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# Proposed Transatlantic Trade and Investment Partnership (T-TIP): In Brief

**Shayerah Ilias Akhtar**

Specialist in International Trade and Finance

**Vivian C. Jones**

Specialist in International Trade and Finance

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## Summary

Congress has the constitutional authority to “regulate commerce with foreign nations.” Thus, it has an important legislative, oversight, and advisory role when trade agreements are being negotiated. The Transatlantic Trade and Investment Partnership (T-TIP) is a proposed free trade agreement (FTA) being negotiated between the United States and the European Union (EU). Both sides envision the T-TIP as a comprehensive and high standard FTA. They seek, among other things, to increase transatlantic market access through the elimination of barriers to trade and investment in goods, services, and agriculture, and enhanced regulatory cooperation. The two sides also seek to use eventual T-TIP commitments on the global scene: to advance trade liberalization; set rules and standards; and address challenges associated with emerging markets. The United States and EU have held five rounds of T-TIP negotiations thus far, with the fifth round concluded on May 23, 2014.

**Congressional interest.** Congress has a direct interest in the T-TIP, both through influencing the Administration’s positions on issues in the negotiations and considering implementing legislation for any final T-TIP agreement for it to enter into force. The 113<sup>th</sup> Congress may consider the renewal of Trade Promotion Authority (TPA) for the T-TIP. Many in Congress support liberalizing international trade, but there are divergent views among Members on the general role and direction of U.S. trade policy, as well as the costs and benefits of trade liberalization. Skeptics of trade liberalization argue that its costs and benefits are not equitably distributed among stakeholders. A transatlantic agreement would also likely have implications for a number of U.S. economic sectors of direct interest to Members of Congress.

**Market access.** Average U.S. and EU tariffs are already quite low. However, given the magnitude of the transatlantic relationship, further elimination and reduction of tariffs could yield significant economic gains. Commitments in other areas, such as further opening of government procurement markets, could also lead to greater market access. Certain aspects of market access negotiations may be controversial, for example, with respect to cross-border data flows. Nevertheless, most observers generally view tariffs as “low-hanging fruit” in the negotiations.

**Regulatory issues.** Regulatory issues are widely regarded by stakeholders as a core component of the T-TIP negotiations. Economic gains from greater regulatory compatibility could be significant. However, many observers have expressed some skepticism about whether a comprehensive agreement on regulatory issues between the two sides can be reached. Debate continues regarding whether financial services will be included in the scope of regulatory talks in the T-TIP.

**Trade-related rules.** Broadly speaking, the United States and EU have more in common than differences on trade-related rules. For instance, both sides generally have strong protections for investors, intellectual property rights, labor, and the environment. Compared to regulatory talks, negotiations of trade-related rules may not be as contentious for the two sides, although certain issues, such as investor-state dispute settlement and geographical indications may be highly contested. Data privacy issues also may receive greater scrutiny following the publication of classified information related to National Security Agency (NSA) surveillance activity since June 2013. To the extent that the T-TIP is used as a vehicle for shaping the global rules-based trading system, debates about certain rules commitments—such as those related to state-owned enterprises and localization barriers to trade—may become more prominent.

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The Transatlantic Trade and Investment Partnership (T-TIP) is a proposed free trade agreement (FTA) being negotiated between the United States and the European Union (EU).<sup>1</sup> Congress retains the constitutional authority to “regulate commerce with foreign nations,” and has a direct interest in the T-TIP, both through influencing the Administration’s positions on issues in the negotiations and approving implementing legislation for any final T-TIP agreement for it to enter into force. The 113<sup>th</sup> Congress may consider the renewal of Trade Promotion Authority (TPA) for the T-TIP.<sup>2</sup> Negotiators on both sides envision the T-TIP as a comprehensive and high standard FTA. They seek to (1) increase market access through the elimination of barriers to trade and investment in goods, services, and agriculture and the further opening of government procurement markets; (2) enhance regulatory coherence and cooperation; and (3) develop new rules in areas such as foreign direct investment, intellectual property rights, labor, the environment, and emerging “21<sup>st</sup> century” areas of trade (e.g., regulating data flows, trade facilitation in a supply chain environment, and the role of state-owned enterprises). The United States and EU also seek to use commitments reached in the T-TIP to advance multilateral trade liberalization, set globally-relevant rules and standards, and address challenges associated with the growing role of China and other emerging markets in the global economy.

## Current Status

The United States and EU began T-TIP negotiations in July 2013, and have held five rounds of negotiations thus far. The fifth round of negotiations ended on May 23, 2014.<sup>3</sup> While both sides aim to conclude the negotiations in two years, some question the likelihood of doing so given their complexity.

Although efforts to deepen transatlantic economic integration are long-standing, the current focus on a U.S.-EU FTA flows from a final report by a joint High-Level Working Group (HLWG) on Jobs and Growth. Established following the U.S.-EU Summit held in Washington, D.C. on November 28, 2011, the HLWG was directed by U.S. and EU leaders to identify policies and measures to increase transatlantic trade and investment. On February 11, 2013, the HLWG released a final report concluding that “a comprehensive agreement that addresses a broad range of bilateral trade and investment issues, including regulatory issues, and contributes to the development of global rules, would provide the most significant mutual benefit of the various options ... considered.” Accepting the HLWG’s findings, on February 13, 2013, U.S. and EU leaders announced that they would initiate internal preparations to launch the T-TIP negotiations.<sup>4</sup>

On March 20, 2013, the Obama Administration formally notified Congress of its intent to negotiate the T-TIP with the EU, under the procedures of the latest TPA, which was granted by

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<sup>1</sup> The European Union consists of 28 member states: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and United Kingdom.

<sup>2</sup> TPA provides for expedited legislative procedures for the consideration of legislation to implement trade agreements, provided that the President meets certain statutory objectives in negotiating them. See CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by William H. Cooper, Ian F. Fergusson, and Richard S. Beth.

<sup>3</sup> USTR, “Statement by U.S. Trade Representative Froman on the Conclusion of the Fifth Round of T-TIP Negotiations,” press release, May 23, 2014.

<sup>4</sup> The White House, “Statement from United States President Barack Obama, European Council President Herman Van Rompuy and European Commission President José Manuel Barroso,” press release, February 13, 2013.

Congress in 2002 and expired on July 1, 2007. Under the 2002 TPA, this notification triggered a 90-day consultation period for Congress to comment on the proposed negotiations, after which the Administration could begin the negotiations.<sup>5</sup> On the EU side, on March 12, 2013, the European Commission agreed to a draft mandate for the T-TIP negotiations, which was transmitted to the Council of the European Union (also known as the “Council of Ministers”) for approval by the member states.<sup>6</sup> Although not formally required to do so, on May 23, 2013, the European Parliament passed a resolution supporting a “deep and comprehensive” and “ambitious and binding” T-TIP agreement, while noting certain sensitivities.<sup>7</sup> On June 14, 2013, the Council of Ministers approved a mandate for the European Commission to negotiate the T-TIP.<sup>8</sup>

### Role of EU Government Actors in Trade Negotiations

The European Commission negotiates with trading partners on behalf of the European Union, working closely with member states through the Council of the European Union (also known as the “Council of Ministers”) and keeping the European Parliament fully informed. The European Commission drafts a negotiating mandate which must be approved by the Council of Ministers before formal negotiations may begin. Although the European Parliament does not have a formal role in approving the negotiating mandate, it can seek to convey input on its views, priorities, and objectives, and can adopt a resolution on the issue. Once negotiations are concluded, the Parliament (by a simple majority) and the Council must both approve the final agreement. The Parliament’s role in EU trade policymaking and the conclusion of international agreements has increased considerably since the entry-into-force of the Lisbon Treaty in December 2009.

**Source:** CRS Report RS21372, *The European Union: Questions and Answers*, by Kristin Archick.

Domestic procedures for both sides also included consultations with Congress and stakeholder groups, as well as investigations/studies into the possible impacts of the T-TIP. For example, the USTR requested comments from the public and held public T-TIP hearings in May 2013.<sup>9</sup> In addition, the U.S. International Trade Commission (USITC), at the request of the USTR, conducted an investigation on the probable economic effects of the T-TIP and submitted a confidential report on its findings to the USTR on September 26, 2013. The USITC also requested public comments and held a public hearing on the T-TIP in June 2013.<sup>10</sup> Likewise, the European Commission released an impact assessment on the future of the EU-U.S. trade relationship, and commissioned a report, titled *Reducing Trans-Atlantic Barriers to Trade and Investment*.<sup>11</sup>

<sup>5</sup> USTR, “Obama Administration Notifies Congress of Intent to Negotiate Transatlantic Trade and Investment Partnership,” press release, March 20, 2013.

<sup>6</sup> The EU Council of Ministers represents the currently 28 national governments of the European Union. European Commission (EC), *Recommendation for a Council Decision Authorizing the Opening of Negotiations on a Comprehensive Trade and Investment Agreement, Called the Transatlantic Trade and Investment Partnership, between the European Union and the United States of America*, COM(2013) 136 final, March 12, 2013.

<sup>7</sup> European Parliament, “Resolution of 23 May 2013 on EU trade and investment negotiations with the United States of America,” P7\_TA(2013)0227.

<sup>8</sup> EU Council of Ministers, “Council approves launch of trade and investment negotiations with the United States,” press release, June 14, 2013.

<sup>9</sup> USTR, “Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement,” 78 *Federal Register* 19566, April 1, 2013.

<sup>10</sup> USITC, “U.S.-EU Transatlantic Trade and Investment Partnership Agreement; Advice on the Probable Economic Effect of Providing Duty-Free Treatment for Imports,” 78 *Federal Register* 23954, April 23, 2013. The impact assessment has not been released to the public as of this writing.

<sup>11</sup> EC, *Impact Assessment Report on the Future of EU-US Trade Relations*, Commission Staff Working Document, March 2013. Joseph Francois, et al., *Reducing Trans-Atlantic Barriers to Trade and Investment*, Center for Economic Policy Research, report commissioned by EC, March 2013.

## T-TIP in Context

The United States and EU share a large, dynamic, and mutually beneficial trade and economic relationship. The two sides account for nearly half of world gross domestic product (GDP), about 30% of global exports,<sup>12</sup> and have investments of more than \$3.7 trillion in each other's economies.<sup>13</sup> Many observers nevertheless assert that the relationship has not reached its full potential due to a range of regulatory, technical, and other barriers. U.S. and EU negotiators have sought to address some of these issues through various forums over the years, including the Transatlantic Economic Council (TEC), established in 2007. However, concerns about slow economic growth, job creation, and increased competition from emerging markets have prompted calls by public and private stakeholders for a renewed, intensive focus on eliminating and reducing tariff and non-tariff barriers to U.S.-EU trade and investment.

The T-TIP negotiations are a part of U.S. trade policy efforts to promote more open, rules-based trade and investment through the negotiation of bilateral and regional FTAs. However, the proposed T-TIP stands apart from other U.S. FTAs for a number of reasons. First, the T-TIP has the potential to be largest FTA ever negotiated by the United States, in terms of the combined economic size, population, and investment covered (see **Figure 1**). Second, negotiators seek new or expanded commitments in areas such as regulatory coherence and “21<sup>st</sup> century” issues, including state-owned enterprises—issues either not discussed or only modestly discussed in prior FTAs. It is worth noting that many of these same observations are made about the Trans-Pacific Partnership (TPP), a plurilateral FTA currently being negotiated by the United States and 11 other countries across the Asia-Pacific region.<sup>14</sup> Third, the T-TIP could have direct implications for the multilateral trading system. Although the United States and EU, to date, are not negotiating the T-TIP as an “open” or “living” agreement that other trading partners could join (unlike the TPP), they have expressed an interest in using the T-TIP to present common approaches for the development of globally-relevant rules and standards in future multilateral trade negotiations.<sup>15</sup>

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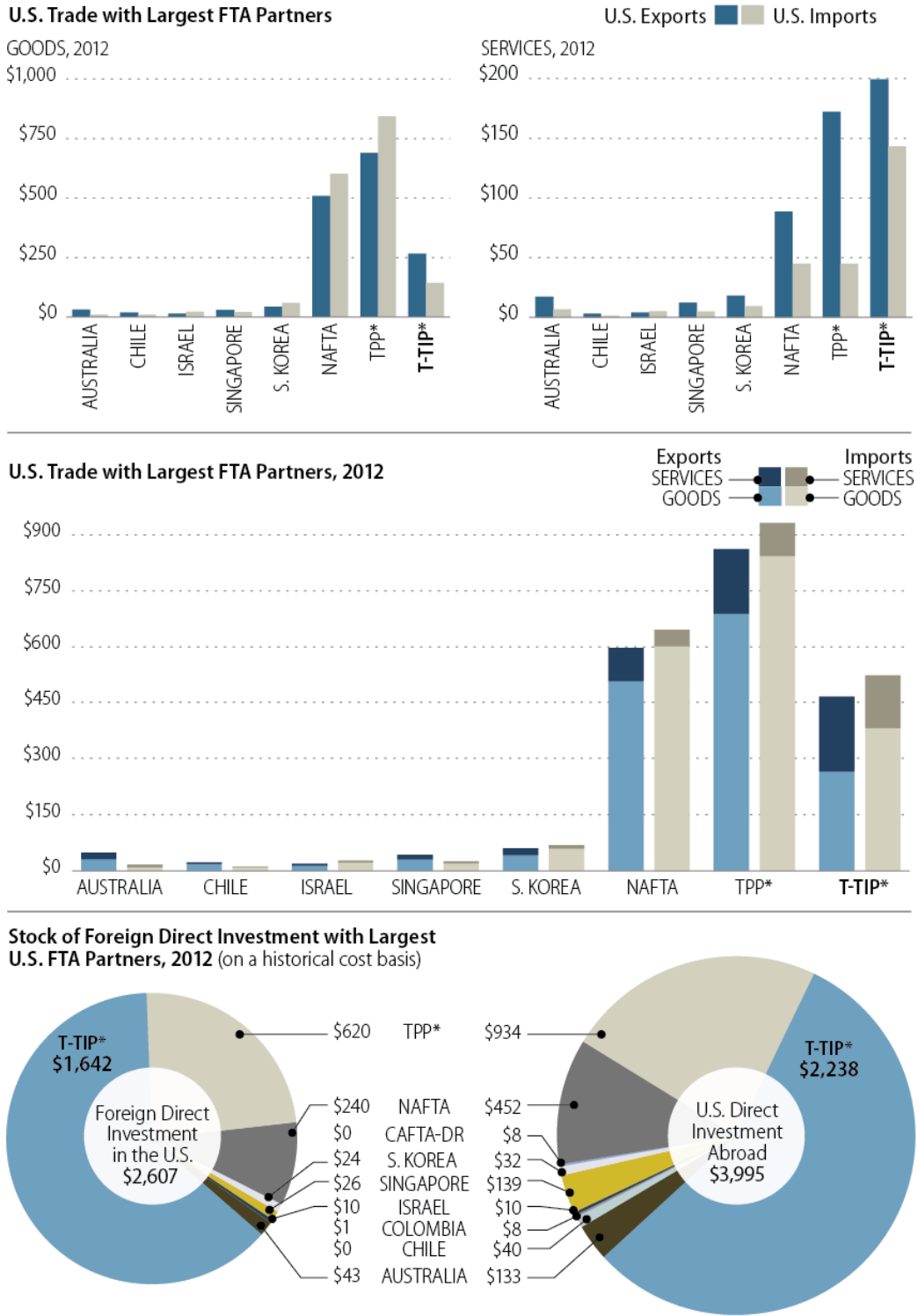
<sup>12</sup> CRS analysis of data from World Trade Organization, *International Trade Statistics 2013*.

<sup>13</sup> CRS Report RL30608, *EU-U.S. Economic Ties: Framework, Scope, and Magnitude*, by William H. Cooper.

<sup>14</sup> CRS Report R42694, *The Trans-Pacific Partnership (TPP) Negotiations and Issues for Congress*, coordinated by Ian F. Fergusson, and CRS Report R42344, *Trans-Pacific Partnership (TPP) Countries: Comparative Trade and Economic Analysis*, by Brock R. Williams.

<sup>15</sup> Officials and other stakeholders of certain countries (e.g., Canada, Mexico, and Turkey) have expressed an interest in their countries participating in the T-TIP negotiations.

**Figure I. U.S. Trade and Investment with Free Trade Agreement (FTA) Partners**



All dollars in billions.

\* Proposed

**Source:** CRS analysis of data from U.S. International Trade Commission and U.S. Bureau of Economic Analysis.



**Notes: North American Free Trade Agreement (NAFTA) partners:** Canada and Mexico.  
**- Proposed Trans-Pacific Partnership (TPP) partners:** Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. TPP services data do not include Brunei, Peru, and Vietnam.  
**- Proposed Transatlantic Trade and Investment Partnership (T-TIP) partners:** EU-28 countries. T-TIP data do not include Croatia, which joined the European Union as its 28<sup>th</sup> member state on July 1, 2013.

## Differing Views on the T-TIP

Members of Congress and other public policy stakeholders have differing views on the T-TIP on multiple fronts, including the following.

- **Economic impact.** Supporters of the T-TIP view the agreement as an opportunity to boost transatlantic economic growth and jobs by eliminating or reducing costly tariff and non-tariff barriers, which they find compelling given the slow economic growth in both the United States and EU and the size of the U.S.-EU economic relationship. Trade skeptics, however, assert that trade liberalization can lead to an inequitable distribution of costs and benefits, including import competition for specific U.S. economic sectors and adverse employment effects.
- **Impact on transatlantic relationship.** On one hand, the T-TIP's successful conclusion could reinforce the United States' commitment to Europe in general and especially to the EU's role as a critical U.S. partner in the international community. Some see this as key, given concerns that the Obama Administration's "rebalancing" toward the Asia-Pacific region may reflect a decline in the relative importance of the transatlantic relationship, though Administration officials have rejected this view.<sup>16</sup> For some, the political turmoil in Ukraine reinforces the need for enhanced cooperation between the United States and EU, including through the T-TIP negotiations. On the other hand, should the negotiations stall or produce results not seen as sufficiently ambitious, further questions could be raised about the strength of the transatlantic relationship.
- **Impact on multilateral trade liberalization.** Supporters argue that the T-TIP could allow the two sides to advance rules-based trade liberalization in the absence of progress in the World Trade Organization (WTO). They also assert that possible U.S.-EU consensus on controversial issues such as agriculture could help to break the impasse on remaining issues in the WTO Doha Round. Others contend that focus on regional and bilateral FTA detracts from trade liberalization efforts through the WTO.
- **Other policy implications.** Supporters contend that the T-TIP could enhance U.S. and EU cooperation in establishing rules and disciplines that address challenges associated with the growing role of emerging markets in the international economy. Critics express concern that globally-relevant rules developed in the T-TIP may adversely affect civil society, consumer, Internet freedom, public health, and other interests. Critics also express concern that the

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<sup>16</sup> See Brookings Institution, "The Transatlantic Partnership: A Statesman's Forum with Secretary of State Hillary Clinton," November 29, 2012; and Department of State, "Remarks at Youth Connect: Berlin" by Secretary of State Kerry, press release.



T-TIP could infringe on U.S. sovereignty, including the ability to regulate health, labor, and environmental standards.

## Selected Key T-TIP Negotiating Issues

### Market Access in Goods, Services, and Agriculture

Average U.S. and EU tariffs are already quite low, at an average applied most favored nation (MFN) tariff rate of about 3.5% *ad valorem* for the United States and about 5.5% for the EU.<sup>17</sup> However, tariffs are higher (known as “tariff peaks”) in certain product import-sensitive categories such as dairy products, sugar and confectionery, beverages and tobacco, fish and fish products, and textiles and apparel.<sup>18</sup> Given the magnitude of the transatlantic relationship, further elimination and reduction of tariffs could yield significant economic gains. For example, according to one economic estimate, the increased welfare gains from a tariff-only agreement accrued by the EU could be as much as \$3 billion, and by the United States as much as \$4.5 billion. Dynamic welfare gains from such a deal could be higher (e.g., when taking into account factors such as the administrative costs of tariffs that accrue due to intra-firm trade between foreign affiliates), estimated by the study to be \$58 billion-\$86 billion for the EU and \$59 billion-\$82 billion for the United States.<sup>19</sup> Commitments in other areas, such as further opening of government procurement markets, could also lead to greater market access.

Although most observers view tariffs as “low-hanging fruit” in the negotiations, certain aspects of market access negotiations may be complex. For example, a point of controversy could be “cultural exceptions,” a practice by France and certain other EU member states to limit market access in sectors considered to be culturally sensitive (e.g., in the audiovisuals sector, restrictions on foreign programming in television broadcasting and foreign access to the film industry). In its approval of the European Commission’s “negotiating mandate,” the Council of Ministers agreed that audiovisual services will not be covered specifically in the mandate, but the European Commission could make additional recommendations that it be included in the mandate at a later time.

Other market access issues that could become contentious are those of data privacy and cross-border data flows. The Internet is a major delivery platform for services trade as well as the product of an important services sector. Some national governments have attempted to limit the flow of data across borders by requiring the processing of proprietary data on-shore or locating physical infrastructure within a country’s borders. Data privacy concerns are also likely to play a role in market access negotiations due to diverging views between the two sides on online web tracking and targeted advertising. Such issues may take on greater prominence following the unauthorized disclosure of classified information related to National Security Agency (NSA) surveillance activity since June 2013.

<sup>17</sup> World Trade Organization (WTO), *World Tariff Profiles, 2013*.

<sup>18</sup> WTO Tariff Download Facility, <http://tariffdata.wto.org/Default.aspx?culture=en-US>.

<sup>19</sup> Fredrik Erixon and Matthias Bauer, *A Transatlantic Zero Agreement: Estimating the Gains from Transatlantic Free Trade in Goods*, European Center for International Political Economy (ECIPE), ECIPE Occasional Paper No. 4/2010, 2010.

## Regulatory Issues

Regulatory issues are widely regarded by many stakeholders as the core of the T-TIP negotiations, potentially “making or breaking” the agreement. Key sectors of interest include automobiles, chemicals, cosmetics, information communication technologies, medical devices, pesticides, and pharmaceuticals.<sup>20</sup> Economic gains from greater regulatory coherence and compatibility could be significant. At the same time, there is debate about whether a comprehensive agreement on regulatory issues can be reached. First, the United States and EU have been communicating on various regulatory differences for some time, and although many have been resolved, a number of seemingly intractable issues remain. Second, some of the regulatory differences relate to divergent public preferences and values. For example, most European consumers prefer “naturally produced” foods, while American consumers tend to be more accepting of products developed by alternative forms of agricultural production (e.g., genetically-engineered foods). Third, U.S. and EU regulatory approaches to risk management have been characterized as containing differences. While EU regulators prefer a more precautionary approach that some U.S. business sectors say leads to more stringent risk regulation that can disproportionately impact small and medium-sized businesses,<sup>21</sup> U.S. officials tend to engage in science-based, cost-benefit risk management that reportedly is widely supported by U.S. farmers and industries.<sup>22</sup> At the same time, observers uniformly agree that the fundamental goal of regulators on both sides of the Atlantic is to provide a high level of consumer safety and welfare.<sup>23</sup>

In addition to greater compatibility in regulations for specific sectors (mentioned above), possible ways forward in the regulatory arena include mutual recognition agreements (MRAs) in which officials on each side agree to accept products or services from the other side based on a “tested once” criterion. For example, a transatlantic MRA on testing and certification requirements for multiple sectors, including telecommunications equipment, recreational craft, and medical devices, was reached in 1998.<sup>24</sup> In 2011, a U.S.-EU Bilateral Air Safety Agreement on the regulation of civilian aviation safety entered into force, which allows for reciprocal acceptance of findings of compliance and approvals issued by each other’s relevant authorities.<sup>25</sup> T-TIP negotiations could result in the creation of a cooperative framework to discuss technical differences, as well as processes for greater transparency, accountability, and stakeholder participation across sectors in the standard-setting process.

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<sup>20</sup> USTR, “Transcript from the Closing Press Conference of the Fifth Round of Transatlantic Trade and Investment Partnership (T-TIP) Negotiations,” press release, May 23, 2014.

<sup>21</sup> USITC, *Trade Barriers that U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union*, Investigation No. 332-541, Pub. 4455, March 2014, <http://www.usitc.gov/publications/332/pub4455.pdf>.

<sup>22</sup> David Vogel, *The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States* (Princeton: Princeton University Press, 2012).

<sup>23</sup> John F. Morrall III, *Determining Compatible Regulatory Regimes Between the U.S. and the EU*, U.S. Chamber of Commerce, 2012.

<sup>24</sup> CRS Report RL34717, *Transatlantic Regulatory Cooperation: Background and Analysis*, by Raymond J. Ahearn.

<sup>25</sup> *Agreement Between the USA and the EU on Cooperation in the Regulation of Civil Aviation Safety*, Federal Aviation Administration website, <http://www.faa.gov/aircraft/repair>.

### Case Study: Automobile Industry

One often-repeated example of divergent U.S. and EU regulations—and a possible opportunity for greater regulatory coherence—relates to the automobile industry. Even though similar cars are sold in both markets, there are widely different transatlantic standards and testing requirements for many parts, including wiper blades, headlights, light beams, and seat belts. According to one U.S. trade association, a U.S.-based producer of light trucks found that a popular U.S. model the manufacturer wanted to sell in Europe required 100 unique parts, an additional \$42 million in design and development costs, incremental testing of 33 vehicle systems, and 133 additional people to develop—all without any performance differences in terms of safety or emissions. EU manufacturers face similar issues in reverse when selling an EU-designed model in the United States. In hearings held by the USTR and the USITC, industry stakeholders pointed to similar regulatory issues and costs in many other industries, including specialty toys, apparel, and footwear.

**Sources:** Various comments from the public in response to USTR (78 *Federal Register* 19566) and USITC (78 *Federal Register* 23954) requests for public comment and scheduling of hearings. For more information, see CRS Report R43399, *U.S. and EU Motor Vehicle Standards: Issues for Transatlantic Trade Negotiations*, by Bill Canis and Richard K. Lattanzio.

Debate has emerged about whether the scope of regulatory issues discussed in the negotiations should include financial services. In response to the global financial crisis of 2008-2009, reforms to the U.S. and EU financial systems are underway. Questions have arisen about the coherence of regulatory reforms and whether differences in regulations affect the competitiveness of domestic financial services firms. Certain Members of Congress, European officials, and business groups across the Atlantic have expressed support for the inclusion of financial services regulatory issues in the negotiations.<sup>26</sup> U.S. Administration officials reportedly continue to express reluctance to include financial services regulation in the T-TIP, in part, because of concern that it may interfere with discussions in multilateral forums, such as the G-20 and the Financial Stability Board.<sup>27</sup>

## Rules

Trade-related rules cover a range of issues. T-TIP negotiations on trade-related rules, such as intellectual property rights (IPR), could build on the rules contained in the WTO agreements. Many trade-related rules, while not addressed in the WTO, have become a standard part of U.S. and EU FTAs with other countries; these include rules on investment, IPR, labor, and the environment. The negotiations also could break new ground on other issues that are modestly treated, or not at all, in prior U.S. FTAs and multilateral agreements, such as with respect to state-owned enterprises (SOEs) or “forced” localization barriers to trade (particularly in the digital environment).

Most observers agree that the United States and EU have more in common than differences with respect to trade-related rules. Compared to regulatory talks, negotiations of rules may not be as contentious, although certain issues—such as investor-state arbitration and geographical indications—could be highly contested. To the extent that the T-TIP serves as a vehicle for

<sup>26</sup> For example, see Dear Colleague letter by Congressman Paulsen, “Call for a Comprehensive EU-US Trade Agreement,” June 26, 2013; Letter from Jeb Hensarling, Chairman of the House Committee on Financial Services, et al. to President Barack Obama, May 22, 2013; and Kevin J. O’Brien, “Silicon Valley Companies Lobbying Against Europe’s Privacy Proposals,” *New York Times*, January 25, 2013, online edition.

<sup>27</sup> “Business Groups Urge Froman to Include Financial Services in T-TIP Talks,” *Inside U.S. Trade’s World Trade Online*, May 17, 2013; and “Lew Resolute in Excluding Financial Services Regulations from TTIP Talks,” *Inside U.S. Trade’s World Trade Online*, December 19, 2013.

shaping the global rules-based trading system, debates about certain rules may become more prominent.

## **Investment**

The United States and EU member states generally have open investment regimes, though certain restrictions remain. The T-TIP could “fill out” the currently incomplete network of bilateral investment treaties (BITs) secured between the United States and certain EU member states, as well as bring more legal certainty to the investment relationship following changes to EU investment policy under the Lisbon Treaty. The T-TIP could lead to the liberalization of additional sectors, though debates could arise regarding entry conditions for investors and national security reviews for investment. Potential differences also could emerge on the free flow of capital and safeguard provisions for capital controls—an issue of renewed interest following the global economic downturn that began in 2008.

Investor-state dispute settlement, a priority for both sides, is subject to vigorous stakeholder debate across the Atlantic.<sup>28</sup> The investor community argues that it is critical for protecting investments in foreign markets, while some civil society groups contend that it affects the ability of governments to regulate in the public interest.<sup>29</sup> In January 2014, the European Commission announced a pause on T-TIP investment discussions during a planned three-month EU consultation with the public on how the T-TIP should approach investment provisions, including investor-state dispute settlement.<sup>30</sup> The EU public comment period ends in June 2014. Some U.S. civil society and other stakeholders call for similar public consultations on the U.S. side, though others question the need in light of the U.S. government’s consultation with the public ahead of the T-TIP negotiations, as well as during a three-year review of the U.S. Model Bilateral Investment Treaty, which was concluded in 2012.<sup>31</sup>

## **Intellectual Property Rights (IPR)**

The United States and EU maintain strong IPR standards and generally prioritize IPR protection and enforcement as a key trade negotiating objective. The HLWG reports suggest, however, that it may be difficult to reconcile differences on the IPR obligations that each side typically includes in their FTAs. For example, protection and enforcement of geographical indications (GIs) could be controversial.<sup>32</sup> The EU seeks strong GI protection because of their commercial value to EU producers (e.g., Parmesan cheese from Italy’s Parma region). The United States tends to protect GIs through trademark law, and expresses concern that the EU approach raises national treatment

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<sup>28</sup> Investor-state dispute resolution allows investors to bring claims against a foreign government to a neutral forum instead of requiring their government to espouse the claim on the investor’s behalf.

<sup>29</sup> CRS Report R43052, *U.S. International Investment Agreements: Issues for Congress*, by Shayerah Ilias Akhtar and Martin A. Weiss.

<sup>30</sup> Karel De Gucht, *Transatlantic Trade and Investment Partnership: Where Do We Stand on the Hottest Topics in the Current Debate*, Lecture and Discussion at Atlanticbrücke, Düsseldorf, January 22, 2014.

<sup>31</sup> Letter to USTR Froman from 43 civil society farm, labor, and environmental groups RE: Support for Public Counsel Process on Investment in Investor-to-State Dispute Settlement Policies, February 28, 2014; and CRS Report R43052, *U.S. International Investment Agreements: Issues for Congress*, by Shayerah Ilias Akhtar and Martin A. Weiss.

<sup>32</sup> GIs are geographical names that act to protect the quality and reputation of a distinctive product originating in a certain region; however, the benefit does not accrue to a sole producer, but rather the producers of a region. The use of GIs generally has been for agricultural products, wines, and spirits.

issues and adversely affects trademarks and widely accepted generic products.<sup>33</sup> GI commitments in the Canada-EU Comprehensive Economic and Trade Agreement (CETA, concluded in principle in October 2013) may have implications for the T-TIP negotiations. Under CETA, Canada agreed to recognize GIs, for instance, on certain cheeses that are generally viewed as common food names in the United States, leading to concern on the part of some Members of Congress and U.S. companies about U.S. market access in Canada and questions about the impact on negotiating positions in the T-TIP.<sup>34</sup>

Both U.S. and EU stakeholders could raise other issues about how to balance IPR protection and enforcement with other public policy goals, such as access to medicines in developing countries and the free flow of information.<sup>35</sup> At the same time, the T-TIP could lead to enhanced rules on trade secrets, an area of U.S. and EU concern in light of increased instances of trade secret theft internationally, including through cybercrime.<sup>36</sup>

## **Labor and the Environment**

Both sides profess commitment to high levels of protection for workers and the environment in their domestic economies. Labor and environmental opposition that emerged in prior FTA negotiations do not appear to be as pronounced in the T-TIP context, though some concerns remain.<sup>37</sup> However, differing U.S. and EU approaches to labor and environment in their trade agreement negotiations could raise some complications. Broadly speaking, the United States includes labor and environmental commitments that are enforceable under FTA dispute settlement procedures. In contrast, the EU tends to take a more consultative approach to resolve differences.<sup>38</sup>

## **New “21<sup>st</sup> Century” Issues**

The United States and EU aim to develop new rules on “21<sup>st</sup> century” issues in the T-TIP. With globalization, new patterns of production, based on complex cross-border supply chains, have emerged in the transatlantic relationship. The two sides could break new ground in areas such as trade facilitation and support for small- and medium-sized enterprises (SMEs) in transatlantic trade, which could lead to greater efficiency in supply chains. They also could address barriers to digital trade, including the appropriate balance between the free flow of information and the right of governments to regulate data flows, and between protecting personal data and permitting access to that data for law enforcement purposes. In addition, possible outcomes from

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<sup>33</sup> USTR, *2014 National Trade Estimate Report on Foreign Trade Barriers*, March 31, 2014, p. 111.; and CRS Report IF00016, *Geographical Indications in U.S.-EU Trade Negotiations (In Focus)*, by Renée Johnson.

<sup>34</sup> CRS Report 96-397, *Canada-U.S. Relations*, coordinated by Ian F. Fergusson and Derek E. Mix.

<sup>35</sup> Some of these issues were controversial topics in the proposed Anti-Counterfeiting Trade Agreement (ACTA), which has not yet entered into force. See USTR, *2013 Special 301 Report*, May 2013, p. 12.

<sup>36</sup> Executive Office of the President, *Administration’s Strategy on Mitigating the Theft of U.S. Trade Secrets*, February 2013.

<sup>37</sup> Nicholas Kulish and Jackie Calmes, “Obama Bid for Europe Trade Pact Stirs Hope on Both Sides,” *The New York Times*, February 13, 2013.

<sup>38</sup> CRS Report RS22823, *Overview of Labor Enforcement Issues in Free Trade Agreements*, by Mary Jane Bolle; and CRS Report R41534, *The EU-South Korea Free Trade Agreement and Its Implications for the United States*, by William H. Cooper et al.

engagement on issues related to state-owned enterprises (SOEs) could be used to address challenges associated with the growing role of emerging economies in international trade.<sup>39</sup>

## Issues for Congress

### U.S. Economic Implications

Members of Congress have a direct interest in the implications of T-TIP for the U.S. economy as a whole, as well as their specific states and/or districts. The slow economic growth in both the United States and EU are a major incentive for the T-TIP negotiations. Many policymakers view the T-TIP as a low-cost economic stimulus for supporting U.S. exports, employment, and economic growth. However, there is debate about how the economic effects of the T-TIP may be borne by various stakeholders. With any FTA, the benefits of trade liberalization tend to be diffuse, extending to businesses, workers, consumers, and other stakeholders. In contrast, the costs of FTAs tend to be highly concentrated—for example, with increased foreign competition resulting from an FTA adversely affecting certain firms and workers.

### Role in Trade Policy

The T-TIP raises questions about its implications for the multilateral trading system, including whether it would advance or detract from trade liberalization efforts under the WTO. A growing area of focus may be the impact of the proposed T-TIP and other “mega-regional” agreements (e.g., the proposed TPP) for the multilateral trading system, including whether they may be a pathway for achieving “WTO-plus” commitments multilaterally.<sup>40</sup>

Questions also have surfaced about how the proposed T-TIP compares and contrasts to other current trade agreement negotiations, including the TPP and the plurilateral Trade in International Services Agreement (TISA) negotiations, which involve the United States, EU, and other trading partners.<sup>41</sup> In addition, there are questions on the extent to which existing trade agreements, including the separate U.S. and EU FTAs with South Korea, which are both considered to be high-standard and comprehensive agreements, and the EU-Canada Comprehensive Economic and Trade Agreement (CETA), may set a precedent for each side’s negotiating positions in the T-TIP and influence potential outcomes.

### Potential Future Members of T-TIP

Congress may examine the economic, political, and other strategic implications of other countries joining (or not joining) the T-TIP in the future. Certain countries, such as Turkey, have shown

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<sup>39</sup> SOEs are businesses where the government has a significant control and which often receive specific privileges from the government, such as subsidies, preferential financing, and preferential access to government procurement.

<sup>40</sup> See Andrew L. Stoler, “Will the WTO Have Functional Value in the Mega-Regional World of FTAs?,” part of International Centre for Trade and Sustainable Development (ICTSD), *Regional Trade Agreements Group: Proposals and Analysis*, Geneva, 2013; for The E15 Initiative: Strengthening the Multilateral Trading System.

<sup>41</sup> CRS Report R43291, *U.S. Foreign Trade in Services: Trends and U.S. Policy Challenges*, by William H. Cooper and Rebecca M. Nelson.



interest in joining T-TIP. Under the current rules of the Customs Union that Turkey has with the EU, countries with which the EU has signed FTAs have access to Turkey's market without having to reciprocate (e.g., the United States, if T-TIP is concluded). In order to gain market access to those countries, Turkey must negotiate its own FTAs with them. Turkey also has raised the possibility of parallel FTA negotiations with the United States, but the United States reportedly has encouraged Turkey to focus instead on eventually joining the T-TIP.<sup>42</sup> Other countries that may wish to join the T-TIP negotiations include Canada and Mexico, both of which arguably have strong trade and economic ties to the United States and EU. Canada and Mexico are a part of the North American Free Trade Agreement (NAFTA) with the United States; both countries joined the TPP negotiations in December 2012; Mexico and the EU have a FTA; and Canada and the EU concluded CETA negotiations in October 2013. The current U.S. position is that the T-TIP negotiations are already complex, and the inclusion of additional trading partners at present may further complicate the negotiations and prospects for concluding a comprehensive and high standard agreement.

## **Trade Promotion Authority (TPA)**

TPA provides for expedited legislative procedures (limited debate, no amendments, up-or-down vote) for the consideration of the implementing bill for a trade agreement, contingent on the President meeting certain statutory objectives in negotiating the agreement.<sup>43</sup> Congressional trade negotiating objectives and consultation and notification procedures were last specified in the Bipartisan Trade Promotion Authority Act of 2002, which expired in 2007. Although TPA is neither required to begin nor conclude a trade negotiation, it can be viewed as (1) a major signal of congressional support for advancing trade negotiations; and (2) an opportunity for Congress to stipulate principal trade negotiating objectives and consultation procedural requirements. In the absence of TPA renewal, the Administration has been proceeding under the rules and negotiating objectives of the 2002 TPA. In the 113<sup>th</sup> Congress, bipartisan, bi-cameral legislation to renew TPA has been introduced (H.R. 3830/S. 1900). Congress may debate the renewal of TPA, both in the context of the T-TIP and other U.S. trade agreement negotiations.

## **Outlook for the T-TIP**

The T-TIP negotiations continue to evolve. As the negotiations proceed, Congress may consider the extent to which the United States will be able to reach its goals of achieving a final T-TIP agreement that is a comprehensive and high standard FTA. Prospects are heightened by U.S. and EU interest in using the T-TIP as an opportunity to advance economic, political, and strategic interests. At the same time, the negotiations could be constrained by U.S. and EU inability to overcome differences on trade issues that have been long-standing "sticking points" in past efforts to deepen transatlantic ties. In addition, broader issues in the transatlantic relationship and the external environment could affect the negotiations. Outcomes of EU parliamentary elections in May 2014, followed by the changing of the European Commission leadership, as well as U.S. mid-term elections later in the year, could further affect T-TIP prospects.

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<sup>42</sup> "Turkey and TTIP—Later," *Washington Trade Daily*, June 3, 2014.

<sup>43</sup> CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by William H. Cooper, Ian F. Fergusson, and Richard S. Beth; CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by William H. Cooper; and CRS Report IF00002, *Trade Promotion Authority (TPA) (In Focus)*, by William H. Cooper.



## **Author Contact Information**

Shayerah Ilias Akhtar  
Specialist in International Trade and Finance  
siliaskhtar@crs.loc.gov, 7-9253

Vivian C. Jones  
Specialist in International Trade and Finance  
vcjones@crs.loc.gov, 7-7823

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