

## Agriculture, Food and the TTIP: Possibilities and Pitfalls

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### Abstract

Progress in agriculture and food issues in the TTIP talks will largely be determined by the level of ambition in the negotiations as a whole. If ambitions are modest, a low-level agreement could probably be reached that includes some limited commitments on agricultural market access and food regulations. These could include promises of mutual support in the area of opening up agricultural markets through the WTO and of further Transatlantic cooperation in trying to resolve conflicts over food regulations. Bolder ambitions would allow more scope for tackling the difficult problems, though at the cost of time. It would be unfortunate if the opportunity were not taken to make some significant progress in removing some long-standing irritants in the area of agricultural policy and food regulations: this is where the economic gains are likely to be significant and the spill-overs useful. This paper argues the case that it is worthwhile making the effort to secure a constructive and imaginative agreement on agriculture and food regulations in the TTIP. A fairly detailed suggestive list of potential sub-deals in agro-food, supported by the analysis in the paper, is the most concrete one of a series of policy conclusions



This paper is the third in a special series of CEPS reports on the Transatlantic Trade and Investment Partnership (TTIP) and the first paper in the “TTIP in the Balance” project, jointly organised by CEPS and the Center for Transatlantic Relations (CTR) in Washington, D.C. It is published simultaneously on the CEPS ([www.ceps.eu](http://www.ceps.eu)) and CTR websites (<http://transatlantic.sais-jhu.edu>). For more information about the project, please see the penultimate page of this paper.

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**Tim Josling and Stefan Tangermann\***

**CEPS Special Report No. 99 / December 2014**

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## Introduction

Agriculture is always a difficult area in trade negotiations. The US and the EU have butted heads on the issue of market access and export subsidies for 50 years, as each tries to protect its own farm interests and farm programmes. However, a combination of domestic reforms, WTO constraints and firmer world market prices has reduced the gap between US and EU farm product prices and led to a possible opening up of trade across the Atlantic. Food trade issues are also tricky: countries are hesitant to change engrained regulatory habits. In the last 20 years there have been significant disagreements between the US and the EU over food regulations, and in particular food safety standards. In some instances there has been convergence of standards; in other areas the differences in regulations and standards appear unbridgeable. Moreover, the differences in food safety regulations have played into the public debate about TTIP, narrowing the room for flexibility, particularly on the side of the EU. But with the extensive development of supply chains in the food industry, the need for more cohesion in food safety and food quality rules is becoming increasingly urgent.

The progress in agriculture and food issues in the TTIP talks will largely be determined by the level of ambition in the negotiations as a whole. If ambitions are modest, a low-level agreement could probably be reached that included some limited commitments on agricultural market access and food regulations. These could include promises of mutual support in the area of opening up agricultural markets through the WTO and of further transatlantic cooperation in trying to resolve conflicts over food regulations. Bolder ambitions would allow more scope for tackling the difficult problems, although at the cost of time. It would be unfortunate if the opportunity were not taken to make some significant progress in removing some long-standing irritants in the area of agricultural policy and food regulations: this is where the economic gains are likely to be significant and the spill-overs useful. This paper will make the case that it is worthwhile making the effort to secure a constructive and imaginative agreement on agriculture and food regulations in the TTIP.<sup>1</sup>

## 1. Agriculture and food in transatlantic trade

To put the agricultural issue in perspective, it is useful to review the extent and nature of transatlantic trade flows in agriculture and food products and the tariff and non-tariff barriers that exist. These non-tariff barriers mainly reflect differences in food regulations and standards,

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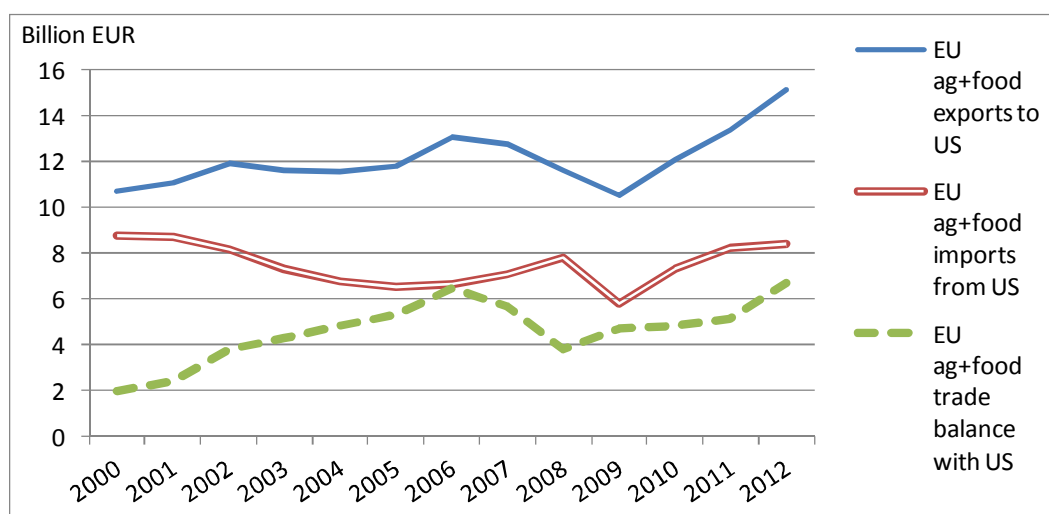
<sup>1</sup> For a detailed discussion of the 50-years history of agricultural trade relations between the US and the EU and implications for the TTIP negotiations, see Josling & Tangermann (forthcoming).

and have attracted public attention beyond their economic significance. The TTIP agenda in agriculture will reflect the balance between the economic interests of the US and the EU in these areas and the extent to which each of the negotiating partners have room to make accommodating changes to policies.

## 1.1 Trade flows in agricultural and food products

The value of transatlantic trade in food and agricultural products (chapters HS 1-24 of the tariff code) has been increasing modestly over the past 20 years mainly as a result of increased exports of food and beverage products. Trade values slumped a little with the economic downturn in 2007-08 but the expansion of trade has been rather rapid since 2009, reaching \$23 billion in 2012. The EU has generally exported more agricultural and food products to the US than it imports from that source, and now shows a surplus of \$9 billion on transatlantic agricultural and food trade (see Figure 1). Much of this surplus is accounted for by buoyant exports of beverages and spirits and of processed foods. EU producers have been reasonably successful in gaining access to the US market, up 48% since 2000. Although the importance of the US as a trading partner in agriculture and food for the EU is somewhat less than it is for total merchandise trade, the US remains the largest single export market for the EU's agriculture and food industry.

Figure 1. Food and agricultural trade between the EU-27 and the US, 2000-12



Source: Josling & Tangermann (forthcoming).

With respect to food and agricultural imports into the EU, the US is a relatively minor supplier (only 8%) of EU food and agricultural imports. The US trails well behind Brazil as a source of the EU's food and agricultural imports: Brazil sells 70% more agricultural and food products to the EU than does the US. Correspondingly, the EU is a relatively unimportant market for US agricultural and food exports. Moreover, the importance of the EU as an agricultural trading partner for the US has declined steadily over time with the growth of markets in Asia: the 'pivot to Asia' has certainly taken place in US agricultural trade. US exporters to the EU of food and agricultural products have found themselves with a stagnant market for the past decade, down 6% since 2000. This difference between the US and the EU in the significance of

transatlantic agricultural trade could prove an important aspect of the political backdrop to the TTIP negotiations.<sup>2</sup>

Certain types of food and agricultural products dominate these trade flows. By far the largest item in the EU's exports of agricultural and food products to the US is accounted for by beverages and spirits (HS 22), where EU exports of spirits, wine and beer figure most prominently (and in that order).<sup>3</sup> That sector makes up one-half of all EU food and agriculture exports to the US. No other sub-sector in the field of food and agriculture (at the 2-digit HS level) accounts for more than 6% of the EU's transatlantic food and agricultural exports.<sup>4</sup> The largest category of imports into the EU in food and agriculture trade from the US is edible fruit and nuts (HS 08), such as almonds and walnuts, followed by oilseeds and oleaginous fruit (HS 12) including soybeans. These two subsectors represent 18% and 16% respectively of the total of all EU imports from the US in the food and agriculture sector, and are more important than beverages and spirits (14%), and cereals (6%). The difficulties in selling genetically modified (GM) products in Europe has been in part a cause of the slow growth, but as significant has been the success of Latin America in providing bulk commodities to Europe.

One might expect in such a two-way trade pattern that there would be significant trade flows in both directions within each individual product sector, at least for processed foods that are less homogeneous than raw agricultural commodities. This 'intra-industry trade' could be as politically significant as trade among sub-sectors. One widely-used measure of the extent of intra-industry trade is the Grubel-Lloyd index (Grubel & Lloyd, 1975). That index lies between 1, indicating that all trade in the sub-sector concerned is of an intra-industry nature, and zero, signalling that there is no two-way trade flow within the sub-sector concerned. The Grubel-Lloyd index for EU-US trade in food and agricultural products (at the level of 2-digit HS product groups) is presented in Table 1, where product sectors are arranged in decreasing order of their share in total EU-US trade.<sup>5</sup> The Grubel-Lloyd index shows that for the nearly all of the most important product sectors in agricultural and food trade between the EU and the US (including the major trade flows in the beverages sector) there is relatively little intra-industry trade. Major exceptions are three rather heterogeneous product sectors (animal or vegetable fats and oils; miscellaneous edible preparations; preparations of vegetables, fruit, nuts) where such inter-industry trade is to be expected.

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<sup>2</sup> This raises the question as to whether it is successful exporters who take the lead in trade negotiations or those who are frustrated by slow growth in certain markets. One assumes that exporter concerns focus on import barriers into potentially lucrative markets.

<sup>3</sup> Trade shares reported here relate to the average of 2010-12.

<sup>4</sup> For convenience we use 'transatlantic' to refer to US-EU trade and not trade between the EU and Canada.

<sup>5</sup> That share is defined as the percentage of EU exports to the US plus EU imports from the US of the product sector concerned in the aggregate of all EU exports plus imports in food and agriculture in trade with the US, for the average of 2010-12. Table 1 contains all product sectors where that percentage is 3% or more. The broad definition of the sectors might lead one to expect that relatively high degrees of intra-industry trade would be found.

Table 1. Intra-industry trade in major EU-US trade flows in the food and agriculture sector

| HS | Product sector                                   | Grubel-Lloyd index | Share in total EU-US agricultural and food trade |
|----|--|--------------------|--|
| 22 | Beverages, spirits and vinegar                   | 0.273              | 35.6%  |
| 08 | Edible fruit and nuts etc.                       | 0.157              | 7.0%   |
| 12 | Oilseeds and oleaginous fruits etc.              | 0.226              | 6.5%   |
| 15 | Animal or vegetable fats and oils etc.           | 0.624              | 4.5%   |
| 21 | Miscellaneous edible preparations                | 0.983              | 3.8%   |
| 20 | Preparations of vegetables, fruit, nuts etc.     | 0.587              | 3.7%   |
| 23 | Residues and waste from the food industries etc. | 0.308              | 3.3%   |
| 04 | Dairy produce, birds' eggs etc.                  | 0.165              | 3.3%   |
| 18 | Cocoa and Cocoa preparations                     | 0.101              | 3.1%   |
| 19 | Preparations of cereals etc.                     | 0.229              | 3.0%   |

Source: Authors' own calculations.

On this basis it might appear that in the agriculture and food sector the US and the EU are primarily engaged in trade where the respective exporter has a clear comparative advantage, i.e. where there is not much of an issue of competition between these trading partners but rather the less-contentious trading relationship of complementarity. However, the existing structure of trade is the result of the current regime of trade and regulatory policies – i.e. of precisely the policies that are set to be liberalised and harmonised as a result of the TTIP. So the low degree of intra-industry trade could be interpreted as an indication of a potential for an increase in such trade if barriers could be reduced.

## 1.2 Tariff barriers

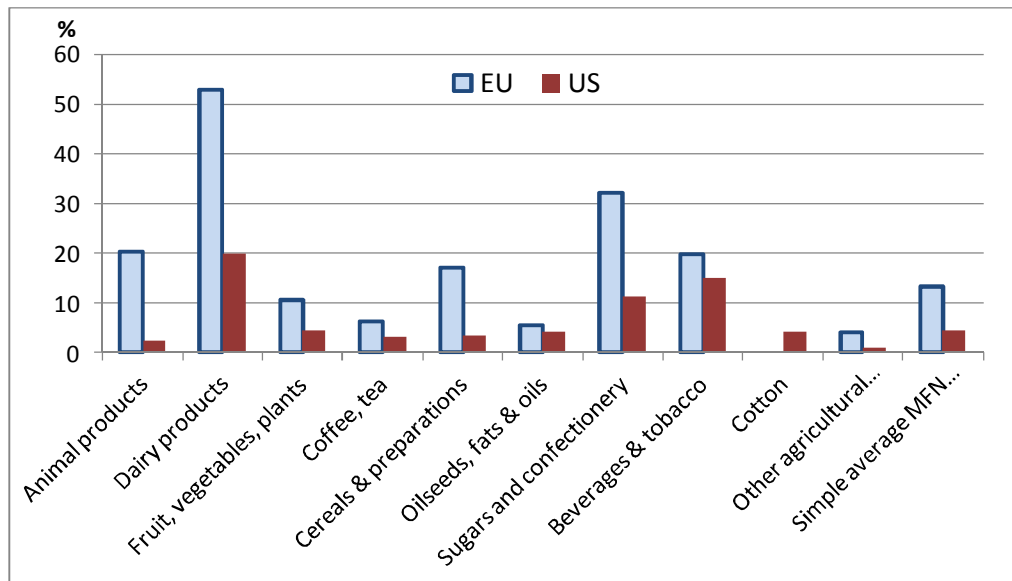
As a result of many rounds of multilateral trade negotiations, tariff barriers on transatlantic trade are already relatively low. Average trade-weighted tariffs on imports into the US stand at 4.7%: the corresponding average tariff for the EU is 6.4%. Even in the case of agriculture and food products, the average MFN tariff applied on all agricultural and food products by the US is only 3.9%.<sup>6</sup> In the EU, the average tariff is more than double that figure, at 8.6%, but even that appears reasonably low compared to agricultural tariffs in other countries. However, these averages hide significant tariff peaks in sensitive products (agriculture, textiles, beverages, etc.). Figure 2 shows tariff profiles across individual product groups within agriculture. The EU maintains a tariff level above 50% to protect dairy products, above 30% in the sugar and confectionary sector, and around 20% for animal products as well as for beverages and tobacco. In the US, tariffs are highest in dairy products, beverages and tobacco and sugar. In all product sectors, with the exception of cotton (where EU output is close to zero), EU tariffs are considerably higher than those of the US.

Moreover, trade-weighted tariff averages tend to under-represent these tariff peaks as import volumes of such products tend to be small. And the average includes those tariffs in agriculture (at the 6-digit HS level, MFN applied) that are already duty free, accounting for 30.7% of tariffs in the US and 31.2% of tariffs in the EU 31.2%. High tariffs themselves are somewhat unevenly distributed: tariffs above 15% are found in only 5.3% of all agricultural product categories in the US, while in the EU 26.2% of all product categories in agriculture have tariffs above that level.

<sup>6</sup> Source of tariff information discussed here is WTO, ITC and UNCTAD (2013), as well as European Parliament (2014).

This disparity is even more apparent if one examines more disaggregated information on tariff levels: this is more likely to identify the so-called 'sensitive' products that can pose particularly potent political problems. Some of the levels that these mega-tariffs can attain are shown in Figure 3.<sup>7</sup> The dairy sector in the EU is protected, for example, by a mega-tariff of up to 600% and in other agricultural sectors there are four cases of tariffs above 100%.<sup>8</sup> In the US, the highest tariff, at 350%, is found in the beverages and tobacco sector, and there are two other sectors with a tariff above 100%.<sup>9</sup> Thus, the common view that tariffs, including those for agricultural products, will not be a major obstacle in the TTIP negotiations may be somewhat premature. Free bilateral trade will cause some disruption. There will be a request for long transition periods and safeguards for sensitive products (Trachtenberg, 2012). The political economy of trade negotiations will be fully on display as interest groups, from sugar, beef and dairy to fruits, nuts and vegetables, will play their cards. The dilemma for trade negotiators will be whether to exclude sensitive sectors that are protected by high tariffs, so as to avoid the talks getting bogged down, or to hope that lofty ambitions will carry enough weight to overcome sector resistance.

Figure 2. EU and US tariff profiles in agriculture: MFN applied duties



Source: WTO, ITC & UNCTAD (2013).

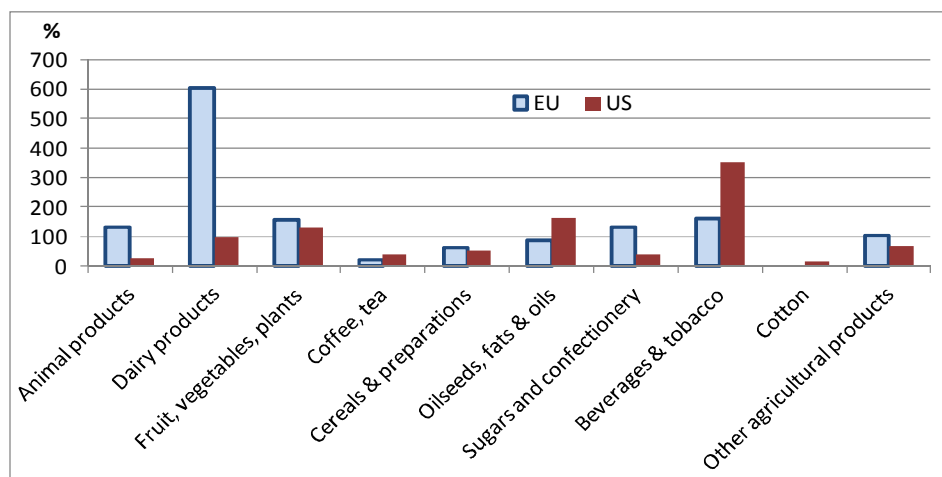
<sup>7</sup> It should be noted that the vertical axis of Figure 3 extends to much higher tariff levels than that of Figure 2.

<sup>8</sup> Mega-tariffs are often specific tariffs, and their estimated *ad valorem* equivalent depends on the import price assumed. This is one reason why alternative sources report different levels of maximum (*ad valorem* equivalent) tariffs.

<sup>9</sup> It is also worth noting that mega-tariffs of such orders of magnitude are an exclusive agricultural phenomenon. Outside the agricultural sector, the highest tariff rate reported for the EU is 26% (in the product group fish & fish products), and that for the US is 55% (in the group leather, footwear, etc.).



Figure 3. EU and US tariff profiles in agriculture: maximum applied MFN duty within the respective product group



Source: WTO, ITC & UNCTAD (2013).

### 1.3 Non-tariff trade impediments

Even though it may be difficult to approach complete tariff elimination in agricultural trade between the US and the EU, the biggest hurdle in the trade part of the TTIP negotiations is reduction of the trade barriers resulting from non-tariff measures (NTMs).<sup>10</sup> However, this is also the element that can generate the largest benefits. Thus it will be crucially important to find an effective way forward in dealing with the many NTMs, both at and behind the border, that result from diverging regulatory approaches used in the two entities. In many cases these NTMs stand in the way of harmonious trade relations across the Atlantic, and in a number of instances they have caused, and continue to cause, serious acrimony and legal disputes in the WTO. Though NTM issues cause difficulties in US-EU trade relations across the board in all sectors, they are particularly pronounced and troublesome in the agriculture and food sector, where particular problems result from health and safety (Sanitary and Phytosanitary – SPS) measures.

The main impetus behind dealing with NTMs will come from the US. Agricultural businesses in the US want a number of long-standing regulatory issues with the EU resolved. They perceive these as the major impediments to market access. These include the use of growth additives in livestock, methods of pathogen reduction in slaughterhouses and approval of genetically modified varieties of corn and soybeans (Grueff, 2013).<sup>11</sup> But not all the offensive interests are on one side of the Atlantic. Agricultural and food producers in the EU would like better access to the US market, specifically for dairy products and meats. As EU milk quotas are abolished, the need to find overseas markets for cheeses and other high-value dairy products will increase. Moreover, the EU would like more protection for geographical indications (GIs) in the US, for cheese and for specialty meats (as well as wines), an issue that has led to stalemate in the context of the TRIPS negotiations.

<sup>10</sup> The value of removing non-tariff barriers to trade is notoriously hard to quantify. As shown below, studies find considerable economic benefits from the harmonisation of regulatory measures in the transatlantic marketplace, benefits that by far exceed those resulting from tariff elimination.

<sup>11</sup> GM crops are approved for sale on the EU market only after an extensive scientific investigation as to their safety to health and the environment. The slowness of this process was at the root of a WTO challenge by the US on the EU's biotech approval process.



## 2. Estimates of benefits from TTIP

A number of recent studies have aimed at estimating the potential quantitative impacts of a TTIP on variables such as GDP, trade and output in the US, the EU and third countries.<sup>12</sup> These models include agriculture, although often at a highly aggregated level. Most of the studies have employed some type of a computable general equilibrium (CGE) model for the analysis, representing the whole economy, disaggregated into several sectors, and including all important feedback mechanisms, in particular linking income generation with expenditures for both consumers and governments. In the models a number of individual countries are identified, in particular the US and the EU, while the rest of the world, closing the global model, is often treated as one country.

As one might expect, results differ from study to study, depending on factors such as the structure of the model and its parameters, underlying data, the baseline assumed (in the absence of TTIP) and the scenarios considered. A study by Fontagné, Gourdon and Jean (2013) conveys the types of impacts of agricultural trade liberalisation suggested by such models, and their orders of magnitude. The modelling framework used in that study is dynamic, generating future time paths for all variables. The results shown below are those for the year 2025, expressed as percentage deviations from the baseline (in which no TTIP is assumed), in constant prices.

### 2.1 Impact on trade flows

Estimated impacts on bilateral trade flows are summarised in Table 2, for the 'reference' scenario, assuming a complete phasing out of all tariffs, and a 25% cut in the trade restrictiveness of all NTMs, for all sectors of the US and EU economies. The impacts of liberalising trade between the US and the EU are found to be significant: bilateral trade between the US and the EU would increase by around half overall, indicating the extent to which current barriers prevent the transatlantic trade potential from being fully tapped. As the highest trade barriers in both the US and the EU are currently found in agriculture, agricultural trade flows are estimated to expand significantly in both directions, by 150% and more. The estimated strong expansion of bilateral trade within a US-EU free trade area (FTA), indicating a potential for large trade creation, might be expected to result in considerable trade diversion at the expense of third countries, as their exports to the US and the EU would no longer be so competitive. Yet, perhaps surprisingly, the authors find that trade diversion would be rather small under a TTIP, with US and EU trade flows from and to third countries declining by less than 3%.

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<sup>12</sup> See, for example, Ecorys (2009 and 2012), Felbermayr et al. (2013), Fontagné et al. (2013), Francois et al. (2013), Kinnman & Hagberg (2012) and European Parliament (2014).

Table 2. Estimated impacts of TTIP on bilateral trade flows ('reference' scenario percentage deviation from baseline in 2025)

| Exporter                   | Importer | Total | Agriculture | Industry | Services |
|----------------------------|----------|-------|-------------|----------|----------|
| <b>Transatlantic trade</b> |          |       |             |          |          |
| US                         | EU27     | 52.5  | 168.5       | 66.4     | 14.0     |
| EU27                       | USA      | 49.0  | 149.5       | 61.8     | 24.0     |
| <b>Other trade flows</b>   |          |       |             |          |          |
| US                         | RoW      | -1.4  | -1.9        | -1.3     | -1.6     |
| EU27                       | RoW      | -1.4  | -0.4        | -1.4     | -1.4     |
| RoW                        | USA      | -2.5  | -0.8        | -2.8     | -0.7     |
| RoW                        | EU27     | 0.2   | -1.5        | 0.1      | 0.6      |
| EU27                       | EU27     | -1.2  | -2.6        | -2.3     | 2.8      |
| RoW                        | RoW      | 0.1   | -0.0        | 0.2      | 0.2      |

Note: RoW refers to the rest of the world.

Source: Fontagné et al. (2013).

The study also estimated the impact of the components of the tariff and NTM package separately. These results are summarised in Table 3, for the 'reference' case and four alternative policy scenarios. In the 'tariffs only' scenario, only tariffs are phased out. Under 'targeted NTM cuts', NTMs that are more restrictive than the median of the respective sector (agriculture, industry, services) are reduced by 30%, while the remaining ones are cut by 15%. The scenario 'harmonisation spillovers' looks into the benefits that third countries may reap as they find it easier to deal with harmonised standards in the US and the EU, and in this scenario the authors assume that the trade restrictiveness of NTMs maintained by the US and the EU vis-à-vis third countries is reduced by 5%.<sup>13</sup>

Table 3. Estimated impacts of TTIP on US and EU real income and exports for alternative scenarios (percentage deviation from baseline in 2025)

|                    | Alternative scenarios |              |                   |                          |             |
|--------------------|-----------------------|--------------|-------------------|--------------------------|-------------|
|                    | Reference             | Tariffs only | Targeted NTM cuts | Harmonisation spillovers | Ecorys NTMs |
| <i>Real income</i> |                       |              |                   |                          |             |
| US                 | 0.3                   | 0.0          | 0.3               | 0.5                      | 0.2         |
| EU27               | 0.3                   | 0.0          | 0.2               | 0.5                      | 0.1         |
| Rest of world      | -0.1                  | 0.0          | -0.1              | 0.1                      | 0.0         |
| <i>Exports</i>     |                       |              |                   |                          |             |
| US                 | 10.1                  | 2.1          | 10.4              | 14.5                     | 5.4         |
| EU27               | 2.3                   | 0.4          | 1.9               | 3.4                      | 1.3         |
| Rest of world      | -0.3                  | -0.1         | -0.3              | 0.9                      | -0.2        |

Source: Fontagné et al. (2013).

## 2.2 Trade impacts of NTMs

It is difficult to provide a quantitative overview of the significance of NTMs. Anecdotal evidence of particularly notable cases helps to foster an impression of the nature of the

<sup>13</sup> For a more recent and more detailed discussion and analysis of such spill-over effects, see Lejour et al. (2014).

problem, but the amount of trade displaced is more difficult to calculate. The most important conflicts in agricultural trade between the US and the EU revolve around regulatory differences, and the attention given to them indicates the weight of the issues the TTIP negotiations on NTM matters will have to deal with. Yet, there are many more barriers of this type that would require action if trade across the Atlantic were to be truly liberalised.<sup>14</sup> To what extent do these NTMs impact on trade flows, compared to the incidence of tariffs?

One way of trying to make information on NTMs comparable to tariff information is by estimating their price impact. Where a given NTM acts as an effective barrier to imports, the domestic market price of the product concerned in the importing country is kept above the international market price (where necessary corrected for a relevant tariff). The resulting price gap, expressed as a percentage of the international price, provides a yardstick of the NTM's price impact that is directly comparable to an *ad valorem* tariff.<sup>15</sup> Aggregate results for the whole food and agriculture sector, as well as for manufacturing and services, reported in two different studies are presented in Table 4, along with average tariff levels in the agriculture and food sector. Even though the two studies (Ecorys, 2009; and Fontagné et al., 2013) arrive at somewhat different estimates for NTMs, they both agree on three interesting findings.<sup>16</sup> First, in agricultural and food trade between the EU and the US, NTMs result in higher trade barriers than tariffs prevailing in that sector. Second, trade barriers resulting from NTMs are higher in the food and agriculture sector than in manufacturing and services.<sup>17</sup> Third, while tariffs in agriculture and food are higher in the EU than in the US, NTMs in that sector are more pronounced in the US than in the EU.<sup>18</sup>

Table 4. Estimates of *ad valorem* equivalents of NTMs and tariffs in the sector of agriculture and food in the EU and the US

|   | EU    | US    |
|---|-------|-------|
| NTMs: Fontagné et al.                                 | 48.2% | 51.3% |
| NTMs: Ecorys  | 56.8% | 73.3% |
| Tariffs in agriculture:<br>simple average MFN applied | 13.2% | 4.7%  |

Sources: Ecorys (2009); Fontagné et al. (2013) and WTO, ITC and UNCTAD (2013).

### 3. Possible modalities for the negotiations

The way in which the US and the EU have negotiated agricultural and food issues in other bilateral agreements suggests the likely modalities for the TTIP. The US and EU trade

<sup>14</sup> For a list of relevant NTMs in trade between the EU and the US, based on various sources, including an extensive business survey, see Ecorys (2012).

<sup>15</sup> There are, however, alternative and more complex approaches to estimating *ad valorem* equivalents of NTMs. For studies applying such alternative approaches, see for example Ecorys (2009).

<sup>16</sup> The 'Ecorys NTMs' scenario, finally, is identical to the 'reference' scenario, except that the Ecorys estimates of NTM restrictiveness in the US and the EU are used instead of those estimated by Fontagné and his colleagues (see Table 4).

<sup>17</sup> Alternative studies yield different results in this regard. For example, Francois et al. (2013) find that NTMs are highest in the sectors of cars and chemicals, followed by processed foods.

<sup>18</sup> Using data at a more disaggregate level, another study finds the tariff equivalent of NTMs to vary considerably across individual products within the food and agriculture sector (Felbermayr et al., 2013). It also finds, contrary to the studies cited above, that tariff equivalents of NTMs in the EU are higher than those in the US, where estimates are available for both entities.

negotiators have accumulated ample experience with negotiating agricultural provisions in FTAs, and there are many other such agreements that provide examples.<sup>19</sup> A general overview and a few concrete examples from existing FTAs will suffice to illustrate some of the major elements that trade diplomats find on the FTA negotiating table, and the room for maneuver they can potentially use.

### 3.1 Negotiations on market access

A significant part of FTA negotiations traditionally deals with tariff cuts. The simplest techniques of cutting tariffs in an FTA is to establish a timeline over which tariffs on bilateral trade would go to zero. Products are often grouped into categories, depending on whether the tariffs are to disappear immediately on the FTA coming into force or over a specified time-period. Many agricultural and food items could be liberalised on such a schedule. But in the case of particularly sensitive sectors, several options are available for introducing modalities specific to agriculture. One of these is exclude some agricultural lines from the duty-free treatment.<sup>20</sup> As was shown above, there are several sectors, including dairy products and sugar, where high tariffs are found in both the US and the EU. The existence of these ‘sensitive’ products in the agricultural sector, often protected by mega-tariffs, is the major reason why most regional trade agreements (RTAs) do not achieve complete tariff elimination on all agricultural products. For example, the EU’s RTA with South Africa, in force since 2000, foresees zero duties on the EU side for no more than 73% of all agricultural tariff lines; the RTA between the EU and Korea, on the other hand, in force since July 2011, provides for zero duties for imports into the EU on 97.9% of all tariff lines in agriculture (WTO, ITC & UNCTAD, 2013). Under the RTAs the US has with Chile and Morocco, the US is committed to apply zero duties to 100% of the agricultural tariff lines, while in the case of its RTA with Peru that share is 97.1% (WTO, ITC & UNCTAD, 2013). One notable exception is that in the FTA with Australia sugar was excluded altogether from the tariff elimination commitment.

A second option that can be used in FTA negotiations over agriculture is the length of the transition period over which tariff cuts are phased in.<sup>21</sup> Obviously, where tariff elimination is considered politically difficult, a longer transition period can be used to attenuate some of the pain. Fulponi et al. (2011) have analysed 55 selected RTAs and found that on aggregate they provided for duty-free treatment of slightly more than 90% of all tariff lines in agriculture, although that level is on average reached only after a transition period of somewhat more than 15 years. Within the product groups of dairy and sugar, however, only 72% of tariff lines were agreed to see complete tariff elimination in this set of RTAs. The US regularly uses the device of categorising products into categories, where one category is liberalised on signing and other categories reach zero tariffs over different lengths of time. Eventually these transition periods end, and the degree of certainty given by such reduction schedules is itself a useful signal for investors and farmers.

A third relevant option regarding ‘sensitive’ products is to agree on tariff cuts for only limited quantities of imports, implemented through **tariff rate quotas** (TRQs). For example, under its

<sup>19</sup> For a more comprehensive overview of the treatment of agriculture in existing FTAs, see Fulponi, Shearer and Almeida (2011) and the literature referenced there.

<sup>20</sup> GATT Article XXIV:8(b) requires that duties are eliminated “on substantially all trade” between the partner countries in an FTA. Although often discussed, a legal definition of which share of trade constitutes “substantially all the trade” has never been agreed.

<sup>21</sup> In this context, GATT Article XXIV(5c) speaks of a “reasonable length of time”, which the Understanding on the interpretation of Article XXIV of the GATT says “should exceed 10 years only in exceptional cases”.

FTA with Egypt, the EU applies TRQs to the importation of 34 agricultural products, while the US-Australia FTA specifies TRQs for imports of 17 agricultural products into the US (Fulponi et al., 2011). An important consideration in negotiating TRQs is whether the import quantities concerned can grow over time, and at which rate. After all, if the TRQ provides for sufficiently fast expansion of the preferential quantity, then it can eventually become equivalent to an unconstrained tariff cut.

Fears that trade liberalisation might result in import surges and consequent pressure on domestic farmers have led negotiators of some FTAs to include “special agricultural safeguards” in the agreements, based on price and/or quantity triggers. Fulponi et al. (2011) found several examples in their sample of 55 FTAs, including all six FTAs involving the US. Fundamentally the nature of these safeguards often resembles that of the Special Safeguards Provisions in the WTO Agreement on Agriculture, although the specific details and parameters vary considerably. The applicable product lists also vary from case to case, although livestock, dairy, poultry, and fruits and vegetables are frequently covered. The remedies allowed also vary, including the option to halt tariff reductions or even to revert to the MFN tariff. Typically, however, the special safeguard provisions expire when the FTA has reached the end of its transition period. Even though special safeguards may create some uncertainty for trade flows, if they allow agreement on deeper and faster tariff cuts in an FTA they could help in completing the negotiations. Many agreements also contain provisions for general trade remedies, i.e. anti-dumping and countervailing duty measures. They tend to make reference to the general rules under the GATT, but also sometimes modify them for trade within the FTA.

### 3.1.1 *Rules of origin*

Since partners of an FTA typically want to avoid trade deflection, i.e. re-routing of imports from third countries through the FTA partner with the lowest tariff, rules of origin (ROOs) are also an important element of FTAs. Partners of an FTA maintain, contrary to those of a customs union, their national MFN tariff schedules applicable to imports from third countries. There is, hence, an incentive to re-route imports into an FTA partner with a high MFN tariff through the territory of an FTA partner with a lower tariff. Such trade deflection would effectively undermine the tariff protection maintained by the high-tariff partner. In order to prevent this from happening, FTAs require that goods imported into any of the partner countries must, in order to qualify for duty-free treatment, originate wholly or primarily inside the FTA. It is reasonably straightforward to define what “wholly” should mean in this context. However, many goods contain intermediate products (including agricultural commodities) imported from third countries. With a growing tendency for value chains to be extended across several countries, there are more and more products that include components imported from anywhere in the world, including of course from countries outside the FTA. Under these conditions it is a matter for negotiation to define which criteria must be fulfilled for a product to be considered to originate “primarily” from inside the FTA. Resolution on the question of ROOs can require considerable negotiation. The outcome will however be important to the relevance of the TTIP to agricultural and food trade (see Box 1).

When deciding on the design of ROOs in the food and agriculture sector, it is worth remembering two implications for the functioning of markets which result from the fact that many agricultural products are so homogeneous in nature that their origin is essentially irrelevant. This means that, first, imported produce can replace the domestically produced output in consumption, with the result that an FTA country can (theoretically) export all its domestic output to the partner country, fully meeting even the most stringent ROO requirements. Where that is the case, no ROO can effectively exclude trade deflection (Josling,



1993 and 1997). Second, where the partner countries of an FTA are on aggregate a net exporter of a given product, the price of that product will in any event be at the world market level and not reflect tariffs that any partner maintains vis-à-vis third countries. In that case, trade deflection is not an issue, and no ROO for the product concerned will be effective in providing protection to its producers inside the FTA.

*Box 1. ROOs and EU FTAs*

When negotiating the ROOs for TTIP, two fundamental issues are relevant. First, the overall 'philosophy' needs to be chosen, in the sense that decisions are required as to how restrictive or liberal the US and the EU want the ROO to be. That philosophy will determine the criteria to be set for all the individual products, but it would also be reflected in a number of more general rules. In particular, most ROOs include a tolerance/*de minimis* clause specifying that inputs from third countries are allowed as long as their share in the value of the final product is below a given threshold, even where these third-country inputs would otherwise exclude the product concerned from preferential treatment. In most FTAs, that threshold is in the range of 7% to 10% (Donner Abreu, 2013). In the EU-South Africa FTA, however, it is generally set at 15%, but reduced to 10% for some agricultural products. Lower-than-the-generally-applicable thresholds are also set for certain agricultural products in many other FTAs. In the TTIP negotiations, the US and the EU could consider setting an example by agreeing on a comparatively high *de minimis* threshold, including for all agricultural products.

Such a 'liberal' philosophy for ROOs could also include exemption from otherwise applicable rules where MFN tariffs meet given conditions. In particular, it could be agreed that ROO requirements do not apply to products where the difference between MFN tariffs of the US and the EU does not exceed a given margin, say five percentage points. The reasoning behind such an approach is that ROO requirements are not needed where the cost of trans-shipment through the partner country is higher than the difference in MFN tariffs. Given the geographical distance between the US and the EU, trans-shipment through the partner territory is rather costly, and hence the acceptable margin between their MFN tariffs could also be set at a reasonably generous level.

Another expression of a liberal 'philosophy' behind ROOs is the degree of flexibility provided to producers. For example, a free choice could be allowed between two alternative criteria, say between a change in tariff classification and a minimum share of value added.

A second fundamental choice for ROOs is the scope for so-called 'cumulation'. It is typical for ROOs in FTAs to allow cumulation of inputs and value added across all FTA members when determining whether the product concerned has originated inside the FTA. Moreover, several FTAs also allow for 'diagonal' cumulation, i.e. inputs originating in third countries that benefit from some form of preferential treatment by the FTA partners. The EU has spearheaded the inclusion of such diagonal cumulation principles in its FTAs, in particular in its 'PanEuroMed' system of trade preferences with countries in the Mediterranean basin, but also in many of its other preferential schemes (Donner Abreu, 2013). The US also makes use of diagonal cumulation in several of its FTAs.

It would appear only natural for a TTIP agreement to allow for diagonal cumulation to include all countries with which both the US and the EU have FTAs, and also those developing countries to which both the US and the EU have extended unilateral preferences under the GSP regime. In a way, this would be a generalisation of the suggestion to exempt products from ROO requirements where the difference between MFN tariffs of the US and the EU does not exceed a given margin: that criterion could be applied not only to MFN tariffs but also to preferential tariffs that the US and the EU charge on imports of a given product from the country concerned.

## 3.2 Negotiations on subsidies

Agricultural subsidies have been a large part of the contentious trade relations between the US and the EU over the years (Josling & Tangermann, forthcoming). In the context of the TTIP it is useful to separate out subsidies given on exports from that given to domestic producers through various farm programmes. The former is a more likely candidate for inclusion in a TTIP agreement.

### 3.2.1 Export subsidies

As export subsidies for agricultural products are still legal, within given constraints, under the Agreement on Agriculture (AoA), they could potentially also be used to distort trade flows between partners of an FTA. That is why many FTAs require the elimination of subsidies on within-FTA exports, although sometimes only after a phasing-out period. Some FTAs also contain provisions aimed at avoiding distortions caused by subsidised exports from a third country to one of the FTA partners. NAFTA, for example, allows the US and Canada to subsidise exports of certain products to Mexico if Mexico imports products from third countries that subsidise their exports.

### 3.2.2 Domestic subsidies

Domestic subsidies pose an interesting problem for FTA negotiations. In principle, like in the case of export subsidies, partners of an FTA may well have an interest in seeing domestic subsidies on intra-trade disciplined so as to avoid distortions. However, it is technically difficult, if not impossible, to cut domestic subsidies to only that part of output that will be exported to an FTA partner country: once output has left the farm gate, it can go anywhere. Hence, if FTA partners wanted to discipline domestic subsidies, the only feasible way to do so is to constrain them for all of domestic output. As this is precisely what is being dealt with in the WTO negotiations on agriculture, the conventional wisdom is that discipline on domestic subsidies can be agreed only at the multilateral level. This is probably also the reason why nearly all FTAs are essentially silent on domestic subsidies (except for remedies, see below). As a matter of fact, the need to discipline domestic subsidies effectively is sometimes used as one of the central arguments for continuing multilateral negotiations rather than leaving trade liberalisation to regional arrangements.

However, one can also argue that there may well be good political reasons for considering the possibility of agreeing on domestic subsidy discipline in TTIP. Among these reasons is the fact that the US and the EU still have 'rights' to trade-distorting domestic support of about \$90 billion under the AoA (Orden et al., 2011). Thus, in a way, negotiations on domestic support between the two cover a large part of the ground that is being debated in the WTO. By agreeing on reduction commitments between them, the US and the EU could set an example that the rest of the WTO membership would find difficult not to follow. This consideration resembles strategic ideas that some countries, including the EU, have in mind in the context of global climate talks, where they feel that pushing ahead with unilaterally set reduction commitments might persuade others to go along. The US and the EU could even try to inspire amendment of the WTO rules on domestic support by adopting a modified regime, for example by giving up on inclusion of market price support in calculating domestic support levels, on the grounds that price support is anyhow effectively constrained by tariff bindings and export subsidy constraints. The counter-argument, however, is that bilateral agreement on domestic subsidy disciplines in TTIP would give away negotiating chips that the US and the EU may need in the multilateral negotiations in the Doha Round, in particular vis-à-vis developing countries, which are trying to change the rules of that game in their favour in the current negotiations. It



would, therefore, appear unlikely that the TTIP negotiations deviate from the tradition of not including disciplines on domestic subsidies in agriculture in FTAs.

### 3.3 Negotiations on regulatory convergence

The most important, and at the same time the most difficult issue for liberalising trade between the US and the EU, will be to manage regulatory divergences and the resulting trade barriers in the form of NTMs. It is not unusual for regulatory issues to be problematic in trade negotiations. Several reasons can be offered for these difficulties. Traditional trade issues such as tariffs and subsidies are more transparent and quantitative: the effects of reductions in these trade impediments are easier to estimate. The reduction of tariffs also has an apparent objective (such as free trade) that can guide a process of transition and measure progress: no such clear objective is apparent with regulatory convergence or increasing compatibility. Neither is there an easy way to define when regulatory differences are themselves desirable, even if they have emerged from administrative happenstance or protectionist pressures. And, above all, the issues facing negotiators discussing regulatory convergence attract the interest of a wider constituency than does tariff reduction. Much of the (surprising) public interest in the TTIP negotiations, in particular in Europe, revolves around minor differences in such regulations as those dealing with the washing of chicken carcasses.

Past FTA negotiations have adopted several different approaches to dealing with the question of regulatory divergence. While that issue is relevant across the board in all sectors, the trade problems caused appear to be particularly pronounced, acute and intractable in agricultural and food trade, above all those resulting from SPS matters. Although most, but not all, existing FTA agreements have some provisions relating to SPS matters and other NTMs, there is no obligation to include them at all in regional trade arrangements. WTO rules (GATT Article XXIV:8(b)) require FTAs and CUs to eliminate “duties and other restrictive regulations of commerce” on “substantially all the trade” among the partners, but explicitly exclude from that requirement those NTMs that are permitted under certain GATT Articles, including Article XX (which covers, among others, measures “necessary to protect human, animal or plant life or health”). However, a TTIP that, in its trade part, does not go beyond eliminating duties on US-EU trade is simply not conceivable. When the political leaders from both sides launched the negotiations in February 2013, they explicitly made the point that TTIP would address regulatory and other non-tariff barriers.

This promise would also not be fulfilled if TTIP were to limit itself to an option that comes only marginally higher in the hierarchy, namely just reaffirming the intention of the participating countries to fully respect their rights and obligations under the relevant WTO provisions, in particular the Sanitary and Phytosanitary (SPS) Agreement. That option is used in several existing FTAs. There is nothing to be said against including a formula like that in an FTA, but there is also not much that speaks for it: governments of WTO member countries should anyhow live up to their obligations under the WTO. For TTIP this option is certainly not sufficient. After all, the existing WTO rules have not prevented barriers from inhibiting the free flow of trade across the Atlantic, and indeed have not guaranteed the absence of serious trade conflicts. There is, therefore, the expectation that TTIP goes beyond stating the obvious need to respect WTO obligations. Whether this means that TTIP would have to include some type of explicit and specific arrangement for all relevant trade barriers in agriculture is, however, a different question. But even if some negotiators might privately dream of sweeping some of the most intractable NTM issues under the rug so as to prevent them from getting in the way of concluding the overall deal, they will feel pressed to move at least one further step up in the hierarchy of options, which is to include at least some

procedural provisions in the agreement, envisaging future efforts to come to grips with the issue concerned.

Rather than only making general reference to given WTO rights and obligations, an FTA can also contain provisions going beyond multilaterally agreed rules, specifying how the FTA partners intend to implement WTO provisions in practice. In this regard, too, there are different ways of shaping this option, with varying degrees of concreteness and exigency. For example, the EU-Korea FTA has a chapter on sanitary and phytosanitary measures where a text of less than two pages contains fairly general provisions on how the two sides intend to deal with SPS matters. A much different example is the EU-Chile FTA, for which negotiators have worked out a whole agreement on SPS measures, annexed to the FTA. The agreement is rather specific and runs over nearly 40 pages. It also aims at developing a common understanding concerning animal welfare standards between the EU and Chile, although finally this focused exclusively on the stunning and slaughter of animals. This EU-Chile Agreement also includes provisions for matters which, as far as trade in animal products between the US and the EU is concerned, are laid down in the US-EU Veterinary Equivalency Agreement signed, after six years of negotiation, in 1999 (see below).<sup>22</sup> It would, therefore, appear conceivable, if not likely, that this 1999 agreement, with amendments later agreed and possibly with further modifications, could also be annexed to a TTIP agreement.

High Level Working Group on Jobs and Growth [HLWG] (2013), *Final Report*. February 11, 2013. Available at [http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc\\_150519.pdf](http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf)

The Task Force that anticipated the agenda of the TTIP<sup>23</sup> addressed the issue of regulatory change by defining the objective as to find “new and innovative ways” to reduce non-tariff barriers to trade and investment. This phrase may conceal a lack of agreement on which approach to take. One approach would be to tackle differences in regulatory philosophy, particularly in such areas as the role of science in regulations where public opinion is not fully convinced by research conclusions. The use of the ‘precautionary principle’ in EU legislation has generally been regarded in the US as a sign of weakness, allowing public opinion to intrude on matters that can be addressed by scientific enquiry. But any direct assault on these differences in the context of TTIP is likely to be counterproductive, hardening opinions on both sides of the Atlantic and reducing the chances of success.

So the Task Force modestly called for the reduction of “unnecessary costs and administrative delays” arising from regulations. No one could be against that, nor could one argue against the consequent aim of improving the competitiveness of US and EU companies in third markets. And the key questions of harmonisation of standards and the mutual recognition of each other’s standards are addressed with caution: greater compatibility in standards is to be “promoted” “where appropriate”.

To throw some more light on this part of the heavy package that US and EU officials find on the TTIP negotiating table, it is useful to consider the range of options as to how to deal with regulatory divergences in FTA negotiations, from the least to the most demanding in terms of negotiating effort. Clearly, none of these options would be applied universally to all NTMs:

<sup>22</sup> The EU also has sanitary and phytosanitary agreements with several other countries, either as separate agreements or as parts of FTAs. For a list of the agreements, see [http://ec.europa.eu/food/international/trade/agreements\\_en.htm](http://ec.europa.eu/food/international/trade/agreements_en.htm)

<sup>23</sup> A High Level Working Group on Jobs and Growth (HLWG), established in November 2011 and led by US Trade Representative Ron Kirk and EU Trade Commissioner Karel De Gucht, was tasked with identifying “policies and measures to increase EU-US trade and investment to support mutually beneficial job creation, economic growth, and competitiveness”. Within less than 15 months, on 11 February 2013, the HLWG issued its final report (see HLWG, 2013).

some cases may qualify for more progressive treatment than others. Also, the range can be multidimensional, and individual elements of each approach can be combined in dealing with a given issue.

### 3.3.1 Harmonisation

At the top of the hierarchy of options for dealing with NTMs appears the approach of harmonisation, where both partners decide to use the same measure. The SPS Agreement urges WTO members to harmonise their SPS measures, as far as possible, by basing them on international standards, guidelines or recommendations, where they exist. One may expect that in a TTIP agreement, the US and the EU will reaffirm their intention to do so, in general terms. However, they could also go further than that, by agreeing to harmonise their measures for given product sectors, either with international standards where they exist, or on a bilateral level. Such a step would be constructive in helping to minimise the cost of having different standards co-existing in the transatlantic marketplace. At some stage it may even be feasible to establish a common agency to administer such standards. Yet, this solution is unlikely to be adopted for any but the least controversial areas of trade. NAFTA envisaged a degree of harmonisation in regulations but the efforts to reconcile Canadian and US standards on such matters as border inspection have not met with great success. The model for any such cooperation could be the Australia-New Zealand Closer Economic Relations Agreement that has a joint food standards agency for those two countries. But the economic relations across the Atlantic may never be as close as those across the Tasman Sea.

Harmonisation of standards raises political red flags. Some NGOs claim that convergence of standards implies the destruction of the gains made on health, nutrition, environmental protection and human rights. Such a widespread accusation hardly constitutes constructive criticism, but it does raise the possibility that agreements, whether in TTIP or just in MOUs between regulatory agencies could become a lightning rod for opposition. Moreover, as the definition of a standard and the related procedures for its implementation is a highly technical matter requiring substantial detail, it appears unlikely that concrete decisions on any harmonised measures could become part of a TTIP agreement. What is conceivable, however, is that agreement is sought on the establishment of bilateral bodies that would be tasked to work towards harmonised measures.

### 3.3.2 Mutual recognition

At a somewhat lower level in the hierarchy of options for dealing with NTMs is mutual recognition in the sense that each partner accepts the products legally sold domestically in the other partner's markets. In establishing its Single Market, the EU very much relied on (and still upholds) a strong version of mutual recognition.<sup>24</sup> Mutual recognition can apply to the regulations themselves or the conformity tests. At first glance it may appear as if there is not much difference between this and equivalence (see below). Equivalence also means that partner countries mutually recognise each other's standards and procedures. Yet, MR in its strong form goes very much further than equivalence. The main difference is that mutual recognition implies acceptance of a product that conforms with the domestic regulations of the exporting country, whereas equivalence refers to the product conforming to the standards of the importing country. Moreover, equivalence is implemented on a case-by-case, and only where positive comity is found in the market opened up to imports from the partner country.

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<sup>24</sup> This strong definition of mutual recognition is sometimes referred to as the "Cassis de Dijon" version in reference to a decision by the European Court of Justice relating to the free circulation of that French drink in the German (and by implication the whole EU) market.

In other words, equivalence agreements are based on a positive list approach. Where mutual recognition governs, however, there is an *a priori* presumption that all standards and procedures in the partner country are acceptable and hence products from there can be freely imported. If the importing country has specific concerns, it must prove that imports of the partner country's product would violate one or more of a list of agreed criteria (say, public health). Mutual recognition, hence, uses a negative list approach, and the criteria are typically defined so stringently that it is very difficult to move a product onto the negative list.

The mutual recognition approach has the great advantage that only one decision is needed: partner countries agree to accept the validity of each other's standards and procedures, and from then on trade can flow freely. In a purely practical sense, negotiators don't need to spend much time and specific expertise on this approach. They simply agree on mutual recognition and move on to other items on the negotiating agenda. However, there are reasons why different countries have diverging regulatory regimes, some more and some less convincing. And there are reasons why such divergences are difficult to remove and hence can result, and have resulted, in trade tensions. It would be unrealistic to assume that once it comes to FTA negotiations such divergences can be resolved by the stroke of a pen. Hence, mutual recognition is an option that will most likely have a minor role in the outcome of the agricultural and food part of the TTIP negotiations.

For its Single Market, the EU has adopted the mutual recognition approach across the board. One could, however, also imagine the application of that option to selected product sectors. That approach would establish some sort of a half-way house between equivalence and overall mutual recognition. It would still go further than equivalence as it would open up markets for the products concerned on a permanent basis, without the need to verify the partner's procedures time and again. It would, thus, create more certainty for producers and traders. But it also requires a significant additional amount of mutual trust between the FTA partners. It might be worth considering whether (some of) the products for which the US and the EU have already determined full equivalence in both directions might qualify for a product-specific mutual recognition. Later the two parties could aim at widening product coverage under that approach.<sup>25</sup>

### 3.3.3 Equivalence

At a rather lower level of ambition is the option to establish equivalence between US and EU regulations on particular topics. This approach is closely interlinked with the concepts of mutual recognition and conformity assessment, and all of them represent important approaches to reducing non-tariff barriers to trade. The equivalence approach has been employed in several areas of standards and was one of the strategies supported in the WTO SPS Agreement. Three requirements for establishing full equivalence can be identified: first, the aims of the standard have to be the same; secondly, the effectiveness of the standards has to be comparable; and thirdly the importing country has to trust the exporting country to carry out its inspection and verification with at least equal diligence (conformity assessment).

Where agreement on the equivalence of each other's standards (in reaching the set objectives) and testing methods is feasible, this represents a more significant step forward in terms of reducing trade barriers. The US-EU Veterinary Equivalency Agreement, for example, defines

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<sup>25</sup> Under the US-EU Veterinary Equivalency Agreement, the degree of 'equivalence' is ranked, and only where a product is assigned the highest rank, the importing party agrees that the exporting party's measures achieve the importing party's appropriate level of sanitary protection, and only for a subset of products have both the US and the EU assigned that highest rank (McNulty, 2005).

those animal products for which the US and/or the EU recognise each other's measures as achieving the importing party's appropriate level of sanitary protection, and sets out the procedures that allow such equivalence to be determined for products not yet covered. Where full equivalence is agreed, the importing party commits to allowing the products concerned in its market without further sanitary restrictions. Agreements of this nature constitute an approach that would appear to merit serious consideration in the TTIP negotiations. However, practical experience with the US-EU veterinary agreement cautions against too high expectations. The six-year period that was required to negotiate that agreement indicates how difficult the issues involved were at the time in the eyes of the negotiating officials. Also, although very far from all products were granted full equivalence status in the original agreement, only very few products were added to the equivalence list after the agreement went into force. Nevertheless, it is worth serious negotiating efforts to make TTIP an effective door opener for more equivalence agreements, or even to add some equivalence agreements to the TTIP agreement.

Agreement on equivalence of conformity assessment procedures, including those in the food and agriculture sector (though the term conformity assessment is not typically used there), is certainly useful and hence another step up the hierarchy. Nevertheless, although they help to reduce the costs of exporting somewhat, they don't really open up EU and US markets much more widely for each other.

### 3.4 Alternative approaches

Although the trio of approaches discussed above – harmonisation, mutual recognition and equivalence – are the usual ways of achieving a resolution of differences in standards, they imply that the standards themselves are a necessary part of market regulation. But other options exist in many areas of food and agricultural marketing that could help to resolve trade differences. Two of these alternatives are discussed here: the reliance on labelling as a way of providing consumer information hence avoiding the use of mandatory public (non-safety) standards, and the decision to allow different standards to exist in parallel in the marketplace. This would generally imply a greater role for the private sector to handle (and potentially benefit from) the range of transatlantic consumer attitudes to foods in conjunction with the national standards.

#### 3.4.1 Labelling as a positive strategy

This approach could be called “resolution of differences through consumer information”, making use of the ability of consumers to make decisions on purchases, subject to general or specific laws on misrepresentation. The boundary between safety and quality standards may be shifting over time but it still provides a framework for deciding on the role of public and private actors in the food system. A key to informing the public about the quality of food products is the use of labelling. Wherever risks to health, safety or the environment are not so serious that banning a particular product characteristic or a process is necessary, or requiring a warning label, citizens are generally trusted to make their own choices, based on appropriate information provided through product labelling.

Governments however often come under pressure from civil society group and special interests to assume responsibility for dealing with all types of risks. This tendency is prominent in the food sector, has led administrative levels of government to regulate extensively. The EU has arguably suffered more from this “regulatory creep” than the US in food standards, though in farming it could be that the reverse is true. Such over-regulation in itself complicates the process of integrating the transatlantic marketplace. An alternative approach is to recognise that in most cases their citizens are perfectly capable of making their



own judgments on what is good and not so good for them, provided they have sufficient evidence-based information. Thus, rather than banning particular products, including imported goods, from the market, they could also require appropriate labelling and leave people to choose whether they want to buy them. Many trade conflicts could be avoided if labels were allowed to replace standards. Thus, one conceivable outcome of TTIP negotiations might be that in certain areas the two partners agree to deregulation by switching to labelling requirements rather than marketing restrictions.

### 3.4.2 *Hands-off approach: Diversity is good*

At the other end of the continuum of approaches to regulatory differences is the apparently trivial but by no means unimportant option of leaving NTMs untouched in the agreement. This may be called a “vive la difference” solution. Not all issues will prove amenable to regulatory negotiation. There will always be issues on which convergence is not possible or even desirable. Ultimately there may have to be an agreement to differ – and “live and let live”. In such cases the aim of negotiations such as TTIP should then be to make sure that information on the respective standards is readily available and the discussions can continue in appropriate venues. This does not preclude activities to build trust among agencies that might eventually lead to closer and less provocative trade relations.

The private sector would play a natural role in such a “hands off” approach to regulatory compatibility. Two standards, one applying in the US and another in the EU, may seem to be a negative situation for business, as transactions costs are increased. But it also represents an opportunity for product differentiation. If consumer sensitivities are different across the Atlantic and different regulatory standards have been adopted to meet those concerns then a firm marketing in both the US and the EU must adapt production and marketing strategies accordingly. So instead of viewing standards harmonisation as the only approach to reducing costs the firms themselves could tailor their products more specifically to particular markets. Of course, this happens all the time as a matter of marketing strategy, but it is striking that many of the regulatory issues in transatlantic food trade do not seem to be seen in this light.

## 4. Possible landing zones

What are the possible outcome of the negotiations in the area of agricultural and food issues? Which areas lend themselves to broad agreement and which situations offer little chance of agreement without considerable delay or significant domestic opposition? And how will that relate to the resolution of trade problems between the EU and the US? Table 5 provides an overview of some of the possible outcomes that could be negotiated over the next two years.

On issues of market access, the US is unlikely to settle for an agreement that does not include significantly better access to the EU agricultural market. This could include the removal of EU tariffs on all food and agricultural products at no slower a pace than granted to Canada in the CETA (i.e. 94% immediate and 95% within 7 years). Indeed, one could imagine an agreement to accelerate this pace in third year to catch up with Canada. There would also no doubt be provision for EU TRQs for limited number of sensitive commodities (dairy, beef and pork), but the US would expect these to expand regularly. Within-quota imports could be duty-free. In effect access for US exports would be as good as in FTAs with Mexico and Korea and the countries that have negotiated Economic Partnership Agreements (EPAs), although not as good as for LDCs under EBA where TRQs do not apply.

The EU will in turn expect the removal of all US tariffs on food and agricultural goods at a comparable pace to the TPP schedules, if that set of negotiations is also successful. This could

mean 95 percent zero tariffs on signing, with further reductions over five years. If the TPP were to include the removal of all tariffs, including sensitive commodities, then there would be pressure for similar market access to be given to the EU. This would imply that TRQs for sugar and dairy would be increased over time until removed in (say) year five.

Other market access outcomes could further open up the transatlantic marketplace. There could be an agreement not to use agriculture-specific safeguards, including the SSG allowed under the WTO. Agreement on broad principles for ROOs, based on WTO rules, could also include a commitment to avoid use of ROOs to protect markets. This could include an agreement on diagonal cumulation of ROOs over NAFTA and EEA countries and those other countries with FTAs with EU and US (as appropriate).

With respect to domestic subsidies it is unlikely that there will be much effort put into negotiating reductions. Strong support for seeking closure on the Doha Round constraints on Domestic Support may be all that is realistic in this area. However, the TTIP could include a ban on export subsidies on bilateral trade when tariffs reach zero, as well as an agreement on a common approach to state trading enterprises and an attempt to converge on food aid policy.

The strengthening of disciplines on export restrictions and taxes has so far eluded negotiators in the WTO could be possible in the TTIP. The TTIP discussions would seem to be an ideal locus for agreeing on a mutual ban on export restrictions and taxes on transatlantic trade in agricultural products.<sup>26</sup> Though this would not in itself prevent export restrictions on third country trade, it would make it more difficult to administer such restrictions. And so the inclusion of a ban on US and EU export restrictions in the TTIP could pave the way for a similar undertaking by all exporters, either as a part of a WTO agreement in the Doha Round or as a plurilateral agreement among the major exporters.

With respect to the regulations that have caused problems for the US and the EU, those involving animal and plant health are the least controversial. Both the EU and the US support the work of the international agencies, the OIE and the IPPC, that have improved the transparency and scientific basis for trade regulations. There seems little reason not to harmonise some regulations where there are no critical differences in approach to trade. This could be true for many of the regulations relating to plant health. The TTIP talks should aim to cement cooperation among agencies to take advantage of mutual interests in the area of animal and plant health. One focus should be on setting up a system for resolving future problems before they become trade conflicts.

Another set of problems are less likely to be resolved by the discussion of regulatory differences by Committees or agencies. These involve human diseases and risks as perceived by the importing country.<sup>27</sup> The issues relating to beef hormones, antibiotics, pathogen reduction techniques (PRTs) and zoonotic diseases also fall in this category, as explained below. The beef hormone ban may be the most politically visible and intractable: any move by the EU to weaken this ban in the short run seems unlikely. This may be one case where “agreeing to differ” may be the best solution, with the political balance being kept by opening up the market for hormone-free beef and beef products. There seems to be some flexibility in

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<sup>26</sup> Export taxes are in any case prohibited under the US Constitution. The EU has the authority to tax exports but has not done so in recent years of high prices.

<sup>27</sup> In the absence of any imports of a product the regulatory differences are unlikely to show up as trade problems. Of course, EU and US exporters could face different regulations in third-country export markets, but solving that problem is best left to other negotiations.



the case of ractopamine, and a broader agreement that included third countries may be the way to defuse this as an EU-US conflict.

The potential conflicts over the use of antibiotics for growth purposes in animal rearing should certainly be addressed. But the issue here is not so much EU policy and US policy conflicting but both the EU and the US facing the same decisions. Non-therapeutic use of hormones is being restricted first in the EU but US regulations are not far behind. So this is a case where the establishment of joint agencies to study the scientific issues would be advantageous. The public could conceivably come to respect the joint findings of such an agency and the recommendations could be made in such a way as to avoid serious conflicts.

The seemingly minor regulatory issue of PRTs has been the cause of much controversy between the US and the EU in the past few years, and has so far eluded resolution. The US industry uses PRTs including chlorine wash, lactic acid and other antimicrobials to remove bacteria. The EU does not favour such PRTs and banned their use in poultry in 1997. As a result of these diverging approaches, imports of poultry from the US that would be legally sold in that country are banned from the EU market. In the EU, this issue is one of the more hotly debated matters in relation to TTIP which is sometimes portrayed by critics as potentially forcing 'chlorine chicken' on the table of reluctant EU consumers. The EU only allows water to be used to rinse pathogens in slaughter facilities. The argument is that PRTs act to cover up unsatisfactory practices at an earlier stage of the process. The US government regards the EU ban as unjustified by scientific evidence and hence out of line with obligations under the WTO SPS Agreement. Within the EU there are differences of opinion: the European Commission has itself suggested in 2008 that PRTs be made legal for poultry processing in the EU, but this was rejected by the Council of Ministers. However, the EU has recently allowed the use of lactic acid as a wash in beef slaughter (as a good-faith measure at the start of the TTIP discussions), and there may be a chance for convergence over this issue in the negotiations.

The issue of zoonotic diseases is particularly problematic. Unlike hormones and antibiotics which are used in livestock production but which under certain uncontrolled circumstances could pose a threat to human health, zoonotic diseases need to be addressed in the animal population in order to avoid the spread to humans. Concerns seem to be equally prevalent on either side of the Atlantic: the BSE outbreak was seen to be a UK problem until cases began to show up in other EU countries. Then when a small number of cases were found in the US and Canada it was no longer possible to ignore the impact. Export markets for beef have still not recovered. This is clearly a case where scientific opinion does not differ but the handling of the outbreak can vary. Avian flu is another such case. There needs to be a mechanism by which the best scientific evidence should be pooled and there should be consultation on the appropriate administrative action. As the objective of human health is shared on both sides of the Atlantic it seems unfortunate to act in such a way that causes trade conflicts.

What about geographical indications? This conflict has been around for many years, mainly as a result of the widespread use of European names by immigrants into the US, Canada, South Africa and Australasia. Attempts by the EU to repatriate such names, whether for wines, cheeses or meats, have met with resistance. But the issues are not insoluble. The agreement on lists of generic names in the US, backed up by evidence that the consumer does in fact regard these as common names, should not be impossible. Generic names cannot, under WTO rules, be protected as GIs. Only a handful of such true generics exist, and cause a disproportionate amount of concern: names such as "parma ham" and "parmesan cheese" are commercially valuable to some North American firms. The producers in Europe should consider purchasing the rights to those names if they feel that their own market is being eroded. Regarding wine, the US-EU wine agreement of 2006 could be reaffirmed and it could be agreed to enter into its second phase where a number of outstanding issues could be discussed such as the further

protection of all GIs for wine on both side, the use of semi-generic names, the process for acceptance of new wine-making practices, or certification requirements. For all other GIs the US should be willing to protect the names on the US market. And the question of extending the additional protection currently given to wines and spirits in the WTO TRIPS Agreement should be left to the multilateral negotiations.

A regulatory issue that has created major tensions between the US and the EU in the past is the treatment of GM products. In most EU member states there is strong resistance against 'green' (i.e. agricultural) GM products among the general public, or at least among powerful NGOs claiming to represent the public interest. In response to that popular aversion several national governments, for example in Austria, Germany and France, have refused to allow the planting of GM varieties in their territories even in cases where the European Commission, based on a positive assessment of the European Food Safety Authority (EFSA), had decided to authorise the respective GM seeds for planting in the EU.<sup>28</sup> For a long time the legal status of these national deviations from EU-wide decisions remained questionable, at both the EU and the WTO level. More recently, though, a new procedure was adopted that allows member states to ban cultivation of GM crops for reasons other than food safety or environmental concerns. The President of the new European Commission installed in November 2014, Jean-Claude Juncker, has already announced that he intends to confirm and strengthen the power of national governments to ban the planting of GM crops in their member states. In effect only one GM variety (maize MON810) can currently be planted commercially in the EU, most of which is grown in Spain.

A different matter is the approval of imports into the EU of GM products for commercial marketing as food and feed. For a while the EU was relatively liberal in allowing the marketing of GM varieties. But subsequent approvals of imports ran into opposition from those member states where the public resisted 'green' GM technology. Approvals on imports came to a halt, and in effect the EU instituted a moratorium. The approval process has been speeded up somewhat in recent years, and at present there are some 50 GM plant varieties whose product can be sold in the EU for use in food or animal feed. These products do, however, have to be labelled. More than half of these crops are types of GM maize. Other crops include soybeans, rapeseed, sugarbeet, cotton and potatoes.

One dimension of the growing public opposition to TTIP in Europe is fear that the EU might have to open up completely to the importation and cultivation of GM products. However, here again a distinction needs to be made between the approval of GM products for sale in the EU on the one hand and the question of licensing the planting of GM seed varieties in Europe on the other hand. It appears that US seed companies have for the time being essentially given up on hopes that resistance against cultivation of such seed varieties in Europe can be overcome in the near future. Hence US negotiators have understood that this is a matter that must be left to the EU and the Member States, and therefore this is an issue that is unlikely to create major difficulties in the negotiations. The issue of labelling GM foods is also one that should not be a major point of contention in the TTIP talks. The US will have to grasp the nettle of public demands for labelling, no matter how shaky is the case for such action. Food products, like all other retail goods, will remain subject to local labelling and packaging regulations. So the main GM issue boils down to the speed at which the EU reviews and decides on the marketability of new types of GM products on the internal market. In exchange for the "live and let live"

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<sup>28</sup> For more detail on the respective legislative procedures in the EU, see Josling & Tangermann (forthcoming), Chapter 5.

approach to GM plantings and labelling the EU should at the very least set up a more responsive approval process for commercial marketing of GM products as food and feed.

One significant aspect of the tension over GM approval is the possibility that it might spill over into future technology. One such example is the use of nanotechnology in food packaging.<sup>29</sup> One application that would appear to have consumer benefits is the development of a packaging material that will give a visual indication (e.g. a change in colour) if bacteria are present in significant quantities. The calls for regulation have come from concerned groups in the EU and in the US. The opportunity exists for the merits and hazards of this technology to be addressed by authorities working together, which might mean that the split between US and EU opinion apparent in the GM case can potentially be avoided.

Both sides will need some 'victories' in the regulatory area to demonstrate the value of the outcome. Though regulatory differences can persist for years and become major trade irritants, most can be resolved when political attention is sufficiently focused. Four cases of agreements in this area of food and agricultural regulations illustrate this possibility, and provide a basis of cooperation for the TTIP to build upon. In 1996 the US and the EU signed a Veterinary Equivalence Agreement (VEA) that aimed to facilitate the establishment of equivalence in SPS measures. Though this agreement has had limited scope so far, it represents a useful starting point for a broader agreement covering equivalence of testing and regulating in matters related to health and safety of animals.

In the area of food safety, the EU Food Hygiene Package of 2004 moved some way to dealing with transatlantic differences over sanitary standards by applying risk-based approval for US slaughterhouses. The EU has also negotiated a US-EU Wine Agreement (2006) that resolved several of the ongoing issues with respect to wine-making practices as well as some naming issues. This again created a useful basis for further resolution of the GI issue. And in 2012 the US and the EU reached agreement on an agreement on Organics that in effect made the two different organic certification systems in use mutually compatible. A product deemed organic by US officials can now bear the EU certification mark. Though each of these agreements may have had their own dynamic they do give some hope that solutions can be found when the necessity arises.

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<sup>29</sup> Nanotechnology refers to the alteration of the molecular structure of a material to alter its characteristics. In effect a new material is produced with features that are under the control of the developer. The use of the technology in medical and energy applications has been widely accepted but its use in food packaging has raised questions of health and safety on both sides of the Atlantic.

Table 5. Potential landing zones for agriculture and food in the TTIP

|  | <i>US Objective</i>   | <i>EU objective</i>   | <i>Landing Zone</i>  |
|--|---|---|--|
| <i>Border Issues</i>   |   |   |  |
| Market Access  | Access to EU cereals and vegetable markets  | Access to US dairy markets  | Free access for 95 percent of agricultural tariff lines with most sensitive items excluded: expanding TRQs for those items   |
| Domestic Subsidies   | Lower EU farm-level subsidies   | Keep lid on US spending on crop insurance   | Agree to work for a solution in WTO Doha Round to achieve reduction of domestic support  |
| Export Subsidies   | Phase out subsidies   | Restrict US food “in kind” food aid and export credits  | Agree to avoid intra export subsidies and to work toward WTO elimination of all export subsidies and similar measures  |
| Export Taxes, Quotas   | Avoid export restrictions on US-EU trade  | Avoid export restrictions on US-EU trade  | Agree to avoid export restrictions on US-EU trade and to work through WTO for multilateral disciplines on export restrictions  |
| <i>Regulations</i>   |   |   |  |
| Animal Health  | Affirm SPS commitment   | Affirm SPS commitment   | Reaffirm SPS commitment to evidence-based rules and support work of OIE. Set up Committee to discuss SPS issues to avoid trade conflicts. Pre-notification of new regulations.   |
| Plant health   | Affirm SPS commitment   | Affirm SPS commitment   | Reaffirm SPS commitment to evidence-based rules and support work of IPPC.  |
| Human Health (including PRTs, hormones, antibiotics and zoonotic diseases) | Achieve coherence in standards for PRTs; persuade EU to change hormone ban; avoid conflicts over antibiotics and zoonoses | Achieve coherence in standards for PRTs; avoid any change in hormone ban; avoid conflicts over antibiotics and zoonoses | Set up Committee to discuss SPS issues to avoid trade conflicts. Pre-notification of new regulations. Joint scientific agencies to advise on PRTs; “agree to differ” on hormones; joint action on antibiotics and zoonoses |
| GIs  | Avoid repatriation of European names  | Register EU GIs for protection in US: expand “additional” protection beyond wines                                       | Reaffirm US-EU wine agreement; agree on a list of “generics” that cannot be used as a GI; leave to TRIPS the issue of additional protection beyond wines.  |
| GM crops   | Speed up EU approval process  | Avoid weakening of GM planting rules and maintain labelling   | Agreement to expedite approval for marketing GM crops; approval of GM plantings in EU left to EU and Member States.  |
| Organic Foods  | Avoid trade problems  | Avoid trade problems  | Incorporate US-EU mutual recognition agreement for Organics  |
| Animal Welfare   | Avoid trade problems  | Avoid trade problems  | Agree to build on OIE standards for animal welfare   |

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## About the CEPS-CTR Project: TTIP in the Balance

In the autumn of 2013, CEPS and the Center for Transatlantic Relations (CTR) at the School for Advanced International Studies (SAIS) of Johns Hopkins University in Washington, D.C. set up a joint project to explore the Transatlantic Trade and Investment Partnership, under negotiation between the European Union and the United States. Its aim is to promote a deepening of the TTIP debate, a comprehensive approach – also sectorally – of the negotiations, a far more detached perspective on the substance of TTIP (than in numerous circles) and concrete analytical output as a support for negotiators on both sides. It also aspires to improve the quality of the policy discussions. The project is directed by Jacques Pelkmans from CEPS and Daniel Hamilton from CTR. It is expected that some 10 papers will be published on the websites of CEPS and of CTR between December 2014 and late March 2015, with the option of publishing more papers subsequently. Most or all papers will have both US- and EU-based authors. Both institutes support the project; it is co-funded by AMCHAM-EU, Repsol and the Konrad Adenauer Foundation. The organisation, substance and editing of the project results, however, are entirely independent.







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