investment capacity of companies.

»TTIP makes it easier for us to access one of our most important sales markets and thus makes a major contribution to safeguarding the jobs of our more than 500 employees in Germany. Import duties, double test procedures and standards result in substantial costs that we could in turn direct towards research and development.«

Christian Schwarz | Zschimmer & Schwarz Holding GmbH & Co KG

The global networking of work and production processes means that many products include components and preliminary services that were not completed in the respective home country. With regard to TTIP, German companies could benefit from this effect in two aspects even if there is no direct contact with the United States. Firstly, the intermediate products or parts may possibly come from the U.S. and thus may be more cost-effective with the elimination of tariff and non-tariff-related costs. When the production of a product entails a greater international division of labor, there is typically a higher cumulative (cost) burden due to tariff and non-tariff trade barriers. Secondly, a German intermediate product may be incorporated into a product that enjoys a considerably higher demand in the U.S. thanks to the effects of TTIP which are designed to promote trade. Companies also benefit as a result of declining costs and increasing sales volumes.

German companies and family business in particular are well represented either directly or indirectly via subcontractors in the sectors that are expected to benefit the most according to a study conducted by CEPR (2013):

- Motor vehicles (increase in exports of +40%)
- Metal products (+12%)
- Processed foods (+9%)
- Chemical substances (+9%)

The fact that trade between the U.S. and the EU has been distinguished primarily by intra-group exchange of goods and services in the past does not mean that the development opportunities of family businesses will be less than satisfactory under TTIP. Firstly, many family businesses have attained in the meantime a corporate size that would make the intra-company exchange of goods across borders a common aspect of day-to-day business operations. Secondly, TTIP's elimination of trade barriers would increase the appeal to trading outside of corporate structures and thus make that interesting even to smaller family businesses.

2 A STRONG EUROPE FACES GLOBAL COMPETITION

The European Union as economic region is still burdened by the financial, debt and euro crisis. Many countries are still dealing with the symptoms of the crisis: High national debts, unemployment, slow growth and low level of investment activity. The calls for additional European and national financial assistance do not really pose a promising strategy for bolstering growth in Europe in general and especially when financial resources are tight. Consequently, it is all the more important to emphasize that free trade agreements are political instruments that do not cost money.

Growth in Europe has been much too weak since the middle of this decade, but not just due to the crisis situations. Europa has been falling behind for years when measured by its shares in the world's economic output. With a few exceptions, the EU member states are faced with

serious structural challenges. Almost all EU countries have strongly ageing societies, which is developing into a demographic problem for the entire EU when combined with the low and declining birth rates.

Moreover, Europe has to compete with the newly emerging growth regions of the world. The pressure of competition, high productivity and the need to deliver innovations will noticeably increase in the next few decades.

That is why it makes sense if Europe would also direct its attention outwards when looking for new sources for growth and increasing prosperity. The preparation of free trade agreements is a good way to further the strengths of Europe's industry. Successes made can usually be attributed to the ability to proficiently provide input based frequently on a high level of knowledge that is decisive for globalized processes based on the division of labor. The more contractors and family businesses that are enabled to do so as a result of a free trade agreement, the greater the positive effects will be for Europe.

European single market as role model

Skepticism about open contact towards important business partners is disconcerting especially for Europe, since the European Union has successfully based its own formation on the principles of this model. Eliminating trade barriers shall improve the capacity of European countries to leverage their comparative advantages for the benefit of all parties involved. For Die Familienunternehmer the common European Single Market represents a core element of the European integration. Realistically, it is the European project that has driven Europe's integration process while improving prosperity too. The positive experiences gained clearly show that it is desirable to achieve a close economic partnership with major trade partners.

The EU as trade partner

The EU ranks ahead of the United States and China, for instance, with regard to trade in goods when it comes to imports and exports. The widespread opinion prevailing in Europe that with TTIP two unequal partners would transact under the dominance of the U.S. partner is in no way established by the flow of trade. On the contrary, the European Union is a commercial power that has imported and exported cumulatively more than any other economic region in the world in 2012.

Trade in goods in bn. euros in 2012

Country	Import	Export	Total
EU28 ¹	1 798.3	1 683.1	3 481.4
USA	1 817.8	1 203.1	3 020.9
China ²	1 415.3	1 594.6	3 009.9
Japan	1 689.5	621.6	1 311.1
South Korea ³	404.4	426.4	830.8
Canada	369.6	354.0	723.6
Russia	261.1	411.9	673.0
India	381.1	229.0	610.1

Source: European Commission, DG TRADE

¹ Foreign trade flow with third countries outside of the EU27

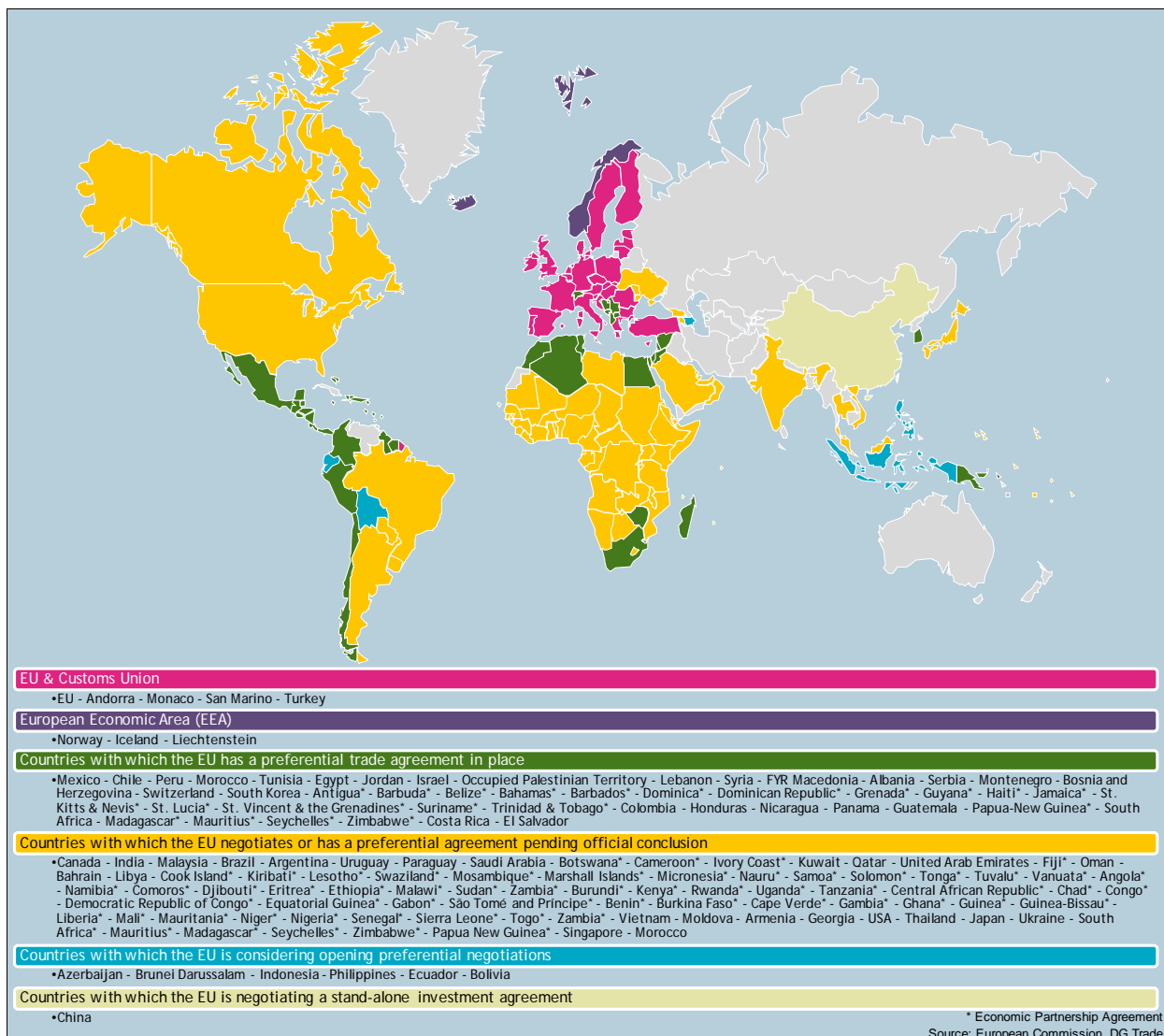
² Without Hong Kong,

³ 2010

High Expertise in EU

The EU member states have surrendered for the most part their authority for a joint trade policy to European Union. In return, the EU guarantees with regard to the common Single Market a consistent European trade policy which would be hardly possible to ensure with the bilateral agreements that were typical in the past. Collaborative action when it pertains to trade issues is in the opinion of DIE FAMILIENUNTERNEHMER a clear added value that was created by a selective surrendering of authority at the European level.

With this authority the EU has already formed almost 50 treaties and partnerships. And the EU is currently negotiating with approximately the same number of partners. Among those, the agreement with Canada (CETA) and the U.S. (TTIP) stand out in particular based on importance. The Comprehensive Economic Trade Agreement (CETA) with Canada has been on the negotiating table for more than 5 years and is about to be ratified. Until recently, there has been surprisingly little discussion about this agreement in the media or by any free trade opponents. The EU has gained over the years extensive expertise in negotiating free trade partnerships that are only pursued if mandated to do so by the member states. A negotiation mandate on part of the EU is discussed intensively among the member states and laid out with their participation prior to the pending negotiations - resulting in a transparent and democratically legitimized process that did not pique any public interest in the past.



With regard to TTIP it cannot be emphasized enough that it is a so-called mixed agreement. This means that the EU and the 28 EU member states must approve via their parliaments the final outcome of the negotiations before the partnership can take effect. In other words, the agreement is subject to a democratic process of dual legitimation.

3 U.S. AS CLOSE ALLY OF EUROPE - STABILIZING ALLIANCES!

The Ukraine crisis has shown how quickly political unrest can undermine economic partnerships and dependencies. It is important for Europe to have reliable and stable partners on its side with an ever more rapidly changing world order and new (economic) powers and rapidly changing hot spots. Economic and geostrategic partnerships always result in dependencies as well.

Given this background, it is necessary to stress that the United States and its society attach great importance traditionally to values that are very similar to those maintained in many areas in Europe.

And like Europe's significance as a trade power, the United States are by far Europe's most important consumer of goods exported from the EU (see below), followed by Switzerland, China and Russia.

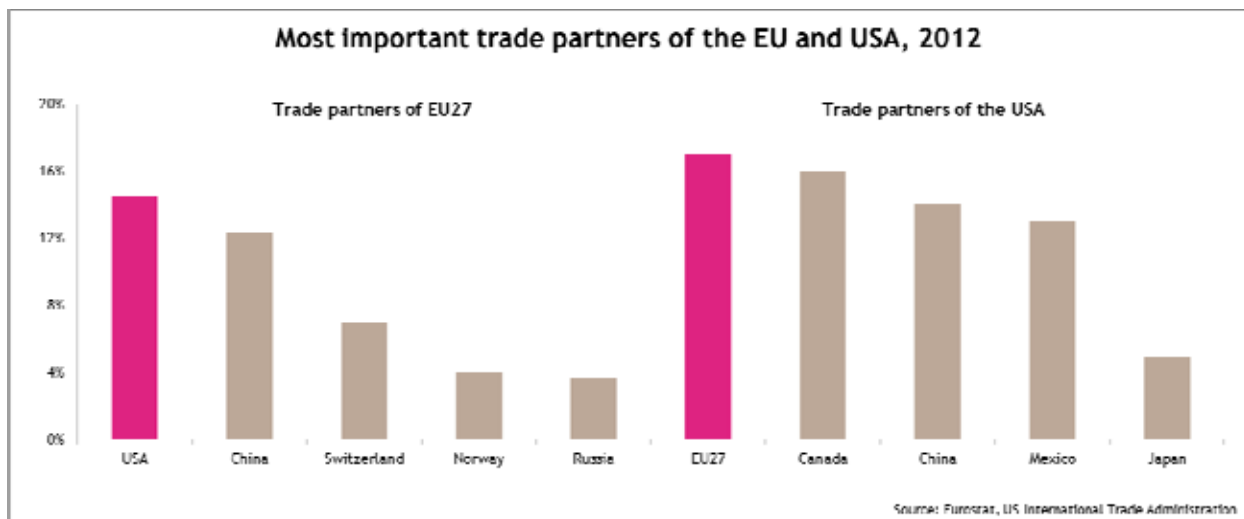
Destinations of EU exports in percent of total goods exports	
USA	16.5
Switzerland	10.0
China (without Hong Kong)	8.5
Russia	7.0
Turkey	4.5
Japan	3.0
Norway	3.0
Rest of the world	47.5

Source: European Commission, DG TRADE

The U.S. President Barack Obama has enthusiastically supported TTIP and is bidding for quick results in spite of how it might affect upcoming elections. Nonetheless, the U.S. together with its neighbors Canada and Mexico are also negotiating at the same time with the Pacific economic region (Australia, Brunei Darussalam, Chile, Japan, Malaysia, New Zealand, Singapore and Vietnam). The Trans-Pacific Partnership (TPP) is at least as important for the strategic focus of the U.S. as the agreement with the EU.

4 IMPORTANT ECONOMIC REGIONS: TOGETHER AT THE TOP

The EU represents for the U.S. the most important partner with regard to direct investments and trade. The same is true for the EU too, whose largest trade partner is the U.S. Intensifying the already very close business relations would result in a free trade zone, in which almost 820 million people produce about 50% of the global economic output.⁴

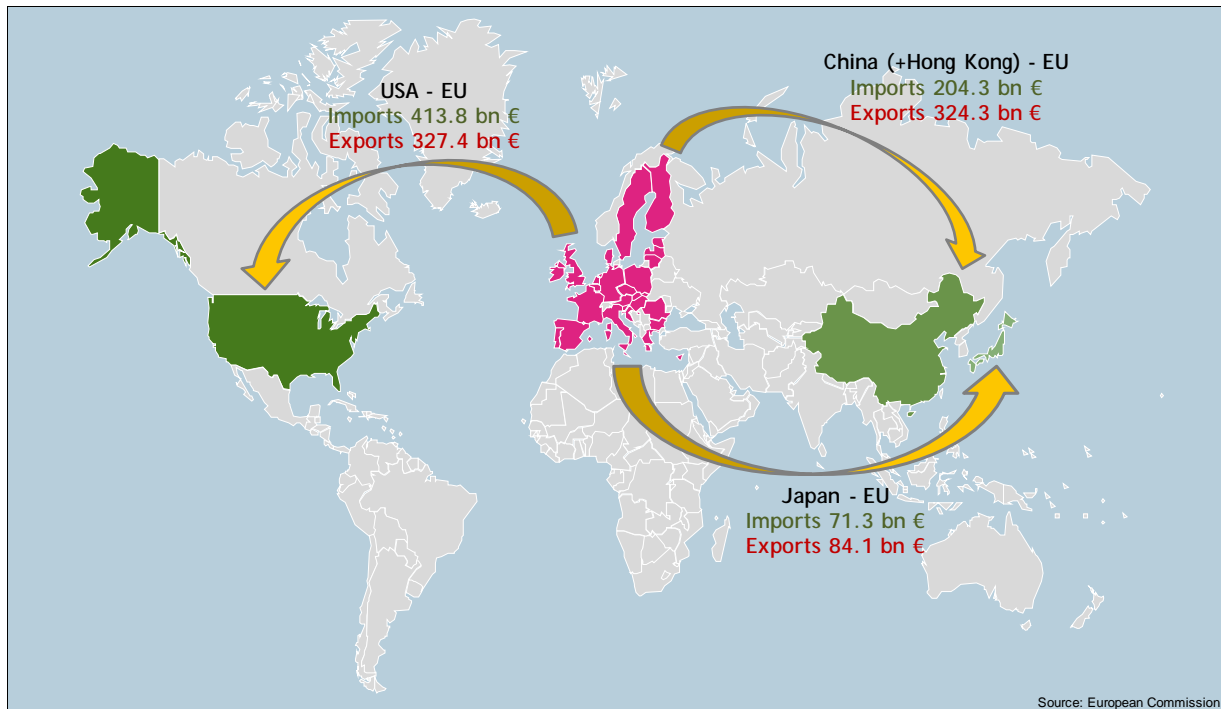


The EU (1st place: EUR 3.3 tn. and 16%) and the U.S. (EUR 2.7 tn. and 14%) jointly account for 30% of the worldwide trade in goods. 3rd place is occupied by China which is rising (EUR 2.6 tn. and 12%).

Apart from the figures relating to business relations, a trade partnership including two distinct trade powers is a clear signal that there is an effort to further develop old coalitions again in addition to focusing on new emerging economic regions.

TTIP takes on new meaning especially when it comes to the question of who will be able to set global standards relating to factual size of joint markets and trade volumes in the future.

⁴ In 2012 the economic performance in the EU and the U.S. jointly amounted to 45% of the global economic output at current prices and exchange rates; cf. DB Research pg.5



The volume of the direct investments made by European companies in the U.S. increased by 95% to EUR 1.4 trillion from 2004 to 2011. Conversely, direct investments made in the EU by U.S. companies rose by 75% to EUR 1.3 trillion for the same period of time.⁵

The gross value added by U.S. subsidiaries in the EU amounts to more than \$ 1 t. The return, resulting from foreign direct investments made by EU companies/subsidiaries, amounted to \$ 93 billion in the United States in 2011. On the other hand, the return from foreign direct investments made by U.S. companies/subsidiaries and generated in the EU was \$ 177 billion in the same year. Bilateral import and exports between the US and the EU had an approximate volume altogether of almost EUR 500 billion with an annual growth rate of 3.5%. In this context, the largest shares included machinery and automobiles (40%), chemicals (22%) and other industrially processed products (12%).

Intra-industrial trade makes up a large percentage, whereas intra-group trade is also of great importance. While the figure is approx. 33% on average, the figure for German car imports from the United States amounted to 80% in 2011.⁶ In commodities trade, the EU generated a net profit of EUR 86 billion in 2012, where Germany accounted for EUR 36 billion.⁷

Besides the impressive statistics relating to the exchange of goods, services and investments it is necessary to point out that modern production processes include a very close involvement with cross-border collaboration. The high level of value added by services to exports is a sign of a high integration of knowledge-based and innovative economic areas.⁵

⁵ DB Research (2013), pg. 6

⁶ US Bureau of the Census, cf. Ifo-Institut (2013) pg. 37

⁷ DB Research (2013), pg. 8-9

The EU exhibits a greater disparity than the U.S., which in turn influences the effects that are to be anticipated for every individual country. The countries which like Germany have an increasing share of worldwide exports should be able to expect greater growth effects than countries that have not reported any increase in exports outside of the EU in the past ten years.⁸

5 EXISTING OBSTACLES - GROWTH BY ELIMINATING OBSTACLE

The cited figures show that the trade relations between the U.S. and the EU are of major significance for both economic regions.

It is therefore all the more important to precisely examine the existing obstacles. The following section focuses on that while broadly comparing tariff and non-tariff barriers.

5.1 FURTHER LOWERING OF TARIFF BARRIERS

All in all, the traditional barriers that exist for trade between the U.S. and the EU in the form of customs duties have already decreased considerably in many areas. The fact remains, however, that there are individual sectors or product groups which are still subject to very high customs duties. For instance, clothing and dairy products originating in the EU and imported into the U.S. still bear customs duties of more than 10%.

There are also areas, in which the customs duties appear at first glance low, but that depends to scope of the trade volume which could result in significant savings for the companies concerned.

The burden in commodities trade still amounts in terms of the trade-weighted average to 2.1 % for exports from the EU and 2.8 % for imports into the EU. Furthermore, smaller and moderate customs duties also have a substantial cost-driving effect especially for intra-group trade, since they are frequently levied several times throughout the production process. Customs duties and charges affect all companies of an industry sector equally and thus are usually incorporated entirely into the final prices of the respective goods. Since no supplier is able to avoid such tariff barriers, it is the customers and consumers who ultimately have to bear these costs. For consumers charges and customs duties decrease one's available budget without offering any improvement to a manufacturer's innovative potential or productivity.

Trade with agricultural and food products is limited for both sides due to customs and quotas as well as non-tariff barriers. Although the agricultural and food products segment plays a considerably less significant role macro-economically compared to the exchange of goods and services, this seems to be a major focal point of public discussion. There is considerable resentment pertaining to the approval of products that are based on production methods which differ from regionally customary practices. It should be pointed out that from the point of view of Die Familienunternehmer there are no better or worse methods per se. The commitments made during previous TTIP negotiations are clear: Products that could not be marketed beforehand will still remain untradeable with TTIP. Genetically modified products are already tradeable in the EU even without TTIP. Anyone who wants to take offense in this context must criticize the negotiating position of the national representatives with regard to these issues at the European level.

Another obstacle occurs at the transition between tariff and non-tariff barriers. Import regulations for the U.S., which also exists without any actual customs duties, result in avoidable

⁸ DB Research (2013), pg. 4

delays for the export of goods. Long waiting periods, poor electronic data transmission and complicated labelling requirements should be history in the 21st century.

5.2 TACKLING NON-TARIFF BARRIERS

While tariff barriers gain relevance first with the effect posed by volume or quantity, so-called non-tariff barriers are of fundamental importance for the relations between the U.S. and the EU. This can be viewed as a focal point of TTIP.

In this context, attention is placed on product-and production standards that are usually not identical in both economic regions but are similar in many areas. The intended objective of defined requirements that do vary is not always accessible. Frequently, regulations are justified with safety, quality or consumer protection requirements. That said, the difference is frequently based on a historical context that is no longer pertinent.

Non-tariff barriers pose a fundamental problem in quantifying the associated costs that can be attributed to them. Estimates for the resulting effects vary widely depending on the method used.⁹ High estimates make references to 21 %, measured in so-called tariff equivalents with regard to average EU-imposed hurdles to U.S. imports. On the other hand, U.S. imposed barriers account for approx. 25 %. One aspect that is common among all studies done is that they focus on the same segments, distinguished by exceptionally high non-tariff barriers. For the EU these include the areas food products, motor vehicles, cosmetics and chemicals. On the other hand, the United States have, in addition to the aforementioned areas, unusually many requirements for aerospace, textile industry, metal processing and pharmaceutical products. When it comes to services, there are considerable differences between the sectors with regard to non-tariff burdens, even though the absolute average burden of approx. 10% is smaller compared to the burden for goods.

Even direct investments are subject to individual, and yet very effective barriers. In the US there are also regulatory restrictions and/or requirements for the aerospace, office equipment, chemicals, cosmetics and steel segments.

The automobile industry which is especially important for Germany spends up to one quarter of its total costs to fulfill various standards, many of which are in the opinion of a number of experts unnecessary due to their redundancy. The high requirements place on product safety and environmental standards could be met in any case by pursuing a more harmonized approach.

In general, it is the wide variety of tests and approval procedures for products that essentially tend to serve as an additional cost driver. Companies who are interested in doing business on both sides of the Atlantic have to deal with duplicate bureaucratic formalities, administrative costs and duplicate structures within the companies in order to fulfill the respective test procedures.

⁹ Ecorys (2009)

Public procurement system

The public procurement system plays a special role in conjunction with free trade agreements, since it is essentially distinguished by the requirements of the World Trade Organization (WTO), especially for national treatment and most-favored-nation treatment.

In the EU, in which the public procurement system accounts for approx. EUR 370 billion¹⁰, European regulations are binding primarily for the awarding of public contracts. Special rules apply to services of public interests in their different national forms. In the U.S., in which this sector accounts for approx. EUR 560 billion, the federal government and 37 states are bound by these requirements. That applies in particular to the procurement of goods and to a lesser extent to the commissioning of services. In addition, domestic small to medium-sized companies shall be given preferential treatment. The so-called "Buy American" clause, which clearly represents a protectionist privilege for domestic suppliers, almost completely seals the awarding of public contracts off from foreign companies.

Regardless of the great potential of a liberalized market, it can be noted that maintaining the status quo requires many strengths when it comes to public procurement.¹¹

DIE FAMILIENUNTERNEHMER strongly recommend in this context to define the scope of public services precisely and as narrowly as possible in order to designate the areas that are not available to commercial processing. All other areas of public procurement must become more appealing for domestic and foreign market participants. This new focus should result in savings for public authorities which are chronically indebted and open up new political options for action over the long term.

Mutual recognition

It is possible to assume significant savings potential in the area of non-tariff trade barriers especially with the integration instrument of mutual recognition.

The fears that standards might be lowered as a result cannot be confirmed for one of the largest integration projects of modern times. The European Union established the form of the single market based on the principle of mutual recognition with the 'Cassis-de-Dijon' jurisprudence. Prior attempts to declare national exceptions as particularly worthy of protection are ultimately guided by strong protectionist motives. Experiences based on the European context clearly show in the opinion of Die Familienunternehmer that the principle of mutual recognition has not reduced standards. On the contrary, the competitive environment and opening of the markets have led to a noticeable improvement in quality in many products and services - especially in cases where the historical differences in regulations cannot be harmonized in the foreseeable future.

» The elimination of customs duties would represent a genuine advantage. For high-tech companies like us it would be even more crucial to have uniform standards on both sides of the Atlantic. «

Dr. phil. Nicola Leibinger-Kammüller | Trumpf GmbH & Co KG

¹⁰ DB Research (2013), pg. 14

¹¹ see, e.g. the approach implemented by the German municipal water management sector:
<http://www.vku.de/wasser/ordnungspolitik/freihandelsabkommen-ttip-rechtsgutachten-unterstreicht-vku-forderung-nach-ausnahmeregelung-fuer-die-kommunale-wasserwirtschaft.html>

Standardization

In this context, there are very diverse standardization procedures that have to be taken into account. The standardization process in Europe is based substantially on consensus, where standards are defined through close dialogue with industry and other stakeholders. European standards usually coincide with national regulations. Here standardization is a coordinated process where responsibilities and authorities are clearly defined and explained. Even though European standards do not have the same status as a law, European regulations such as directives and ordinances make reference to specific standards to ensure the technical fulfillment of a political objective.

In the United States, however, standardization is more like a competition of ideas. Standardization is handled by more than 300 private sector institutions, whose main purpose entails administering standards that bring together the largest market share. A federal structure with a national umbrella organization does not exist as a result of this structure, which extremely complicates the transnational coordination of consistent standards.

DIE FAMILIENUNTERNEHMER suggest that an industry-specific examination should be implemented in order to identify in which areas a mutual recognition of a counterpart standard would be possible. In this context, similar consensual coordination processes are to be pursued similar to those implemented in Europe. The input of industrial associations and other stakeholders can be very productive in this regard, as the arrangement made in the automotive industry has shown. If a mutual recognition would not be possible, a viable alternative would be to reference the international ISO standards.

In such case, US criticism of the voting weight exercised by member states in decisions taken by International Organization for Standardization (ISO) is understandable. Gauged by the economic strength of the United States, the US is underrepresented in the ISO. Accordingly, DIE FAMILIENUNTERNEHMER do support the idea to reform the voting weight system in the ISO. The significance of the individual economic regions must be reflected more accurately in the voting weights. Until that is ensured, the negative attitude the US have towards ISO is easy to understand.

Early coordination of future rules

The definition of future standards should be distinguished by less conflict by agreeing as early as possible on implementing a joint platform for deciding how on to develop the joint standard. When elaborating new standards (e.g. for electrical connections relating to electric mobility) new technologies should be made more accessible to a larger market in a cost-effective manner based on economies of scale. The harmonization of standards opens up markets for many participants, since the fulfillment of a variety of standards was not attractive beforehand. In general, it is necessary to make sure that there is still sufficient leeway for competition between companies to deliver, for instance, the best technical solution while meeting the harmonized standards.

» The company BJB has been active in the lighting industry for more than 150 years. We have focused disproportionately on foreign trade for decades and currently sell 80% of our products outside of Germany and we have 750 employees worldwide. The common European market has made a significant contribution to our growth with harmonized standards and approval rules in Europe. In the past there were numerous inspection authorities, which resulted in enormous delays and costs. An open European-US market with adapted standards and test regulations shall have the same effect creating jobs. TTIP will be a benefit to all. «

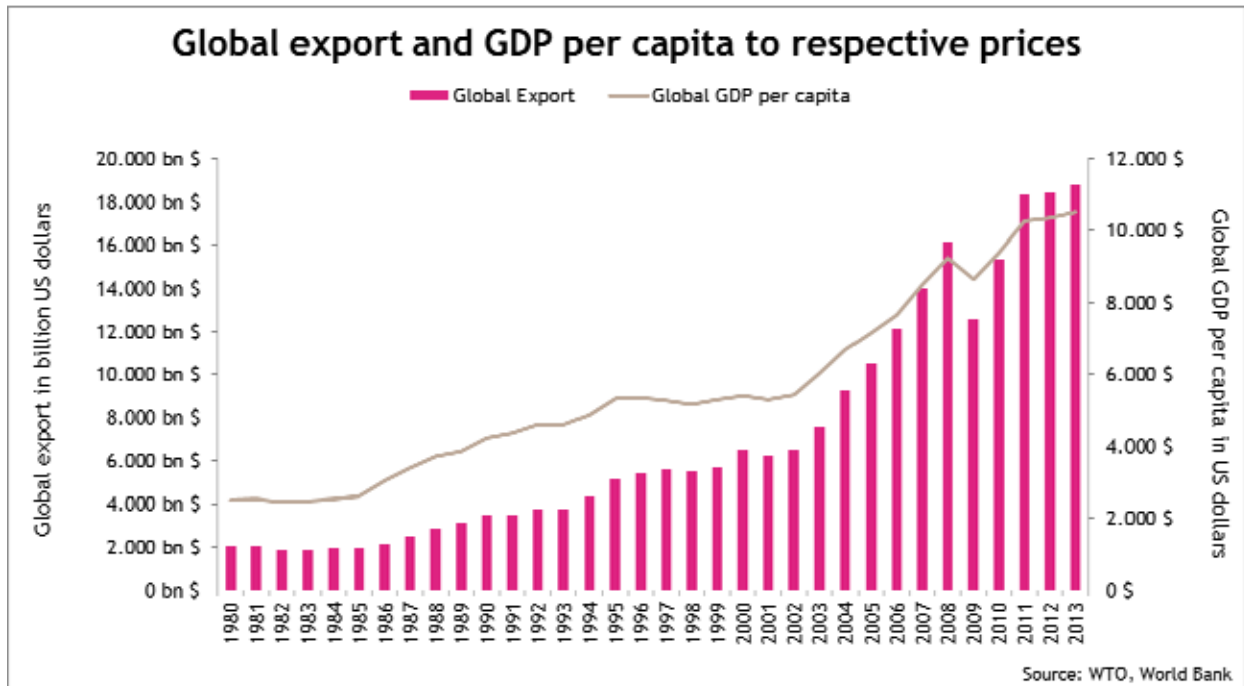
Dieter Henrici | BJB GmbH & Co KG

National representatives of the standardization bodies must ensure during the ex-ante coordination of standards that the joint solution does not remain behind the own quality and safety requirements. The respective instances must build up mutual trust for successfully setting forward-looking common standards. That would increase confidence that common standards would be optional at first besides existing national standards or transition periods have been agreed upon for the standards' introduction. A major incentive for agreeing to common standards would be the resulting ability to enforce their use while doing business with the rest of the world. The size of the market offered by the US and EU would serve as an exemplary role model for agreeing on standards with other economic regions. Common standards have the potential to influence international standards and improve overall quality. From the point of view of Die Familienunternehmer, both European and US standards relating, e.g., to technical areas fulfill very high quality requirements. DIE FAMILIENUNTERNEHMER also do not believe that TTIP poses a risk to consumer protection. Firstly, existing bans (e.g., import of meat from hormone-treated animals into the EU) will not be expressly circumvented with TTIP, and secondly, an informed consumer has a greater choice which is by no means worse due to existing labelling requirements.

6 THE CLOSER THE PARTNERSHIP, THE GREATER THE EFFECTS

Currently, it is not possible to predict to what extent and in which sectors the described obstacles will be reduced within the framework of TTIP. It will remain relatively difficult to assess the level of relief attained even after concluding negotiations and drawing up the TTIP agreements especially when it comes to non-tariff barriers. Nevertheless, it should generally be possible to determine the effects that might arise as a result of intensifying trade relations with TTIP.

Economics as a field of study has long focused on analyzing the effects of measures that are designed to influence trade between countries and economic regions. Based on the conventional foreign trade theory, customs duties and volume limitations are a central focal point of the studies undertaken. Recognizing that the prosperity of the world's population has improved globally due to increasing free trade is still valid and forms the basis for maintaining a positive attitude towards bilateral and multilateral free trade agreements.



Theoretically, it would be possible now to make statements relating to the elimination of barriers that do not include customs duties or volume limitations based on the fictitious conversion of non-tariff barriers into so-called tariff equivalents.

The complexity and interdependence of global trade flows pose an enormous challenge for preparing theoretical and empirical analyses on this topic. Few studies have focused on the possible effects that TTIP might have since trade negotiations between the US and the EU have commenced.

The effects according to ifo-Institut

One of the studies most often referred to is the study completed by the Munich-based ifo-Institut and written by Felbermayr on behalf of Germany's Federal Ministry of Economic Affairs.¹²

This study examined three scenarios:

First, a "customs scenario" (i.e. the complete elimination of all bilateral import duties), second, a so-called "NTB scenario" in which the effective non-tariff trade barriers are additionally reduced to the average level in the existing free trade agreements. Third, a "single market scenario" was simulated, where an assumption was made regarding the reduction of the effective variable trade barriers to the level existing within the EU. This scenario corresponds in effect to a complete elimination of all barriers. The analysis is essentially based on an empirical evaluation of global trade agreements and the economic effects that these have on the directly and indirectly involved national economies.

Due to the broad basis of data, it is possible to estimate and simulate the effects resulting from trade creation, trade diversion and prosperity. These findings can be applied to the development of income, employment and economic growth.

¹² ifo-Institut (2013): ifo-Institut (2013) Dimensionen und Auswirkungen eines Freihandelsabkommens zwischen der EU und den USA.

The results generally show that the positive growth and employment effects are greater when an agreement is more liberal.

In the extreme case of full liberalization, bilateral trade between Germany and the U.S. could double over the long term and trade between the EU and the U.S. could even increase by up to 80 %. Even if this scenario is not realistic, since a single market scenario with full liberalization is actually not subject matter of the negotiations, these figures do provide an idea of the dimension of an intensified collaboration between economic regions.

With this model it can be assumed that Germany would experience an increase in exports in all economic sectors, especially machinery and automotive manufacturing. A comprehensive, ambitious reduction of non-tariff barriers could generate a total of up to 110,000 new jobs in Germany and approx. 400,000 in the EU. Estimates for the U.S. suggest up to 100,000 new jobs. These figures were based on a medium to long-term period of 15 years. The real income could increase as a result of a transatlantic partnership agreement by 13.4 % over a long term of approx. 15 years in the U.S., in Great Britain by 9.7 % and in Germany by 4.7 %. The real income is shown in the analysis as approximation for the change in prosperity. In Germany, that would mean for the annual growth that it would be about 0.3 % above the level presumed without trade liberalization.¹³

The analysis also shows that prosperity outside of these two economic regions could be adversely affected. Such regions in this context could be, e.g., Canada, Australia, Russia, China and India.

The effects according to the CEPR study:

The study also considers that an implementation of an extensive TTIP could lead to economic gains in the EU amounting to EUR 120 billion and in the U.S. to EUR 95 billion. An additional growth of altogether 0.5 % in the EU's GDP by 2027 is predicted and 0.4 % for the U.S. Both qualified and unqualified workers would be expected to experience wage increases of 0.5 %, which could be attributed to a free trade agreement. The study also addresses the price effects and estimates the increase in the available income of a four person household in the EU based on wage increases and price drops to be approx. EUR 500 annually.

Most studies relating to TTIP have been prepared on behalf of the participating negotiation partners.

The findings face strong public criticism wherever they are quoted as justification for a free trade partnership in official notices. Especially comments on possible effects, which are taken out of the context of the models and propagated without indicating the assumptions made, are met with skepticism not based on science.

Die Familienunternehmer know that studies based on their very nature are a very complex undertaking like the simulation of a trade agreement between 29 different national economies that cannot be predicted with precision. With this in mind, it is important to classify the numerical values attained in a realistic manner.¹⁴

Even if the scope of the effects of such a partnership cannot be precisely forecasted, it is still possible to summarize the scientific analyses so that clear positive effects can be assumed for trade between these regions. That applies to effects both on employment and prosperity, which would preclude any costs.

¹³ Felbermayr (2014)

¹⁴ Beck and Ohr (2014) urge by making reference to the EU's single market for measured estimates relating to growth and increases in employment due to TTIP.

7 INVESTMENT PROTECTION AND ARBITRATION

The debate revolving around the transatlantic agreement with the United States is marked in Austria, Great Britain, and especially Germany by the issue of whether a separate regulation is necessary to protect investments. DIE FAMILIENUNTERNEHMER are of the opinion that investment protection deserves a lot of attention and that there are good reasons to include it in the TTIP agreement.

Agreements on protecting investments should provide investors on the one hand with legal security vis-a-vis the respective country taking part in the agreement and on the other hand protection against arbitrary rules by that country, e.g. discrimination or expropriation.

Investment protection agreements have long been a proven instrument in trade relations between different countries. Germany was one of the initiators in 1959 especially for including arrangements to protect investments in particular in agreements with less developed countries. Since then, investment protection agreements have established themselves as a very integral part of trade agreements. The number of investment agreements have been increasing steadily: While in 1989 there were less than 400 investment protection agreements, the number had reached 3,200 agreements worldwide in 2013. The EU member states have 1,228 investment protection agreements - some joint and some bilateral - with non-EU countries. The United States have formed comparable protection agreements with 58 countries.

» Entering a new market always involves high risks. With TTIP the U.S. market is drawing closer to Europe. That improves the chances that small to medium-sized family business will have to grow. Courts of arbitration have proven to be a successful instrument for decades and help in particular small-sized businesses to protect their interests even in unknown and foreign legal systems. «

Karoline Beck | in.wendt Management GmbH

Most investment protection agreements include an arrangement to have a court of arbitration to settle disputes. That provides foreign investors with a viable alternative to only asserting any claims for a possible infringement of the rights arising in connection with the free trade agreement in a normal court of law.

In this regard, a broad front of public criticism has also formed against incorporating investment protection clauses and settling disputes by way of arbitration within the framework of TTIP.

The critics of investment arbitration claim that this approach would create a form of "private justice" that is not accountable to either federal governments or societies. Moreover, courts of arbitration would unilaterally and opaquely serve the profit interests of global corporations and thus deprive countries and/or their governments of their legitimate right and opportunity to establish their own regulations.

It would be somewhat simpler to justify the objection by pointing out that the U.S. and Europe are two different economic regions in which there is an adequate rule of law. The German Economics Minister Sigmar Gabriel has adopted this view in the meantime and states on behalf of Germany's government that Germany rejects the investment protection clauses in TTIP¹⁵. That

¹⁵ Die Welt (newspaper), March 11, 2014, pg. 5, "Freihandelsabkommen ist Gabriels Verliererthema"

stance breaks with the trend that Germany has been pursuing for more than 55 years in its foreign trade policies to protect business investments. The very good stipulations on investment protection set forth in the Canada EU Trade Agreement (CETA) were described by Gabriel in part at least as irreversible. It remains to be seen whether Germany's and Europe's social democrats change their minds with regard to the negative stance towards investment protection clauses.

Investment protection from a regulatory perspective

The overriding significance of foreign direct investments between the EU and the U.S. (see Chapter 6) justify that TTIP would be created as more ambitious than a pure free trade agreement. The investments which really lend a key part of the name Transatlantic Trade and Investment Partnership represent a central element and will continue to become more significant for both economic regions.

The question of how effective state-reached decisions as legislator can be reviewed judicially is very significant from a regulatory viewpoint. Political decisions can have a serious impact, changing regulatory frameworks, including laws. The changes can lead to the fact that investments which were made on the basis of previously valid rights would be rendered unprofitable or could even completely lose their (legal) basis. In this case it is necessary to distinguish whether the effects of the regulation changes fall within the scope of corporate risk and thus must be borne by the investor independently, or whether it is a case of impairment of trust and protection of property, which would possibly warrant compensation claims vis-a-vis the government.

Such a political realignment may occur without having any reservations relating to constitutional law, for instance, with Germany's decision to abandon nuclear energy, and thus the state causes damage to the detriment of the investor, for which the latter cannot be responsible. That pertains though to already made investments which have lost their value either completely or in part as a result of the withdrawal of a government guarantee. In this context, a government guarantee should not be confused with tolerance or non-regulation of a course of action. For instance, there is no government guarantee for the unrestricted marketing or consumption of cigarettes. Tighter smoking restrictions cannot be covered according to DIE FAMILIENUNTERNEHMER within the framework of investment protection clauses.

Finally, the states would increase their credibility for their own good if they would permit not only state jurisdiction for reviewing their own decisions but also an alternative form of conflict resolution in the form of arbitration courts. Since property protection under international law is worded very ambiguously, instruments were created such as bilateral and multilateral investment agreements that now have to be further defined and developed within the framework of TTIP. It is important to note, however, that the unequal treatment of legal action of domestic and foreign investors relate exclusively to the assertion of damage claims arising in connection with the underlying agreement under international law. Theoretically, the enforcement of claims that are based on agreements formed according to international law can frequently be pursued in front of a national court of law but is not realistic. Access to courts of arbitration should be limited to cases in which foreign investors are subjected to a discriminatory regulation. In this regard, it is necessary to note that in the U.S. neither federal nor state laws offer any explicit protection against discrimination. On the contrary, there seem to be indications that U.S. courts would favor domestic investors¹⁶.

A glance at the empirical data shows that there is no evidence for this theory of an erosion of the democratic process due to arbitration. The United Nations Conference on Trade and Development (Unctad) estimates the number of reported cases at altogether 568 globally. Of

¹⁶ Ecorys (2014).

course, the amount of disputes arising in connection with investment protection agreements is climbing as would be expected with the increase in agreements. Nevertheless, the countries were in no way frequently the underdogs:

117 disputes have been directed so far against EU member states, nine of which came from the United States.

54 disputes, raised against EU countries, have been concluded. Fifty percent ended in favor of the countries, 26% resulted in settlement and the investors only won 24% of the cases. The preamble of the Canada EU Trade Agreement (CETA) clearly stipulates that the right to regulate within the respective territories shall be preserved and in no way curtailed¹⁷.

Legislative divide in the EU

For TTIP it is beneficial not to focus solely on the German constitutional state when thinking about the EU. The U.S. perspective that the legal systems of countries like Bulgaria, Croatia or Romania are less reliable, does coincide with the status quo, which the European Commission itself has criticized repeatedly. In addition to that, the obstacles to constitutional amendments and thus serious legal changes can differ greatly as a result of the politics in the EU member states. Even in such cases it is for the good of the respective country to assure investors additional protection in the form of investment protection clauses.

Investment arbitration and commercial arbitration

Unfortunately public discussions about arbitration very rarely distinguish between investment arbitration (disputes between investors and countries) which is relevant for TTIP and commercial arbitration (disputes between private parties). Especially the confidentiality of arbitration proceedings in commercial matters is often mixed with the criticism of an alleged lack of transparency in investment proceedings.

Trend toward opening up has started

Attempts are being made to improve transparency with regard to proceedings and decision making for investment arbitration. They are part of a comprehensive trend to open up investment arbitration for the general public. For instance, it is now possible to obtain extensive information about more than 450 investment arbitration proceedings free of charge via the publicly accessible internet presence of the International Centre for Settlement of Investment Disputes of the World Bank (ICSID), one of the world's most important investment arbitration institutions.

When there is a dispute between two private parties, it is advantageous for protecting the trade secrets of the businesses that arbitration proceedings ensure a certain level of confidentiality. In light of the increasing importance of investment arbitration, this particular feature should be restricted more to commercial arbitration.

17 European Commission: http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf

Procedural advantages

It is possible to cite fundamental procedural advantages advocating the inclusion of such arbitration processes in TTIP:

The selective composition of arbitral bodies, usually consisting of three arbitrators, increases the possibility of entrusting experts with specific field experience to a specific dispute. It would be wrong to assume that both arbitrators, each selected by one party, should decide undoubtedly in favor of the party he or she is representing. Another advantage is that when it comes to arbitration, there is no "home field advantage" which could occur for the benefit of the rule setter in a case of doubt during ordinary court proceedings. Agreeing to neutral proceedings is equally calculable for investors from both economic regions. From the viewpoint of a German business, it may seem prohibitive to an investment decision when that company may have to assert a possible claim in a U.S. court with serious procedural differences relating, e.g., to documentation and disclosure obligations. The U.S. legal system also does not include a reimbursement of costs if a case is won. A factor that represents an additional deterrent for many small to medium-sized businesses.

The specification of certain rules of procedures for TTIP opens up a unique opportunity for establishing a common standard for settling disputes for further bilateral and multilateral trade agreements. In the future, trade agreements could very well include countries that may be, on the one hand, a heavyweight with regard to trade policy but be far behind German or European standards when it comes to their legal systems.

Investment arbitration is usually called for when there is a dispute about continuing a business model in light of an amendment to a statutory provision. For businesses the most expedient solution of the matter is crucial. Decisions about jobs, provisions and divestment cannot be deferred at will. It is advantageous in this regard that arbitration waives the sequence of courts, and as a result the length of arbitration proceedings is considerably shorter compared to similar processes which can go from district court to the federal court of justice.

Regardless of an arbitration agreement, the parties still have the opportunity to file or assert a claim with the national court system as part of preliminary legal proceedings. Given the increase in disputes, it would be a good idea to check whether it is reasonable to set up continuous courts of arbitration in order to facilitate efficiency.

DIE FAMILIENUNTERNEHMER believe that courts of arbitration also need monitoring. In our opinion, the easiest approach for ensuring that would be an improved transparency of arbitration proceedings without granting courts of arbitration a legally enduring status. The welcome definition of possible applications of investment protection clauses in the draft version of the CETA agreement and the corresponding memorandums of understanding for TTIP of the new EU Commission attest to a moderate usage of investment protection as a positive instrument.

Our practical suggestion is to incorporate the UNCITRAL¹⁸ Rules on Transparency in Investor-State Arbitration, which have been in effect since Apr. 1, 2014, in the TTIP arbitration clauses. Based on that, investment arbitration should generally be open to public, which includes the hearing, publication of written submissions and all decisions reached by the courts of arbitration. Consequently, arbitration in investment protection cases would definitely satisfy a higher standard for transparency than ordinary court proceedings, where access to records is only permitted after providing proof of a legitimate interest.

8 CONCLUSION

DIE FAMILIENUNTERNEHMER regard in light of the size and importance of the U.S. and European trade areas a successful conclusion of the TTIP negotiations as absolutely essential without any thematic limitations. Europe should deprive itself of such a great opportunity for ensuring sustainable and cost-effective growth. Without a doubt, information about topics that are negotiable and non-negotiable should be communicated and even discussed within the limits of contract negotiations under international law. The greater the scope of the final agreement, the more benefits Germany and its citizens and companies will enjoy from simplifying the exchange of goods, services and investments under TTIP. During previous rounds of negotiations, it is incomprehensible that there are fears about standards falling. There are no signs of any downward spiral of regulatory requirements but the results of the negotiations must still undergo review by the general public and parliaments. Free trade means better supply, more opportunities and greater competition for consumers and suppliers. DIE FAMILIENUNTERNEHMER are ready to take another important step in the globalized 21st century with TTIP.

18 The United Nations Commission on International Trade Law (UNCITRAL)

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