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New Challenges, New Voices:

Next Generation Viewpoints on
Transatlantic Relations

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New Challenges, New Voices: Next Generation Viewpoints on Transatlantic Relations

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EU View: Four Reasons Why TTIP May Fail and Why It Will be Europe's Fault

Tereza Novotná

Despite clear economic and geopolitical advantages, TTIP has become one of the most controversial agreements to ever be negotiated by the European Union (EU). In contrast to initial expectations, it might be the ratification process within the EU which proves to be more difficult than that in the United States (US) Congress. This chapter focuses on how we got to where we are now in the public debate on TTIP from a European perspective and explains that a potential failure to ratify TTIP in Europe would be a result of weaknesses in the EU's system of governance created by the Treaty of Lisbon. The chapter argues that the public discourse among national leaders born from a sense they are not responsible for TTIP may eventually block the agreement. Secondly, various actors, including the European Parliament, are using the TTIP debate and aspects of it, such as questions over transparency and the investor-state-dispute-settlement (ISDS) mechanism, to their advantage in the institutional turf wars rather than as a matter of common good. Finally, the chapter points to a lack of 'throughput legitimacy' of TTIP being the cause for why public opinion has shifted from 'permissive' to 'constraining' and how this is likely to shape TTIP's destiny. In other words, if TTIP fails, it will be Europe's fault.

Terrorists attacks in Europe, Da'esh¹ threatening peace and stability in the Middle East, Russian aggression on the Eastern flanks of the EU, immigration inflows causing tense debates on both sides of the Atlantic and the rise of China and other emerging economies in Asia, all mean that more than ever there is a need for a strong transatlantic partnership. Although it tends to get overshadowed by headline-grabbing events, negotiations over the Transatlantic Trade and Investment Partnership (TTIP) might prove to be the most significant development that could shape the transatlantic partnership for the foreseeable future.

From an economic perspective, with one notable exception,¹ scholarly studies² predict that TTIP will boost the GDP growth in the US and Europe as well as worldwide, increase mutual exports and FDI³ and, in Europe, have a positive impact on economies of individual EU member states.⁴ Moreover, even though TTIP is primarily a trade deal, if concluded it will have far-reaching global implications for both the US and the EU.⁵ A successful TTIP will not only strengthen the transatlantic alliance internally but also reinforce the standing of the two partners, together and individually, *vis-à-vis* third countries. A comprehensive TTIP, along with its partner, the Transpacific Partnership (TPP) deal, would allow the US and EU to set global trade standards⁶ and extend their mutually agreed rules across borders.⁷

Yet despite these clear economic and geopolitical advantages, TTIP has become one of the most controversial agreements to ever be under negotiation in Europe. From anti-TTIP public demonstrations in various European capitals through to online and social media campaigns to vocal 'TTIP-skeptics' in the European (and some national) parliaments, opponents of TTIP portray the agreement loudly as a catastrophic scenario which will dismantle the European social model, lower environmental, health, and food protection standards, and sell off the European regulatory systems to the hands of multinationals. Meanwhile, TTIP's supporters remain largely silent.

This is however not to say that the EU negotiators should accept any American proposal on the table or that some of the concerns voiced by the critics do not have their merits. Nonetheless, in contrast to initial expectations that the final TTIP deal would have a hard time passing through the US Congress, it might in the end be the ratification process within the EU which proves to be more difficult and even lead to TTIP's rejection. If this happens it will not be due to the power of the arguments put forward by the anti-TTIP campaigners, since many of them have been repeatedly refuted as grossly exaggerated or even unfounded.⁸ Rather, a potential failure to ratify TTIP in Europe would be a result of weaknesses in the EU's system of governance

that were supposed to be solved by the Treaty of Lisbon. Although the Lisbon Treaty did alleviate some problems, TTIP exposes Lisbon's remaining deficiencies and, in fact, intensifies them. In other words, if TTIP fails, it will be Europe's fault.

This chapter focuses on how we got to where we are now in the public debate on TTIP from a European perspective and explains why a TTIP deal may fail in Europe. To do so the chapter assesses the role of EU leaders, their public discourse on TTIP and how a lack in sense of national ownership may eventually block the agreement. The chapter then looks at the institutional turf battles between various EU institutions and actors who are using TTIP to their advantage rather than as a matter of common good. Throughout the chapter we examine several aspects of TTIP, such as questions of transparency and the investor-state-dispute-settlement (ISDS) mechanism; issues that have been taken hostage by various groups in order to press for their own interests. Finally, the chapter points to a lack of 'throughput legitimacy' of TTIP being the cause for why public opinion has shifted from 'permissive' to 'constraining' and how this is likely to shape its destiny.

NATIONAL LEADERS, PUBLIC DISCOURSES AND OWNERSHIP OF TTIP

For direct observers, TTIP "has been from the outset, is at present and will have to continue to be a *Chefsache*"⁹ (a 'matter for the boss'). This has been on display in TTIP negotiations where the high level of engagement by European national leaders has distinguished it from previous trade negotiations that were conducted by the EU.¹⁰ However, because of the post-Lisbon Treaty institutional arrangements of the EU, member states have no direct control over the TTIP negotiation process and, therefore, have less desire and fewer means available to them by which they can ensure the negotiations are a success. Indeed, if TTIP negotiations fail, national leaders can then blame the 'faceless' European Commission bureaucrats.

From the EU-US summit establishing a High-Level Working Group on Jobs and Growth (HLWG) in November 2011, TTIP-related meetings at the margins of G7/G8 summits and through to several successive European Council Conclusions,¹¹ the attention of EU member states and their leaders paid to TTIP, particularly in contrast to other trade negotiations, has indeed been extraordinary. It is also true that the

impetus to initiate TTIP negotiations with the US came from EU member states, in particular because European leaders were keen on using a free trade deal with the US to boost jobs and growth after a protracted financial downturn. The influence of EU member states was therefore very high, easily overriding the concerns of trade experts on both sides of the Atlantic.¹²

Yet, TTIP has run into problems because of the peculiar system of power and competence-sharing within the EU. Because the EU's 'common commercial policy' is an exclusive power of the EU,¹³ once the process of negotiations is set off it is the European Commission, and DG Trade in particular, which sits at the negotiating table with the American counterparts on behalf of all 'EU-28 Member States'. In practical terms, EU member states can voice their views and concerns as well as obtain regular detailed debriefs by Commission officials on the outcomes of the TTIP negotiating rounds through the Council of the EU's weekly Trade Policy Committee (TPC), and bi-weekly Working Group on Transatlantic Relations (COTRA) meetings. Despite this, throughout the negotiation process, EU member states have been more or less passive receivers of information rather than active agents. Given the massive impact of a transatlantic deal, TTIP could increase the clout of the EU's supranational institutions, and the Commission in particular, *vis-à-vis* EU member states more than any other trade agreement.¹⁴

Although the Lisbon Treaty clarified the EU's powers and strengthened the influence of the Commission (as well as the European Parliament, see below) in the trade and investment areas, in effect, due to lower input by member states, it decreased national leaders' sense of ownership of the trade negotiation process and their willingness to risk their political capital on its outcome. This was particularly so since other big issues and crises often loom large at the same time. This would be much less of a problem in other Free Trade Agreement (FTA) negotiations that create nearly no public reaction, such as that currently ongoing with Japan or the 2011 FTA agreed with the Republic of Korea. However, due to the heated debate surrounding TTIP, and the Commission's limited ability to conduct its own public diplomacy, the Lisbon set-up has disincentivised European leaders to get engaged, explain, and publicly support TTIP, while making them more prone to disown what they have themselves previously agreed 'in Brussels'.

“ In the EU, it is often the case that national leaders agree amongst themselves on an issue at an EU summit only to then condemn the same decision when back home and so shift the blame by saying ‘Brussels made me do it.’ As a result, the gap between the coordinative and communicative discourse leads to low legitimacy for the decisions taken jointly with other member states and within a context of ever more critical domestic publics. ”

The Commission itself pointed this out in 2013, saying that it would need to work closely together with EU member states to “collectively manage and coordinate our communication and outreach strategies.”¹⁵ In 2015, Commission President Juncker complained that member states should “stop the ‘double-speak’ between what is said during meetings in Brussels and what is said in public, and make sure they commit and stick together in the process...talking about the benefits, listening to people’s concerns, responding to them.”¹⁶ This complaint has been supported by others around the EU, most notably by the House of Lords. The European Union Committee of the British Upper House² concluded in a report on TTIP that the Commission “cannot be expected to make the case for the TTIP... EU Member States are not bearing their fair share of responsibility for transparency and communication around the project.”¹⁷

In a sense, the EU faces an ‘enlargement paradox’: during an EU enlargement it is the member states that lead the accession negotiations, while the Commission stands in the background providing wider objectivity to the process through its technical expertise.¹⁸ In TTIP, as with any other trade negotiation, the situation is the reverse: the Commission conducts negotiations but legitimacy of the process is provided by EU member states and it is their politicians who are now reluctant to do so over TTIP.

From an academic perspective, the TTIP negotiations and debate are good examples of ‘discursive institutionalism’ and the difference between two types of public discourse: a coordinative discourse among the elites and a communicative discourse between the elites and masses.¹⁹ In the EU, it is often the case that national leaders agree amongst themselves on an issue at an EU summit only to then condemn the

same decision when back home and so shift the blame by saying ‘Brussels made me do it.’ As a result, the gap between the coordinative and communicative discourse leads to low legitimacy for the decisions taken jointly with other member states and within a context of ever more critical domestic publics.

The question of transparency and, in particular, the agreement on and publication of the TTIP negotiation mandate provides an illustration. Between March and June 2013, the Commission launched procedures to obtain a negotiating mandate. The Commission’s draft was approved unanimously by the Council (and received an input by the European Parliament) within just four months, a record time by EU standards.²⁰ Despite this short stretch of time, those member states who were keen on certain issues were able to exert pressure on their colleagues to achieve changes to the draft. For example, at France’s insistence, audiovisual services were removed from the mandate and have thus been considered ‘non-negotiable.’ The Council’s unanimous vote on the mandate allowed TTIP negotiations to begin on 14 June 2013.²¹

At the time of the mandate’s approval by the Council, no national leader protested against inclusion of ISDS.²² Yet, public opinion on ISDS (if not TTIP as such) has become increasingly contested, in no small part thanks to civil society activists particularly in Austria and Germany.²³ Austrian Chancellor Faymann, who has been in the office since 2008 and therefore during the period leading up to the launch of TTIP negotiations, experienced a change of his heart and became one of the fiercest opponents of ISDS, condemning it as an outdated institution which benefits corporations.²⁴ Despite agreeing to the mandate, Faymann threatened to file a

lawsuit with the European Court of Justice should ISDS become a part of TTIP, and made the unusual move of making a unilateral declaration to this effect during the March 2015 Council meeting.²⁵ More recently, Faymann declared himself to be opposed to the Investment Court System (ICS), the reformed ISDS tribunal proposed by the Commission.²⁶

In a similar vein, growing dissatisfaction with ISDS and TTIP in Germany saw SPD³ Vice-Chancellor Sigmar Gabriel prevaricate over the old ISDS system.²⁷ While he seems content with its newest version, this may be because TTIP is a part of the coalition treaty with Angela Merkel's CDU²⁸ and thus torpedoing TTIP would have consequences for the unity of the German grand coalition. A legitimate debate on the possible reforms of the arbitration system which, in contrast to the proposed scale of EU-US regulatory cooperation, is not the most important aspect of TTIP has therefore become a magnet for other political interests, such as the quest for popularity within the political elite and anti-globalisation sentiments among the activist public (see below).

It has not only been ISDS but also a lack of transparency that have been one of the key criticisms levied by various civil society organisations against TTIP. The demand to publish the negotiating mandate became the first target of public pressure. Aware of the increasing public backlash against TTIP, it was Commissioner De Gucht and DG Trade who early on advocated publishing the mandate.²⁹ Yet, the Commission received most blame for keeping the talks out of public scrutiny despite the fact that this was due to a blocking minority of 11 member states³⁰ who at a Council meeting in May 2014 prevented the mandate from being published, a particularly ludicrous decision given the fact that the mandate had been leaked and had been available online for several months.³¹ It took several more months and growing public pressure to reach a unanimous Council decision to publish the mandate in October 2014.³²

The incoming Juncker Commission, appointed in 2014, included Trade Commissioner Cecilia Malmström who made transparency of TTIP negotiations one of her flagship initiatives. This included publishing all the EU's textual proposals, i.e. specific proposals for legal texts for individual TTIP negotiation chapters that set out the EU's negotiating positions, with the first batch made public on 7 January 2015 and the latest set of documents published on 21 March 2016. However,

the damage over an alleged lack of transparency had already been done, even if the negotiations were now rightly described, including by some of those who are unhappy with certain aspects of it, as a trade negotiation with an unprecedented degree of transparency.³³

The impression of a lack of transparency, of TTIP as a 'behind the closed door' deal and hence a lack of legitimacy, has continued to stick since it is not possible to make the consolidated texts (i.e. legal textual proposals that include concessions and compromises of both sides) public before all the chapters are agreed upon in the expectation that 'nothing is agreed until all is agreed'. As evidenced above, this is exacerbated by two facts: firstly, in line with the contradiction between coordinative and communicative discourses, national leaders are not willing to invest much of their political capital into defending what has been negotiated within TTIP at home, but are happy to absolve themselves from any accountability while shifting responsibility to the Commission. Secondly, the topic of transparency has been taken up by other actors, such as the European Parliament, as a means of establishing itself as an equal partner to the Council within the interinstitutional 'several level game'.

THE EUROPEAN PARLIAMENT: THE NEW ACTOR ON THE SCENE AND THE BATTLE OF TTIP

Following the Lisbon Treaty, where the European Parliament received more or less an equal standing with the Council as a co-legislative body through the ordinary legislative procedure within the EU, any EU FTA must be ratified by the Parliament.³⁴ No matter whether the Commission eventually judges that TTIP falls under the exclusive Common Commercial Policy (CCP), (and thus will be voted at the EU level only) or that TTIP represents a 'mixed agreement' interfering with Member State competences (in which case the national ratification processes will take place as well mostly through national parliaments), the European Parliament will approve or reject it on a simple majority vote.³⁵

In fact, TTIP will be the first EU-US agreement that will be ratified by both the European Parliament and the US Congress.³⁶ Because the Obama Administration managed to secure a fast-track Trade-Promotion Authority (TPA) from Congress in 2015, Congress has

in effect moved from a body that was allowed to add amendments both to the TPP and TTIP agreements to the same position as the European Parliament: they can both either say yay or nay to the final deal.³⁷ The European Parliament's role has therefore been likened to a 'permanent TPA'³⁸ due to the caveat that either the US House of Representatives or the Senate may under certain conditions withdraw their consents to the TPA, while the European Parliament does not have such a power.³⁹

Nevertheless, the fact that the European Parliament enjoys the 'hard power' of thwarting any final arrangement has been portrayed as the basis of its political clout,⁴⁰ its 'ex-ante power'⁴¹ or even its 'trump card'.⁴² The European Parliament has shown that it can exploit its newly accorded competence by voting down the SWIFT (Society for Worldwide Interbank Financial Telecommunication) and ACTA (Anti-Counterfeiting Trade Agreement) agreements.⁴³ What is perhaps new with TTIP is that the European Parliament have tried to exert influence over TTIP from a much earlier stage than during the ratification period, as was the case with SWIFT and ACTA.

During the period of obtaining the TTIP mandate, MEPs more or less copied the approach of national leaders. In May 2013, a month before launching the negotiations, the European Parliament voted on a resolution that emphasised two main points: exclusion of audiovisual and the Parliament's insistence on being 'immediately and fully informed at all stages' of the TTIP negotiations.⁴⁴ As with national leaders, the European Parliament did not express any objections to ISDS being included. Yet once ISDS turned into one of the most controversial issues of the negotiations, the newly elected MEPs from both the Left and Right seized on it as the opportunity to show that they were the main guardians of the public's interests. It took them two years to realise this, but they did so with all the more force.

Before voting on a second resolution on TTIP in July 2015,⁴⁵ MEPs submitted nearly 900 amendments through 14 European Parliament committees, making it the most contested European Parliament resolution of all time.⁴⁶ In an unprecedented move, the initial vote was postponed and amendments that were largely related to ISDS were sent back to the International Trade (INTA) committee. In the end, a compromise was produced in order to satisfy primarily the Socialists and Democrats groups. This agreed that the Parliament

would approve TTIP only in the case of a revised version of ISDS was a part of the deal. Even so, about a third of the Socialists voted against the resolution⁴⁷ which, in a way, parallels the divide within the US Congress that is split on TTIP (and even more so on the TPP) not along party lines but across the aisle with mainly Democrats being against it.⁴⁸ In any case, TTIP may eventually lose a majority vote in the European Parliament if the Commission's revised ISDS (or ICS) proposal is rejected or watered down due to the objections by the US.

Even though the Lisbon Treaty strengthened the role of the European Parliament as the only directly elected body in the EU's decision making-processes, MEPs have to some extent started behaving similarly to their national counterparts. They have been quick to drop previously held views once they see they no longer correspond with popular demand back home, as opposed to trying to explain and defend their original positions. The contradiction between the coordinative and communicative discourse is thus being replicated in the European Parliament as well. Moreover, even if pressure by the Parliament to change ISDS might be considered a victory by the Parliament over the Council (and the Commission), paradoxically, it was achieved by using the same 'double speak' method that national leaders practice. As such they have done so through the means that the Lisbon Treaty should have reduced. For the future of the transatlantic relations it is a shame that the ISDS, and TTIP in general, might be the first victim of these post-Lisbon developments.

The European Parliament's tendency to use contentious subjects for its own institutional gain is well illustrated on another issue: transparency and the so-called 'reading rooms'. In contrast to the US Congress where, even under the TPA, the USTR must consult the individual members of Congress at any time they wish and provide them with all classified documents, the European Parliament is in a more passive position in which it is to be 'informed' rather than consulted. Although the Commission has been willing to provide more information than previously,⁴⁹ by using public pleas for more transparency the European Parliament has pushed for increased access to the consolidated texts through the opening of specially secured 'reading rooms' in the Commission and Parliament buildings.

Since spring 2014, select MEPs (for example, the Parliament's leadership, chairs of key committees and rapporteurs) have been able to access the consolidated texts of TTIP. After several more months

of pressing both the Commission and the US, all MEPs were granted access in December 2015.⁵⁰ As a result, the European Parliament successfully changed the 'institutional asymmetry' that favoured the EU member states who had more access than MEPs. Nonetheless, public criticism directed at the reading rooms as a 'sham transparency' persists, particularly because of complex security rules allowing for handwritten notes but no photocopies that could be taken away.⁵¹ Given the high number of actors involved, it is probably only a matter of time before one of the classified documents is leaked.

National parliaments joined the European Parliament's demands for better access to the consolidated texts. That was initially allowed to a small group of MPs in each Member State at special premises in the US embassies in each capital. However, together with the European Parliament, national parliamentarians eventually received the same level of access as MEPs and, for instance, the German Members of the Bundestag may view the documents in a secured room at the German Economics Ministry.⁵² It is one of the few instances where national parliaments have teamed up with the European Parliament in pressuring the governments of the member states.

It remains to be seen whether this level of access will lead MEPs or MPs to better communicate TTIP to the general public. As the Committee of Regions (whose key members may also access the classified documents in the Commission's reading room) pointed out, it is not clear how this information can be used to improve communication on the ground.⁵³ Moreover, some MEPs such as a Swedish Green MEP started calling for opening up the consolidated texts to all citizens, which is impossible to permit if there is to be anything left for the US and EU to negotiate over.

All in all, there are two lessons that TTIP can teach us about the role of the European Parliament. First, in contrast to the US Congress that voluntarily limited its control through agreeing to the TPA, the European Parliament has used TTIP as a way to increase its powers. In a way, we are witnessing two opposite processes across the Atlantic: in the US TPA contributed to a shift from the congressional to executive actors in handling TTIP, in the EU we have seen a shift from the executives towards the European Parliament. Second, actors who are not formally involved in the negotiations are those who can eventually ditch the deal, particularly if they have the public on their side.

TTIP, THROUGHPUT LEGITIMACY AND A CONSTRAINING PUBLIC DISSENSUS

TTIP negotiations demonstrate how public opinion can matter in areas of European integration where previously public views were either ignorant or were ignored by elites. Although from the American perspective we can say that TTIP shows nothing much new and Europe is simply experiencing its 'NAFTA moment',⁵⁴ from a European perspective however there has been a significant change. TTIP represents a clear example of Hooghe's and Mark's⁵⁵ post-functional argument of the EU and EU policy making moving from a 'permissive consensus' to 'constraining dissensus' among European publics.

Moreover, these developments differ across EU member states. In the Czech Republic, for instance, where general support for TTIP is relatively high at around 62%,⁵⁶ the 'permissive consensus' still prevails: around 78% of the Czechs have never heard of TTIP or do not know what TTIP is about and, equally, 76% of the Czech citizens are not interested in knowing more.⁵⁷ On the other hand, in EU member states where anti-TTIP campaigners are particularly active through social media,⁵⁸ such as Twitter,⁵⁹ and which do not experience the same level of online engagement from TTIP advocates, the public 'dissensus' becomes constraining and is translated into the lowest levels of support for TTIP: Austria with 39%, Germany with 39%, and Belgium with 40%.⁶⁰

This is perhaps in line with wider frustrations and feelings of disconnect between ordinary voters and politicians. TTIP's weak support is therefore in part the result of the so-called '80:20 society'⁶¹ where 80% of the population do not see any direct benefits of a trade deal like TTIP, as much as they do not see any benefits that the European integration brings them in general. We can also look at it from a positive angle and see in the anti-TTIP civic activism the creation of a true Europe-wide public sphere and civil society. Or, it can be dismissed as a 'proxy war' by those who fight against globalisation, corporate influence, and are anti-American.⁶²

Nevertheless, there is a silver lining to the problems TTIP faces. Paradoxically, some of those who protest against TTIP do so to defend the rules and regulations that have been achieved throughout the last seventy years of European integration: it is the EU's environmental, health

and safety standards that they want to uphold rather than dismantle. The VW scandal also points to another paradox between reality and faith in EU standards. In 2014, 91% of Germans trusted EU standards for car safety more than American standards.⁶³ But it was the US environmental agency that detected the German car manufacturer's cheating of emission rules.⁶⁴

Therefore it is 'throughput legitimacy' which is needed to make sure TTIP is agreed in Europe. In other words, it is not enough to focus either on the output legitimacy from delivering the goods (such as 'TTIP will bring jobs and growth', a position advocated by Commissioner De Gucht), or input legitimacy (whereby 'all stakeholders are consulted' in the decision-making process, as often emphasised by Commissioner Malmström). We also need 'Throughput' legitimacy⁶⁵ of the negotiation process as such, i.e. that both national leaders and politicians at the EU level make clear that they take part, trust in and support what goes on in the 'black box' of EU governance. This throughput legitimacy depends however on them resisting the temptation of caving in to public pressure at home by blaming 'the EU' for a bad TTIP deal.

If TTIP fails in Europe, the EU will be blamed but, in fact, national politicians will be responsible. On the other hand, the EU's institutions, especially the European Parliament, should avoid using TTIP and its various aspects, such as transparency and ISDS, as part of the power struggles between themselves. All sides in the EU need to recognise that if TTIP is not ratified but TPP is, it will allow the US to set global trade and regulatory standards with Pacific allies such as Japan, leaving the EU to play catch up at a later date.

POLICY RECOMMENDATIONS

1. EU member states, and their national leaders in particular, need to get involved in the public debate about TTIP in their home countries, explaining and defending what they have agreed 'in Brussels' and what has been negotiated at the EU level with the United States. The Commission's DG Trade communication unit should better coordinate its work with national ministries, thereby increasing the sense of member states' ownership of the TTIP process.
2. The European Parliament and national parliaments should use their increased access to negotiating texts to inform their voters about the costs and benefits of TTIP. Both European and national parliamentarians should familiarise themselves with fact based advantages and disadvantages of various aspects of TTIP, such as ISDS and regulatory cooperation, through consultations with experts. They should avoid using TTIP for turf wars with other EU institutions.
3. All actors, from EU member states and European Commission through to European and national parliaments, should focus on an informed debate on the geopolitical aspects of TTIP and consider the consequences for the EU and its member states of TTIP failing. ■

NOTES

- 1 J. Capaldo, *The Trans-Atlantic Trade and Investment Partnership: European Disintegration, Unemployment and Instability* (Medford MA: Tufts University, 2014).
- 2 See, for instance, CEPR, *Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment* (London: Centre for Economic Policy Research, 2013).
- 3 For an overview of various models examining the costs and benefits of TTIP, see, for instance, F. Mustilli, 'Estimating the Economic Gains of TTIP', *Intereconomics* Vol. 50, no. 6, 2015 ; G. Felbermayr, *Die TTIP Debatte in Deutschland* (Paris: ifri, 2015), p.13.
- 4 World Trade Institute, *TTIP and the EU Member States* (Bern: University of Bern, 2016).
- 5 D. Hamilton and J. Pelkmans (Eds.), *Rule-Makers or Rule-Takers? Exploring the Transatlantic Trade and Investment Partnership* (London: Rowman and Littlefield, 2015) ; D. Hamilton (Ed.), *The Geopolitics of TTIP: Repositioning the Transatlantic Relationship for a Changing World* (Washington DC: Center for Transatlantic Relations, 2014) ; E. Brattberg, *Toward a Transatlantic Renaissance? TTIP's Geopolitical Impact in a Multipolar World* (Washington DC: The German Marshall Fund, 2015).
- 6 C. Malmström, 'Future EU Trade Policy: Achieving Europe's Strategic Goals', (2015), http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153407.pdf; Hanns Günther Hilpert, "Trans-Pacific Partnership (TPP) Agreement: Increased Pressure on European Trade Policy," Berlin: Stiftung Wissenschaft und Politik, 2015.
- 7 K. De Gucht, 'Transatlantic Trade and Investment Partnership – Solving the regulatory puzzle', Speech in Prague, Czech Republic, 10 October 2013, http://europa.eu/rapid/press-release_SPEECH-13-801_en.htm.
- 8 F. De Ville and G. Siles-Brugge, *TTIP: The Truth about the Transatlantic Trade and Investment Partnership* (Polity, 2015) ; T. Novotná et al. (Eds.), *The Politics of Transatlantic Trade Negotiations: TTIP in a Globalized World* (Farnham: Ashgate, 2015). For the Commission's view, see: http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153266.pdf
- 9 A. Ahnlied, 'EU in the TTIP negotiations - some observations on the role of leaders, stake-holder dialogue and transparency', Paper presented at the Unpacking TTIP Negotiations ULB-Berkeley Conference, Brussels, 17 October 2016 2016, p1.
- 10 *Ibid.*
- 11 *Ibid.*
- 12 Some EU member states pushed the Commission into the launch of the talks despite the fact that there was no clear consensus within the Commission that the negotiations should commence as quickly as they did. Similarly, Mike Froman, the current US Chief Trade Negotiator, was initially skeptical about launching the negotiations. See T. Novotná, 'EU Institutions, Member States and TTIP Negotiations: The Balance of Power and EU Foreign Policy', in J. F. Morin et al. (Eds.) *The Politics of Transatlantic Trade Negotiations: TTIP in a Globalized World* (GEM Series, Farnham: Ashgate, 2015) ; C. Barfield, 'The Political Economy of TTIP: The View from the United States', paper presented at the Unpacking TTIP Negotiations ULB-Berkeley Conference, Brussels, 17 October 2015, p3.
- 13 Article 207 of the Treaty on the Functioning of the European Union (TFEU): "only the EU, and not individual member states, can legislate on trade matters and conclude international trade agreements." See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E207:en:HTML>
- 14 Novotná, 'EU Institutions, Member States and TTIP Negotiations: The Balance of Power and EU Foreign Policy'.
- 15 This point of view was actually criticized by the civil society activists and leaked by one of the anti-TTIP groups. See <http://corporateeurope.org/trade/2013/11/leaked-european-commission-pr-strategy-communicating-ttip>
- 16 Speech by President Juncker at the Business Europe Day event, 26 March 2015, http://europa.eu/rapid/press-release_SPEECH-15-4708_en.htm
- 17 House of Lords European Union Committee, *Fourteenth Report - The Transatlantic Trade and Investment Partnership* (London: House of Lords, 2014), Point 258.
- 18 T. Novotná, *Negotiating the Accession: How Germany Unified and the EU Enlarged*, New Perspectives in German Political Studies. (Basingstoke: Palgrave Macmillan, 2015).
- 19 V. A. Schmidt, *Democracy in Europe: The EU and National Politics* (Oxford: Oxford University Press, 2006) ; V. A. Schmidt, 'Discursive Institutionalism: The Explanatory Power of Ideas and Discourse', *Annual Review of Political Science*, no. 11, 2008.

- 20 Ahnliid, 'EU in the TTIP negotiations - some observations on the role of leaders, stake-holder dialogue and transparency', p.5.
- 21 Council of the European Union, 'Council approves launch of trade and investment negotiations with the United States', 2013, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137485.pdf.
- 22 ISDS is an arbitration mechanism that was initially devised to protect private investors from abuse and discrimination by interfering governments but is nowadays considered by its critics a tool prioritising the private interests at the detriment of public regulatory powers. See, for instance, M. Sapiro, *Transatlantic trade and investment negotiations: Reaching a consensus on investor-state dispute settlement* (Washington: Brookings Institution, 2015); R. Pardo, *ISDS and TTIP - A miracle cure for a systemic challenge?* (Brussels: European Policy Centre, 2014); R. Quick, 'Why TTIP Should Have an Investment Chapter Including ISDS', *Journal of World Trade* Vol. 49, No. 2, 2015.
- 23 For data, see: http://ephtinktank.eu/2015/06/16/eu-us-negotiations-on-ttip-a-survey-of-current-issues/support_for_ttip_in_eu_ms/. For an analysis of the German views, see P. Sparding, *Germany's Pivotal Role on the Way to TTIP*, (Washington DC: The German Marshall Fund of the US, 2014); Felbermayr, 'Die TTIP Debatte in Deutschland'.
- 24 M. Volker, 'TTIP: Faymann gegen Schiedsgerichte', *der Standard*, 9 April 2015. <http://derstandard.at/2000014095183/Konzerne-profitieren-von-Schiedsgerichten>.
- 25 Ahnliid, 'EU in the TTIP negotiations - some observations on the role of leaders, stake-holder dialogue and transparency', p.16.
- 26 Der Standard, 'TTIP: Faymann auch gegen reformiertes Schiedsgerichte' *der Standard*, 29 December 2015. <http://derstandard.at/2000028195269/TTIP-Faymann-auch-gegen-reformiertes-Schiedsgericht>
- 27 H. Mayer, 'Between 'NATO for Trade' and 'Pride in Angst': The German TTIP Debate and its Spill-over into Wider Transatlantic Concerns', in J. M. Morin et al. (Eds) *The Politics of Transatlantic Trade Negotiations: TTIP in a Globalized World* (Farnham: Ashgate, 2015).
- 28 The Christian Democratic Union of Germany (CDU). Coalition agreement between CDU, CSU and SPD can be found here : https://www.bundesregierung.de/Content/DE/_Anlagen/2013-12-17-koalitionsvertrag.pdf;jsessionid=B8C9186A2D9C0A08688850EBF42F7D.s6t1?__blob=publicationFile&v=2, p. 168
- 29 European Commission, 'TTIP : I'm delighted EU governments decided to make the TTIP negotiating mandate public – says De Gucht', European Commission Press Release, 9 October 2014, http://europa.eu/rapid/press-release_STATEMENT-14-306_en.htm.
- 30 The blocking minority included most of the 'new' EU member states but also states like Denmark which argued that publishing the mandate will set a wrong precedent and weaken the hand of the EU's negotiators. An informal discussion with an EU member state diplomat, Brussels.
- 31 S. McKeagney, 'Council fails to agree on release of TTIP mandate', *TTIP2016 blog*, 14 March 2016, <http://ttip2016.eu/blog/EU%20Mandate%20transparency.html>.
- 32 See European Commission, 'Declassification: Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America', 9 October 2014, <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>. Nonetheless, even the published mandate does not show any positions of individual EU member states and thus we can still only speculate which countries pushed for what amendments. In the audiovisual example above, it seems however clear that it was not just France that took a critical stance, but a number of other states were happily hiding behind it.
- 33 See a comment by Bernd Lange (MEP, S&D), a chair of the EP's INTA committee, during a Facebook chat cited in: European Parliament News, 'Bernd Lange on TTIP: "If there is no ambitious deal on the table, there is no deal"', 4 February 2016, <http://www.europarl.europa.eu/news/en/news-room/20160203STO12769/Lange-on-TTIP-If-there-is-no-ambitious-deal-on-the-table-there-is-no-deal>.
- 34 See Article 218 (TFEU), <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008E218>.
- 35 M. F. Larsén, 'The Increasing Role of the European Parliament in EU FTA Negotiations', GIFTA Project Briefings Series, No. 3, September 2015, http://giftaproject.org/wp-content/uploads/2015/09/Policy-Brief-3_Frenhoff-Larsen-2015.pdf; Directorate General for External Policies European Parliament, *Comparative study on access to documents (and confidentiality rules) in international trade negotiations* (Brussels: European Parliament, 2015).
- 36 M. Iffland, *Getting Legislatures on Both Sides of the Atlantic Engaged in TTIP* (Washington, DC: The German Marshall Fund of the United States, 2015), p1.
- 37 Cf. Ibid.
- 38 D. W.F. Huang, 'The European Parliament's Role in Trade Agreements and TTIP', *Journal of Business and Politics*, 2016.

- 39 TPA is also time-limited, i.e. valid until 1 July 2018 with a possible extension for another three years. For further details, see D. Jancic, 'The Role of the European Parliament and the US Congress in Shaping Transatlantic Relations: TTIP, NSA Surveillance, and CIA Renditions', *JCMS: Journal of Common Market Studies*, forthcoming 2016.
- 40 Larsén, 'The Increasing Role of the European Parliament in EU FTA Negotiations', p.2.
- 41 Huang, 'The European Parliament's Role in Trade Agreements and TTIP'.
- 42 Jancic, 'The Role of the European Parliament and the US Congress in Shaping Transatlantic Relations: TTIP, NSA Surveillance, and CIA Renditions', p.5.
- 43 See, e.g., European Parliament, *Comparative study on access to documents (and confidentiality rules) in international trade negotiations*.
- 44 European Parliament, 'European Parliament resolution of 23 May 2013 on EU trade and investment negotiations with the United States of America' (Strasbourg: European Parliament, 2013). See particularly points 11 and 25 of the resolution. The resolution was accepted by 406 votes against 105 with 28 abstentions. See <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0227+0+DOC+XML+V0//EN>.
- 45 European Parliament, 'European Parliament resolution of 8 July 2015 containing the European Parliament's recommendations to the European Commission on the negotiations of the Transatlantic Trade and Investment Partnership (TTIP)' (Strasbourg: European Parliament, 2015), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0252+0+DOC+XML+V0//EN>.
- 46 Ifland, 'Getting Legislatures on Both Sides of the Atlantic Engaged in TTIP'.
- 47 Votewatch.eu, 'TTIP mandate makes it through EP plenary. Investors' protection system remains in limbo', 9 July 2015, <http://www.votewatch.eu/blog/ttip-mandate-makes-it-through-ep-plenary-investors-protection-system-remains-in-limbo/#more-5653>.
- 48 This assumption is based on the vote on TPA in the Congress, see Barfield, 'The Political Economy of TTIP: The View from the United States'. The TPP will go through the ratification process in Congress during 2016.
- 49 Larsén, 'The Increasing Role of the European Parliament in EU FTA Negotiations'; Ahnlid, 'EU in the TTIP negotiations - some observations on the role of leaders, stake-holder dialogue and transparency'.
- 50 European Parliament Press Office, 'All MEPs to have access to confidential TTIP documents', 2 December 2015, <http://www.europarl.europa.eu/news/en/news-room/20151202IPR05759/All-MEPs-to-have-access-to-all-confidential-TTIP-documents>; and M. De La Torre, 'S&Ds welcome increased TTIP access to negotiating documents for members of the EU parliament', press release from S&D group, 2 December 2015, <http://www.socialistsanddemocrats.eu/newsroom/sds-welcome-increased-ttip-access-negotiating-documents-members-eu-parliament>.
- 51 Letter from Cecilia Malmstrom to Bernd Lange, 2 December 2015, <https://polcms.secure.europarl.europa.eu/cmsdata/upload/8159ead1-cc47-410e-9985-843f42dda56e/Letter%20to%20Chairman.pdf>; and letter from Martin Schulz and Bernd Lange to Cecilia Malmstrom, 10 December 2015, <https://polcms.secure.europarl.europa.eu/cmsdata/upload/9eb1ebb4-3205-4cb1-9b57-72a87a298048/Access%20to%20TTIP-related%20docs.pdf>.
- 52 Tagesschau.de, 'Abgeordnete dürfen Dokumente einsehen', 26 January 2016, <http://www.tagesschau.de/wirtschaft/ttip-einsicht-freihandel-101.html>.
- 53 M. Schneider, 'Mobilising the masses: a grass-roots communication strategy for TTIP', *European View* Vol. 14, No. 2, 2015, p.204.
- 54 Barfield, 'The Political Economy of TTIP: The View from the United States'.
- 55 L. Hooghe and G. Marks, 'A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus', *British Journal of Political Science*, Vol. 39, No. 01, 2009.
- 56 See European Parliamentary Research Service Blog, 'Support for TTIP in member states' 16 June 2015, http://epthinktank.eu/2015/06/16/eu-us-negotiations-on-ttip-a-survey-of-current-issues/support_for_ttip_in_eu_ms/.
- 57 See J. Cervenka, 'Občané o Transatlantickém obchodním a investičním partnerství', *CVVM*, 8 July 2015, <http://cvvm.soc.cas.cz/mezinarodni-vztahy/obcane-o-transatlantickem-obchodnim-a-investicnim-partnerstvi-cerven-2015>; and J. Cervenka, 'Občané o Transatlantickém obchodním a investičním partnerství – listopad 2015', *CVVM*, 30 December 2015. <http://cvvm.soc.cas.cz/mezinarodni-vztahy/obcane-o-transatlantickem-obchodnim-a-investicnim-partnerstvi-listopad-2015>. The percentage of disinterested citizens was 78% in June 2015 and 79% in September 2015.
- 58 M. Bauer, 'The Spiral of Silence – How Anti-TTIP Groups Dominate German Online Media and Set the Tone for TTIP Opinion', *ECIPE*, 28 January 2015, <http://ecipe.org/blog/anti-ttip-german-online-media/>; B. Crawford and A. Chan, 'The power of public opposition to TTIP in Germany: A case study in the demise of ISDS', paper presented at the Unpacking TTIP Negotiations ULB-Berkeley Conference, Brussels, 17 October 2015.

- 59 S. Maria Ciofu and N. Stefanuta, 'TTIP, the Bullied Kid of Twitter', *Georgetown Public Policy Review*, January 2016, <http://gppreview.com/2016/01/14/ttip-twitter-and-how-social-media-is-defining-the-public-argument/> ; M. Bauer, *Klicks gegen TTIP: Netzaktivismus als Mittel zur Massenmobilisierung* (Konrad Adenauer Stiftung, 2015).
- 60 European Parliamentary Research Services Blog, *EU-US negotiations on TTIP: A survey of current issues*, 16 June 2015, <http://epthinktank.eu/2015/06/16/eu-us-negotiations-on-ttip-a-survey-of-current-issues/>.
- 61 N. Copsy, *Rethinking the European Union* (Basingstoke: Palgrave Macmillan, 2015).
- 62 Sparding, 'Germany's Pivotal Role on the Way to TTIP'; Felbermayr, 'Die TTIP Debatte in Deutschland'.
- 63 Pew Research Center, 'Americans, Germans Prefer Own Standards', 8 April 2014, <http://www.pewglobal.org/2014/04/09/support-in-principle-for-u-s-eu-trade-pact/pew-bertelsmann-eu-trade-report-13/>.
- 64 R. Hotten, 'Volkswagen: the scandal explained' *BBC News*, 10 December 2015. <http://www.bbc.com/news/business-34324772>
- 65 V. A. Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output and Throughput', *Political Studies*, Volume 61, No. 1, 2013.

List of abbreviations

ACE Mobile	Allied Command Europe Mobile	GHG	Greenhouse gases
ACTA	Anti-Counterfeiting Trade Agreement	IAEA	International Atomic Energy Agency
AFL-CIO	The American Federation of Labor and Congress of Industrial Organizations	ICS	Investment Court System
AIIB	Asian Investment Infrastructure Bank	INDC	Intended Nationally Determined Contributions
ASEAN	Association of South East Asian Nations	ISDS	Investor-State Dispute Settlement
BRIC	Brazil, Russia, India and China	ISIS	Islamic State of Iraq and Syria
CCP	Common Commercial Policy	MEP	Member of the European Parliament
CCWG	Climate Change Working Group	MINT	Mexico, Indonesia, Nigeria and Turkey
CDU	Christian Democratic Union	MP	Member of Parliament
CELAC	Community of Latin American and Caribbean States	NAFTA	North American Free Trade Area
CERC	US-China Clean Energy Research Center	NATO	North Atlantic Treaty Organization
CJEF	Combined Joint Exeditinoary Force	NGO	Non-Governmental Organisation
COTRA	European Council's Trade Policy Committee's working group on Transatlantic Relations.	NPT	Non-Proliferation Treaty
CTBT	Comprehensive Test Ban Treaty	NSA	National Security Agency
DSG	Defence Strategic Guidelines	RCEP	Regional Comprehensive Economic Partnership
ETS	Emissions Trading Scheme	SAIS	School of Advanced International Studies (Johns Hopkins University)
EU	European Union	SWIFT	The Society for Worldwide Interbank Financial Telecommunication
FDI	Foreign Direct Investment	TPA	Trade Promotion Authority
FTA	Free Trade Agreement	TPC	European Council's Trade Policy Committee
G7	Global 7: Canada, France, Germany, Italy, Japan, USA, UK.	TPP	Trans-Pacific Partnership
G20	Global 20: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, UK, USA	TTIP	Transatlantic Trade and Investment Partnership
GAMM	Global Approach to Migration and Mobility framework	UNASUR	Union of South American Nations
		UNFCCC	United Framework Convention on Climate Change
		VTJF	Very High Readiness Joint Task Force