

# EU-US TRADE TALKS: MOVING FORWARD?

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## Contents

EU-US trade deal to include 'corporate bill of rights'.....p.1	EU, US gear up for 'real' negotiation round on trade deal.....p.7
TTIP: Data is the elephant in the room.....p.2	Erixon: TTIP will move to fast track if first results come early.....p.9
EU-US trade talks delve into regulatory maze.....p.4	EU lawmaker: 'TTIP is not a monster'..... p.12
Moreira: TTIP must overcome cultural perceptions.....p.5	Beyrer: EU-US trade talks can achieve the impossible..... p.13

## EU-US trade deal to include 'corporate bill of rights'

Controversial rights for multinational corporations to sue states, likely to be included in the Transatlantic Trade and Investment Partnership (TTIP), are causing a political headache for EU and US negotiators, but may also set a precedent for future trade agreements, notably with China.

The TTIP currently being negotiated includes so-called "investor-state" dispute clauses empowering EU and US-based corporations to lodge private legal cases directly against governments.

The European Commission's proposal for investor-state dispute settlement under the TTIP would enable US companies investing in Europe to by-pass European courts and directly challenge governments at international tribunals, whenever they find that laws in the area of public health, environmental or social protection infringe their right to do business.

EU companies investing abroad would have the same rights in the United States.

"Politicians might think they are acting in the interests of 'their' investors overseas,



but they are in fact exposing themselves to predatory legal action from corporations," according to NGO Corporate Europe Observatory's Pia Eberhard, who wrote a report on the issue, "A Transatlantic Corporate Bill of Rights", in June.

## Warning over litigation boom

Co-authored with the Transnational Institute (TNI), Eberhard's report warned

Continued on Page 2

### Continued from Page 1

that the volume of transatlantic investment, with both partners accounting for more than half of foreign direct investment in each others' economies, hints at the sheer scale of the risk of such litigation wars.

"Not only will our money go to pay for expensive lawsuits that compensate big business, but we will also pay as critical environmental and social regulations and policies are dismantled to clear the way for corporate profiteering," according to a TNI spokesperson.

Of some 514 known investor-state disputes launched before the end of last year (2012), the lion's share have come from the US (123 cases) and European countries such as the Netherlands (50), the UK (30) and Germany (27), showing that they are familiar with the procedure.

EU and US companies have used these lawsuits to challenge energy and medicine policies, anti-smoking legislation, bans on harmful chemicals and environmental restrictions on mining, amongst other sectors.

### Business groups favour the move

For example, in 2012 Swedish energy giant Vattenfall launched an investor-state lawsuit against Germany, seeking compensation of €3.7 billion for lost profits related to two of its nuclear power plants, following the German government's decision to scrap its atomic generators in the wake of the Fukushima scare.

Business groups in both the EU and US – such as the European employers' federation, BusinessEurope, the US Chamber of Commerce (AmCham EU), the Transatlantic Business Council – are all broadly in favour of such a clause.

Many MEPs are expected to disagree with such provisions if they appear in drafts of the agreement. The European Trade Union Confederation (ETUC) has issued a note to the negotiating parties arguing against the clause.

"Considering that both parties are advanced economies with well-developed legal systems, the ETUC sees no reason to

create a by-pass to national courts for foreign investors, and therefore insists that a state to state dispute settlement mechanism and the use of local judicial remedies are the most appropriate tools to address investment disputes," ETUC argued.

### Opposition in the US as well

Resistance is also coming from the United States. For example The Sierra Club – the US grassroots environmental organisation with hundreds of thousands of members – also strongly opposes the inclusion of investor-state dispute settlement in the TTIP.

"It is worth noting that the US, in its negotiations of its Free Trade Agreement with Australia, did not insist on including any direct investor-state dispute settlement mechanism because of 'the fact that both countries have robust, developed legal systems for resolving disputes between foreign investors and government'," according to a spokesman for the Sierra Club.

Josh Kallmer, a counsel in Crowell & Moring's international trade group based in Washington, believes that the clause will and should be adopted in due course, even if it triggers "a significant a political battle".

### China on their minds

Perhaps surprisingly, however, he does not believe that but does not believe that the clause will be as significant as some believe.

According to Kallmer, corporations are unlikely to want to substitute the legal systems on both sides of the Atlantic.

Instead the former deputy assistant US trade representative for investment – who played a central role in developing US investment policy in relation to the European Union – said that both blocs are looking to future agreements with countries such as China where such a clause would be very useful.

"The TTIP is being considered a gold standards of future agreements, and will be used as a blueprint for future deals," Kallmer said.

## TTIP: Data is the elephant in the room

Data protection issues have been cut out of the negotiations for the Transatlantic Trade and Investment Partnership (TTIP), but rivalry between the two trade blocs in the critical booming sector threatens to spoil any deal.

Though it was a political decision by the US and EU to cut data protection from the ambit of the TTIP negotiations, it came against a backdrop of accelerating competition between EU and US data sector companies.

Significantly, it also came shortly before the Prism scandal (see background) began to seep revelations of data espionage, which have since soured EU-US relations.

"Data protection is a fundamental right. It is different in nature to the tariff of a good or to the schedule of a service. That's why a discussion on standards of data protection should be kept separate from the give and take of a trade negotiation," Justice Commissioner Viviane Reding said this month (17 September).

As a result Reding said she was "grateful" that Trade Commissioner Karel de Gucht agreed that data protection came outside of the scope of the TTIP.

### Data is the new 'oil'

But clarity about international data protection standards is seen as critical for strategic commercial decisions in the booming market.

Reding said in the same speech: "Data is the new currency: the value of EU citizens' data was €315 billion in 2011. It has the potential to grow to nearly €1 trillion annually in 2020."

According to John Boswell, a senior

Continued on Page 3

## Continued from Page 2

vice president with business analytics and software company SAS, data is the new 'oil' and data analytics are essential to business, job growth, innovation, prosperity and will lead to the creation of millions of jobs in the future.

"Core to this objective, are data-friendly policies that encourage the use, free-flow and analysis of data, facilitate the location of companies in Europe that focus on data-driven innovation and build the necessary framework of trust for European citizens who will ultimately benefit from the deluge of data and its analysis," he says.

## Nerves over impact of Prism on EU-US relationship

Fallout from the Prism scandal has shown how difficult the TTIP negotiations would have been had data protection been kept on the agenda.

In early July, the European Parliament voted to support the Commission to end Swift and other data-sharing programs with US authorities, if the EU executive chose to do so.

The outgoing US ambassador to the EU, William Kennard, promised on 8 July a "healthy debate" between the two partners, and cautioned against allowing the scandal to rock TTIP.

"We have such a deep and broad relationship that it would be unfortunate if we allowed one issue, as serious as it is, to paralyse us across a whole range of other issues we're working on," Kennard told EurActiv in an interview.

Later that month Reding announced that the Commission would conduct a "solid assessment" of the data protection Safe Harbour programme with the United States, refusing to rule out the possibility that the programme could be suspended.

## Data protection regulation could hit US concerns

Reding may have another motive for keeping data away from the TTIP. The commissioner wishes to ensure the swift

passage into law of controversial new data protection rules, which are currently being debated by member states and the European Parliament with the aim of agreeing legislation before spring next year.

Observers warn that a failure to agree the new rules by then could cause long delays to their implementation, as they face the prospect of having to be re-opened by newly elected MEPs following the Parliament elections in May next year.

Various clauses within the proposed regulation would impact on the larger US companies offering so-called "over-the-top" data services, such as Google and Amazon, and more significantly the burgeoning cloud computing sector.

US-based cloud service providers – including Google, Amazon and Microsoft – currently account for around 85% of global markets.

In June and July 2013, the Cloud Security Alliance, an industry group, surveyed members and other cloud computing stakeholders for their reactions to the US Prism spying scandal.

One in 10 non-US residents who responded indicated that they had cancelled a project with a US-based cloud computing provider in the wake of Prism and 56% said that they would be less likely to use a US-based cloud computing service.

The Alliance predicted that US cloud computing providers might lose as much as €26 billion by 2016, equivalent to the loss of 20% of its share of cloud services in foreign markets.

Europeans now hope to use the Prism scandal to win a share of this market.

"If European cloud customers cannot trust the United States government, then maybe they won't trust US cloud providers either," said Neelie Kroes, the EU's commissioner for the digital agenda.

"If I am right, there are multibillion-euro consequences for American companies. If I were an American cloud provider, I would be quite frustrated with my government right now," Kroes said in July.

## Europe looks to seize advantage on cloud

At the same time, Kroes announced that the Commission would redouble its efforts to promote EU-based cloud services this autumn, a move timed to coincide with the perceived lack of trust in the US competition.

The data protection regulation and new cloud proposals will be mulled over by EU heads of state when they gather in Brussels for a summit in October.

Although data sector will not overtly be discussed in the context of TTIP, US businesses are expected to watch the debate closely for a flare up of indignation at the Prism scandal and EU attempts to capitalise on the cloud computing market.

One source close to the US industry – who spoke on condition of anonymity – said: "At the moment it is looking like a trade dispute over the data sector is as likely to emerge between the US and EU before any trade agreement emerges."

Data, seen as pivotal to future trade, may be off the official agenda for now, but it remains the elephant in the room.



# EU-US trade talks delve into regulatory maze

A gulf has opened up in the approaches taken by the two sides in the transatlantic trade talks, with the European Union wanting sector-specific commitments and the United States leaning towards rules that would apply across industries, EurActiv has learned.

EU and US negotiators meeting for a new round of trade talks on 7-11 October might repeatedly agree to disagree, but they are together on one issue: they must make progress on regulatory cooperation.

Regulatory cooperation is the crown jewel of the negotiations, João Vale de Almeida, the EU ambassador in Washington, said in a recent interview. "It is very much about regulatory coherence and how we can regulate effectively in the public interest, while eliminating duplications in the system," he said in an interview.

Sources said that while discussions

so far on regulatory cooperation were preliminary, the transatlantic partners were already diverging.

The EU favours mutual recognition of existing regulations and has put forward a list of priority sectors. These include medical devices, chemicals, pharmaceutical and automobiles, as they are the heavily-traded industries.

However, the United States seems more inclined to come up first with a kind of horizontal framework, which would work also for future regulations, the sources said.

A report of the High level working group on growth and jobs released in February hinted at this point.

## Roadmap

BusinessEurope Director-General Markus Beyrer said in an interview with EurActiv that both sectoral and horizontal approaches were needed. "We will need regulators for different sectors come to mutual recognition in the best cases, but then we'll have to define a process for the future."

"We will have to talk about early consultations, maybe even the possibility to defer the process, because if one side would like to regulate on a specific issue, and the other side wants to do it but only six months later, we would need a framework to make sure we don't drift apart," Beyrer added.

Companies must design and manufacture two lines of products for the markets on both sides of the Atlantic, even though we have equivalent levels of health safety, security and environmental protection.

Getting rid of duplication would save costs for both EU and US regulators and businesses. By making it easier for companies to comply with both sets of laws at the same time, billions could be saved and resources reallocated to develop and market new products.

"A strong regulatory chapter of TTIP would be a genuine 'win-win' for business and government. Overall, I see a readiness to do it, but I don't see a clear roadmap yet," Beyrer said.

Beyrer conceded the devil was in the detail and that work was underway in different sectors to move the process forward.

"We will need to bring the concerned sectors and the concerned regulators at the same table," he said, adding that both BusinessEurope and the US Chamber of Commerce will submit a joint paper on cross-sectorial aspects of regulatory coherence.

## Making it work for chemicals

EU analysts agree that if negotiators succeed finding a way out of the regulatory labyrinth on some sectors, like chemicals, that would set a precedent that could build further political momentum. A high level of non-tariff barriers are used for chemicals, cosmetics and biotechnology, say Center for Economic and Policy Research experts.

"In the area of chemicals legislation the transatlantic divide is huge," said Lena Perenius, executive director of the European chemicals trade association Cefic.

Some estimates show that removing barriers in chemicals could yield a 8.39% increase in total exports to the US on a value added basis.

The EU and the US regulate chemicals in different ways. European regulation requires that all chemicals sold in Europe



Continued from Page 4

be registered with the European Chemicals Agency, while the US requirements are much less strict. Both sides, however, maintain comparable high levels of protection.

Without going for full harmonisation, chemical companies want enhanced regulatory cooperation, Perenius said, stressing the need to share information among EU and US government bodies.

If regulators could agree to coordinate their safety assessments of the same chemicals, companies would not have to repeat tests. This would save costs both for

companies and regulators. More alignment also on technical standards could be a first step forward, the Cefic expert said.

Perenius, however, agrees that it is still too early to see the light at the end of the tunnel, and this round of negotiations will at best set the roadmap for future negotiation rounds.

According to a scenario developed the Centre for Economic Policy Research (CEPR), TTIP could lead to 100% reduction in transatlantic tariffs and a 25% decrease in the costs resulting from non-tariffs regulatory barriers, and a 50%

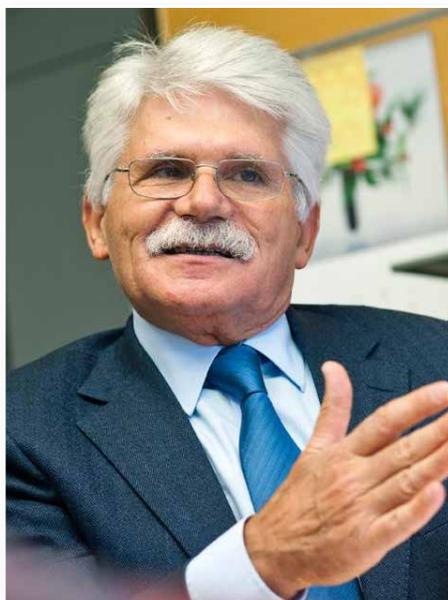
reduction in procurement barriers. Just removing half the regulatory barriers to trade would add €200bn to the EU economy.

Both sides will discuss the full range of issues in the next round, but on regulatory cooperation agreeing on approaches would seem already a first step forward.

If successful, the Transatlantic Trade and Investment Partnership (TTIP) is expected to significantly strengthen the EU and US economies by streamlining the two regions' regulatory regimes - without lowering environmental or product safety standards.

## Moreira: TTIP must overcome cultural perceptions

The issues complicating a Transatlantic Trade and Investment Partnership (TTIP) agreement are deeply cultural and will not disappear. But they can be overcome, says Portuguese MEP and rapporteur on the trade agreement, Vital Moreira.



*Vital Moreira, a centre-left Portuguese MEP, is the chair of the European Parliament's Committee on International Trade. He spoke to EurActiv's editor-in-chief Daniela Vincenti.*

**The second round of negotiations for a Transatlantic Trade and Investment Partnership will start on 7 October and are in full preparation right now. Is Parliament being kept in the loop on this?**

The Commission tabled its draft mandate earlier to which we have access. It is the duty of the Commission to share it with us. We decided to move forward, based on the resolution of the Council, even though we have oppositions on this.

As you know it was this resolution that decided to carve out the audio-visual sector. In essence, the French didn't want to jeopardize their policy on subsidies and quotas in the audio-visual sector. This was regarded as the most important issue - even if it was an obscure element compared to others.

**Was this a deliberate move to divert the attention from other elements?**

I don't think it was; it was in the interest of France particularly to exclude the audio-visual sector. And Council followed France on this.

**Do you feel the US will spell its red lines at this round of negotiations after**

**their impact assessment is finalised? Will financial services be off the table?**

No, the US stressed from the start that they didn't want the regulatory side of financial services integrated. So this didn't come as a retaliatory reaction to our decision. So far, we've seen no move on the side of the US to exclude a similar element.

**Are there particularly sensitive issues the US has, and which they might take off the table later?**

Of course they have prime interests, but they won't just exclude things. They will go for substance and refuse to make substantial concessions on certain issues.

We know their sensitivities: maritime transport, public procurement, regulation of financial services, Sanitary and Phytosanitary (SPS) issues, textiles... the usual things, in fact. Many of these are connected with traditional security concerns in the US.

**Could these sensitivities turn out to be deal breakers in the negotiation?**

If both sides do not invest serious political capital in the TTIP agreement, there will be many deal breakers. I can think of a dozen. I prefer not to speak of deal breakers but of challenges, and don't think

Continued on Page 6

### Continued from Page 5

we should anticipate deal breakers.

The hurdles are steep, so you need a true and far-reaching political engagement. Both sides are investing plenty of resources. [Trade Commissioner Karel] De Gucht is personally overseeing the negotiation; and the US trade representative in Washington is very close to the American government. I'd say there is a real political investment on both sides.

#### What do you expect from this second round of negotiations?

To start the proper job of negotiating and have real proposals on the table. Notably on a key issue that a free trade agreement is about: tariff barriers. In general these are low, but there are peaks in textile and agriculture.

And don't underestimate the market access issues either. This is still the first and major pillar in this agreement. We have to deal with many restrictions on import: the infamous ban on European beef import in the US; a ban on fruits, apples, pears; restrictions on investments in maritime and air transport; and so on. The US is also very interested in negotiating [access to] our agriculture market.

#### What about the regulatory side, what Ambassador Vale Almeida called the crown jewel of TTIP?

Regulatory issues will be the hard nut to crack. Non-tariff barriers can be much more costly than tariff barriers. Levelling technical standards might be easy, but when it comes to safety standards, things can get difficult.

Let's be clear: the idea that we'll address all different standards and achieve a hundred per cent convergence, is utopian.

Some of these standards are built into culture, custom and maybe even fear. Take an issue that everyone is talking about: hormone beef. Imagine if we go to the European consumer and say that, from now on, hormone beef will be on your market. You simply cannot just decide this. So it is

unimaginable to have hormone beef being sold in Europe.

But don't forget we have a market double the size of the US market. We are the biggest economy. So why don't American producers start to produce hormone-free beef for the Europeans, who are ready to pay. That could be a solution: to allow for hormone-free beef – high quality, high prize – to be exported to the EU.

There are two things this agreement will not change. One is both our constitutions. For example, you cannot force rules upon the US states concerning public procurement; they have a federalised system with fifty state rulebooks on procurement.

A second thing is that we will not change are the minds of our people. However close Europeans and Americans are to one another, there are differences. So let's live with them.

By the way, these are constraints to any international agreements, not only trade agreements. We have rejected three international agreements in this legislative year in the European Parliament, two of which with the US: SWIFT and ACTA. There is a clear, deep divide on these issues which we cannot solve with a trade negotiation.

#### The stakes of this agreement are high for other parties as well - the MERCOSUR countries, for example, going back to beef. Should we involve these third parties in the negotiation?

Free trade agreements are privileged agreements; they are aimed at the economies that negotiate them. And so a transatlantic agreement also means the erosion of trade preferences that we negotiated with other countries.

Of course, TTIP will have an impact. MERCOSUR countries will be heavily impacted if we reach an agreement on agriculture. But we are not negotiating with MERCOSUR, so Brazil and Argentina will have to find their own way of keeping a market share.

I often tell to our Brazilian friends that they should be concerned about this

agreement. If we reach an agreement, they will have to compete with cheaper US commodities on the European market.

On the other hand, third parties will also benefit from future common standards. Instead of having to comply with two different standards, the EU and US one will have the same. You'll see how much this agreement will have a positive impact on a number of countries, notably Asian ones. They will benefit from a huge market of more than 700 million consumers, with an equal standard.

#### Let's get to the investor-state dispute resolution, which, as some experts point out, is one of the major hurdles. How to overcome this?

I am not a negotiator. I expect negotiators to be creative and find a compromise. As you know the Americans are very keen on investor-state dispute settlement, which would allow them to challenge a state directly, through international arbitrary schemes.

#### We are talking about two western partners with well-developed legal systems. Why would investors need international arbitration?

Well, European investors could share your point of view but American investors fear that courts are not that independent from states here. Also, there's a time cost: appealing to courts could cost you years. That is the point of view of investors everywhere, not only the American ones.

Ours is a much more restrained view, but we tend to accept state-to-state dispute settlements because this is part of international trade agreements. We are much more sceptical to give a foreign investor the right to go to a third international scheme.

But maybe there are forms of compromise. That's up to the negotiators and I am not a negotiator. My wish is that they successfully promote the interests of the EU and reach a compromise.

Continued on Page 7

Continued from Page 6

**Negotiators had their hopes up that this could be done by September-October 2014. Looking at where we are today, that timing is improbable, isn't it?**

First of all, I think that substance should prevail over time. Timing shouldn't influence the results of a negotiation.

Secondly, we will need a political

momentum. This agreement needs permanent political support from both sides. In the EU there is a strong and consistent coalition in both Parliament and Council, who share the responsibility for trade policy. This will not change after the 2014 elections and Commission change. Our partners know they don't need to anticipate mood swings in Brussels.

But that's not the case in the US. Trade groups are putting heavy pressure on Capitol

Hill. Plus: it concerns agriculture, maritime transport, security... These are issues that might derail the support in Washington. We need to take advantage of the particularly positive mood both on Capitol Hill and in the White House.

But we didn't start negotiations anew: the preparatory work was done before. We know what's on the table and how much pressure we can put on the person across the table. Things could go faster than we anticipated.

## EU, US gear up for 'real' negotiation round on trade deal

There is a sense of anticipation in Brussels as negotiators are frantically preparing for next month's second "real" round of trade talks with the United States in Brussels, but progress is unlikely to be perceivable before December, experts say.

After a first testing session in July, negotiators are expected on 7-11 October to delve into complicated dossiers to pave the way towards a Transatlantic Trade and Investment Partnership (TTIP) which could over time boost EU GDP by 0.5% annually and help create approximately 400,000.

"The first round was really to lay out ideas and concepts of how to address the various issues. We weren't negotiating text," United States trade representative (USTR), Michael Froman said recently. "But it was a very productive week of consultations, and I think it sets us up well for when we get back together in October to begin the real negotiations."

US negotiators are indeed waiting for their own impact assessment report



expected to be ready by the end of this week (26 September). But sources say Froman will still have to review the findings on sensitive areas and discuss them with members of Congress, in time for the October meeting.

The second round agenda is packed,

according to sources. Negotiators are supposed to move simultaneously on all fronts: elimination of tariffs, regulatory cooperation and rule-making, and last but not least, rewriting the global trade

Continued on Page 8

### Continued from Page 7

rulebook after the collapse of the Doha round, taking into account the complexity of the modern supply chains and the role of services and the internet economy.

“They don’t have the time to sequence negotiations in the same fashion as they might have done in another free-trade agreement,” Fredrik Erixon, director and co-founder of the European Centre for International Political Economy (ECIPE) told EurActiv in an interview.

“At the same time they need to build the dynamic which is going to generate and harvest quick results so that you build the momentum for more,” he said, adding that tangible progress will be known only after the two top trade officials, EU Commissioner Karel de Gucht and USTR Michael B. Froman do the first stock-taking expected for January 2014.

### Scent of deal-breaking?

Building the dynamic seems a mind-boggling exercise. Even though businesses on both sides of the Atlantic are pushing decision-makers to be constructive, doing themselves their homework to put forward concrete proposals to negotiators and regulators, the scent of deal-breaking on sensitive issues is hanging in the air.

After the French pushed for excluding the audiovisual sector from the negotiating mandate in June, the US has started over the summer to draw its red lines, if one looks at the fine print of Froman’s public addresses.

Earlier this month, the USTR said that the trade talks “can be a very important element of Europe’s effort to get back on a path toward growth, but it’s got to be only one piece of an overall growth strategy.”

“If TTIP is seen as a way for Europe to export its way out of its problems, it won’t have support,” Froman reportedly added. “It’s got to be part of an overall effort to promote reform and get their economies moving again,” he added.

Froman has made it clear in recent weeks that he will preserve the US Jones Act, a federal law that requires cargo between US ports to be transported on US ships. He also seemed reluctant to bend to EU request to lift restriction on aviation.

Responding to members of the House Ways and Means Committee, the US trade representative said: “We recognise that the coverage of air services has always been limited in the US agreements, and particularly that trade agreements have not previously covered air traffic rights.”

He also said he was concerned by the proposed amendments to the EU Fuels Quality Directive, which vows to reduce greenhouse gas emissions from transport.

### Respecting differences

“If both sides do not invest heavily – politically – on this agreement, there will be many deal-breakers,” centre-right MEP Vital Moreira, chair of the International trade committee supervising the US monitoring group, said in an interview with EurActiv.

“You can think of a dozen,” he said, mentioning sensitive areas like maritime and air transport, agriculture and GMOs, and textile. “But I prefer not to talk of deal breakers, they are more challenges.”

GMOs has been a transatlantic controversial area for years. Speaking to the US chamber of commerce in Washington, director of the US Food and Drug administration, Mary Lou Valdez, one of the key US regulators, reportedly said that “some governments evaluate the relevant science in issuing their regulation but then put a ‘cultural overlay’ on top of their rules.”

But added that only by better aligning respective approaches can the EU and the US gain in efficiency. “I think there are a couple of ways that we can do that. One is really to better understand, and dig deep so that we can really leverage our respective regulatory processes,” she insisted.

### Hormone-free beef for Europeans

Talking to EurActiv, Moreira stressed indeed that both partners will need to respect their differences. “There are two things that this agreement will not change, on both sides of the Atlantic. One is our constitutions. Second, we will not change the minds of our people,” he said, but insisted that despite differences there is a way.

Taking as an example the EU-US hormone beef dispute, which has affected transatlantic trade relations for years, Moreira pointed at the constructive outcome.

“I don’t see it possible at the current stage to have hormone beef sold in Europe. But we have a market double of their own market. We are still a high-income economy – we are the biggest economy in the world. So, why not start hormone-free beef for Europeans?” he questioned.

This pragmatic approach was indeed used to address the trade dispute on chlorine-washed chicken. The hormone-free beef would probably cost more, Moreira explained, but “the higher the price, the higher the gains,” he concluded.

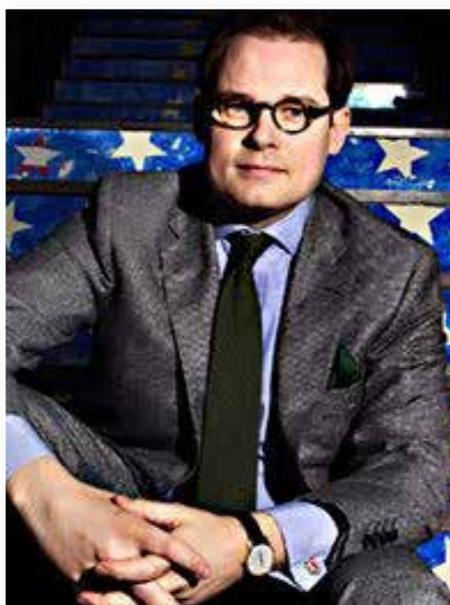
Leading to the October negotiating session, over 20 different technical groups are meeting this week to prepare the ground for discussion, sources said. Negotiators would then start to work on an horizontal framework. Sector-specific negotiations would probably take place later in the year or early next year, said sources.

Featuring high on the bilateral talks is regulatory cooperation. Studies suggest that between two-thirds of the gains from a future agreement would come from cutting red tapes and four-fifths from having more coordination between regulators.

“Before Christmas, they need to have parked a couple of issues, and tariffs is going to be one of them,” said Erixon. “I would say two-three sectoral mutual recognition agreements,” he added, spelling out pharmaceutical and chemicals. “It is doable.”

# Erixon: TTIP will move to fast track if first results come early

To maintain a high political momentum for the Transatlantic Trade and Investment Partnership (TTIP), negotiators will have to move fast to secure some successes and build the desire for more, said Fredrik Erixon in an interview with EurActiv.



*Fredrik Erixon is a Swedish economist and director of the European Centre for International Political Economy (ECIPE). He spoke to EurActiv's editor-in-chief Daniela Vincenti.*

**Transatlantic trade negotiations are expected to start for real in October. Are we behind schedule and will we be able to have a deal before the end of the term of this Commission?**

Timing is important. While it is impossible to get a deal done in the lifetime of this Commission, US negotiators want

to finish before President Obama leaves the White House. They don't have time to sequence negotiations in the same fashion they might have done in another FTA. They don't have the luxury to negotiate issue by issue. They have to deal with many if not all issues at the same time.

At the same time you need to build a dynamic that can generate quick results, results that will build the momentum for more results. So you start with the low hanging fruits—tariffs is one of them—you get to work on market access issue for industrial goods and merchandises straight away – that is going to be easy ones. Market access issues for agricultural products are more difficult but you deal with all tariff lines that are uncontroversial.

You work on all of them but at the same time you need to start having a conversation on the difficult issues as well.

**What are the uncontroversial areas where they can quickly reach an agreement?**

You have a couple of thousands tariffs lines where tariffs are zero or very low, 1.5-2% . Tariffs like that do not defend anyone from competition. They are just a nuisance. You have that on both sides on, for example, copying machines, electronic devices, lots of commercial goods and some chemical compounds.

There is no secret formula for trade negotiations. If there were, we would have seen the Doha Round being concluded. The point with trade negotiations is that everything is on the table until everything is wrapped up. That is the core guiding principles of trade negotiations.

At the same time you need to advance negotiations so that you can park a couple of issues on the sideline and move on.

As I see it, before Christmas they need to have parked a couple of issues on the sideline and tariffs is going to be one of them, with also two-three sectoral mutual recognition agreements close to the finishing line, in perhaps electrical products, pharmaceutical testing, perhaps something on chemicals.

All of them are doable. It is doable to have some mutual recognition agreements advanced to the point that negotiators feel confident they can park it and move to the next on the list.

**Would you say that Washington better prepared than Brussels in terms of manpower?**

You don't need a lot of personnel to do a trade deal. But you need a lot of people for internal consultation, especially on the EU side, and especially when you deal with regulations.

The member states have a formal conversation between regulatory bodies in 28 member countries.

The main difference between US and EU is that given the internal differences between the member states over trade the Commission does not have the luxury to go line by line, they need to come up with the overall framework, because this is the way you can deflect attention from issues on which individual member states may think this goes too far and are not prepared to go ahead.

So, in order to present a deal that is going to be acceptable to every member states, you need to come up with the final results, you need to have the complete vision there. If you don't have that member states are going to pick on each and every issue.

It is only when they are presented with the 'fait accompli' and final results that they will say yes or no.

**Like cultural exception?**

That one was a sideshow. It didn't have any real meaning at all for the substance of the trade talks. Not even for the French.

**The United States has not come up with its own sideshow yet. What do you think are the potential deal breakers?**

One of the potential deal breakers is GMOs. If there is not going to be any

Continued on Page 10

### Continued from Page 9

change at all on GMOs, it will be difficult to get the deal through the US Congress. Max Baucus, who is the most powerful senator in trade policy, has already said that. No change, no deal.

You can do it transparently or you can do it dirty. The transparent way is to say: we agree on a number of cross-horizontal rules that are going to apply for every regulation that we want to use affecting trade. When, for instance, you are making impact assessments on future regulations you need to take into account different factors. You need to give the high weight of scientific evidence when you design a regulation.

It is not tied to a specific regulation, it is just a generic principle. What you achieve with that is basically finding a way to deal with the GMOs issue.

The GMOs issue in Europe is basically an issue where the precautionary principle stands against scientific evidence. There are cases where there have been recommendations by regulatory authorities to grant either farmers or importers to plant GMOs, but they are using the precautionary principle because science is too uncertain.

What you want to do with such horizontal discipline and regulations is tighten up the decision-making process.

The dirty way of doing it, is basically to cut deals on individual GMO crops for individual European countries. I don't think America would force every country in Europe to open up the market for importers of GMO crops with the understanding that not every country will, but there are also many countries that want to import GMO crops—and they want to plant them themselves. So let's do a deal that is directed with them and not a deal with the EU – find a way around the internal conflicts of the EU.

We have already countries in Europe that have said no to all GMOs and other countries that are importing GMOs. It's not a clean, transparent system, but it is how it is.

#### Enhanced cooperation?

Absolutely. Then you have a couple of external factor on internet regulations and cross border data portability—which could become deal breakers on both sides.

But I think it is mostly the United States that is going to say no to a deal unless they find a situation that at least preserves status quo for US companies to maintain Safe Harbor access to the EU.

But other than that I don't think there are other deal breakers in the sense that they

are going to stop the whole trade agreement.

There are going to be a lot of sensitive issues, but there are ways around them. Agriculture – a couple of products where they either have very high tariffs on both sides or very high subsidies and these tariffs are there to protect competition against each other--- like sugar, meat where tariffs are high and they need to find a way. One way would be to exempt them or have a long-phasing out period until tariffs expire (and progressively lower them during that time).

#### What kind of impact will TTIP have with partners we already have FTA? And who is afraid of TTIP and are they right to be afraid of TTIP?

There are different aspects to this issue. You will find lots of different reactions from other countries: going from almost conspiratorial views coming from some in China, to supportive propositions coming from others. I think most of these fears are not so much about actual trade consequences, but more about power structures and how to deal with trade issues in the future.

To start there are a couple of things both sides can do to take away the fears. One of those could be the United States needs to find a better way to integrate Canada into TTIP. Canada is doing its own FTA with Europe. What's the point of having a NAFTA with Canada and Mexico if you are going to have three different FTAs between these countries and Europe.

Likewise Europe has to speak with countries that are part of the single market or with whom it has a customs union, like Turkey and find ways to have an open dialogue and address some of the concern they have.

The other part is more directed to the emerging market that claim to play a much more significant role in all sorts of all global policies today.

The problem is that they are the ones that have blocked the Doha round. They



**Continued from Page 10**

are the ones that have not been prepared to negotiate a good global trade agreement. They talk with a split tongue. On the other hand they want to see multilateral advancement, but they are the one that have refused to accept liberalisation in the Doha round.

Brazil, India are the two obvious examples. China has been playing not an opposing role in the Doha round, but has been standing on the sideline, claiming to be a recently acceded member states – meaning it acceded after the Doha round was launched as they entered in 2001, so that they took on much more liberalisation than others. So they say: We have done our part, now you have to do your part.

China is the big elephant in the room in terms of providing opposition to TTIP, which may have consequences on the way the EU deals with China.

A third complication is Japan, because the EU is negotiating an FTA with Japan and Japan has recently joined TPP (the Trans-Pacific Partnership). Japan represents such a big part of output and trade in those areas where regulatory convergence is of importance that you just cannot take Japan away from the table.

This is also partly true with China. As China and Japan are not rule takers in the way that other countries are, other economies adjust, but China and Japan go with their own rules and standards.

You need to find a way to coordinate what you are doing with Japan and to some extent China. You have to make sure that whatever you are doing will be compatible with their system.

You are right though on the fact that a trade agreement might not just create new trade but also reshuffle trade among countries.

In this case you take the case of Brazil and meat exporters with the US. The fear here would be that we stop importing from more efficient producers in Brazil and import from less efficient producers in the US. That is going to create a cost and it's not going to be good for us.

A lot of different studies are estimating

the economic consequences of TTIP but they come to very different results. Some would say that trade aversion is significant and others say it is insignificant. It really depends on who you trust the most.

The point is that on areas where you have high tariffs against everyone they have a trade preventive effect. You have a lot of trade now that is going to be diverted because you are doing an FTA with another country.

You are probably going to create more trade than you divert trade. If you look at past examples on GDP level, you find that lots of non-participating countries will benefit from TTIP, simply because if GDP expands in America and Europe they are going to import more from other countries as well.

If you import more electronic goods from America, you are going indirectly import more from South America because this is where a lot of the parts suppliers are.

### **Another thorny issue is the investor-state dispute resolution. Do you really think that can sour moods?**

Investment treaties inside or outside trade agreements we have with countries where we don't trust the legal system of that country to respect fair rules – that is where investor-trade dispute resolution make most sense.

We don't have that problem between Europe and America. You don't need an international tribunal in order to settle disputes. America has a problem with individual countries in Europe where they believe the legal system is ineffective, corrupt.

### **So do you think this is a non-issue?**

Not necessarily. The question whether you should negotiate an investment treaty inside TTIP depends on two facts: Will it actually liberalise something is the first one. Investment treaties you do firstly to get investment protection issues and then open up markets. The other leg of that calculation I am not so sure about.

America is a country which has lots of difficult administrative problems when it comes to foreign investment in certain sectors, when it comes to telecom or maritime sector. I am not so sure you can do a liberalising agreement through Congress, even when it concerns the EU.

This does not prevent foreign investors to purchase assets abroad but it means that America will reserve the right to say no if certain conditions are not met. And these conditions can of course be manipulated for political purposes. We have seen it in the US Congress where you have a Congress-lead tribunal to basically oversee foreign investors in certain sectors.

If you cannot do an investment treaty which is going to have liberalising effects, than the value of having an investment treaty will be low.

The other issue is the extent you can design an agreement which you can externalise with other countries. In other words, can you build an agreement which has the capacity to change the investment relations you have with Turkey, for example.

This could be highly beneficial for the world economy.

Take for example the issue of subsidies. You can restrict subsidies by deciding what it's called competitive neutrality regulations --- any country cannot give a particular advantage to any of its industries to the expense of foreign investors.

The problem is that existing investment treaties are weak on those issues. So it's very difficult for anyone to basically go to one outside tribunal and claim his or her rights when they believe they have been seriously disadvantaged by the government conferring advantages to state and enterprise which changes the value of the investment entirely.

But if you can start a way to advance on this issue, there is a strong case for doing an investment treaty. But I don't see yet the States and the EU ready to do that yet.

Europe has yet to come up with an idea of what it wants to achieve with this investment treaty, partly because there are internal fights between member states. They all have different ideas on what an investment treaty should achieve.

# EU lawmaker: 'TTIP is not a monster'

The budding Transatlantic Trade and Investment Partnership (TTIP) has been wrongly portrayed as a Western conspiracy against China when it would positively impact world trade, says a key MEP ahead of a second round of trade negotiations in Brussels between 7-11 October.

"TTIP is no monster," said Portuguese MEP Vital Moreira (Socialists and Democrats), chair of the European Parliament's international trade committee.

"Not only are there positive externalities, but indirectly it could break down the vicious circle of WTO negotiating capacity," he told EurActiv.

Fears about TTIP boil down to what trade experts call trade diversion, but also the impact that such a massive agreement could have on the world's power structures.

When countries or blocs tear down trade barriers, there is net trade creation that helps support welfare in those countries, but at the same time, trade with third parties has been thought to be diverted. For example, if Europe begins importing more US beef, it will cut down on meat imports from South American countries such as Brazil and Argentina, the argument goes.

But such fears are unfounded, according to Fredrik Erixon, of the European Centre for International Political Economy think-tank.

"You are probably going to create more trade than you divert, and lots of non-participating countries will benefit from TTIP, simply because if GDP (Gross Domestic Product) expands in America and Europe they are going to import more from other countries as well," he said.

## Peer pressure

World trade would thus benefit, and other countries would be pushed to negotiate similar agreements to prevent their isolation, Erixon said.

In Brazil, businesses are becoming more vocal in pushing for a trade liberalisation deal with the EU. The powerful manufacturers lobby, Sao Paulo's Industry Federation Fiesp, said yesterday (26 September) that a free trade agreement between Mercosur and the European Union was badly needed so that Latin America's largest economy could break away from its current "commercial isolation".

"Dealing with the EU is not going to be easy, it will take time. But it will mean climbing out from the isolation we have been in for the last twelve months," said Rubens Barbosa, the head of Fiesp's Foreign Trade Superior Council following a meeting with EU ambassadors in Brasilia.

He pointed out that unlike Mexico and Chile, which have a long list of international trade agreements, Brazil had only signed three in over a decade – with Israel, Egypt

and Palestine.

Ana Paula Zacarias, the EU's ambassador to Brazil, said that both sides were going through "the most sensitive of negotiations" and trusted that improved trade proposals would be presented before 2014.

Zacarias also referred to internal differences in Mercosur (a body that includes Argentina, Brazil, Paraguay, Uruguay and Venezuela) and underlined that "they must find their own path and verify the best proposal they can come up with."

## Stepping stone towards Doha?

International trade rules are widely thought to be out of step with a fast-changing global economy.

Both the TTIP and Trans-Pacific Partnership (TPP) negotiations are being followed closely by the international community for hints of what might be possible in the multilateral arena, João Vale de Almeida, the EU's ambassador in Washington, said in a recent interview.

TTIP's supporters argue that it could allow the advancement of rules-based liberalisation in the absence of progress in the World Trade Organisation (WTO)'s Doha Round. Finding a consensus on thorny issues like agriculture could even break the WTO impasse.

"Governments do have regional or bilateral trade negotiating options," said the newly-appointed director general of the WTO, Roberto Azevêdo, during his inaugural speech. "But I have never heard a trade negotiator from any country say that these options were preferable to a global deal through the WTO. A global deal encompasses more countries and more segments of economic activity than any regional accord could possibly deliver."

Speaking to EurActiv, Wu Hailong, the Chinese Ambassador to the EU, said Beijing was not opposed to the EU-US trade talks. "China is open to new regional cooperation and free trade negotiations which are transparent and inclusive," he said.

"Both the EU and the US are major



Continued from Page 12

economies and key players in the global trading system. I hope to see them proceed with the talks in an open and transparent manner and reach an agreement that helps move forward the current Doha round of WTO talks and the multilateral trading system. The agreement should facilitate the universal growth of the world economy rather than affecting or even undermining other regional and multilateral cooperation,” Hailong added.

### Rule-takers vs rule-makers

To soothe fears that have built up around the TTIP, experts encourage negotiators to be as open as possible, especially with countries that are directly impacted, such as Canada and Mexico, which are members of the North-Atlantic Free Trade Agreement (NAFTA).

Similarly, Europe has to keep in the loop countries that are part of the single market or with whom it has a customs union, like Turkey.

Kemal Kirişci, a Brookings Institute fellow, argued in favour of Turkey’s inclusion in the agreement.

“Countries left outside TTIP and TPP would either have to accept less favorable access to these markets, or would have to adopt the standards laid down by these two partnerships,” he wrote in a recent report.

“Geo-strategically, this means that emerging economies would be left at a disadvantage. Ironically, Turkey, a long standing member of this Western-led international economic order, would also be disadvantaged if not included in TTIP,” he added.

Speaking to EurActiv, Erixon spelt out the risk of shifting power structures in the future global trade order.

“China and Japan are not rule-takers in the way other countries are,” he insisted. “You need to find a way to coordinate what you are doing with Japan and to some extent with China. You have to make sure that whatever you do is compatible with their system,” he said, referring to cooperation on regulatory coherence and standards.

## Beyrer: EU-US trade talks can achieve the impossible

Even though there is no clear roadmap on how to achieve regulatory cooperation - the most difficult chapter in the negotiations for a Transatlantic Trade and Investment Partnership (TTIP) - if there is “full political support, we can achieve what seems impossible”, Markus Beyrer tells EurActiv.



*Markus Beyrer is the director-general of BusinessEurope, the largest European business association. He spoke to EurActiv’s editor-in-chief, Daniela Vincenti.*

### What do you expect from this second round of EU-US trade negotiations?

After this round, we should have more clarity where the problems lie. We expect the US to put on the table their expectations for the deal. The first round one was a general one, but the EU spelled out its concerns and interests. The US could not do it because they were waiting for the assessment by the ITC [which is going to be released this week].

We expect during this second round to know clearly what they want and after this we might come to a list of issues we can work on.

**Analysts say that the first issue to work on is the elimination of tariffs...**

This could be a good starting point. Precisely, we would like to reduce tariffs to zero. We don’t aim for long transitional periods. They are relatively low but there are still peaks, like in textile, so the full elimination of tariffs is important.

### Do you expect some sort of consensus already at the end of this second round?

During the first round, we had the initial positioning of the EU. At the second round, I expect an initial positioning of the US. Then I’d expect the December round to deal with real topics, and then after the December round, we could have a list of real problems to work on.

Let me add on tariffs, we agree with our US partners that on both sides we have a high interest to talk about the global value chain, so this has to be taken into account too in this chapter.

### But TTIP is first and foremost about regulatory coherence. What kind of agreement do we see emerging there?

Of course the regulatory coherence is a big issue of course. A strong regulatory chapter of TTIP would be a genuine “win-win” for business and for governments. This could significantly reduce regulatory compliance burdens for business and improve the time to market for new products. From a regulatory perspective, this would reduce the resource constraints on regulators and enable them to focus on the high risk issue.

Overall, I see more readiness to do it. But I don’t see a clear roadmap, yet.

Our position is that we need an ambitious approach on regulatory cooperation. Regulators of all concerned sectors must also sit at the negotiating table in order to achieve real progress.

There has been one stakeholders’ conference; we think another one might be necessary. Business is working on a joint paper on the cross-sectorial aspects of this regulatory coherence which should be ready between the second and the third negotiation

Continued on Page 14

### Continued from Page 13

round. We should be able to submit this jointly signed by BusinessEurope and the US Chamber of Commerce to the USTR and to the Commission (DG Trade).

**Since you are already working on such a paper, where do you see the most convergence, in which sectors and where the most divisions?**

Let me say that with the full political support, we can achieve what seems impossible. The Commission is without any doubt more open, and we have a full political support, but the devil is in the details. They will have to prove that they have a strong leadership behind it.

**Where do you think there will be the most advances?**

I'm not so much involved in the sectors, but from what I hear they're doing a good job as far as chemicals are concerned, cars, pharmaceuticals.

In both my meetings with the Commission and the USTR, I have had the feeling that they had a way to manage this, so I am reassured.

We have to tackle the existing divergences, meaning we will need regulators for different sectors come to mutual recognition in the best cases, but then we'll have to define a process for the future as well, where we will have to talk about early consultations, maybe even the possibility to defer the process, because if one side would like to regulate on a specific issue, and if the other side wants to do it but six months later, so we would need a framework to make sure we don't drift apart.

**Is there more consensus on that?**

There is acceptance that we should have a system like this. That would be a cornerstone to the deal that will lead to a sustainable transatlantic market place. For the moment there is the acceptance, but no agreement on the way we will achieve it.

As a whole the aim should be to come to

a system to maintain the level of divergence to the lowest level possible.

**Obama administration officials have publicly suggested that they do not want to discuss financial service regulations in the TTIP talks. What is the biggest hurdle there you think?**

The biggest hurdle there is that they have a very difficult legislation which is not fully implemented and it's unclear how far it will affect it, where do they stand and our legislation is not finished either, so it's a mix of political problems and implementation problems.

What we would like to see substantially is a negative list, to be clear on what is excluded – for the services. A negative list with limited exceptions. It should be short and explicit.

**Beyond convergence, public procurement and market access is another crucial element of the proposed deal. Commission figures show that the EU makes €352 billion worth of public procurement contracts open to foreign bidders. By comparison, the US market offers only €178 billion to outside bidders and Japan €27 billion. Will TTIP revert this?**

Public procurement is of prime importance for this agreement. Currently our companies face restrictions due to laws like the "Buy America" Act.

We want greater transparency on its implementation at federal and sub-federal level to establish a level playing field. I'm sure that many American governors who have found this law so challenging to implement will agree that this law cannot be applied to such an integrated Transatlantic industry.

European businesses also ask that commitments for national treatment in procurement are significantly expanded in coverage and go below existing thresholds to ensure transparent access to procurement markets.

It will be difficult for us to sell TTIP in Europe if we didn't make significant progress on this. The argument of the sub-federal level, where states are autonomous, doesn't stand as we had a similar problem in

Canada and it appears it has been solved.

If there's a will, there's a possibility. This is an important point for Europe. Once you have a that signs a deal, take for example Alabama, and Volkswagen is investing there, the neighboring states compare the advantages and what you have is a snowball effect.

**Do you have a sense that we will reach a deal by the end of 2014?**

It's too early to say. Our position is we want it rapidly but not at the expense of the content. Content comes before speed. There will be lots of problems, sectorial approaches, levels of regulation, we will need time.

**EU Trade Commissioner Karel De Gucht said it should be a living document, something you build on. So potentially, you can have the trunk and then add the branches...**

I don't disagree with the concept but it depends on how far reaching is the framework. If the framework is already an ambitious one and we say we have to continue building on regulatory coherence I could think it could be appealing.

## For information on EurActiv Special Reports...

### Contact us

**Delia Nicolaescu**  
events@euractiv.com  
tel. +32(0)2 788 36 72

**Ross Melzer**  
publicaffairs@euractiv.com  
tel. +32(0)2 226 58 17

### Other relevant contacts:

**Rick Zednik**  
ceo@euractiv.com  
tel. +32(0)2 226 58 12

**Frédéric Simon**  
executiveeditor@euractiv.com  
tel. +32(0)2 788 36 78