



European Union Committee

14th Report of Session 2013–14

# The Transatlantic Trade and Investment Partnership

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References in footnotes to the Report are as follows:

Q refers to a question in oral evidence. Witness names without a question reference refer to written evidence.

### **SUMMARY**

The Transatlantic Trade and Investment Partnership (TTIP) is the most ambitious trade and investment pact ever attempted, due both to its scale—the European Union and the United States together account for nearly half of world GDP—and because in tackling non-tariff barriers to trade, a deal could set the template for a new generation of 21st century trade and investment agreements.

In this report, we examine the prospects of the EU and US being able to conclude an agreement that fulfils that potential, and examine the UK Government's approach to the negotiations. We assess the prospects of making progress on flagship issues and in areas the Government have identified as UK priorities, and explore concerns about the possible adverse effects of an agreement.

We conclude that, by analogy with the Single Market programme to which the initiative has been likened, the net and long-term effect of an agreement should be to boost employment and prosperity among EU member states and in the US. The initiative also has a strategic dimension, presenting an opportunity to set a high-standard precedent for future trade and investment agreements. It could also serve to revitalise the transatlantic relationship, not least by establishing a permanent, structured dialogue on regulatory matters through provisions for a living agreement.

Our analysis suggests that it should be possible to make progress on UK objectives in relation to the motor industry and geographical indications. Access to US public procurement contracts will be more difficult to obtain, particularly at the subfederal level, but is worth attempting, as the CETA agreement with Canada shows. We conclude that the inclusion of financial services regulatory matters in TTIP will be the hardest fought of the UK's objectives, due to vehement opposition from the US.

We observe that, insofar as a public debate on TTIP exists, EU member states are losing it. Proponents have yet to articulate the purpose or possible gains from TTIP in a compelling way, or to offer convincing responses to legitimate concerns. This task cannot be left to the European Commission alone: we judge that EU member states, including the UK Government, are not bearing their fair share of responsibility for transparency and communication around the initiative. Nor should it fall to trade ministers alone: we recommend that the UK Government should develop a communications strategy involving ministers with sectoral responsibilities.

We anticipate that the political backdrop of mid-term elections in the US, European Parliament elections and the appointment of a new European Commission will limit progress on politically contentious issues in the negotiations until late 2014. There will then be a relatively narrow window of opportunity to make progress on the issues that require political capital to be spent in the first half of 2015, before the US presidential election cycle takes over. With the US Administration yet to secure Trade Promotion Authority, it is by no means clear that negotiators will be in a position to seize that opportunity.

The UK Government have a pivotal role to play in spurring on other leaders and decision-makers in order to sustain momentum behind the initiative. We judge that they are according priority to this in their work in the United States, but that there is scope to do more in Brussels and other European capitals if the Government and their allies are to take charge of the public debate in the EU and help ensure that a new Commission is in a position to seize the narrow window of opportunity that may present itself next year.

# The Transatlantic Trade and Investment Partnership

### **CHAPTER 1: INTRODUCTION**

### Purpose and Scope of this Inquiry, Structure of this Report

- 1. The Transatlantic Trade and Investment Partnership (TTIP) is the most ambitious trade and investment pact ever attempted, due to both its scale and its significance for the transatlantic relationship between the European Union and the Unites States. Our intention in conducting this inquiry has been to examine the prospects of the European Union (EU) and the United States (US) being able to conclude an agreement that fulfils that potential, and to explore what they wish to achieve by doing so. We also set out to examine the UK Government's approach to the negotiations, with a view to presenting our assessment of the prospects of making progress in some of the areas they have identified as UK priorities. We have at the same time sought to explore a number of concerns about the possible adverse effects of an agreement that have been brought to our attention, and present our conclusions on which of those concerns appear to us well-founded and which do not.
- 2. We hope that our report will make a timely contribution to public debate as the potential outline of an agreement begins to take shape now that the initial phase of negotiations between the EU and the US and the first political "stock-take" led by the European Commission and the US Trade Representative have taken place. We also intend that the evidence we present and the conclusions and recommendations we draw from that evidence should serve to inform the House, the UK Government and the European Commission as negotiations begin to gather pace after European Parliament elections, mid-term elections to the US Congress and the appointment of a new Commission.
- 3. Our report first sets out the background to the evidence we have gathered in the course of our inquiry, including a chronology of events and milestones in the negotiations thus far and facts and figures about a prospective TTIP agreement. We then turn to our witnesses' views on the objectives that could be pursued by means of an EU-US trade and investment deal, as well as the evidence we have received on outcomes to be avoided (Chapter 2). In a third chapter, we examine the prospects of making progress in the areas that the UK Government have identified as top priorities, and also highlight the issues that our witnesses identified as most challenging and therefore most likely to hold up the conclusion of an overall deal. Finally, we turn to the process of reaching an agreement, including our witnesses' views on the timetable envisaged, on engagement and communication with interested parties and the public, and on the political impetus likely to be required.
- 4. The inquiry that led to this report was carried out by the Sub-Committee on External Affairs, whose members are listed in Appendix 1. We received written evidence and heard oral evidence from a wide range of witnesses, who are listed in Appendix 2. We are grateful to them all for their

contributions. We would also like to thank those who facilitated our visits to Brussels and Washington. We are particularly indebted to Dr Dennis Novy, our Specialist Adviser on this inquiry.

5. We make this report to the House for debate.

### The road to TTIP

- 6. Negotiations on a Transatlantic Trade and Investment Partnership between the EU and US were launched in June 2013 at the G8 summit on the shores of Lough Erne. UK Prime Minister David Cameron described a prospective deal as a "once-in-a-generation prize" that could be "the biggest bilateral trade deal in history; a deal that will have a greater impact than all the other trade deals on the table put together." He went on to suggest that an agreement "could add as much as £100 billion to the EU economy, £80 billion to the US economy, and as much as £85 billion to the rest of the world". European Commission President Barroso described the negotiations between the EU and US as an opportunity to "write the next chapter of what is our common history", while President Obama presented them as a chance to "forge an economic alliance as strong as our diplomatic and security alliances—which, of course, have been the most powerful in history."
- 7. The rhetoric is all the more ambitious when one considers the starting point for this endeavour. The European Union and the United States already have the largest bilateral trade relationship in the world. Each is the other's largest export market, and investment ties across the Atlantic are robust: the US invests considerably more in the EU than in all of Asia—three times more according to the European Commission—while the EU invests considerably more in the US than in China and India combined—eight times more. These economic ties are even more pronounced in the case of the UK: the US and the UK are each other's largest foreign investors, and those investments are estimated to support around one million jobs in each country.<sup>2</sup>
- 8. Nor is this the first time that an EU-US trade pact has been contemplated. Between 1994 and 1996, a Transatlantic Free Trade Area (TAFTA) was under discussion, but formal negotiations were never launched. According to the UK Government, this was because the priority at that time was "to ensure the stability of the newly formed World Trade Organisation (WTO) and to avoid creating a fault line in global trading patterns." Lord Brittan of Spennithorne QC, European Commissioner for Trade at the time, placed the emphasis elsewhere, telling us that, while the US Administration and EU member states had been "very interested" in proceeding down this route, the American regulatory agencies had posed "the real obstacle", as they were hostile to an agreement, and the US Administration felt they could not take

White House Press Release, 17 June 2013, available at <a href="http://www.whitehouse.gov/the-press-office/2013/06/17/remarks-president-obama-uk-prime-minister-cameron-european-commission-pr">http://www.whitehouse.gov/the-press-office/2013/06/17/remarks-president-obama-uk-prime-minister-cameron-european-commission-pr</a>.

<sup>&</sup>lt;sup>2</sup> BIS, para 6; White House Fact Sheet: Transatlantic Trade and Investment Partnership, available at <a href="http://www.ustr.gov/about-us/press-office/fact-sheets/2013/june/wh-ttip">http://www.ustr.gov/about-us/press-office/fact-sheets/2013/june/wh-ttip</a>; European Commission trade policy website, available at <a href="http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/">http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/</a>.

<sup>&</sup>lt;sup>3</sup> BIS, para 8.

- them on.<sup>4</sup> Lord Brittan went on to warn us that he had "not seen any evidence of a change either in their views or in their power".<sup>5</sup>
- 9. Professor Baldwin of the Graduate Institute, Geneva, suggested that this latest attempt to set up a transatlantic free trade agreement was different. In his view, there is a geostrategic dimension to the TTIP initiative to the extent that, in addition to the commercial interest that has always been there, there is now "a high-level interest that this might rewrite the rules of the world trading system in a way that is pro-Europe and pro-North America." He noted that around 1990 the ICT revolution had changed the nature of trade in the sense that it allowed stages of production that once took place within a factory to be dispersed overseas. The effect had been to change the nature of trade, so that the trading system is now "being used to make things, not just sell things." This in turn changed the nature of trade agreements, he suggested, providing the impetus for regional agreements underpinning those production chains that include deeper, "21st-century" trade disciplines. Professor Baldwin went on to suggest that the TTIP was a step towards "knitting together" at the multilateral level these deeper agreements.7
- The UK Government also take the view that an EU-US trade deal is "an idea whose time has come". This time around, driving forward the TTIP "will not be at the expense of the WTO agenda." Moreover, the domestic economic backdrop on each side of the Atlantic creates an incentive to seize every opportunity to "create both growth and jobs without taxpayers' money." Consistent with this view, the UK Government describe themselves as "instrumental" in putting the TTIP on the EU's negotiating agenda. The launch of negotiations at the Lough Erne resort may thus be seen not as a coincidence, but as an indicator of the importance that the UK Government—with cross-party support—attach to the initiative. With the support of the UK Government and other EU member states, an EU-US 'High Level Working Group on Jobs and Growth' was set up following an EU-US Summit in 2011, and tasked with identifying ways of increasing trade and investment across the Atlantic. The group—co-chaired by the US Trade Representative, then Ron Kirk, and the EU Trade Commissioner, Karel de Gucht—published their final report, recommending the launch of negotiations on a comprehensive trade and investment agreement, in February 2013.9 US President Obama, European Commission President Barroso and European Council President Van Rompuy accepted the recommendation in a joint statement days later.<sup>10</sup>

<sup>4</sup> Q1.

<sup>5</sup> Ibid.

<sup>6</sup> Q 198.

<sup>&</sup>lt;sup>7</sup> Q 198–9.

<sup>8</sup> BIS, paras 10 and 13.

<sup>&</sup>lt;sup>9</sup> United States-European Union High Level Working Group on Jobs and Growth, Final Report, 11 February 2013, available at <a href="http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc\_150519.pdf">http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc\_150519.pdf</a>.

<sup>&</sup>lt;sup>10</sup> European Commission MEMO/13/94, 13 February 2013, available at <a href="http://europa.eu/rapid/press-release MEMO-13-94">http://europa.eu/rapid/press-release MEMO-13-94</a> en.htm.

### BOX 1

### Launch and Conduct of EU Trade Negotiations

- Trade policy is an exclusive competence of the European Union, meaning that the European Commission negotiates international trade agreements on behalf of EU member states.
- The Commission requests formal authorisation from the Council of Ministers to open negotiations—a request also shared with the European Parliament.
- The Council adopts negotiating directives, which authorise the Commission to negotiate on behalf of the EU.
- The negotiating teams on each side are led by a Chief Negotiator at official level—in the case of the TTIP, this is Ignacio Garcia-Bercero from DG Trade on the EU side and Dan Mullaney from the Office of the US Trade Representative on the US side. The teams include experts covering all the different topics under negotiation, in the EU's case drawn from across the Commission.
- The Chief Negotiators set up negotiating rounds, normally alternating between the EU and the other party's country, at flexible intervals.
- At key points in the negotiations, the politicians formally overseeing the negotiations will meet for political 'stock-takes'—in the case of the TTIP these are EU Trade Commissioner, Karel De Gucht, and US Trade Representative Mike Froman.
- The treaty under negotiation will typically contain chapters on each topic and a number of annexes. These include the schedule of tariff liberalisation, sectoral agreements and protocols.
- The draft texts under negotiation are not made public during the negotiating stage, even when chapters (topics) are "closed", as the negotiation is not over until everything is agreed. EU member state governments and selected members of the European Parliament's trade committee have access to all EU texts, but—at the United States' insistence—not to US texts.
- For more on the signature and ratification of EU trade agreements, see Chapter 4.

### Under the bonnet

- 11. After their formal launch at the G8 meeting at the Lough Erne resort, EU-US negotiations began in earnest in a first negotiating round held in Washington in July 2013 (see Box 1). A further three negotiating rounds have since taken place, the latest of which was held in Brussels in March. The fifth round of negotiations will take place later in May, with a further round to follow in July, and a second political "stock-take" scheduled for September.
- 12. The European Union has exclusive competence to legislate on trade matters and conclude international trade agreements under Articles 207 and 218 of the Treaty on the Functioning of the European Union, which in practice means that the European Commission conducts negotiations with the EU's counterparts—in this case the US—on behalf of the EU as a whole. It does so within the constraints of the negotiating mandate set for it by the EU

member states acting through the Council of Ministers. Since the entry into force of the Lisbon Treaty, the EU competence to conclude international trade agreements includes agreements on foreign direct investment.

- 13. Prospective trade agreements negotiated by the Commission must be presented to the Council of Ministers for agreement before they can be signed, and the European Parliament must also give its consent before they can be formally concluded.<sup>11</sup>
- 14. The European Commission's negotiating mandate (technically "negotiating directives") for the TTIP, adopted in June 2013 by the Council of Trade Ministers, has not been made public, but its main elements are set out in Box 2. Broadly speaking, there are three areas in which negotiations are underway: market access, regulatory issues and non-tariff barriers, and trade rules around "shared global challenges". 12

### BOX 2

### What is under negotiation: main elements of the EU mandate

### **Market Access**

Tariffs—the objective is to get as close as possible to removing duties on transatlantic trade in industrial and agricultural products

Rules of Origin—the objective being to reconcile EU and US approaches to rules of origin, which are used to determine the origin of a product for the purpose of trade rules

Trade Defence Measures—the EU wants to establish a regular dialogue with the US on anti-dumping and anti-subsidy measures

Services—the objective is to open up more access for transatlantic trade in services, at both federal and sub-federal level, and to ensure that European professional qualifications can be recognised in the US

*Investment*—the objective is to secure investment liberalisation at both federal and sub-federal level and potentially, to establish investment protection provisions—the latter subject to consultation with Member States

Public Procurement—the objective is to open up access to government procurement markets at all levels of US government

### **Regulatory Issues and Non-Tariff Barriers**

The objective is to tackle so-called "behind the border" barriers to trade, such as different safety or environmental standards for cars, or different health and hygiene standards for food products (so-called SPS—sanitary and phytosanitary—standards)

The objective of regulatory cooperation extends to trade in services, as well as trade in goods, for example financial services

Because convergence in these areas will take time, a further objective is that a "living agreement" for future cooperation against defined targets and deadlines should be put in place (see paragraphs 20 to 22 below)

For more on the process, see Chapter 4 and the European Commission, *Trade Negotiations step by step*, September 2013, available at <a href="http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc\_149616.pdf">http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc\_149616.pdf</a>.

<sup>&</sup>lt;sup>12</sup> European Commission MEMO/13/564, 15 June 2013, available at <a href="http://europa.eu/rapid/press-release MEMO-13-564">http://europa.eu/rapid/press-release MEMO-13-564</a> en.htm.

### **Shared Global Trade Challenges**

Intellectual Property Rights—the objective is to reconcile different US and EU approaches to specific issues, such as protection for Geographical Indications (e.g. parma ham, champagne)

Trade and Sustainable Development—the objective is to include commitments by both parties on the labour and environmental aspects of trade and provisions to promote adherence to and implementation of internationally agreed labour and environmental standards

Miscellaneous—including customs and trade facilitation, trade in energy and raw materials, trade-related aspects of small and medium-sized enterprises, state-owned enterprises

### Non-Tariff Barriers

- 15. A study about the potential economic effects of an agreement was carried out by the Centre for Economic Policy Research (CEPR) for the European Commission. The study was published in March 2013, and suggested that the vast majority (as much as 80 per cent) of the potential economic gains from an EU-US deal would result from the second of the above three elements, i.e. from reductions in non-tariff barriers on both sides of the Atlantic.13 This is mainly because average tariff levels applied between the EU and US are already relatively low. This means that although the volume of trade between the two blocs is so large that further tariff cuts would add up to considerable savings overall, they would in most (but by no means all) cases make a very small difference to the level of protection in individual sectors. For the UK for example, the average level of tariffs for trade with the US is around 0.5 per cent, so the scope for further reductions in tariffs is limited, but the Government point out that dismantling them altogether could still save UK exporters almost £1 billion. They also emphasise that there are still products subject to US tariffs of over 20 per cent, for example many items of clothing and footwear.14
- 16. Non-tariff barriers can take different forms. Some non-tariff barriers, such as import quotas, directly restrict market access, while others, such as regulations that require expensive reconfiguration of products (e.g. changing voltage or adapting the exhaust system of a car) add to the cost of exporting into that market. While some non-tariff barriers, such as import quotas, can be removed relatively easily given political will, others—for example those taking the form of domestic regulations—often prove more difficult to address because they serve legitimate domestic purposes. Instead, the suggestion is that the costs they pose to prospective importers and exporters can be mitigated or reduced through some form of regulatory co-ordination. Lord Mandelson, a former European Commissioner for Trade, identified three possible approaches to such co-ordination: "mutual recognition of, broadly speaking, equivalent standards" at the lowest level of ambition, "harmonisation of existing brownfield standards and rules pertaining in the

<sup>&</sup>lt;sup>13</sup> CEPR for European Commission, Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment, March 2013, available at <a href="http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc\_150737.pdf">http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc\_150737.pdf</a>.

<sup>&</sup>lt;sup>14</sup> BIS, paras 21–22.

- different jurisdictions" at the next level, and long-term convergence of regulatory approaches in "greenfield" areas of regulation on a third level. 15
- To illustrate, mutual recognition of broadly equivalent standards might involve the EU and US each accepting that a car manufactured to the other jurisdiction's safety standards is safe enough to be sold to consumers in its own market. Harmonisation of "brownfield" standards would mean the US and EU agreeing to revise their own existing car safety standards to create a common approach. Cooperating on "greenfield" regulation might mean attempting to develop from the outset a joint approach to regulation expected to be needed in future, for example for hybrid electric cars. All of these approaches would facilitate trade by reducing the regulatory hurdles faced by prospective exporters on each side of the Atlantic, in that they would save them the trouble of complying and/or demonstrating that they have complied with, a different regulatory regime. Lord Mandelson went on to predict that progress would be most likely on greenfield regulation, where there is no legacy to unpick, and that some mutual recognition should also be possible, but that harmonisation would be "extremely hard" because the EU and US are both "robust, insular and self-confident" when it comes to their existing stock of regulation.<sup>16</sup>

### Estimated Impact

- 18. The focus on non-tariff barriers as the most promising source of economic gains from a TTIP deal has implications when attempting to quantify those gains. The studies commissioned from the Centre for Economic Policy Research (CEPR) by the European Commission and the UK Government on the potential impact of a TTIP deal on the EU and UK economies, respectively, rest on assumptions about which non-tariff barriers can realistically be reduced, and on estimates of what the impact of such reductions would be on prices and costs. Those assumptions and estimates in turn rely on information collected in a previous 2009 study produced for the European Commission by Ecorys, an independent economic consultancy.<sup>17</sup>
- 19. The CEPR studies have also had to make assumptions about the eventual content of a TTIP agreement that has yet to be negotiated: for example, the headline figures about potential gains for the EU economy rest on the assumption that an "ambitious" agreement can be concluded, which is defined as tariff barriers being reduced to zero, non-tariff barriers in goods and services being reduced by 25 per cent and public procurement barriers being reduced by 50 per cent. Finally, the headline figures in the EU-wide study refer to economic gains that would be expected to materialise fully only once an agreement is fully implemented and the economies fully adjust—estimated to be in 2027 according to that study. With these caveats, we reproduce the

Q 26. The analogy is to construction on "greenfield" land, where there is no need to work around existing buildings or infrastructure, in contrast to construction on "brownfield" land where there has already been construction in the past.

<sup>16</sup> Ibid.

<sup>&</sup>lt;sup>17</sup> See section 4.4 of European Commission, Transatlantic Trade and Investment Partnership: The Economic Analysis Explained, September 2013, available at <a href="http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc 151787.pdf">http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc 151787.pdf</a> and Ecorys for European Commission, Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis, 11 December 2009, available at <a href="http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc 145613.pdf">http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc 145613.pdf</a>.

headline results from the two studies in Boxes 3 and 4 and re-examine their robustness in Chapter 2.

### BOX 3

## Reducing Transatlantic Barriers to Trade and Investment: Headline Results<sup>18</sup>

- An ambitious and comprehensive transatlantic trade and investment agreement could bring significant economic gains as a whole for the EU (€119 billion a year) and US (€95 billion a year). This translates to an extra €545 in disposable income each year for a family of 4 in the EU, on average, and €655 per family in the US.
- The benefits for the EU and US would not be at the expense of the rest of the world. On the contrary, liberalising trade between the EU and the US would have a positive impact on worldwide trade and incomes, increasing global income by almost €100 billion.
- Income gains are a result of increased trade. EU exports to the US would go up by 28 per cent, equivalent to an additional €187 billion worth of exports of EU goods and services. Overall, total exports would increase 6 per cent in the EU and 8 % in the US.
- Reducing non-tariff barriers will be a key part of transatlantic liberalisation. As much as 80 per cent of the total potential gains come from cutting costs imposed by bureaucracy and regulations, as well as from liberalising trade in services and public procurement.
- The increased level of economic activity and productivity gains created by the agreement will benefit the EU and US labour markets, both in terms of overall wages and new job opportunities for high and low skilled workers. Labour displacement will be well within normal labour market movements and economic trends. This means a relatively small number of people would have to change jobs and move from one sector to another (0.2 to 0.5 per cent of the EU labour force.)
- The agreement would have negligible effects on CO2 emissions and on the sustainable use of natural resources.

For the full study, see CEPR for European Commission, Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment, March 2013, available at <a href="http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc\_150737.pdf">http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc\_150737.pdf</a>.

### BOX 4

# Estimating the Economic Impact on the UK of a TTIP Agreement: Headline Results<sup>19</sup>

- A potential TTIP is estimated to yield an increase in UK national income of between £4-10 billion annually, or up to £100 billion over a ten-year period (which corresponds to a 0.14-0.35 per cent increase in annual GDP levels.) This means a sustained increase in the level of GDP over baseline levels without an agreement.
- Most of the national income gains are attributable to lowering Non-Tariff Barriers in goods. Aggregate exports (to all countries) are expected to increase by 1.2–2.9 per cent, and imports by 1.0–2.5 per cent (depending on the scenario modelled). The sector most strongly affected is motor vehicles, where output increases by as much as 7.3 percent (or as little as 1.7 per cent).
- While the results indicate that the effects of a TTIP for the UK are positive, the current overall level of barriers is lower between the UK and US as opposed to EU and US. This reflects a greater importance for services to the US-UK relationship than to the EU as a whole.
- The report highlights the crucial importance of non-tariff barriers (NTBs). Most of the gains stemming from a potential agreement for the UK are attributable to estimated reductions in NTBs. Reducing non-tariff barriers implies reductions in costs for producers and traders and so increasing productivity. This leads to potential investment and worker income gains. On the other hand, if the FTA is limited to tariffs alone, gains for the UK would be much more limited.

### A Living Agreement

20. A further consequence of the emphasis on non-tariff barriers to trade in TTIP negotiations is that it has been billed as a "living agreement"—meaning not a one-off negotiation, but a work in progress, not entirely dissimilar to the EU's Single Market programme.<sup>20</sup> Professor Baldwin suggested that, like the Single Market programme or the European Economic Area, it would mean launching a process of regulatory convergence.<sup>21</sup> Lord Mandelson put it to us that "most trade negotiations and trade agreements are snapshots of a period in time. What we would be trying to do in creating a living agreement is to convert the snapshot into a movie".<sup>22</sup>

<sup>&</sup>lt;sup>19</sup> For the full study, see CEPR for BIS, Estimating the Economic Impact on the UK of a Transatlantic Trade and Investment Partnership (TTIP) Agreement between the European Union and the United States, March 2013, available at <a href="https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/198115/bis-13-869-economic-impact-on-uk-of-tranatlantic-trade-and-investment-partnership-between-eu-and-us.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/198115/bis-13-869-economic-impact-on-uk-of-tranatlantic-trade-and-investment-partnership-between-eu-and-us.pdf</a>.

<sup>&</sup>lt;sup>20</sup> See Commissioner De Gucht's speech, European Commission SPEECH/13/801, 10 October 2013, available at <a href="http://europa.eu/rapid/press-release SPEECH-13-801">http://europa.eu/rapid/press-release SPEECH-13-801</a> en.htm.

<sup>&</sup>lt;sup>21</sup> Q 199.

<sup>&</sup>lt;sup>22</sup> Q 24.

- 21. The intention is that a TTIP agreement should create an institutional underpinning for sustained cooperation between EU and US regulators, so that regulatory barriers to transatlantic trade can be tackled on an ongoing basis. Commissioner De Gucht told us that he anticipated there would be "an actual agreement, where you agree on a number of things, with respect to tariffs, non-tariff barriers, norms, standards and regulations, intellectual property, public procurement and so on, and then you will have a living part, whereby you put in place structures that make sure that, in future, you will have much more common regulation than you presently have".<sup>23</sup>
- 22. The timetable for concluding the initial agreement or "snapshot" has already begun to slip. The original aspiration—at the time the negotiations were launched in February 2013—was that it might be possible to reach an agreement within the lifetime of the present European Commission, i.e. by the end of 2014, or as Mike Froman, now US Trade Representative put it, "on one tank of gas". With negotiations having only just completed their initial phase, and with President Obama yet to secure Trade Promotion Authority (formerly known as "fast-track" authority) from Congress—which he needs in order to prevent legislation implementing an eventual agreement from being amended or filibustered during its passage through the House and Senate—it is likely that negotiators will have to "go back to the filling station." We return to this in Chapter 4, and in the meantime turn to our witnesses' views on what could and should be the ultimate purpose of the TTIP initiative.

<sup>23</sup> Q 110.

<sup>&</sup>lt;sup>24</sup> See Ambassador Froman's speech, Office of the United States Trade Representative press release, 8 July 2013, available at <a href="http://www.ustr.gov/about-us/press-office/speeches/transcripts/2013/july/amb-froman-ttip-opening-plenary">http://www.ustr.gov/about-us/press-office/speeches/transcripts/2013/july/amb-froman-ttip-opening-plenary</a>.

<sup>&</sup>lt;sup>25</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 87.

### **CHAPTER 2: THE PURPOSE OF THE TTIP**

### Jobs and Growth

23. Both the European Commission and the UK Government have identified "jobs and growth" as the overriding purpose of concluding a TTIP agreement with the US.<sup>26</sup> Ambassador Sapiro, Deputy US Trade Representative, put it to us that, in view of the economic challenges the US and EU are still facing, there was a common view that they could not afford to leave any jobs "on the table".<sup>27</sup>

### Growth

In their written evidence, the UK Government pointed to the CEPR studies 24. commissioned by the Department for Business, Innovation and Skills (BIS) and the European Commission to suggest that an ambitious, comprehensive TTIP deal could over the long-term be worth up to £10bn (or 0.35 per cent of GDP) annually to the UK, up to £100bn (or 0.5 per cent of GDP) annually to the EU, and up to £80bn (or 0.4 per cent of GDP) annually to the US.<sup>28</sup> The GDP gains would be relative to projected GDP levels without TTIP in place. The European Commission explained that "this would be a permanent increase in the amount of wealth that the European and American economies can produce every year." The gains would be expected to build up gradually, with gains increasing every year from the moment the agreement enters into force until it is fully implemented, and reaching their full level by 2027. 29 As indicated above, the vast majority of those gains would be expected to result from reductions in non-tariff barriers to trade, rather than from reductions in tariffs. This is particularly true for the UK, where up to 90 per cent of gains would be expected to come from such measures.30

### Jobs

25. The CEPR study produced for the European Commission does not include figures on the TTIP's overall impact on job creation. It does, however, examine the potential impact on wages and on the reallocation of jobs among different sectors of the economy as different sectors contract and expand as a result of the TTIP. Wages for both skilled and less skilled workers are projected to rise by around 0.5 per cent. Meanwhile, 0.7 per cent of the labour force is expected to move between sectors as a result of the TTIP over 10 years. The European Commission has pointed out by way of comparison that the average annual change in EU manufacturing employment between 2001 and 2007 was 2.1 per cent, and concluded that any labour movement between sectors prompted by the TTIP ought therefore to be "easily absorbed by these normal processes." <sup>31</sup>

<sup>&</sup>lt;sup>26</sup> See, for example, Commissioner De Gucht's speeches on the subject, and BIS, para 1.

<sup>&</sup>lt;sup>27</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 136.

<sup>&</sup>lt;sup>28</sup> BIS, para 19.

<sup>&</sup>lt;sup>29</sup> European Commission, TTIP: The Economic Analysis Explained, p.2 and p.6.

<sup>&</sup>lt;sup>30</sup> BIS, para 23

<sup>&</sup>lt;sup>31</sup> European Commission, TTIP: The Economic Analysis Explained, sections 2.2.1–2.2.2.

### Sectors

26. In terms of sector-specific impacts, analysis by BIS suggests that in the UK the sectors where output would be expected to increase as the result of a TTIP agreement are vehicles (4.1 per cent), financial services (1.1 per cent), insurance services (0.7 per cent), processed foods (0.5 per cent) and chemicals and pharmaceuticals (0.5 per cent). Sectors expected to see "modest" declines would include transport equipment (-0.4 per cent) and miscellaneous manufacturing sectors (e.g. textiles, clothing, footwear, materials and furniture), with only the metals and metal products sector projected to contract by more than 1 per cent (-1.5 per cent).<sup>32</sup> Across the EU, by contrast, the CEPR study produced for the European Commission suggests that the metal products sector would be expected to benefit from a TTIP agreement, as would the processed foods sector, chemicals, and transport equipment. As in the UK, the sector with the most to gain would be the motor vehicles sector.

### Consumers

27. The European Commission has suggested that consumers should expect to benefit from cheaper products as a result of the TTIP, and pointed to CEPR analysis indicating that in the best-case scenario, the average European household of four would see its disposable income increase by €545 per year by 2027 as a result of the combined effect of wage increases and price reductions.<sup>33</sup>

### Witnesses' Views

- 28. The AFL-CIO expressed sympathy with the views of Dean Baker, of the Center for Economic and Policy Research, who had noted that the projected GDP increases in the study produced for the European Commission would not materialise in full until 2027, and that they reflected a best-case scenario. In a less ambitious, and "presumably more realistic" scenario, the GDP gain for the US by 2027 would be "roughly equal to a normal month's growth" and thus in Mr Baker's view, "too small to notice".<sup>34</sup>
- 29. Professor Baldwin advised us to treat the figures with caution for a different reason, pointing out that figures were projected against a "status quo" world, and that experience—for example with predictions on the effect of the North American Free Trade Agreement (NAFTA)—had shown that the status quo world "was nothing like what actually happened, because a thousand things happened". It was consequently "very difficult" to sort out what NAFTA did, and it might in future be similarly difficult to disentangle the effects of a TTIP agreement from other factors. He nonetheless judged that the numbers "will be realistic, but over a medium run." 35
- 30. With regard to income gains for consumers, Professor Baldwin told us that it was "basically impossible to say how much this will add to people's income"

<sup>&</sup>lt;sup>32</sup> BIS, paras 20 and 26.

<sup>&</sup>lt;sup>33</sup> European Commission, *TTIP: The Economic Analysis Explained*, Summary, and Table 18 in CEPR for European Commission, *Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment*, March 2013, available at <a href="http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc\_150737.pdf">http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc\_150737.pdf</a>.

<sup>&</sup>lt;sup>34</sup> AFL-CIO and 'The US-EU trade deal: don't buy the hype', *The Guardian*, 15 July 2013, available at <a href="http://www.theguardian.com/commentisfree/2013/jul/15/us-trade-deal-with-europe-hype">http://www.theguardian.com/commentisfree/2013/jul/15/us-trade-deal-with-europe-hype</a>.

<sup>35</sup> Q 204.

and suggested that we "take with a large grain of salt any particular numbers on the overall numbers". We could, however, have confidence in the sectoral predictions: "if you look at the CEPR studies saying that the biggest sectors that will be [affected] are motor vehicles, chemicals and processed food, you can take that to the bank."

- Professor Baldwin noted that "rich people consume a lower fraction of their income, so anything that lowers prices of consumption tends to favour lower income people." He also pointed out that, on both sides of the Atlantic, the most protected parts of the economy were food, so that if there were to be progress on liberalising the food trade, it would be more favourable for people with low incomes, who spend more of their income on food. He warned, however, that this would be difficult to achieve, as the big protectionist barriers were usually associated with extremely strong special interests.<sup>36</sup> The US Department of Agriculture also sounded a note of caution, suggesting that, while expanded choice and increased competition did tend to lower prices, in the US the effect would more likely be felt in industrial goods, whereas in agriculture, the EU's competitive advantage tended to be in high-end products rather than in basic food basket commodities.<sup>37</sup> On this side of the Atlantic, the National Farmers' Union was more optimistic, suggesting that it would be "axiomatic" that if tariffs were reduced, one would expect consumers to benefit, and that if the TTIP talks were to succeed in liberalising trade and making food more affordable, consumers should expect to benefit both in price and expanded choice.<sup>38</sup>
- 32. In regard to jobs and wages, the TUC told us that while they would "welcome the creation of decent quality jobs and higher wages", they saw a need for "an independent analysis of the labour market impact of the TTIP so negotiations can be guided to maximise the deal's potential to create higher skilled jobs, and industries likely to be negatively impacted by the TTIP are supported to retrain their workforce." Other unions such as the AFL-CIO (American Federation of Labor and Congress of Industrial Organisations) and the UK's GMB expressed concern that jobs in those EU member states that have higher wages and more employment rights might be lost, rather than created, if reductions in tariff and non-tariff barriers as part of the TTIP led to a reallocation of investment. We return to this issue in paragraph 58 below.

### **Conclusions and Recommendations**

- 33. By analogy with the Single Market programme to which a number of our witnesses have likened the initiative, we judge that a Transatlantic Trade and Investment Partnership has the potential to deliver substantial economic benefits to both parties.
- 34. We recognise that the potential economic benefits—and costs—of a trade and investment treaty between the United States and the European Union are difficult to predict with any certainty while negotiations are still underway. Were a Transatlantic Trade and Investment Partnership (TTIP) to be concluded, its effects would no

<sup>&</sup>lt;sup>36</sup> O 205.

<sup>&</sup>lt;sup>37</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 82.

<sup>&</sup>lt;sup>38</sup> Q 168.

<sup>&</sup>lt;sup>39</sup> TUC, para 27.

doubt be difficult to disentangle from many other factors that influence growth and employment. We nonetheless judge that the net effect of the agreement would be to boost employment and prosperity on both sides of the Atlantic, and that neither the UK nor the EU should pass up the opportunity to reap those gains.

- 35. We recommend that, in making the case for TTIP, the UK Government and the European Commission should deploy the headline figures from economic studies commissioned prior to the start of negotiations with extreme caution, lest they dent the credibility of an initiative that has merit in its own right.
- 36. In our view, GDP figures beginning with zero and household income gains that would not materialise in full until 2027 will not win hearts and minds, even if they are substantive effects. The traditional political hurdle for trade agreements is that potential benefits are diffuse while potential costs are concentrated, and TTIP is unlikely to be an exception. Proponents will therefore need to show that there are tangible potential gains for identifiable groups. We recommend that, as negotiations progress and the outline of a possible agreement emerges, the European Commission and the UK Government should commission more detailed analyses of the possible practical effect of tariff reductions for consumers of particular goods and services in the EU, and on the effects that TTIP may have on investment, and by extension jobs, in particular sectors and EU member states, much like the material that has already been prepared for US audiences. 40

### Other purposes

37. Although the European Commission, the UK Government, and the US Administration have all placed bilateral economic objectives at the centre of what the Transatlantic Trade and Investment Partnership is about, our witnesses drew attention to a range of other objectives that could be pursued through the TTIP, many of which would have implications for third countries.

### Geopolitical

38. A first point made to us was that TTIP would inevitably serve a political, as well as an economic, purpose. Dr Daniel Hamilton, Director of the Center for Transatlantic Relations at Johns Hopkins University's School for Advanced International Studies, suggested TTIP could be viewed as a new link and commitment in the economic sphere to supplement NATO in the military sphere and thus help to rebalance the transatlantic relationship between the US and Europe. He warned us that there was a danger that the EU-US relationship would increasingly be seen in the US as a legacy relationship that was less relevant to the current world. The health of the transatlantic relationship, he argued, had for decades been defined primarily through the military prism, and had failed to tap the huge potential of the economic connection. TTIP could therefore be seen as a "second glue" to shore up the transatlantic relationship, at a time when the old link—

<sup>&</sup>lt;sup>40</sup> See Foreign & Commonwealth Office, *TTIP and the Fifty States: Jobs and Growth from Coast to Coast*, September 2013, available at <a href="https://www.gov.uk/government/publications/ttip-and-the-fifty-states-jobs-and-growth-from-coast-to-coast">https://www.gov.uk/government/publications/ttip-and-the-fifty-states-jobs-and-growth-from-coast-to-coast</a>.

NATO—was "a little wobbly". Calling TTIP an "economic NATO" would in his view be wrong, in that it could give the impression that there was an enemy, but it served as convenient shorthand for conveying the message.<sup>41</sup>

### Template for future trade negotiations

- 39. A second function for TTIP identified by almost all our witnesses was its potential to serve as a template for future bilateral, plurilateral and multilateral trade agreements by virtue of the fact that any provisions agreed between the US and EU—which together account for almost half of world GDP<sup>42</sup>—would inevitably serve as an orientation point for others. The TUC, for example, anticipated that once the world's two biggest economies signed up to a deal, the rules it contained were likely to become the "gold standard". In their view this meant that the standards set by a TTIP agreement would be much more important than for their impact on the EU and US alone: standards could be "locked in" for future agreements, for better or worse. 43
- 40. Other witnesses arrived at the same conclusion from a different starting point. They noted that, as tariffs fall, non-tariff barriers to trade tend to be erected in their place. It would follow that in negotiating a TTIP agreement with a focus on non-tariff barriers, the EU and US would be at the cutting edge of where trade negotiations are expected to head in future. Lord Mandelson described the focus on behind-the-border barriers to trade in TTIP as "almost virgin territory in international trade negotiation" while Commissioner De Gucht identified norms and standards as "the next big battle in trade ... what it is really about in the decade to come". The Commissioner went on to suggest that if the EU and US could forge common standards they would play a very important role worldwide.
- 41. The UK Government took the view that such progress would have two systemic benefits. First, unblocking divisions between the EU and US could "provide a boost to sectoral negotiations across the multilateral system"—for example those conducted under the auspices of UNECE<sup>46</sup> or the World Intellectual Property Organisation, where divisions between the EU and US frequently block progress. Second, horizontal measures adopted as part of TTIP could serve as the basis on which to improve relevant WTO agreements—for example on Technical Barriers to Trade and Sanitary and Phytosanitary Measures. 47
- 42. The UK Government nonetheless recognised a "danger" that the regulatory lead shown by the EU and US either on horizontal issues, or in specific sectors, might conflict with multilateral efforts and establish competing regulatory approaches. They suggested this risk would "need to be managed" and identified three ways of doing so: adopting rules of origin that are as

<sup>&</sup>lt;sup>41</sup> Appendix 4: Evidence taken during visit to Washington, D.C., paras 108–110.

<sup>42 48.7</sup> per cent in 2010—see Eurostat statistics available at <a href="http://epp.eurostat.ec.europa.eu/statistics">http://epp.eurostat.ec.europa.eu/statistics</a> explained/</a> <a href="index.php/The EU">index.php/The EU</a> in the world - economy and finance.

<sup>&</sup>lt;sup>43</sup> TUC, para 23.

<sup>&</sup>lt;sup>44</sup> A phenomenon known as tariff substitution.

<sup>45</sup> O 23, O 107

<sup>&</sup>lt;sup>46</sup> United Nations Economic Commission for Europe.

<sup>&</sup>lt;sup>47</sup> BIS, para 38.

open as possible; adopting regulatory approaches that are based on existing internationally agreed best practice; and having an accession process to TTIP that encourages others to join provided that they can comply with the regulatory components.<sup>48</sup>

### Catalyst or Substitute for the Doha Round

- 43. A third potential function for TTIP that witnesses drew to our attention was its relationship to the Doha Round of multilateral trade negotiations among members of the World Trade Organisation (WTO). Our witnesses were divided on whether TTIP could help to catalyse the Doha Round or might instead—perhaps in combination with the Trans-Pacific Partnership<sup>49</sup> (TPP) that is also under negotiation—serve as a substitute for it.
- 44. Lord Mandelson anticipated that the EU would place great emphasis—possibly more than the United States—on making sure that anything achieved in the TTIP would, over time and by whatever means possible, be multilateralised through the World Trade Organisation (WTO). He emphasised that the TTIP should not be "a closed shop for Europe and America to serve and suit each other but an open architecture that others can join and emulate". <sup>50</sup>
- 45. Dr Hamilton suggested that EU and US leaders had not yet been clear enough on this point. He drew a contrast with the Trans-Pacific Partnership (TPP), where leaders had said that although there were 12 countries negotiating, it would also be open to all members of APEC<sup>51</sup> and even beyond. The US and EU had not said anything equivalent in respect of the TTIP, which in Dr Hamilton's view risked creating the impression that it would be a closed agreement, "about rich countries pulling up the drawbridge." He proposed that leaders should affirm that the TTIP was part of open-architecture trade and would be WTO-compatible, or face losing some of the public debate.
- 46. Other witnesses saw the TTIP as a distraction from the Doha round of trade negotiations among WTO members. The AFL-CIO expressed concern that "together, the TTIP and the TPP are substitutes for a Doha round agreement at the WTO. What developed countries like the US, EU and Japan cannot achieve multilaterally at the WTO, they may be seeking to accomplish in smaller groupings where they have more leverage." 52
- 47. Lord Mandelson contested the idea that the TTIP was a distraction from the Doha Round, arguing that much of what the TTIP would focus on was a very long way from where most of the other WTO members trade and where they would wish to negotiate, both with the EU and with the United States.<sup>53</sup>

<sup>&</sup>lt;sup>48</sup> BIS, para 40.

<sup>&</sup>lt;sup>49</sup> Negotiations on a Trans-Pacific Partnership agreement between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam are currently underway.

<sup>&</sup>lt;sup>50</sup> QQ 32-33.

<sup>&</sup>lt;sup>51</sup> Asia-Pacific Economic Cooperation.

<sup>52</sup> AFL-CIO, para 73; see also Q 19.

<sup>&</sup>lt;sup>53</sup> Q 30.

Professor Baldwin judged that the Doha Round was in any event "in a sort of holding pattern."<sup>54</sup>

- 48. A number of our witnesses suggested that TTIP could help to catalyse the Doha Round by changing China's attitude to the WTO negotiations. According to Professor Baldwin, the US had found it very frustrating that China would not treat itself like a developed country in the WTO and would not step up to the plate and make concessions in the Doha Round. In his view, the US was using the TTIP to "make China demandeur", in the belief that once China had something to negotiate for in the WTO it would expand the Doha agenda and take a leadership role in the WTO.<sup>55</sup> Lord Mandelson also judged that "the United States, but not so much the European Union, is pursuing what to my mind is a fairly clear policy or approach of encirclement of China."<sup>56</sup>
- 49. Lord Green of Hurstpierpoint, then UK Minister for Trade and Investment, was more circumspect, but expressed hope that as progress was made on TPP, TTIP and in the WTO (through the Bali agreement struck in December 2013), China would become more and more keen on becoming involved. He suggested it would be in the UK's "global interest" to keep this momentum up.<sup>57</sup>
- 50. The Chinese government advised us to regard the possibility of exporting elements from a TTIP agreement into a multilateral setting as no more than an aspiration. "This is an intention from the US and the EU. This is not automatically the common understanding from other members [of the WTO], because we know that the multilateral system serves all members." They reminded us that there were varying levels of economic development among WTO members, and warned that, if the intention on the part of the EU and US was to convince third parties that their result would be suitable for others, "any others will see whether this idea is a good or bad one for third parties." <sup>58</sup>
- 51. Commissioner De Gucht told us that he had no intention of imposing norms and standards on China. He did, however, "want to create a situation where China cannot impose standards on us." Dr Hamilton suggested the TTIP was about helping to define the terms on which China and other developing countries could be integrated into the world economy. Until now, each side had been talking to third countries separately in an attempt to shore up their own standards: EU and US messages to third countries had been divided at best, and competitive at worst. The approach the US and EU had taken to tackling the problem of lead in toys imported from China—creating a trilateral consumer safety process—demonstrated that when the US and EU joined forces they could exert much more influence. This was in his view the logic of TTIP. 60

<sup>&</sup>lt;sup>54</sup> O 203.

<sup>55</sup> Q 198, Q 202.

<sup>&</sup>lt;sup>56</sup> Q 31.

<sup>&</sup>lt;sup>57</sup> Q 127.

<sup>&</sup>lt;sup>58</sup> Q 60, Q 63.

<sup>&</sup>lt;sup>59</sup> Q 107.

<sup>60</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 102.

### **Unintended Consequences**

52. Quite apart from the official and unofficial reasons for concluding a trade and investment treaty with the United States, a TTIP agreement might also have unintended consequences. Our witnesses highlighted in particular its possible effects on third countries, and especially developing countries; its potential to send jobs overseas if it were to lead to a redisposition of investment; and the potential for regulatory co-ordination between the US and EU to undermine labour, environmental and consumer protection standards.

### Effect on Third Countries

- A number of witnesses highlighted the potential for changes in tariffs and 53. tariff preferences to impact negatively on third countries. The TUC directed us to a study by the Bertelsmann Stiftung projecting that EU trade with neighbouring states in North Africa and Eastern Europe would decline by an average of 5 per cent if there were to be a comprehensive agreement between the EU and US, because this would devalue existing preference agreements. 61 Professor Rollo pointed out that for a lot of developing countries, particularly low-income developing countries, the tariffs that might be removed in transatlantic trade by a TTIP agreement are not trivial for the products in which they are competitive and which are currently their major exports, such as textiles, clothing and footwear.<sup>62</sup> The UK Government told us they had commissioned analysis on the potential effect of a TTIP agreement on developing countries, which showed that some countries and products might face increased competition, for example Bangladesh, Pakistan and Cambodia on garments and footwear, Ghana on fish, and Nigeria on light oils.63
- Most witnesses concurred, however, that these effects should be "limited", 54. for two reasons. 64 First, the exports from developing countries to the US and EU are very different from the trade the TTIP partners have with each other.65 Lord Mandelson told us that "many of the emerging economies, most of the developing countries, and all of the least developed countries are not competing with us in those markets at that top end of the value chain."66 Professor Rollo also noted that in the areas where there were still significant tariffs between the EU and US, such as on textiles, the EU and US are not competitive in each other's markets, so that it was arguable that even a 10 per cent or 15 per cent tariff preference would not make that much difference to the underlying competitive position of third countries.<sup>67</sup> Second, it was suggested that there would be ways to mitigate these kinds of negative effects. Professor Baldwin noted that if the US and EU gave each other tariff preferences on textiles, apparel and agriculture, that would hurt the third countries that were left out, but Europe could potentially counter that by

<sup>61</sup> TUC, para 24.

 $<sup>^{62}</sup>$  Q 21.

<sup>63</sup> BIS, para 42.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Q 30.

<sup>67</sup> Q 21.

- unilaterally improving GSP preferences and thus attempting to offset any negative effect.<sup>68</sup>
- 55. Some witnesses warned that TTIP might also have an impact on third countries through a different channel, namely if regulatory cooperation between the US and EU resulted in standards becoming more stringent. Professor Baldwin put it to us that "the problem for developing countries is that we get this US transatlantic [TTIP], transpacific [TPP] set of high-standard rules—but are they the right rules for developing countries? They will not have a choice. They obey those rules or they do not export, just like Switzerland." The UK Government recognised this risk, but again thought it could be mitigated: "there are development assistance funds that could be allocated to help developing country exporters meet new standards."
- Others emphasised that regulatory cooperation between the US and EU might also bring benefits to third countries. Professor Rollo explained that "even if you harmonised at a higher level of protection, it might still be outweighed by having the two markets together and the economies of scale in conforming to that new harmonised regulation. It is costly to conform. If you have to conform to two different regulations, that is twice the cost, so there is a trade-off."<sup>72</sup> Professor Baldwin drew our attention to the parallels with the single market project: "everybody said "Fortress Europe! What are we going to do?"In the end there was no Fortress Europe. The single market was good for Japanese and American exporters."<sup>73</sup> Professor Rollo acknowledged this, but noted that it had been a conscious choice. Mutual recognition agreements, he explained, can be strictly preferential, i.e. they can be bilateral and exclude third countries. In building the Single Market, the EU by and large went down the road of being non-discriminatory in its application of mutual recognition, which according to Professor Rollo, "was a big and important point."74 The UK Government appear to acknowledge this, noting that "if there is mutual recognition of standards through TTIP, it would be in the interest of developing countries for this recognition to be open to third countries that currently meet either EU or US standards."<sup>75</sup>
- 57. The majority of our witnesses therefore concurred that the scope for negative effects on third countries from changes in tariffs and tariff preferences between the US and EU was limited, and that although they might also face new regulatory hurdles as a result of TTIP, this might be offset by the benefit of not having to conform to two different sets of standards when exporting into EU and US markets.

### Off-shoring jobs and deregulation

58. A number of witnesses drew our attention to their concerns that a trade and investment treaty between the EU and US might result in jobs being sent off-

<sup>&</sup>lt;sup>68</sup> Q 203. The EU's Generalised Scheme of Preferences (GSP) provides developing countries with preferential access to the EU market through reduced tariffs.

<sup>69</sup> BIS, para 42.

<sup>&</sup>lt;sup>70</sup> Q 203.

<sup>&</sup>lt;sup>71</sup> BIS, para 42.

<sup>&</sup>lt;sup>72</sup> Q 21.

<sup>&</sup>lt;sup>73</sup> Q 201.

<sup>&</sup>lt;sup>74</sup> Q 21.

<sup>&</sup>lt;sup>75</sup> BIS, para 42.

- shore, and that regulatory co-ordination between the two parties might undermine labour, environmental or consumer protection standards in the European Union.
- 59. Corporate Europe Observatory told us that, in their view, "a trade agreement is about doing away with and reducing barriers to trade to make it easier for companies to move their goods, services and investments. It increases their power and leverage in a society." Trade agreements such as TTIP would therefore serve to "increase competition between workers, which in the long term puts pressure on issues such as wages and labour rights."
- 60. The GMB saw a "very real risk of our hard-won European employment and social rights being levelled down to often much lower American standards". The TUC echoed this concern, pointing out that the US has not ratified six of the core International Labour Organisation (ILO) conventions, and that "Right to Work" laws, "which clamp down on unions' capacity to bargain and organise", had been passed in 24 US states. The GMB went on to argue that "contrary to the rosy predictions made by TTIP advocates, that the deal will boost employment and create thousands of new jobs, in reality it could lead to increased unemployment and mass social dumping as EU companies relocate to the US to take advantage of their weaker labour laws, or US companies choose to operate only in the poorer EU member states, where wages and conditions are lower and trade unions weaker." \*\*
- 61. This concern was shared not only by other UK unions (TUC and Unite) but also by the AFL-CIO in the United States. They told us that from their point of view, the TTIP is unique in the sense that the United States is the low-wage participant in the agreement, because US wages are lower than in the major manufacturing economies in the EU. They also warned that "in the comparison to NAFTA, the US would be Europe's Mexico—particularly the southern states that are lower wage, that are 'right-to-work', that would be less tolerant of workers exercising their labour rights."<sup>80</sup>
- 62. Other witnesses firmly rebutted the suggestion that TTIP might prompt companies to relocate across the Atlantic as a result of wage competition from the US. Lord Livingston of Parkhead, UK Minister for Trade and Investment, emphasised that "the average wage in the US is higher than the average wage in Europe by some distance." Ford Motor Company told us that "rarely if ever" had Ford moved a plant to another country because wage rates were lower. Instead, numerous factors would lead to that decision, including tariffs, energy costs, the ability to source parts and suppliers, and access to raw materials, so that the cost contribution of labour was only one small factor in the equation. They went on to argue that, between the US and Europe, there was in any event no huge advantage on either side of the transatlantic marketplace, either in terms of regulation or from the cost of labour. 82

<sup>&</sup>lt;sup>76</sup> O 247.

<sup>77</sup> GMB.

<sup>&</sup>lt;sup>78</sup> TUC, para 14.

<sup>79</sup> GMB.

<sup>80</sup> Appendix 4: Evidence taken during visit to Washington, D.C., paras 11 and 21.

<sup>81</sup> Q 261

<sup>82</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 44.

- 63. It was also suggested to us that there might be scope to use the negotiations to "level up" in the area of labour standards instead. Unite proposed that the EU should call on the US to ratify fully the ILO conventions as part of negotiations towards a TTIP. \*\* The UK Government appeared to be open to this suggestion, stating in their written evidence that the TTIP negotiations "represent an opportunity to work with the US on the implementation of International Labour Organisation standards. \*\* Professor Baldwin took the view that this was the more likely direction of travel, noting that "the political game in the US is to get the US more or less to agree to the core ILO things. It is not Europe going down." In his view, the Democrats were using trade agreements as a way of forcing the US into ILO core standards. \*\* \*\*
- 64. The TUC and Unite also saw scope to use the TTIP to extend elements of the EU social model to the US—or at least to European companies operating in the US—in order to promote European Works Councils and extend other worker voice mechanisms to US employees.<sup>86</sup>
- 65. Other unions were more pessimistic. The GMB recognised that some had argued that the TTIP might provide an opportunity to raise labour standards, but judged that, "given current economic pressures, there is far more risk of these being levelled down." The AFL-CIO argued that rather than raising the bar, trade agreements signed by the US tended to set a floor for labour standards, and warned that mechanisms to enforce even those basic standards were "generally weak at best."
- Professor Baldwin judged that a prospective "race to the bottom" on standards might be more of a concern in respect of food safety, health and safety, and the precautionary principle than in respect of labour or environmental standards.88 The AFL-CIO raised a range of concerns about the effect TTIP might have on consumer protection, suggesting that any benefits an agreement might bring to consumers in terms of lower prices would be "marginal" and more than outweighed by the risk of dragging down consumer protection standards, for example food safety standards. In their view, large food conglomerates did not want to label growth hormones or GM ingredients, and would therefore try to sideline the European Union's precautionary principle<sup>89</sup> (its approach to risk management on the environment and human, animal and plant health matters) and "go after" EU labelling rules. The term "sound science" was in their view no more than "code words" to get rid of safeguards. 90 Corporate Europe Observatory echoed these concerns, and told us they feared that "if it is not the way to wipe out important consumer legislation in future, it is definitely a good tool for industry to prevent progressive consumer legislation in future."91

<sup>83</sup> Unite, para 3.1.

<sup>84</sup> BIS, para 51.

<sup>85</sup> Q 206.

<sup>86</sup> TUC, para 16 and Unite, para 3.3.

<sup>87</sup> GMB; Appendix 4: Evidence taken during visit to Washington, D.C., para 6.

<sup>88</sup> Q 206.

<sup>89</sup> The concept of the precautionary principle as used by the EU was first set out in a Commission Communication adopted in February 2000, COM(2000) 1, available at <a href="http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52000DC0001">http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52000DC0001</a>.

<sup>90</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 8.

<sup>91</sup> Q 243.

- 67. Which? took a more optimistic view, explaining that they were "broadly supportive" of TTIP negotiations and saw the potential for an agreement to lead to better alignment of consumer protection on both sides of the Atlantic as well as bringing increased consumer choice. <sup>92</sup> They were in favour of articulating the consumer outcomes that should be protected whilst allowing mutual recognition of the ways in which those outcomes were achieved. They nonetheless warned that there were "areas in which there should be caution", including food safety and product safety, stressing that they would want the EU to be able to maintain use of the precautionary principle and that care should be taken to ensure that mutual recognition is done in a way that ensures consumer protection.
- 68. The UK Government rejected the idea that EU regulatory standards might be watered-down, emphasising that they were clear that a "race to the bottom" in respect of product safety, labour standards or environmental protection "must not be the case in the TTIP negotiations" and that they would be on their guard in this respect.<sup>93</sup> The MEPs we heard from were equally adamant. Robert Sturdy MEP told us that labour and environmental standards were "one of those red lines that is absolutely clear." Maria Eleni Koppa MEP predicted that the EU would not give up its labour and environmental standards, "that is for sure". <sup>95</sup>
- 69. General Electric told us that "nobody is under any illusion that somehow this is a back door to getting regulatory regimes on both sides lowered in their stringency". In their view, the business community's perspective was that there was more than enough work to be done in alignment and coherence where the regulatory standards basically stay the same—it being "the whole point" that the EU and US had equivalent outcomes in those areas—and that they could benefit from that "without playing any games". 96
- 70. Professor Evenett judged that the "people who are very concerned about the race to the bottom and the falling standards have very effectively organised themselves and their position". Combined with regulatory "inertia", this would act as a brake on widespread deregulation, he predicted.<sup>97</sup>

### The price of failure

71. We also asked our witnesses about the implications of failing to conclude a TTIP agreement. The TUC emphasised the missed opportunity, telling us that "we would lose the positive results that might flow from a TTIP, with the added complication that world trade would continue to increase without the EU playing such a key role, or benefiting as much." Lord Green of Hurstpierpoint, then UK Minister for Trade and Investment, also saw the price of failure as the foregone opportunities, themselves "an opportunity cost of considerable magnitude". But more generally and in his view more importantly, failure would have an impact on overall dialogue at the global level on trade relationships and investment relationships that would "clearly

<sup>92</sup> Which?

<sup>93</sup> BIS, para 51.

<sup>94</sup> Q 54.

<sup>95</sup> O 55

<sup>&</sup>lt;sup>96</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 37.

<sup>97</sup> Q 13.

<sup>98</sup> TUC, para 30.

- be deleterious". He hoped that TTIP would become "something of a benchmark for regional agreements that can then feed into the overall multilateral process." He concluded that "failure in the US will not help that cause." "99
- 72. Commissioner De Gucht told us that "not making a deal will have a price and could have a substantial price", not only for Europe but also for the US. Not reaching a deal would weaken their position in what he saw as the "next big battle" about norms and standards, and so there would be "a price if we do not get there." Lord Mandelson warned that if the negotiation were to break down, there would be "acrimony". He predicted that "a large blame game would ensue and it would poison relations between two very important trading partners." 101

### **Conclusions and Recommendations**

- 73. TTIP is not just another trade deal: by virtue of the fact that the EU and US together account for nearly half of world GDP, any agreement they conclude would necessarily have ramifications for other countries and for the multilateral trading system. The initiative therefore has both a strategic dimension, and a geopolitical one.
- 74. TTIP is in our view a political as well as an economic project, not least because it could serve to revitalise and rebalance the transatlantic relationship between Europe and the United States. One of its most important legacies may be the establishment of a structured dialogue on regulatory matters between the EU and US sustained into the future, through provisions for a living agreement.
- 75. The initiative also provides the EU and US with an opportunity to set a high-standard precedent for future trade and investment agreements, and would to that extent serve a strategic purpose. We recognise that this avowed intention could prompt unease among other trading partners, but in our view it should not: agreement between the US and EU is pivotal to the progress of other multilateral initiatives, including, but not limited to, the Doha Round. Were TTIP negotiations to run aground, prospects for those other initiatives would look worse, not better. We therefore agree with Lord Green of Hurstpierpoint that a TTIP agreement should help to sustain momentum at the WTO following the Bali agreement, and help to promote China's full involvement.
- 76. The EU and US should nonetheless address concerns that TTIP could be a "closed shop" in which the world's richest economies pull up the drawbridge. We welcome the UK Government's recognition that there should be an accession process to allow third countries to participate in TTIP; that regulatory approaches adopted as part of the TTIP should be based on existing internationally agreed best practice; and that any mutual recognition of standards achieved through TTIP should be open to third countries. Provided that an

<sup>99</sup> Q 127.

<sup>100</sup> O 111

<sup>&</sup>lt;sup>101</sup> Q 23. See also Dan Hamilton and Tim Oliver, paras 15–20 about the impact of failure or delay on the UK's domestic debate on EU membership.

- eventual agreement has the right features—including those we have listed—we anticipate that the positive external effects of a TTIP agreement could outweigh any negative effects on third countries.
- 77. The design of a TTIP agreement will matter, and we therefore recommend that the UK Government should press its EU partners, the European Commission, and the US administration to choose design features that will allow third countries to participate in the benefits accruing through TTIP, in the same way that third countries have been able to benefit from the development of the European Single Market.
- 78. We also recommend that, at a later stage in the negotiations, the UK Government and the European Commission should bring forward proposals to mitigate the possible adverse effects of changes in tariff preferences on developing countries, and to help their exporters to meet new standards. The UK Government should press for the implementation of such measures as an integral part of its approach to the initiative overall.
- 79. Concerns about the effect that TTIP might have on jobs, on employment rights, and on consumer protection are in our view not equally well-founded, and need to be disentangled. This is because some of those standards—for example some product safety standards—are directly under negotiation, while others—such as specific employment rights—are not. We recommend that, in making the case for TTIP, the UK Government and the European Commission articulate more clearly which areas of regulation will be under discussion, and which will not.
- 80. In principle, a trade and investment treaty between the EU and US could, over time, lead to a reallocation of investment—and with it, jobs—as tariffs and non-tariff barriers are reduced or removed. Once an agreement begins to take shape, the UK Government and European Commission should therefore ensure that the likely scale and direction of such effects are carefully evaluated—as recommended in Para 36 above.
- 81. Employment rights—on either side of the Atlantic—are not directly under negotiation as part of the TTIP. We therefore see no prospect that labour regulation in EU member states would be watered down as part of the initiative. We nonetheless urge the UK Government and European Commission to seize the opportunity presented by the sustainable development chapter of the negotiations to press the United States to ratify the International Labour Organisation's core conventions.
- 82. By contrast, product safety and food safety regulation are likely to be under discussion, and it is therefore vital that the UK Government and the European Parliament should be vigilant in making sure that there is no detriment to consumers and the environment from coordination between the EU and US.

### **CHAPTER 3: CONTENT OF THE TTIP**

83. In this chapter, we turn to the content of a prospective Transatlantic Trade and Investment Partnership. It would not have been possible to explore, let alone do justice, to the full range of issues that are under negotiation, and so we focus on two areas: the UK's top priorities in goods and services, respectively, and the issues that have been drawn to our attention as potentially critical to securing and ratifying and overall agreement.

### **UK Priorities**

- 84. The UK Government have identified the automotive sector and the financial services sector as their top two priorities in the negotiations. We recognise that these are but the tip of the iceberg insofar as UK priorities are concerned, and do not wish to imply by omission that other priorities would not merit similar analysis and attention—indeed we hope that, by raising the profile of the TTIP negotiations, our report will help to achieve just that.
- 85. We also recognise that the UK's priorities will evolve. As the UK Government explained in their written evidence, they expect to get a clearer sense of which objectives will be relatively easy to deliver and which are proving more challenging as the talks proceed, and expect their priorities to evolve accordingly. 102

### **Automotive Sector**

86. The automotive sector is highlighted in the CEPR studies produced for the European Commission and the UK Government as the sector that potentially stands to gain the most from a TTIP agreement. The UK Government told us that the UK's exports of motor vehicles could increase by as much as 15 per cent in the ambitious scenarios modelled, and that the sector was correspondingly "well organised and strongly in support of greater liberalisation, with mutual recognition of environmental and safety standards being the top priority ... followed by cooperation and harmonisation of future regulation and full tariff elimination."

### **Objectives**

- 87. Although there are "non-trivial" tariffs applied to trade in this sector, the industry explained that they wanted to see the emphasis placed on non-tariff barriers. Ford of Europe, for example, told us that "the vast majority" of the potential benefit from the agreement would lie in removing non-tariff barriers, which would allow them to reduce their production costs because they would be able to build vehicles to one standard rather than two. 104
- 88. Representatives of the UK industry told us they were seeking mutual recognition of existing "brownfield" regulations that produce equivalent outcomes, and were also looking to the TTIP to produce a quicker, more streamlined system for agreeing a harmonised approach to new "greenfield" regulation. Jaguar Land Rover told us that that the US and EU regulatory

<sup>102</sup> BIS, para 46.

<sup>&</sup>lt;sup>103</sup> BIS, para 46.

<sup>104</sup> Q 144.

regimes "ostensibly seek to address exactly the same principles and requirements: to make sure that vehicles are safe and cause least harm to the environment." They had, however, grown up separately over 50 to 60 years, and thus diverged, with good reason, including in the systems used to demonstrate compliance with each regulatory regime. 105

- 89. In respect of existing regulation, Ford of Europe emphasised that "this is not about harmonising, it is about mutually recognising two different sets of standards and assessing them as equivalent overall in terms of the outcome". To illustrate, Jaguar Land Rover explained that the illuminated symbol indicating that a car's handbrake is on is different in the United States: the instrument cluster must put up the word "Park". "If we had mutual recognition of that particular element of the regulations that allowed us to use what we design for Europe in the United States, we would not have to design a solution that had the word "Park" for America and a symbol for everybody else."
- 90. Asked about the top areas where they were looking for mutual recognition of existing regulation, the Society of Motor Manufacturers and Traders (SMMT) identified first, a "long list" of safety regulations; second, environmental regulations; and third, "Small-Series Type Approval"—an EU mechanism that allows low volume producers to sell their products Europewide with technical and administrative requirements that are more adapted to smaller businesses. <sup>108</sup>
- 91. In regard to the third of these priorities, the SMMT suggested that it was very difficult for small, low-volume manufacturers to access the American market in a way that is cost-efficient, given the level of regulation that needed to be adhered to. 109 McLaren Automotive Ltd concurred, explaining that as a small manufacturer they would seek to build a common technical specification as far as possible for all the different markets that they sold in around the world, but that even with a common specification, they might be forced to retest a vehicle multiple times in order to demonstrate compliance for different markets. They identified the US as "perhaps one of the most demanding in that respect", and concluded that for very small companies, this could represent a barrier to being able to enter the market at all, because it was largely a fixed cost for certifying a model for that market, almost regardless of the volume the producer then goes on to sell. 110
- 92. Representatives of the UK industry explained that they were hoping that mutual recognition between the US and EU would serve as a platform for similar agreements with other countries. Ford of Europe, for example, anticipated that developing a set of mutually recognised standards between the US and EU "would help to create some critical mass to take those to other parts of the world." Jaguar Land Rover also suggested that TTIP would give them "a bit more leverage to say that mutual recognition is a way forward to one common understanding of regulations which are

<sup>&</sup>lt;sup>105</sup> *Ibid*.

<sup>&</sup>lt;sup>106</sup> Q 147.

<sup>107</sup> Q 148.

<sup>&</sup>lt;sup>108</sup> Q 150.

<sup>109</sup> *Ibid*.

<sup>&</sup>lt;sup>110</sup> *Ibid*.

<sup>111</sup> Q 152.

demonstrated differently, with the ambition of having it recognised globally."112

- 93. In respect of future regulation, witnesses explained that there was an existing process at the multilateral level for developing Global Technical Regulations (GTRs) under the auspices of the United Nations, but that it had thus far been "a very slow journey". Since the agreement launching the process was signed in 1998, seven Global Technical Regulations had been published, and a further four were in development. Jaguar Land Rover suggested that "over 15 years, to have 11 [GTRs] is a little glacial in pace perhaps, and one of the benefits of TTIP is to give fresh political impetus from the EU and the United States." Ford of Europe concurred, and clarified that they were not looking for new institutions or processes to be set up as part of the TTIP: the GTR process and the existing institutions were in their view "exactly the right forum, with the political will to make it work faster." \*\*115\*\*
- 94. With these aims in mind, the European industry and the US industry had come together to develop a joint set of proposals, which had been put to the negotiators and the regulators on both sides of the Atlantic.<sup>116</sup> The Society of Motor Manufacturers and Traders confirmed that they were confident they had the support of the regulators on the European side.<sup>117</sup>

### Impact on investment, jobs and consumers

- 95. Professor Evenett suggested to us that there had been "signals from European manufacturers that they would expand their investments in the United States should this deal [TTIP] go through, with the intention of exporting back to Europe from the lower-cost southern US states.<sup>118</sup> He added that one of the reasons why the automobile sector was in his view so keen on investing in the United States was because they expected energy costs to be much lower there.<sup>119</sup>
- 96. In contrast, the SMMT told us that European manufacturers already had facilities in the US and were exporting some models back to Europe, but suggested that those companies had invested in the US because it was close to the main market for those particular models, adding that "we do not see a tremendous change in that". They noted that decision-making around production investment took into account a number of factors, one of the primary ones being transport and logistics costs, meaning that it made sense to reduce those costs by producing close to each market. They also emphasised that small and low-volume manufacturers generally produce from one site, meaning there was "less likelihood of them upping sticks from one particular location to base themselves in the US." 121

<sup>&</sup>lt;sup>112</sup> *Ibid*.

<sup>&</sup>lt;sup>113</sup> Q 151.

<sup>114</sup> *Ibid*.

<sup>115</sup> O 154.

<sup>116</sup> Q 144.

<sup>117</sup> *Ibid*.

<sup>&</sup>lt;sup>118</sup> Q 11.

<sup>&</sup>lt;sup>119</sup> Q 15.

<sup>120</sup> Q 153.

<sup>121</sup> Q 146.

- 97. McLaren Automotive Ltd confirmed that they had no ambition to start making vehicles outside the UK. 122 They pointed out that small manufacturers' supply chains were predominantly European-based, and that small manufacturers added up to quite a large number of companies overall who would not be looking to relocate to the US, because being in the UK and Europe was an important part of what they and their vehicles were about. 123
- 98. The UK Government noted that many of the major automotive producers had manufacturing facilities on both sides of the Atlantic, and that sometimes part of the reason for that was the different regulatory and other non-tariff barriers that exist. They acknowledged that over time, therefore, TTIP might lead to a redisposition of investment, but nonetheless anticipated that TTIP could deliver "a significant gain, particularly for the British automotive sector, because it is more at a premium end." <sup>124</sup>
- 99. We also asked our witnesses whether regulatory convergence in this area might lead to lower levels of protection for consumers as a result of regulatory cooperation on car safety standards, for example. Ford of Europe insisted that what they had in mind was "absolutely not about reducing levels of protection because we are not generating new standards. We are mutually accepting standards that we assess to be equivalent." 125
- 100. As regards benefits for consumers, our witnesses were more confident that TTIP might lead to more jobs than that it would lead to price reductions. Ford of Europe noted that they were expecting reductions in cost from being able to build to one standard instead of two, but judged that it was "too early to say how that will materialise." They were, however, confident that there would be "an overall benefit for consumers as citizens in that we will see economic growth and we will see more jobs through this agreement." McLaren Automotive Ltd anticipated "a benefit for the size of the company here ... in terms of our own staff and employees from the growth in an important market." They also expected that the removal of barriers to entry for small low-volume manufacturers to the US market would provide more choice for US consumers. 127

### Other member states' views

101. We canvassed other member states' views on whether the motor vehicles sector featured among their priorities for the TTIP. The Czech and German governments indicated that they and their industries were supportive of the proposals that the European car industry association ACEA had put forward. The German government told us that the contents of those papers reflected "the German view" and were quite important to them. <sup>128</sup> Czech industry was also "very satisfied" with the proposals, according to the Czech government. <sup>129</sup> The French government, on the other hand, attached less

<sup>122</sup> Q 150.

<sup>&</sup>lt;sup>123</sup> O 153.

<sup>124</sup> Q 124.

<sup>125</sup> Q 154.

<sup>&</sup>lt;sup>126</sup> Q 154.

<sup>&</sup>lt;sup>127</sup> *Ibid*.

<sup>128</sup> Q 48.

<sup>129</sup> Q 84.

importance to this sector, because their industry was "not invested" in the US. 130

### **Conclusions and Recommendations**

- 102. We were warned that, when going from the objectives of the TTIP at 36,000 feet to the nuts and bolts, we would see a gap. We detect no such gap in the automotive sector. Consistent with projections that the sector may have most to gain from a TTIP agreement, the industry on both sides of the Atlantic is organised and vocal. The most striking aspect of this observation, in our view, is that other sectors appear to be considerably less mobilised, and that this sector may therefore be unrepresentative of the business community at large in terms of its engagement and advocacy of the initiative.
- 103. Although we therefore see scope for other sectors to learn from the motor industry's approach to the TTIP negotiations, we anticipate that the sector will need to articulate more clearly the possible benefits for consumers from attainment of their objectives, and explain why they expect to see jobs added, rather than lost or reshuffled, if they are to build public and political support for their goals. We judge that for the largest companies with production facilities on both sides of the Atlantic those goals are primarily about reducing production costs and acquiring more flexibility on where to locate production. The extent to which this will increase trade between the EU and US will depend on a host of consequential decisions to be taken by the companies about how best to further their commercial interests.
- 104. We note that the industry views TTIP as a platform from which to inject momentum into the existing multilateral process for developing Global Technical Regulations and are encouraged by this approach, which is consistent with our view that the TTIP should serve to catalyse multilateral negotiations, and not substitute for them.
- 105. We recognise that there is merit in pursuing mutual recognition of environmental and safety standards for motor vehicles where they are assessed as producing equivalent outcomes. We nonetheless urge the UK Government and the European Commission to ensure that this only occurs where EU and US standards are genuinely equivalent, so that existing environmental and safety standards are not compromised.

### **Financial Services**

106. The financial services sector contributes almost half of the UK's total trade surplus in services, so that according to the UK Government "further liberalisation of all elements of the financial services market between the EU and the US is likely to be a significant win for the UK, more so than for any other EU member state." Their priority is to establish greater coherence and cooperation in transatlantic financial regulation, with a view to reversing

<sup>130</sup> Q 78.

<sup>&</sup>lt;sup>131</sup> Q 18.

<sup>132</sup> *Ibid*.

what they see as the fragmentation of financial services regulation that has taken place during the process of regulatory reform following the [financial] crisis.<sup>133</sup>

- 107. The Government accept that "nothing that gets signed between here and, let us say, the spring or summer of 2015 is going to eliminate regulatory discrepancies between the two sides of the Atlantic on financial services". 134 They emphasised that they were not seeking to align the Dodd-Frank Act 135 passed by the US Congress with equivalent EU legislation such as the CRD IV package (composed of the Capital Requirements Regulation and the Capital Requirements Directive, and covering prudential rules for banks, building societies and investment firms). "That would be neither possible nor wise", Lord Green of Hurstpierpoint, then UK Minister for Trade and Investment, told us. 136
- 108. The Minister did, however, suggest that for prudential reasons it would be a good idea for the two major economies in the world, the EU and US, to have a broadly similar approach. The Government's concerns were twofold: first, that there "cannot be more than one basic right way of regulating banks"; and second, that depending on how different regulatory treatments affect the ability of banks to do business on the opposite side of the Atlantic, there might not be a level playing field (that is, it might be easier for US banks to do business in the EU than for EU banks to do business in the US). TTIP Chief Negotiator Ignacio Garcia-Bercero confirmed that the issues across the Atlantic on financial services did not have to do with classic market-access restrictions, as financial services markets were already quite open, but were instead about a "potential clash" between the two regulatory regimes. The aim would be to try to ensure that, "to the largest feasible extent, regulations of both sides do not conflict."
- 109. The UK Government also emphasised that their priorities in this area were not just about banks, but also "very importantly about insurance". Recent changes to Solvency II—the capital adequacy regime for the European insurance industry—had opened up the possibility for a useful dialogue on insurance. There could be a very considerable gain for British, French and other European insurance companies if they were able to compete more seamlessly across the United States.<sup>139</sup>

<sup>133</sup> *Ibid.*, paras 46-47.

<sup>&</sup>lt;sup>134</sup> Q 117.

<sup>&</sup>lt;sup>135</sup> Full title: Dodd-Frank Wall Street Reform and Consumer Protection Act. The Act, passed in 2010, is the largest overhaul in US financial regulation since the 1930s, and is named after its Democratic sponsors in Congress, Senator Chris Dodd and Representative Barney Frank. It included new rules for banks, hedge funds and derivatives transactions intended to prevent a repeat of the 2008 financial crisis. The Act also created a new Consumer Financial Protection Bureau to protect retail users of banking products and a new Financial Stability Oversight Council to guard against looming threats to the financial system. For a more detailed summary of measures in the Act, see US Senate Committee on Banking, Housing and Urban Affairs, *Brief Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act*, 2010, available at <a href="http://www.banking.senate.gov/public/files/070110">http://www.banking.senate.gov/public/files/070110</a> Dodd Frank Wall Street Reform comprehensive <a href="http://www.banking.senate.gov/public/files/070110">summary Final.pdf</a>.

<sup>136</sup> Q 119.

<sup>&</sup>lt;sup>137</sup> QQ 116-117.

<sup>138</sup> Q 116.

<sup>139</sup> Ibid.

# **Objectives**

- 110. The EU and US are already engaged in various dialogues on financial services regulatory matters, at both the multilateral level and the bilateral level. Most of our witnesses—with the notable exception of the US Administration—took the view that those dialogues were not working as well as they should. The intention on the part of the UK and EU, as well as among proponents in the industry, would therefore be to use the TTIP to "upgrade" the existing EU-US dialogue on financial services regulation—which principally takes place through the Financial Markets Regulatory Dialogue (FMRD)—into a more formal process, with a view to improving the quality of the dialogue and making more progress. 141
- 111. TheCityUK, for example, told us that the FMRD "does not work as it was intended to work", and that they were therefore looking to the TTIP to "define the issues, to scope them out, and to put them into a process that can lead to the progress the industry seeks."142 Lloyd's described the EU-US insurance dialogue, which they had been following through the FMRD, as "a very unsatisfactory process" which had not led to particularly impressive progress to date. They regarded the dialogue as "very opaque", suggesting that they were dependent on the European Commission choosing to tell them what had been discussed; that it was not clear what the concrete steps emerging from the dialogue were despite assurances from the Commission that good progress was being made; and that only recently had there for the first time been an opportunity for stakeholders to input and comment.<sup>143</sup> They were therefore looking for the TTIP to provide "a more formal political overlay that clearly specifies what is expected of the parties and in which they are held accountable." Specifically, they would favour more transparency in the process, a formal commitment to consultation with stakeholders, timelines for achieving objectives, a forward agenda, and a joint body to review the progress being made. 144
- 112. The UK's Financial Conduct Authority noted that three features would be useful in any future EU-US dialogue on financial services under the TTIP. First, a recognition of the broader global dimension of financial services, including the Asian markets. Second, that the right people should be gathered around the table—one of the weaknesses of the FMRD in their view being that it only engages the European Commission and "does not engage any of the relevant technocrats." Third, that the basis of the conversation should be clear, for example, whether the dialogue would be about generating greater understanding or a "harder-edged decision-making process." If the latter, it might require a mechanism for resolving differences and disagreements.<sup>145</sup>
- 113. The European Commission has said that the EU is proposing to establish, within the TTIP framework, "a transparent, accountable and rule-based process which would commit the two parties to work together towards

<sup>&</sup>lt;sup>140</sup> O 137.

<sup>&</sup>lt;sup>141</sup> European Commission, *TTIP: Cooperation on financial services regulation*, 27 January 2014, available at <a href="http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc\_152101.pdf">http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc\_152101.pdf</a>.

<sup>142</sup> Q 136.

<sup>143</sup> QQ 129-131.

<sup>&</sup>lt;sup>144</sup> *Ibid*.

<sup>145</sup> Q 140.

strengthening financial stability." The goal would be to create an institutional framework for cooperation between EU and US regulators. 146

# US response

- 114. The proposal has, however, thus far been received frostily by the US Administration. Ambassador Miriam Sapiro, Deputy US Trade Representative, told us that they saw the existing mechanisms for working on financial services regulatory issues as "very sound" and thus did not see the "value added" of introducing another channel when the FMRD, various G20 initiatives, the Financial Stability Board and other groups were already in place. She acknowledged that both sides had an interest in making sure those processes were working well, but stressed that they did not see the need to move processes that are in their view "already working" into a new agreement that "isn't even written yet." 147
- 115. Several witnesses suggested that behind this resistance lay a reluctance to reopen discussion on the Dodd-Frank Act, and concerns that an EU-US dialogue might be used to water down its provisions, bearing in mind that the equivalent EU provisions are viewed by some in the US as less stringent. This was certainly the view of the AFL-CIO, who told us that, although they would strongly support a robust common floor between the US and EU on financial services regulation, and saw it as critical to achieving the purpose of the Dodd-Frank Act, they had "no reason to believe" that the TTIP would produce a financial regulatory framework that they would support, and indeed felt certain that it would lead to "a weakening, a least-commondenominator agenda." They argued that they had had to fight very hard to protect the regulatory framework for derivatives that came out of Dodd-Frank against pressure from European financial services institutions and from transatlantic financial services institutions working through the EU, who had in their view sought to weaken it and make it possible for US institutions to use European platforms to avoid US derivatives regulation. "That sort of experience colours our view of what is possible in the TTIP framework", and they were consequently supporting "[US Treasury] Secretary [Jack] Lew's position that financial regulation should not be in the TTIP."148
- 116. TheCityUK emphasised that the US view was not "monolithic": parts of the Administration were much more sympathetic to the views of the business community in the US as well as the UK, and leading members of the Senate Finance Committee and the House Ways and Means Committee were also much more positive. Republican Senator Orrin Hatch, Ranking Member of the Senate Finance Committee, confirmed that he wanted to see financial services included in the TTIP agreement. The US Chamber of Commerce told us that both from a market access perspective and from a regulatory perspective, the Chamber's members believed there were "only upsides" to be had from including financial services in TTIP discussions. They insisted

<sup>&</sup>lt;sup>146</sup> European Commission, *TTIP: Cooperation on financial services regulation*, 27 January 2014, available at <a href="http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc\_152101.pdf">http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc\_152101.pdf</a>.

<sup>&</sup>lt;sup>147</sup> Appendix 4: Evidence taken during visit to Washington, D.C., paras 138–9.

<sup>&</sup>lt;sup>148</sup> Appendix 4: Evidence taken during visit to Washington, D.C., paras 17–18.

<sup>149</sup> Q 128.

<sup>150</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 113.

that it would not be about a race to the bottom in regulatory protection and the application of prudential measures, but rather an opportunity to ensure that regulators on both sides took the time—when looking forward in particular—to think about the impact of a new regulation on transatlantic capital markets. They pointed out that the US and Europe were still in the process of promulgating hundreds of measures to implement their approaches to the financial crisis, and that rather than rolling back Dodd-Frank, the intention was that those regulations should take into account the transatlantic impact as they are developed.<sup>151</sup>

- 117. The European Commission's Chief Negotiator for the TTIP confirmed that the United States was still in a critical phase in the implementation of Dodd-Frank, and that a lot of implementing rules had not yet been adopted. There was consequently the perception or suspicion that, if those issues were to be discussed in the context of the TTIP, they could be traded off against other issues—a risk that US financial services regulators were keen to avoid. Professor Evenett suggested that although the Dodd-Frank Act had put a framework in place, much of the detail had deliberately been left for the post-legislative phase, where all the action was taking place. He told us that, in his judgment, the US regulatory agencies "are not going to let us anywhere near that." He went on to predict that unless there were a very strong presidential intervention, the regulators would prevail over the Office of the United States Trade Representative, deemed privately sympathetic. 154
- 118. In regard to the US Administration's view, the US Chamber of Commerce told us that "no-one really disagrees with relying on existing mechanisms provided that they are efficient and effective. There are many in the financial services sector who will tell you that the existing mechanisms, particularly at the bilateral level—the FMRD—is not as transparent or productive as they would like or as they think the situation calls for." GE Capital pointed out that there were bilateral and multilateral regulatory cooperation efforts in many other domains, and yet those were not being carved out of TTIP as was being proposed for financial services. The European Commission's Chief Negotiator for the TTIP took a similar view, insisting that it would be "inconceivable" to establish a transatlantic agreement that, to a large extent, was going to be about regulatory cooperation, without ensuring that there was close cooperation on regulatory regimes in this area. 157
- 119. The Financial Conduct Authority made the point to us that "simply setting up a dialogue should not lead to any presumption that regulatory standards would be driven downwards." Once a process was established, it could be used for "for a variety of things: you could go up, you could go down, you could stay the same, but that entirely depends what you use the process for." <sup>158</sup>

<sup>151</sup> *Ibid.*, para 34.

<sup>&</sup>lt;sup>152</sup> O 116.

<sup>153</sup> Q 14.

<sup>154</sup> *Ibid*.

<sup>&</sup>lt;sup>155</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 35.

<sup>156</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 36.

<sup>157</sup> Q 116.

<sup>158</sup> QQ 142-143.

## Other member states' views

- 120. We canvassed other member states' views on the inclusion of financial services regulatory cooperation in TTIP. The UK Government acknowledged that financial services were "higher in the priorities of the French and the British than of other countries", and that although the French were "equally keen", they were focusing on it more from an insurance angle than from a banking angle. The French government confirmed that financial services were "clearly an offensive interest" for them. The services were "clearly an offensive interest" for them.
- 121. Elsewhere, however, we found lukewarm support. The German government, for example, told us that they were "quite cautious" about financial services: they did not want to exclude the sector, but neither were they a big offensive interest. The government of the Czech Republic indicated that while they supported the inclusion of financial services in the agreement, it was "not a major interest" for them. Swedish government saw it as "one important sector" among others. Section 163

## **Conclusions & Recommendations**

- 122. In a negotiation that is ostensibly between equals, it is in our view essential that one party should not be permitted to exclude a sector—which for these purposes includes not just the banking sector but also related industries, such as insurance—that is clearly central to both economies. We therefore judge that the EU is right to press the US on the inclusion of financial services regulatory matters in TTIP. 164
- 123. We were nonetheless struck by the vehemence of the US Administration's opposition, and found lukewarm support for the EU's stance among several of its member states. We struggled to understand what the UK Government's objectives were, and believe they must be articulated much more clearly if they are to have traction elsewhere, including among other EU member states. The shroud of secrecy around UK and EU objectives thus far has been unhelpful, and stokes unnecessary suspicion.
- 124. We see no threat to financial and prudential regulation from the establishment of a more effective dialogue between EU and US regulators, for the reasons set out by the Financial Conduct Authority. We nonetheless judge that the UK and the European Commission will need to build a more compelling case for why the TTIP is the right vehicle for securing that outcome.
- 125. There is clearly widespread dissatisfaction with the Financial Markets Regulatory Dialogue (FMRD), both in terms of its capacity to deliver

<sup>159</sup> QQ 116-117.

<sup>160</sup> Q 78.

<sup>&</sup>lt;sup>161</sup> Q 44.

<sup>&</sup>lt;sup>162</sup> Q 85.

<sup>163</sup> Q 95

<sup>164</sup> In contrast to audiovisual services—which have been explicitly excluded from the European Commission's negotiating mandate altogether, at least for the time being—the US and EU have both agreed in principle to include financial services in the negotiations on trade in services. The US is seeking to restrict the scope of those negotiations to investment and market access issues.

results and in terms of a perceived lack of transparency and accountability around discussions held in that forum. We recommend that, pending any progress that TTIP may deliver, the UK Government should press the European Commission to bring forward proposals to improve transparency around the existing process, and allow member state governments and industry to hold the Commission to account in respect of its engagement in the FMRD.

# Flagship Issues<sup>165</sup>

- 126. When taking evidence from Commissioner De Gucht in November 2013, we asked him to identify the issues he thought would be most difficult for the EU and US to reach agreement on. He warned us that the biggest hurdles would not be the traditional issues that had led to trade disputes between the EU and US in the past, such as regulation around Genetically Modified Organisms (GMO) or hormone-treated beef. Instead, public procurement, some services—such as shipping and aviation—and Geographical Indications<sup>166</sup> (GIs) were likely to pose the biggest problem for the EU, he predicted. In those areas, it would be "very tough to get anything." <sup>167</sup>
- 127. A number of written submissions also drew Investor-State Dispute Settlement to our attention as an issue likely to prove contentious on this side of the Atlantic. This has been borne out by subsequent events: in March 2014, the Commission launched a public consultation on a proposed EU text for the investment protection provisions in TTIP in response to concerns raised. We examine these issues in the sections that follow.

#### Procurement

128. Access to public procurement contracts in the United States is a priority for both the UK and the EU. The UK Government told us that the scale of the US public procurement market at both state and federal level and the many "Buy America" provisions<sup>168</sup> in force across the US meant that this priority was "very much worth fighting for." They also pointed us to a Commission assessment suggesting that around 10 per cent of the EU's potential economic gains from TTIP could come from liberalisation of procurement. <sup>169</sup> In oral evidence, Lord Green of Hurstpierpoint, then UK Minister of State for Trade and Investment, added that "if we failed to do a deal on government procurement in the TTIP, that would diminish its significance quite considerably." <sup>170</sup>

<sup>&</sup>lt;sup>165</sup> This is not an exhaustive list, nor does it reflect the economic significance of the issues listed—which is often entirely at odds with their political significance.

<sup>166</sup> Geographical indications are usually place names that identify products originating in a particular geographical location—for example Champagne, Scotch whisky or Parma ham. The EU protects these indications as intellectual property rights in the Single Market, and through its trade policy, also attempts to secure protection for them in third countries and in the WTO.

<sup>167</sup> O 105.

<sup>168</sup> The Buy American Act 1933 governs procurement by the federal government and places conditions on it, including in regard to the level of American content. The Act has only been substantively amended four times, but many complementary provisions have been adopted in the meantime, at both federal and subfederal level.

<sup>169</sup> BIS, para 46.

<sup>170</sup> Q 120.

- 129. There are several reasons why it could prove difficult to reach agreement in this area. One is that, although "the prize is there on both sides", there is a bigger potential benefit to the EU than there is to the US from the government procurement discussions. Lord Green explained that the Commission had calculated that the openness of the EU public procurement market was at 90 per cent compared to 38 per cent for the US. He suggested that the 90 per cent figure sounded "a bit high" but that the "discrepancy and directional difference is clearly correct, and therefore it is a significant prize in terms of the EU interest, as well as the British interest." 172
- 130. The second reason is that the EU is seeking access to US public procurement at the state level as well as the federal level. The federal government cannot bind the states—or is at least judged unlikely to wish to do so. Ambassador Sapiro, Deputy US Trade Representative (USTR), told us that the EU had indicated interest in more access to procurement contracts across all 50 states as well as more access to federal procurement. 173 13 US states had not yet signed up to the relevant WTO commitment—the Government Procurement Agreement or GPA. Lord Green pointed out that those 13 states were currently under no obligation to consider bids from international suppliers at all, and that even those states that were covered by the WTO GPA were subject to Buy America provisions that required them to give price advantage to local suppliers. 174
- 131. The third reason is the political sensitivities around Buy America provisions in the United States. The AFL-CIO, for example, told us that they saw public procurement not as a trade issue, but as about "how a domestic government chooses to spend its very precious resources". They suggested that being able to use that money "in targeted places for targeted people" was very important and that if all procurement were to be opened to European companies, the funds raised through taxes would not necessarily recirculate in the community and have the desired multiplier effect. The AFL-CIO also took the view that, if the US was to re-build its manufacturing sector, it needed to be able to compete with economies that use their industrial policy around procurement: "we don't want the US to be barred from playing that game which everyone else is playing by the TTIP". 176 Nor did we detect that this was a partisan issue: Senator Thad Cochran (Republican—Mississippi) predicted that politically active constituents in his home state would prefer local, home-grown workers to be employed on public contracts and to own the company that employs them.<sup>177</sup>
- 132. This said, the US does have a reciprocal interest in better access to public procurement contracts in the EU. Ambassador Sapiro contested the idea that the EU was more open than the US, suggesting that when one looked at the detail, it could be seen that that was not the case. She pointed to instances where the EU had indicated programmes were open, but when reading the small print one saw they were not open to the US. In other cases it was a

<sup>&</sup>lt;sup>171</sup> *Ibid*.

<sup>&</sup>lt;sup>172</sup> *Ibid*.

<sup>&</sup>lt;sup>173</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 144.

<sup>174</sup> O 120.

<sup>&</sup>lt;sup>175</sup> Several UK trade unions shared this view, see for example TUC, para 12 or Unite, para 2.5.

<sup>&</sup>lt;sup>176</sup> Appendix 4: Evidence taken during visit to Washington, D.C., paras 23–25.

<sup>&</sup>lt;sup>177</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 64.

matter of transparency, or information only being published in certain languages, she suggested. There were thus "challenges on both sides." Elena Bryan, Senior Trade Representative at the US Mission to the EU, also emphasised that the Single Market was "not perfect" in this respect, and that procurement would therefore be a "two-way discussion". 179

- 133. Our witnesses offered a number of suggestions for how the federal government might bind the states into a procurement agreement concluded as part of the TTIP. Gary Hufbauer of the Peterson Institute for International Economics suggested that, on a plain reading of the US Constitution, the federal government had power over inter-state commerce, if the Congress decided to exercise it. He noted that USTR was known to have a different view, and that as a political matter it was in any event "a different story" than as a legal matter. He went on to suggest two ways in which a Trade Promotion Authority (TPA) bill<sup>180</sup> could be used to create incentives for states to participate: first, it could be drafted in a way that created an "all or none" choice for each state on whether to participate; and second, a TPA bill could stipulate that companies would only be eligible for procurement opportunities in the EU if the state in which they had most of their employment had chosen to participate. The latter provision would in his view create an incentive for companies to lobby state governors. Mr Hufbauer also suggested that it would be open to the federal government to stipulate that procurement at sub-federal level that drew on a significant amount of federal funding would have to be open to EU bidders. 181
- 134. Kent Hughes of the Wilson Center pointed out that the US federal government already had practice in using incentives to influence states. Some states had already introduced certain regulations—such as speed restrictions—in return for federal transportation money, demonstrating that creative ways of "using the carrot" could be found.<sup>182</sup>
- 135. Claude Barfield of the American Enterprise Institute warned us that although these were promising ideas substantively, they could be difficult to shoehorn into either a TPA bill or the TTIP agreement, because the federal government would face opposition not only from the states but from the separate and equally influential Buy American groups.<sup>183</sup>
- 136. Dr Daniel Hamilton of Johns Hopkins University suggested that the trade agreement that the EU has recently concluded with Canada—known as CETA, or the Comprehensive Economic and Trade Agreement—might be relevant, because the Canadian provinces had been at the negotiating table. Mauro Petriccione, the European Commission's Chief Negotiator on the CETA, confirmed that the Canadian federal government had taken a "basic political decision" at the outset that they would involve the provincial governments, and put in place consultation mechanisms to achieve this. He suggested this had been necessary because the EU had made clear from the outset that they regarded some areas of provincial competence as

<sup>&</sup>lt;sup>178</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 144.

<sup>&</sup>lt;sup>179</sup> See evidence volume for note of the discussion.

<sup>&</sup>lt;sup>180</sup> See para 174.

<sup>&</sup>lt;sup>181</sup> Appendix 4: Evidence taken during visit to Washington, D.C., paras 94–95.

<sup>182</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 96.

<sup>&</sup>lt;sup>183</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 97.

<sup>&</sup>lt;sup>184</sup> *Ibid.*, para 98.

"indispensable" for a balanced agreement and the EU would not be interested in an agreement with Canada that did not cover those areas. The Canadian provinces had thus "participated fully" in the negotiations, which had resulted in access to an estimated 70 to 80 per cent of the Canadian procurement market between the federal government, the provinces, and the large municipalities. 186

- 137. We concur with Commissioner De Gucht's assessment that a deal on procurement is likely to be hard-fought, not least because the EU hopes to obtain commitments from US states as well as the US federal government. The precedent set in negotiations with Canada and its provinces, and our witnesses' suggestions for steps the US federal government could take to create incentives for states to participate nonetheless demonstrate that with political will, there would be ways to attain the UK and EU's objectives.
- 138. Political will on the part of the US administration and state authorities will in part hinge on the attractiveness of the reciprocal offer from the European Union. We are not persuaded that all EU member states consistently apply EU public procurement rules as diligently as could be hoped. TTIP negotiations may therefore present an opportunity to examine what the EU still needs to do to monitor and enforce the rules it has set for itself, and may to that extent help to spur the completion of the Single Market in this area.

# **Agriculture**

- 139. Although Commissioner De Gucht contested the idea that traditional areas of tension with the US over trade—such as hormone-treated beef and GMOs—would be the hurdle some might expect them to be in the negotiations, other witnesses made clear that a deal on the agriculture elements of the TTIP package would be critical to the overall political prospects of an agreement, particularly in the United States. The US Department of Agriculture (USDA) told us that other sectors of the US economy had been known to complain that when it came to agriculture, the sector might provide 20 per cent of the economic support but 80 per cent of the political support. They consequently predicted that it would be difficult to get an agreement through Congress without having a high-standard agreement in agriculture—a point also made to us by the EU's Chief Negotiator for the TTIP.<sup>187</sup>
- 140. The USDA explained that the United States' priorities would be greater access to the EU's meat and poultry markets, and "more normalised trade" in areas where they felt they had experienced regulatory barriers, such as in biotechnology food products and on the use of certain food safety practices used in the US.<sup>188</sup>
- 141. In respect of GMOs, the USDA noted that the EU has a procedure for approving new products, starting with the European Food Safety Authority (EFSA) evaluation, but that the procedure did not always operate on the

<sup>185</sup> Q 188.

<sup>&</sup>lt;sup>186</sup> QQ 196–197.

<sup>&</sup>lt;sup>187</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 74 and para 117.

<sup>&</sup>lt;sup>188</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 71.

timeline that it was supposed to. Even when the timeline was observed, every application took the maximum number of days for consideration. The US would therefore be looking for improvements in the predictability and timeliness of approvals for new biotechnology products. Commissioner De Gucht confirmed that the EU already had in place a law on cultivation of GMO products and a procedure for their commercialisation, through which 49 GMOs had been approved for animal feed stock and two for human consumption. He indicated that he "could imagine that the procedure will be speeded up a little bit", but emphasised that the procedure itself and the requirements would not change. 190

- 142. Representatives of the UK's food and farming industry told us they were sympathetic to the US position. The National Farmers' Union (NFU) took the view that the EU legislative system for GMOs is "seriously broken", and indicated they would favour an EU system that was more consistent with that in the US and elsewhere. They described the procedures for importing biotechnology products from the US as "sluggish and slow" and "arguably not responding to the science". <sup>191</sup> The Food and Drink Federation drew a distinction between the EU's procedures on GMOs, and the outcome of those procedures, arguing that the procedures were rigorous, evidence-based and objective, and that the problem lay with the "decision-making following on from the procedures" and the time taken to implement that decision making where there was a positive recommendation. <sup>192</sup>
- 143. On hormone-treated beef, Commissioner De Gucht's prediction was that the EU would be likely to follow the path it had charted with Canada in the CETA agreement, whereby Canada secured a quota of "hormone-free" beef it could export into the EU market. "If we make an agreement with the United States, it would be exactly the same", he suggested. The USDA, on the other hand, expressed scepticism that a quota increase for US beef would be sufficient to meet their objectives, and told us that the US would be looking for results on tariffs and quotas across all beef products. "195"
- 144. The USDA warned that the US had seen "real hesitation" on further opening of the EU meat sector, and that was confirmed in evidence from other witnesses. The National Farmers' Union told us that, in light of the low average profitability of beef and sheep farms, they would need to look at the TTIP not just in terms of the potential job opportunities it might create but in terms of potential threats from competition that might arise from opening up trade. They would consequently be looking for the Commission to produce an impact assessment of a proposed deal. In respect of the CETA precedent on a quota for "hormone-free" beef, the

<sup>&</sup>lt;sup>189</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 77.

<sup>&</sup>lt;sup>190</sup> Q 105.

<sup>&</sup>lt;sup>191</sup> Q 164.

<sup>&</sup>lt;sup>192</sup> *Ibid*.

<sup>193</sup> The term "hormone-free" is used to refer to beef which has not been treated with hormone implants, but is potentially misleading to the extent that all beef contains naturally-occurring hormones, and indeed some cuts (e.g. from bulls) contain more hormones naturally than others which have been treated with hormone implants.

<sup>&</sup>lt;sup>194</sup> O 105.

<sup>&</sup>lt;sup>195</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 78.

<sup>196</sup> Q 159.

<sup>197</sup> Q 166.

NFU pointed out that there were potentially quite significant differences of scale in terms of the sizes of quotas offered to Canada as compared to the US. 198 The French government also noted that although they too saw a US quota for "hormone-free" beef as a possible "technical solution", if the results of the negotiation with the US were to multiply by three or four the figures provided to the Canadians, they would "have a very strong political difficulty." 199

- 145. The UK Government predicted that the US would also press the EU strongly "on some quite technical matters" such as Sanitary and Phytosanitary standards, and predicted that the Commission "will have quite a challenge to corral member states to support an agreement on this."<sup>200</sup> Corporate Europe Observatory noted that, prior to the launch of TTIP negotiations, the US had secured a lifting of an EU ban on use of lactic acid as a pathogen-reduction treatment on beef in the face of opposition from some EU member states, and expressed concern that other such measures might in time follow—for example on use of chlorinated water as a pathogen-reduction treatment on poultry meat.<sup>201</sup>
- 146. On GMOs, we share the Commissioner's assessment that the area for compromise with the US lies in allowing existing EU procedures for cultivation and commercialisation of GMOs to work as intended. We note that the UK is in the unusual position of being closer to the US than the EU in its stance on this issue, and judge that it therefore has an important role to play in helping the Commission to win support for such a compromise among other EU member states.
- 147. We are more pessimistic than Commissioner De Gucht about the ease with which an agreement on access for US beef products to EU markets could be reached, and note that parts of the UK industry could have difficulty in this area. We recommend that, as a possible compromise on this issue begins to take shape, the UK Government should produce a comprehensive impact assessment of the changes proposed on the UK's agriculture sector.

## Geographical Indications

- 148. Commissioner De Gucht explained to us that, if the EU did not secure at least partial protection for its Geographical Indications (GIs) in the US, it would be very difficult to conclude a deal on agriculture. He suggested that recognition of GIs would be a counterweight for concessions that would probably have to be made in US access to EU beef, chicken or pork markets, and would serve to soften the blow. "If you do not have that softener, it will become more difficult with the rest."
- 149. Lord Green of Hurstpierpoint, then UK Minister of State for Trade and Investment, emphasised that the issue of GIs is important to the UK: "I have had to dispel a sense in Brussels and elsewhere that this is not particularly a British concern. It is very clearly a concern of the French, Italian, Spanish

<sup>198</sup> Q 169.

 $<sup>^{199}</sup>$  Q 70 and Q 77.

<sup>&</sup>lt;sup>200</sup> Q 121.

<sup>&</sup>lt;sup>201</sup> Q 245.

<sup>&</sup>lt;sup>202</sup> *Ibid*.

and others, but I consistently make the point that we care about this too." He explained that the UK would be seeking protection for geographic indicators such as Scotch beef, Scotch lamb, Welsh beef, Welsh lamb and West Country farmhouse cheddar, with a view to tapping opportunities for more exports from the UK food and drink industry to the US.<sup>203</sup> The NFU confirmed that, although the UK had made relatively little use of geographical indicators by comparison to other EU countries, there was "continued interest" in building on geographical indications to help to enhance the provenance attributes of different products when marketing them. As well as the potential for Scottish and Welsh beef and lamb mentioned by the Minister, the NFU identified "a number of cheese products" that had PGI status and which the UK dairy industry would be looking to trade on.<sup>204</sup>

- 150. Commissioner De Gucht explained that the US uses trademarks to protect this kind of intellectual property right, and that those trademarks are often held by big corporations, setting up a significant challenge.<sup>205</sup> Lord Green also warned us that the EU mindset was "in a different space than the American mindset" on GIs.
- 151. The US Department of Agriculture acknowledged that they were concerned by the breadth of protection the EU was seeking for names that they consider generic. They predicted that there would be a lot of GIs, particularly compound<sup>206</sup> GIs very specific to European places, where the US and EU would not have a disagreement, but that protection for names the US considers generic and recognises as generic in the US intellectual property system would be difficult for them.<sup>207</sup> They explained, for example, that the US would consider "parmesan" to be a generic name, but would not consider "parmiggiano reggiano" to be a generic name. In the US market, parmesan was widely used as a generic term. They consequently suggested that the US would be willing to engage on the basis of a system "that recognises generics and trademarks". If it were possible to engage on that level and have a "granular" (name-by-name) conversation, it should be possible to make progress.<sup>208</sup>
- 152. The US Chamber of Commerce confirmed that any attempt to "claw back" generic food terms in the US would face stiff opposition from the US dairy foods industry. Other US witnesses suggested that the EU could nonetheless find allies on the other side of the Atlantic. David Short of Fedex told us that his observation during stakeholder days as part of TTIP negotiating rounds was that American producers—Napa wine, Kona coffee from Hawaii—wanted to have a scheme that would protect the geographical origin of their products, so that finding allies in the US and identifying synergies might be the key to making progress. 210

<sup>&</sup>lt;sup>203</sup> QQ 121-123.

<sup>&</sup>lt;sup>204</sup> O 161.

<sup>&</sup>lt;sup>205</sup> O 105.

<sup>&</sup>lt;sup>206</sup> Compound GIs refers to designations that include more than one term, e.g. "Mozzarella di Bufala Campana" rather than mozzarella.

<sup>&</sup>lt;sup>207</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 75.

<sup>208</sup> *Ibid.*, para 76.

<sup>&</sup>lt;sup>209</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 54.

<sup>&</sup>lt;sup>210</sup> *Ibid.*, para 53.

- 153. It was also suggested to us that the outcome of the CETA negotiations between the EU and Canada could again set a "helpful" precedent. 211 Mauro Petriccione, the European Commission's Chief Negotiator for the CETA, explained that the EU's main achievement on GIs in the agreement with Canada had been to extend protection to over 160 Geographical Indicators, the great majority of which would be fully protected with no conditions. For "15 or 20 controversial names", reasonable compromises of different types had been found. For example, there were a handful of GIs, including Parma ham, where the problem was co-existence with existing trademarks in Canada, which meant that European exports were prohibited from using the same name. Agreement had been reached on co-existence, allowing those products to be lawfully exported to the Canadian market and enjoy protection against everyone except the holder of those prior trademarks. The most difficult cases, according to Mr Petriccione, were products that Canada insisted had become generic, including feta cheese. There the compromise struck was that current users of the name in Canada would be free to continue to use it but no new uses would be allowed unless accompanied by terms such as "style", "imitation", "kind", etc. 212
- 154. The USDA warned us that they did not think the CETA agreement offered a suitable precedent, and that their market circumstances are different, notably in regard to the dairy sector.<sup>213</sup>
- 155. The prospects of reaching an agreement on Geographical Indications (GIs) are in our view better than Commissioner De Gucht predicted, at least insofar as the UK interest is concerned. We anticipate that, as in negotiations with Canada, protection for names potentially considered generic (parmesan, feta) will be hardest-fought. We see scope for the UK Government to attain its objectives, which mainly relate to protection for compound names, and should be correspondingly less contentious.

## Investment Protection and Investor-State Dispute Settlement

156. A wide range of witnesses drew our attention to their concerns about the inclusion of Investor-State Dispute Settlement (ISDS) provisions in a prospective TTIP agreement.<sup>214</sup> The TTIP is expected to contain provisions on investment, and would to that extent be an investment treaty as well as a trade agreement. Investment treaties typically set out between those states that are party to them the protections that each will accord to investors from the other state. ISDS is a mechanism for providing dispute resolution where there are questions about whether those protections are being provided. It allows foreign investors to file claims against the host state if they believe it to be in breach of the commitments it took on in the treaty, and therefore serves as an enforcement mechanism. Critically, arbitration of such claims takes place under international law, rather than through the domestic legal system of the state that has hosted the investment.

<sup>&</sup>lt;sup>211</sup> Q 121.

<sup>&</sup>lt;sup>212</sup> O 195

<sup>&</sup>lt;sup>213</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 75.

<sup>&</sup>lt;sup>214</sup> See for example written evidence from Which?, Unite, AFL-CIO,GMB, Linda Kaucher, OurNHS openDemocracy, and the TUC.

- 157. Traditionally, the purpose of including investment protection provisions in a treaty and providing for their enforcement through an ISDS mechanism is to encourage foreign investors to invest in one's own country and provide protection for one's own investors in the other country. Individual EU member states are already party to some 1400 investment treaties with third countries. Eight member states already have their own bilateral investment treaty with the United States.
- 158. In the case of the TTIP, an ISDS mechanism appears to be on the agenda partly because US negotiators have put it there, and partly because some member states and the European Commission also want it there. The Czech government, for example, told us that investment protection provisions could be one of their priorities for the TTIP, for three reasons: first, they favoured a comprehensive agreement, including investment; second, they hoped TTIP would serve as a model agreement for future negotiations, including with emerging economies, and it should therefore include investment provisions for their precedent value; and third, they already had a bilateral investment agreement with the US which they considered outdated, and saw the TTIP as a good opportunity to update it. Professor Evenett noted that the Lisbon Treaty gave the Commission the competence to negotiate on certain investment issues, and suggested that the Commission would want to "play with its new toy...if only to establish the precedent elsewhere." 217
- 159. Lord Goldsmith QC suggested that there were also traditional reasons for including ISDS provisions in TTIP, namely that the EU could not seek protection for its own investors in the US without agreeing to provide reciprocal protection for US investors in the EU. He pointed out that EU investors had been prolific users of investment protection provisions in existing treaties: more than half of claims filed between 2008 and 2013 had been initiated by EU investors.<sup>218</sup> He cited the Loewen case in Mississippi as an example of why foreign investors might need protection in the US, suggesting that there were issues in relation to state courts and jury awards.<sup>219</sup> Lord Goldsmith also noted that the UK and EU would expose themselves to a charge of hypocrisy if they failed seriously to consider the inclusion of ISDS in trade agreements with other developed countries, when they insist on these same provisions when negotiating with developing countries. He warned that the omission of ISDS from an EU-US agreement would likely affect the ability of the UK and EU to negotiate ISDS provisions in future trade deals.<sup>220</sup>
- 160. The UK Government told us they thought it "preferable" to have ISDS provisions in a TTIP agreement, in order to provide confidence for investment. They too took the view that state-based law in the US is "not

<sup>&</sup>lt;sup>215</sup> Q 125, Q 46.

<sup>&</sup>lt;sup>216</sup> Q 89.

<sup>&</sup>lt;sup>217</sup> Q 11.

<sup>&</sup>lt;sup>218</sup> O 209.

<sup>&</sup>lt;sup>219</sup> QQ 213–214. The case in question concerned a Canadian funeral company, the Loewen Group, which was sued by a local competitor in a Mississippi court. The Loewen Group subsequently filed an investment arbitration against the US, alleging numerous violations of the North American Free Trade Agreement (NAFTA). For more detail on the *Loewen v US* case, see the supplementary evidence submitted by Lord Goldsmith.

<sup>&</sup>lt;sup>220</sup> Lord Goldsmith, supplementary written evidence.

- quite as consistent" as federal law.<sup>221</sup> They nonetheless recognised that a number of member states were nervous about the inclusion of such provisions—Germany being the most vocal among them.<sup>222</sup> The German government confirmed that they had a "rigid negative opinion" of the necessity of the investment chapter itself and of ISDS provisions within it.<sup>223</sup>
- 161. Witnesses including the German government highlighted a series of concerns about the inclusion of investment protection provisions enforceable by an ISDS mechanism in a TTIP agreement. A first concern was that it might lead to litigious activity against EU member states by US investors. Corporate Europe Observatory told us that US investors had launched by far the largest number of ISDS claims—nearly one quarter of the total—and were supported by "equally litigious" US law firms, who "dominate the global arbitration business". 224 Dr Lauge Poulsen of Oxford University suggested that the UK should expect to be subject to at least as many claims as were filed by US investors against Canada under the NAFTA agreement (which also contained ISDS provisions), given that 8 per cent of US outward foreign direct investment stock was in Canada while 13 per cent was in the UK. 225 Lord Goldsmith QC contested this analysis "very strongly", suggesting that claims might be brought against the UK, but successful claims would be "very limited" due to the nature of the protections that existed already under UK law and practice.<sup>226</sup> The UK Government also challenged the idea that ISDS would be used only by American companies, noting that in 2012, 60 per cent of ISDS cases had come from the EU, compared with 8 per cent from the US.<sup>227</sup>
- 162. A second concern raised was that the very prospect of claims being filed would create a "regulatory chill" which "stays the hand of governments to regulate in the public interest for fear of litigation."<sup>228</sup> Corporate Europe Observatory suggested that the threat of an expensive and reputation-damaging investor-state lawsuit could be used by companies in battles over regulation.<sup>229</sup> The TUC told us that they were concerned that the inclusion of investment protection provisions enforceable through an ISDS mechanism "might restrict the ability of a future Government to redraw the boundary over what is provided publicly and what is provided privately in the National Health Service".<sup>230</sup> They consequently proposed that, if ISDS was not to be dropped completely, health services should be excluded from the agreement.<sup>231</sup> The German government noted that the EU and Germany would need "policy space" when looking at banking and bailout measures, and were concerned that action taken in the future "might lead to arbitration and huge awards".<sup>232</sup> Lord Livingston of Parkhead, UK Minister for Trade

<sup>&</sup>lt;sup>221</sup> Q 258

<sup>&</sup>lt;sup>222</sup> Q 125.

<sup>&</sup>lt;sup>223</sup> Q 46.

<sup>&</sup>lt;sup>224</sup> Q 246.

<sup>&</sup>lt;sup>225</sup> Q 212.

<sup>&</sup>lt;sup>226</sup> *Ibid*.

<sup>&</sup>lt;sup>227</sup> Q 258.

<sup>&</sup>lt;sup>228</sup> TUC, para 6.

<sup>&</sup>lt;sup>229</sup> Q 246.

<sup>&</sup>lt;sup>230</sup> Q 227. See also TUC, paras 5-10.

<sup>&</sup>lt;sup>231</sup> Q 227.

<sup>&</sup>lt;sup>232</sup> Q 46.

and Investment, suggested that although clarity about governments being able to legislate in a non-discriminatory way on public health matters would be an important part of the agreement, he did not "see us having a carve-out for the NHS per se." <sup>233</sup>

- 163. Lord Goldsmith QC told us that there was legitimate scope for discussion about how the regulatory space of a particular country might be affected by the extent of the protections afforded to foreign investors in an investment treaty, but that this could be addressed by looking at the substantive protections provided.<sup>234</sup> He went on to suggest that the CETA agreement between the EU and Canada demonstrated that "the question of what protections you have is a matter for negotiation and agreement, and therefore one can deal with concerns that way."235 Mauro Petriccione, the European Commission's Chief Negotiator on the CETA, told us that the substantive rules on investment protection had been "improved in a very clear manner" in the agreement with Canada. By contrast to most bilateral investment treaties, the notion of fair and equitable treatment had been clearly defined: investors would only be able to demonstrate that they had been treated unfairly or inequitably in a limited and defined set of circumstances. "Legitimate expectation" would be a cause for complaint only if the state had made a specific promise to the investor, on the basis of which promise the investment was made. The concept of "indirect expropriation" had been clearly defined to exclude legitimate public policy measures. A number of procedural improvements had also been secured: hearings would be open, all documents would be made public, interested parties would be able to make submissions, lists of approved arbitrators would be chosen by the parties, and there would be strict application of the "loser pays" principle by contrast to other agreements where the question of costs had not been sufficiently clear and winning governments had had to pay part of the cost of claims brought unsuccessfully. The EU and Canada would also be able to agree on binding interpretations, so that if arbitrators were interpreting the agreement in an unintended way, they would be able to clarify the matter and bind the arbitrator to what was intended.<sup>236</sup>
- 164. Dr Poulsen suggested that these steps still did not address what in his view was "the heart of the matter", namely why, when a Canadian investor ran into a dispute with the UK Government, that investor should not go through UK courts.<sup>237</sup> This third concern—that foreign investors should not have access to legal remedies outside the domestic legal system of the host state—was also raised by a number of other witnesses. Corporate Europe Observatory questioned why it was necessary to reform investment arbitration when there were "very good national legal systems" in place in the US and across the EU. They suggested that this violated a key principle of the rule of law, namely the principle of equitable access to justice, because only foreign investors had access to the remedies available under ISDS.<sup>238</sup> The TUC suggested that the inclusion of an ISDS mechanism in TTIP

<sup>&</sup>lt;sup>233</sup> Q 260.

<sup>&</sup>lt;sup>234</sup> Q 219.

<sup>235</sup> Q 222.

<sup>&</sup>lt;sup>236</sup> O 192.

<sup>&</sup>lt;sup>237</sup> Q 222.

<sup>&</sup>lt;sup>238</sup> Q 246. They also suggested that investment arbitration violated the principle of judicial independence, because arbitrators are typically private lawyers paid per case rather than judges paid a fixed salary.

would be "anomalous" because such provisions were designed to offer security for investors in countries where there was no developed legal system to protect their investments. The EU and US, on the other hand, had "sophisticated legal systems for guaranteeing financial activity against risk." Dr Poulsen suggested that, like the UK, the United States had a strong tradition of protecting capital, and had "independent and efficient courts." There was in his view no evidence that courts in the US or Europe were "systematically biased against foreign investors"—evidence which he suggested would be needed to justify the inclusion of ISDS provisions in TTIP. 240

- 165. A further objection raised was that investment protection provisions enforceable through ISDS were not necessary to attract investment to either the EU or the US. Dr Poulsen told us he had "seen no evidence that the absence of an investment treaty with the United States means that UK investors are not investing in the United States" or that "US investors were investing less in the UK because of the absence of an investment protection agreement." He went on to suggest that very strong justification would be needed "for why we would want to risk the political agreement for the transatlantic trade agreement as a whole derailing because provisions are included that, in the case of the United States, are not even necessary." 242
- 166. The TUC drew our attention to the previous Australian government's refusal to include ISDS provisions in trade agreements.<sup>243</sup> Dr Poulsen also cited the 2005 investment treaty between the US and Australia as an example of the US "hesitantly" agreeing to exclude ISDS provisions.<sup>244</sup> He went on to suggest that, if the EU tried to use the CETA agreement with Canada as a precedent for negotiations with the United States, the US might prefer to have no investment agreement at all than to have an agreement based on the European Commission's proposals.<sup>245</sup>
- 167. We agree with those witnesses who emphasised that Investor-State Dispute Settlement (ISDS) provisions are in themselves only an enforcement mechanism: the substantive protections afforded to foreign investors in the investment chapter of a TTIP agreement would matter most.
- 168. We are persuaded that, as appears to have been achieved in the CETA agreement between the EU and Canada, steps can be taken to strike a better balance between affording protection to investors and the right of states to regulate, notably by defining the grounds on which claims may be brought with more precision, and allowing for binding interpretations. Measures can also be taken to improve transparency around ISDS proceedings, for example by making hearings and documents public, allowing interested third parties to make submissions, and reviewing rules around the appointment of arbitrators. We deem the "loser pays" principle particularly

<sup>&</sup>lt;sup>239</sup> TUC, para 7.

<sup>&</sup>lt;sup>240</sup> Q 214.

<sup>241</sup> Q 222.

<sup>&</sup>lt;sup>242</sup> Q 217.

<sup>243</sup> TUC.

<sup>&</sup>lt;sup>244</sup> Q 218.

<sup>245</sup> Q 223.

- important, as without it all these steps can be in vain. We recognise that the European Commission is already committed to pursuing all these improvements.
- 169. We nonetheless conclude that proponents of investment protection provisions enforced by an ISDS mechanism have yet to make a compelling case for their inclusion in TTIP or to convincingly dispel public concerns. We recognise that there may be a precedent value in their inclusion and that this may be an important consideration ahead of similar EU agreements with other countries such as China. We also recognise that for member states with an existing bilateral investment treaty with the United States, TTIP presents an opportunity to update such provisions. From the UK's perspective, however, we see two principal justifications for their inclusion: to attract more investment from the US, and to afford better protection to our investors in the US. We recognise the potential risk to UK investors in the US but judge that, to build a better case for the inclusion of investment protection provisions in TTIP, isolated cases would need to be supplemented by evidence that the UK could attract more investment from the US by signing up to such provisions.
- 170. We see a risk that this issue could distract from, or even derail progress on TTIP negotiations—especially in view of the hostile stance of the German government and German public. We therefore recommend that, having expressed a preference for the inclusion of ISDS provisions in an eventual agreement, the UK Government should use the Commission's consultation period to take a more proactive role in the debate before valuable momentum and public confidence are lost. We support the Government's stance on the inclusion of investment protection provisions only on condition that the EU is able to secure the same range of safeguards in an agreement with the United States as were included in the CETA agreement with Canada. Those safeguards themselves require proper explanation—a task for which we believe member states including the UK should take their share of responsibility.

## **CHAPTER 4: SECURING A DEAL**

171. In this chapter, we turn to the process by which a prospective Transatlantic Trade and Investment Partnership would need to be approved on each side of the Atlantic, and present our witnesses' views on the timetable envisaged for that process; on how political leaders and the European Commission should engage with interested parties and the public during the negotiation and ratification process; and on the political impetus likely to be required to keep the initiative on track.

# Concluding a Trade Agreement in the EU

- 172. When negotiations are technically concluded, finalised texts of the proposed agreement are sent for so-called "legal scrubbing" by lawyers. The Chief Negotiators on both sides "initial" the negotiated text of the proposed agreement when that process is complete. The Council of Ministers and the European Parliament are then provided with the initialled text, and the agreement is sent for translation into all the official languages of the European Union. Legal scrubbing and translation can take months or even years. Once finalised, the European Commission presents a draft Council Decision on signing of the agreement to the Council of Ministers, which authorises signature. After signature by both sides, the European Parliament is asked to agree to the conclusion (that is, ratification) of the agreement. The European Parliament may not amend the agreement, it can only accept or reject it under the so-called "consent" procedure, which includes a vote in the Committee for International Trade, and then a vote in the plenary. Thereafter the Council authorises conclusion of the agreement.
- 173. Where a trade agreement contains provisions that fall under Member State (rather than EU) competence, individual Member States also have to sign and ratify the agreement according to their national ratification procedures. It is anticipated that this is likely to be the case for the TTIP.

## Concluding a Trade Agreement in the US

- 174. Since 1974, the US Congress has enacted Trade Promotion Authority (previously known as fast-track authority) legislation that gives the President guidance on trade policy priorities and negotiating objectives; establishes requirements for the Administration to notify and consult with Congress and other parties during the negotiation of trade agreements; and defines the terms, conditions and procedures under which the Administration may enter into trade agreements, including the procedures by which Congress will consider bills to implement such agreements. Critically, Trade Promotion Authority (TPA) traditionally includes provisions whereby Congress agrees to consider legislation to implement trade agreements under a procedure that includes mandatory deadlines, no amendment, and limited debate.
- 175. The US President was granted this authority almost continuously from 1974 to 1994, but it then lapsed. It was restored in 2002 by the Trade Act of 2002, but lapsed again for new agreements (as opposed to those already under negotiation) in 2007.
- 176. The current US administration has yet to secure Trade Promotion Authority and this creates a critical difference with the EU, which in effect awards

permanent "fast-track" authority to the European Commission.<sup>246</sup> Securing TPA is therefore expected to be the first hurdle for the US administration on the path to concluding TTIP.

## Witnesses' Views

- 177. Claude Barfield of the American Enterprise Institute suggested to us that the "pattern" of TPA is that support in the House of Representatives is key. Even a Democratic President could count on support from two-thirds or even three-quarters of House Republicans, but beginning with NAFTA, a Democratic President could not count on getting a majority of House Democrats to support TPA. The President would therefore have to persuade enough Democrats to go along with the Republicans to make sure that it carried.<sup>247</sup> Republican Congressman Fred Upton, Chairman of the Energy and Commerce Committee in the House of Representatives, also judged that the President had "a real issue in his own party", and suggested that the President would need to win support from around 50 House Democrats to offset the 30 or 40 House Republicans who would not support TPA.<sup>248</sup>
- 178. Democrat Senator Debbie Stabenow, Chairman of the Senate Agriculture Committee, confirmed that the question of TPA was controversial, and that there was a split among Democrats over whether trade agreements should be seen one by one, rather than Congress granting overall authority. She nonetheless suggested that the agreement with the EU was probably "the one that people are most comfortable with."
- 179. Kent Hughes of the Woodrow Wilson Center told us that, in his view, the bottom line was that the President could get TPA, but it would depend on "what he is willing to offer in response", for example Trade Adjustment Assistance. He also warned that the President had other priorities on which he would need to spend political capital, such as immigration reform and ongoing problems with the Affordable Healthcare Act. <sup>251</sup>
- 180. Congressman Upton suggested that in the November 2014 congressional mid-term elections, the Senate might well flip (passing from Democrat to Republican control) and that primaries would start again as early as March 2015, meaning there would be much-shortened legislative time. He warned that it was not clear whether TPA could be passed in a lame-duck session (before a Presidential election) or not, and that TPA was "a pretty heavy lift" which would not happen without "real leadership". Pepublican Senator Orrin Hatch, ranking member of the Senate Finance Committee and one of the sponsors of a TPA bill introduced in January 2014, emphasised that the Administration needed to ask the Committee to "get it [TPA] done", but that so far the President had not really weighed in.

<sup>&</sup>lt;sup>246</sup> Q 105.

<sup>&</sup>lt;sup>247</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 92.

<sup>&</sup>lt;sup>248</sup> *Ibid.*, para 68.

<sup>&</sup>lt;sup>249</sup> *Ibid.*, para 114.

<sup>&</sup>lt;sup>250</sup> The Trade Adjustment Assistance Program is a US federal programme that provides benefits and services to people deemed to have lost their jobs as a result of foreign trade.

<sup>&</sup>lt;sup>251</sup> Appendix 4: Evidence taken during visit to Washington, D.C., paras 84–85.

<sup>&</sup>lt;sup>252</sup> *Ibid.*, para 69.

<sup>&</sup>lt;sup>253</sup> *Ibid.*, para 112.

- 181. Gary Hufbauer of the Peterson Institute for International Economics and Claude Barfield of the American Enterprise Institute suggested that, because negotiations on a Trans-Pacific Partnership (TPP) were more advanced, the battles in Congress would be fought over TPA and TPP. Gary Hufbauer predicted that the TPP would "take all the heat", and that so far as TPA went through, if it went through, TTIP would get "a free ride". 254
- 182. Senator Hatch emphasised that without TPA, the EU would not take the US seriously in TTIP negotiations.<sup>255</sup> This point was corroborated in our private discussions, where the point was also made that the President was biding his time for reasons of domestic politics, including Senate Majority Leader Harry Reid's warning in January "not to push this right now", but that there was no doubt that he could deliver TPA once he decided to go ahead.<sup>256</sup>

## **Timetable**

- 183. We canvassed our witnesses' views on what might be a feasible timetable for reaching political agreement on the TTIP. Lord Mandelson told us that he would hesitate to use the word "unimaginable" in respect of the original ambition of striking a deal in two years, but that it would be "pushing it". The UK Government accepted that "the ambition of having it completed by the end of next year [2014] is probably exactly that: ambitious." Lord Green of Hurstpierpoint, then UK Minister for Trade and Investment, nonetheless suggested that "if this turned out to be a deal that was largely identified by some time in the spring or summer of 2015, I do not think that would be in any way a failure; on the contrary, it would be a remarkable achievement."
- 184. Kent Hughes of the Woodrow Wilson Center suggested that 2015 was the limit of what might be realistic in the US context, because even then one would be in the middle of a Presidential election, and in 2016 [a Presidential election year] that would only intensify.<sup>259</sup> Gary Hufbauer of the Peterson Institute suggested that although the agreement might be set up under the Obama Administration, ratification would be an issue for the next US administration, because President Obama's ability to push things through was in his view a "rapidly wasting asset."<sup>260</sup> Claude Barfield of the American Enterprise Institute thought it would take even longer, suggesting that the timeline for concluding TTIP would be "sometime after 2017 and before 2020".<sup>261</sup>
- 185. Lord Brittan warned us that there were capacity constraints on the US side, as the Office of the US Trade Representative was "curiously small." Professor Baldwin predicted that the US would be interested in TPP first, which would take at least until the end of 2015, and that until they nailed

<sup>&</sup>lt;sup>254</sup> *Ibid.*, paras 89 and 92.

<sup>&</sup>lt;sup>255</sup> *Ibid.*, para 112.

<sup>256</sup> See, for example, 'Obama and G.O.P. Facing Opposition to Trade Pacts', New York Times, 30 January 2014, available at <a href="http://www.nytimes.com/2014/01/31/business/reid-pushes-back-on-fast-track-trade-authority.html">http://www.nytimes.com/2014/01/31/business/reid-pushes-back-on-fast-track-trade-authority.html</a>.

<sup>&</sup>lt;sup>257</sup> Q 24.

<sup>258</sup> Q 113.

<sup>&</sup>lt;sup>259</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 86.

<sup>&</sup>lt;sup>260</sup> *Ibid.*, para 90.

<sup>&</sup>lt;sup>261</sup> *Ibid.*, para 92.

<sup>&</sup>lt;sup>262</sup> Q 4.

that down, we would not see the energy in TTIP. He consequently did not anticipate that it would be done by the end of this year [2014] and probably not even by the end of next year [2015]. "On the other hand, who cares?", he suggested, arguing that "people are discussing the hard issues and making progress, and a lot of this stuff can be done without signing a free trade agreement."<sup>263</sup>

186. Other witnesses drew our attention to the timetable on the EU side. Dr Daniel Hamilton suggested that the timetable would be "problematic" on the European side, because there would not be any clarity until November or December 2014 on the new political configuration in the European Commission and the European Parliament. The UK Government acknowledged that a strong nationalistic vote in the European Parliament elections "would be challenging" but noted that while some parties might be nationalistic in every sense of the word, others might be anti-EU but pro-free trade.<sup>264</sup>

## **Conclusions and Recommendations**

- 187. Without Trade Promotion Authority (TPA), the United States cannot make serious offers as part of the TTIP negotiations, lest they should put off the very people whose support they need to secure TPA. Although important technical progress can still be made, we anticipate that there will come a point when negotiations enter a holding pattern, and contentious issues are deferred until the US administration has secured TPA. The timetable for the latter is likely to be driven by the progress of Trans-Pacific Partnership negotiations. The TTIP initiative is therefore in danger of drifting.
- 188. The political context in the US with mid-term elections and in the EU with elections to the European Parliament and the appointment of a new Commission can also be expected to limit progress on politically difficult issues until late in 2014, or early 2015. In 2015, we anticipate that there will be a relatively narrow window of opportunity to make progress on the issues that require political capital to be spent before the US Presidential election cycle takes over ahead of 2016. Due to the hold-up over TPA, it is not yet clear that the EU and US will be in a position to seize that opportunity.

## Living Agreement

189. We also canvassed our witnesses' views on what a "living agreement" might mean in practice. Commissioner De Gucht told us in November 2013 that there was "a basic understanding that you have a regulatory council made up of the most important people on both sides of the Atlantic, with respect to regulations. That would be a kind of steering committee and would also have a forward-looking view on regulation." He suggested that it was "more or less agreed" that this would be provided for, but that he would prefer to go further and "give that council the possibility that, if something has to be regulated, they could assign it to a common body, a common group of

<sup>&</sup>lt;sup>263</sup> Q 199.

<sup>&</sup>lt;sup>264</sup> Q 253.

- regulators, so that from the start we have common regulations. That is the best way to avoid disparities: to agree them together."<sup>265</sup>
- 190. General Electric approved of the idea of creating "a Council of some sort" including regulators from both sides of the Atlantic, but suggested it should also include "central, high authorities, e.g. the Vice-President of the US and a suitable EU counterpart" who would be charged with overseeing cooperation into the future and providing sustained political accountability. They predicted that it would only be possible to tackle a limited number of sectors as part of the initial negotiations and that it would therefore be important to set up a horizontal mechanism of this nature to allow regulators to engage with each other as new proposals emerged. 266
- 191. Corporate Europe Observatory raised with us two concerns about the institutions and processes that might be set up to provide for a "living" agreement. First, that the European Commission was in their view proposing to set up a "very complicated" system for future legislation that would open up the policy process much earlier than is currently the case to US interests—including US stakeholders as well as the US administration—who would be able to input at a very early stage and "long before any Parliament in Europe". They suggested that this would have the practical effect of shifting policy-making into "the pre-democratic sphere, the pre-public sphere, to bureaucracies", and to that extent disempower Parliaments. Second, they were concerned that provisions making it compulsory to provide information to stakeholders at an early stage would provide "very early opportunities for industry to water down, to delay or even to kill legislation—providing strong consumer protection, for example—that they dislike."
- 192. The UK Government contested this, noting that there were already sectors—such as telecoms and the internet—that were in large part regulated at a global level, and that this did not appear to pose such a big challenge. They also emphasised that the Americans "cannot have a seat at the EU table", nor was that envisaged: instead, the aim might be to encourage regulators to consider the transatlantic impact of future regulation in their impact assessments—an obligation that would be reciprocal.<sup>268</sup>
- 193. We support the establishment of a structured arrangement for future dialogue between EU and US regulators, and consider it a critical part of the long-term legacy of a TTIP agreement. We see no inherent reason why such an arrangement need be complex or why taking account of the transatlantic impact of regulation—as one factor among many—should disempower democratic institutions.

# **Transparency**

194. A number of witnesses drew our attention to their concerns that the TTIP negotiations were insufficiently transparent. Maria Eleni Koppa MEP told us that "the fact that we are totally in the dark about what happens and about the details of the negotiations is not helpful, at least for those of us who want

<sup>&</sup>lt;sup>265</sup> O 11.

<sup>&</sup>lt;sup>266</sup> Appendix 4: Evidence taken during visit to Washington, D.C., paras 31–32.

<sup>&</sup>lt;sup>267</sup> Q 239 and Q 243.

<sup>&</sup>lt;sup>268</sup> Q 264.

to be supportive."<sup>269</sup> Corporate Europe Observatory expressed their concern that the agreement was being negotiated "in secrecy and under undue influence from corporate lobby groups".<sup>270</sup> On the other side of the Atlantic, the AFL-CIO suggested that transparency around TTIP negotiations was "very low", and that the idea that it could not be discussed publicly was "a real red flag". In their view, secrecy was a holdover from the days when agreements were about tariffs, and "you didn't want the potato farmers to know that their protectionist tariffs were being cut until you could show them that the tariffs on automobiles were going to be cut too. But now that we're talking about food safety policy and financial services regulation and all of these additional things, those are the kinds of things that, in a democracy, need to be discussed in the open, and not behind closed doors." They questioned what was being done that was "so horrible that it needs to remain in secret until you're ready to pull it all out?" <sup>271</sup>

- 195. Commissioner De Gucht told us that his response to those calling for the European Commission's negotiating mandate to be made public was that he could not supply the mandate because it was not his mandate: the Council of Ministers had refused to render it public.<sup>272</sup> The European Commission's Chief Negotiator for the TTIP added that "you cannot negotiate without maintaining confidence between the negotiators, which means that normally the negotiating text and negotiating proposals are in confidence. They are not public documents." They had nonetheless attempted to respond to the level of public interest in the negotiation by making as many documents public as possible, and publishing initial position papers. Mr Garcia-Bercero went on to point out that every document that the European Commission had given the United States in the context of the negotiation was a document that had first been consulted with the member states. The member states therefore had "all of those documents", as did selected members of the European Parliament's INTA committee, the committee responsible for monitoring trade policy. He acknowledged, however, that the United States was concerned about access to offers that the US gave to the Commission, and wary of leaks. 273
- 196. The UK Government noted that there had been "a bit of disagreement" between the US and the EU about transparency. They suggested that while "clearly you cannot go into a negotiation with your bottom-line position being made available for everyone to see", where there was no need for secrecy there should be none.<sup>274</sup>

# **Conclusions and Recommendations**

197. The European Commission is in our view going to considerable lengths to improve transparency around TTIP negotiations. Both Commissioner De Gucht and Chief Negotiator Ignacio Garcia-Bercero have readily assisted us with our inquiry. In respect of the confidentiality of the negotiating mandate, we believe the

<sup>&</sup>lt;sup>269</sup> Q 57.

<sup>&</sup>lt;sup>270</sup> Q 237.

<sup>&</sup>lt;sup>271</sup> Appendix 4: Evidence taken during visit to Washington, D.C., paras 12–13.

<sup>&</sup>lt;sup>272</sup> Q 108.

<sup>&</sup>lt;sup>273</sup> Q 114.

<sup>&</sup>lt;sup>274</sup> Q 265.

Commissioner is right to point to the Council of Ministers: it is the Member States—whose decision it was to keep the negotiating mandate out of the public domain—who need to defend that decision, which we judge to be correct.

198. The European Commission cannot be expected to make the case for the TTIP initiative across 28 member states. In our view, EU member states are not bearing their fair share of responsibility for transparency and communication around the project. This may be exacerbated by the fact that although EU trade ministers lead on the initiative, the breadth of the negotiations means that many other national ministries are involved, and—in our experience of the UK—not necessarily seized of the importance of promoting TTIP to the public and other interested parties.

## Communication

- 199. Our witnesses also put forward competing messages about what the public should think of the TTIP project. Corporate Europe Observatory described the TTIP as "a power grab from corporations on our societies", and highlighted their impression that the Commission was "negotiating on behalf of a certain group in society, which is export-oriented companies." The AFL-CIO also suggested that the strategic purpose of the TTIP was "to diminish the power of democratic institutions vis-a-vis the power of large corporations." <sup>276</sup>
- 200. The companies we heard from rejected this analysis. General Electric, for example, insisted that they had "zero expectation that regulators on either side are somehow going to capitulate their missions and their authority to serve up all kinds of pro-business weakening of regulation". They suggested that the business community needed to be clear on their objectives and be vigilant in pushing back on those who might try to mischaracterise what was being negotiated.<sup>277</sup> The Dow Chemical Company told us that they too were trying to put the message out that the negotiations were "not about getting rid of anybody's regulatory system. We are a heavily regulated industry, we expect to be."<sup>278</sup>
- 201. The UK Government emphasised the need to "get the message out that TTIP is not about a big corporate deal. Just because big corporates want it, that does not mean that it is only for big corporates or is wrong." They acknowledged that there was a need to make the TTIP initiative "less dry and more real", which would include finding "real examples of real things" that might matter to people. 280
- 202. Dr Hamilton suggested that free-trade member states in the EU had thus far not done a very good job of engaging publicly on the agreement, and at the moment were losing the public debate. In his view, governments on both sides of the Atlantic had not yet been able to boil the case down to the types

<sup>275</sup> Q 237, Q 240.

<sup>&</sup>lt;sup>276</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 16.

<sup>&</sup>lt;sup>277</sup> *Ibid.*, para 37.

<sup>&</sup>lt;sup>278</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 40.

<sup>&</sup>lt;sup>279</sup> Q 265.

<sup>&</sup>lt;sup>280</sup> Q 266.

- of arguments to which people could relate.<sup>281</sup> He went on to suggest a number of ways in which the TTIP initiative could be better explained.
- 203. In Dr Hamilton's view, the lifeblood of the transatlantic economy was investment, not trade. US commerce with Asia was trade-driven, while US commerce across the Atlantic was investment-driven—this simple distinction made all the difference. He suggested that leaders should be talking about spurring on investment flows, which would mean more investment, translating into real jobs. "When you do trade, you send stuff across the ocean. Investment is going to be in your community."<sup>282</sup>
- 204. He also suggested there was a need to explain that "what the US and EU are trying to do with the TTIP agreement is to keep standards high, and set a benchmark for global standards, and that if they do not do it then the result will be to end up with Chinese standards, and that is the simple choice." Democrat Senator Debbie Stabenow also framed the agreement in those terms, suggesting that the EU and US shared the problem of competition from other lower-wage countries and so the TTIP was about how to raise standards in other countries instead of lowering their own. <sup>284</sup>
- 205. Dr Hamilton warned that talking about transatlantic barriers had led some to think that the agreement was about and for big companies. It would be important to counter that by pointing out that part of the reason why small companies did not engage in trade is because it involved too much paperwork, and was too complicated. "If those barriers could be cleared away with two-thirds of the world's richest economies, then the artisan cheese maker in Wisconsin would have a market in Europe that he might not want to engage in right now because it's too complicated." 285
- 206. In the end, when it came down to the US Senate or members of Congress, Dr Hamilton predicted they would first ask what it would mean for their constituents. Studies about what the TTIP would mean for states would therefore be quite important. Senator Cochran made a similar point, noting that although trade and trade policy was not an issue raised with him by his constituents, they did recognise that agriculture, especially cotton and soya beans that are grown in Mississippi, provide export revenues to the state and that the European Union was the biggest market for those products.<sup>286</sup>
- 207. Dr Hamilton predicted there would also be a lot of other questions unrelated to the agreement raised, about the US-EU geopolitical relationship in general, meaning that the geopolitical argument would have to be in place as well as the economic.<sup>287</sup>

## **Conclusions and Recommendations**

208. We recommend that the UK Government should formulate a cross-government communications strategy in respect of the TTIP, involving ministers with sectoral responsibilities and building on

<sup>&</sup>lt;sup>281</sup> Appendix 4: Evidence taken during visit to Washington, D.C., paras 87 and 107.

<sup>&</sup>lt;sup>282</sup> Appendix 4: Evidence taken during visit to Washington, D.C., paras 101 and 106.

<sup>&</sup>lt;sup>283</sup> *Ibid.*, para 101.

<sup>&</sup>lt;sup>284</sup> *Ibid.*, para 116.

<sup>&</sup>lt;sup>285</sup> *Ibid.*, para 106.

<sup>&</sup>lt;sup>286</sup> *Ibid.*, para 66.

<sup>&</sup>lt;sup>287</sup> *Ibid.*, para 109.

- cross-party support for the initiative. It should not be left to each Department to decide whether and how to engage with interested parties and the public. Although the Department for Business, Innovation and Skills is best placed to co-ordinate this task, it should be a shared responsibility across Departments.
- 209. Insofar as a public debate on TTIP exists, EU member states are losing it. In part this is because they are engaging in it fitfully and invariably on the back foot. The UK business community—with notable exceptions, such as the motor industry—has not been vocal in support thus far.
- 210. Proponents have yet to articulate the purpose or possible gains from TTIP in a compelling way, or to offer convincing responses to legitimate concerns. In too many cases, we have had to coax out of our witnesses what TTIP might deliver for the ordinary citizen. There is indeed a risk that transatlantic trade is perceived as "sending stuff across the ocean", and therefore not relevant to an ordinary household or small business.
- 211. We recommend that the UK Government and the European Commission should review their account of what TTIP is about. We see scope to put more emphasis on investment and the jobs it may lead to—particularly in the UK which is a major recipient of US Foreign Direct Investment. We also see scope to emphasise the likelihood that small and medium-sized businesses stand to benefit disproportionately, not only from specific provisions under negotiation, such as protection for Geographical Indications, but also from any reduction in red tape associated with transatlantic trade, given that the vast majority of gains from TTIP are expected to result from reductions in non-tariff barriers. That case ought in our view to be made directly to small and medium-sized businesses who might otherwise consider that the initiative has no direct relevance to them.
- 212. We recommend also that the Government should make clear the very considerable costs to the UK and the EU of potential failure in the TTIP negotiations (drawing on evidence set out in paragraphs 71 and 72 of our report).
- 213. We recommend that, as more detail on potential provisions in each chapter becomes available, the UK Government should commission work on the potential impact of a TTIP agreement on specific regions and nations of the UK—in some respects like the 50 States study prepared for US audiences—in order to identify tangible benefits and risks for specific geographical constituencies. We believe that this would aid transparency and help to identify not only where gains may lie but also which concerns are warranted and need addressing.

#### Political Engagement

214. In November 2013, Commissioner De Gucht told us that, in his view, the biggest hurdle for the TTIP project was political resolve: "What is the biggest hurdle? You will need a lot of political resolve to do it. I believe even more in the United States than in Europe." 288

- 215. Our witnesses highlighted four areas in particular that would require political resolve. First, leaders would need to take on special interests. The EU's Chief Negotiator for the TTIP, Ignacio Garcia-Bercero, emphasised that "it is never going to be possible to conclude this negotiation unless it is done at a rather high level of ambition. It is part of the political reality of the negotiations."289 Lord Brittan suggested that there should be a focus on identifying those things that would be most attractive for each side, in order to reach an initial tentative agreement building on those things, and then use those attractions to assist in overcoming the obstacles.<sup>290</sup> Professor Baldwin warned us that the precedents were not necessarily encouraging: "with the Swiss-US free trade agreement we found that everybody was interested, but it was killed by peanuts, chocolate and beef." He went on to suggest that there might be a huge business interest, but there were also "these very hard special-interest nuts. To overcome them we need Angela Merkel to say, 'This is a systems competition between the Atlantic economies and China', and then they will overcome the peanut guys."291
- 216. Political resolve would also be required to engage regulators on both sides, but particularly in the US—the stumbling block identified by Lord Brittan. Mr Garcia-Bercero warned us that "the regulators on the US side have a strong tradition of independence and strong constituencies in the Congress. That means that, although most of them—not all—are part of the Executive, it is still a very tricky issue to get them fully engaged in the exercise."<sup>292</sup> Gary Hufbauer of the Peterson Institute suggested that, if the regulatory agenda that the EU has espoused were to be serious, it "would require trimming the authority of the US independent regulatory agencies by some oversight as they write their regulations going forward. This would produce push back from the constituencies and the regulators themselves."293 Professor Evenett told us that "changing the status quo would require very senior political leaders to signal that they would be prepared to change the law and in some cases to change personnel at these key regulators if they were not to cooperate." He judged that that would be "quite hard to pull off" and predicted that in spite of "much talk of a need for very senior political commitment to various aspects of this negotiation ... when it comes down to the regulatory side I think you will see that it is missing."294 He suggested that Congress would be "the key player" as the congressional committees that oversee the regulators would "determine whether or not cooperation happens."295
- 217. Our witnesses also predicted that political heavy-lifting would be required in order to bring the US states on board. Gary Hufbauer pointed out that, in the US, most services are regulated at the state level, as is procurement, "so there would be a lot of pushback from the states about being subjected to or included in a TTIP agreement." He noted that the USTR formula thus far had been "come along if you wish", and in recent trade agreements, "none of

<sup>&</sup>lt;sup>289</sup> O 117.

<sup>&</sup>lt;sup>290</sup> Q 6.

<sup>&</sup>lt;sup>291</sup> Q 205.

<sup>&</sup>lt;sup>292</sup> O 111.

<sup>&</sup>lt;sup>293</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 89.

<sup>&</sup>lt;sup>294</sup> Q 10.

<sup>&</sup>lt;sup>295</sup> Q 22.

- the states have wished, so they would have to be forced or some very strong incentives would have to be provided."<sup>296</sup>
- 218. Lord Mandelson warned that political resolve would also be required on this side of the Atlantic to corral EU member states: "in the case of the EU you are ... negotiating with yourselves in a sense almost as much as you are negotiating with the people opposite you". He predicted that there would be a need to make sure that, at member state government and at head of government level, differences or conflicts were reconciled, creating a clear, united position for the EU to take.<sup>297</sup> Professor Evenett predicted that German support in particular would be critical, "because what is different now from in the past is that the Germans are very much behind this initiative." He warned that "if they lose interest in this, I do not think the UK and Sweden can carry it."
- 219. Lord Mandelson judged that the UK Government had "done a great job ... in getting TTIP on the agenda and agreed." But he warned that "it did not do it by itself; it did it with Berlin and other supporters. London now has to realise that it cannot deliver TTIP on its own." He predicted that "a considerable galvanising and sustaining of effort among the member states as a whole" would be needed, for which the UK would need allies. Lord Brittan emphasised that the European Parliament should not be overlooked by regarding it as "a body that you have to deal with when it is all over", but should instead be engaged with at an early stage, treating MEPs as partners in the process.<sup>299</sup>
- 220. Lord Mandelson also emphasised the UK's role in engaging with the US, suggesting that the US administration needed to feel "that they have people on the European side who understand their point of view." The UK Government recognised this, noting that "we have a greater chance as a bilateral influence point than any of the other member states."
- 221. Ultimately, however, most of our witnesses concluded that the fate of the TTIP lay in the hands of the White House. As Lord Mandelson put it, "If the White House is really not joined in this thing, if it is really not using up its political capital and really putting its shoulder to the wheel in this negotiation, there is absolutely no chance of it going anywhere beyond the day after tomorrow." 302

#### **Conclusions and Recommendations**

222. The UK Government have a particular role to play in spurring on other leaders and decision-makers, on both sides of the Atlantic, if momentum behind the TTIP initiative is to be sustained. We judge that the Government are according priority to this in their work in the United States, but that there is scope for them to do more in Brussels and in national capitals to develop and sustain coalitions with other

<sup>&</sup>lt;sup>296</sup> Appendix 4: Evidence taken during visit to Washington, D.C., para 89.

<sup>&</sup>lt;sup>297</sup> QQ 27-28.

<sup>&</sup>lt;sup>298</sup> Q 22.

<sup>&</sup>lt;sup>299</sup> Q 5.

<sup>&</sup>lt;sup>300</sup> Q 29.

<sup>301</sup> Q 126.

<sup>&</sup>lt;sup>302</sup> Q 33.

EU member states, in particular Germany and France. This will be vital if the Government and their allies are to take charge of the public debate in the EU and help ensure that a new Commission is in a position to seize the narrow window of opportunity available to clinch a political agreement in the first half of 2015.

# CHAPTER 5: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

# Chapter 2: The Purpose of the TTIP

# Jobs and Growth

- 223. By analogy with the Single Market programme to which a number of our witnesses have likened the initiative, we judge that a Transatlantic Trade and Investment Partnership has the potential to deliver substantial economic benefits to both parties. (Paragraph 33)
- 224. We recognise that the potential economic benefits—and costs—of a trade and investment treaty between the United States and the European Union are difficult to predict with any certainty while negotiations are still underway. Were a Transatlantic Trade and Investment Partnership (TTIP) to be concluded, its effects would no doubt be difficult to disentangle from many other factors that influence growth and employment. We nonetheless judge that the net effect of the agreement would be to boost employment and prosperity on both sides of the Atlantic, and that neither the UK nor the EU should pass up the opportunity to reap those gains. (Paragraph 34)
- 225. We recommend that, in making the case for TTIP, the UK Government and the European Commission should deploy the headline figures from economic studies commissioned prior to the start of negotiations with extreme caution, lest they dent the credibility of an initiative that has merit in its own right. (Paragraph 35)
- 226. In our view, GDP figures beginning with zero and household income gains that would not materialise in full until 2027 will not win hearts and minds, even if they are substantive effects. The traditional political hurdle for trade agreements is that potential benefits are diffuse while potential costs are concentrated, and TTIP is unlikely to be an exception. Proponents will therefore need to show that there are tangible potential gains for identifiable groups. We recommend that, as negotiations progress and the outline of a possible agreement emerges, the European Commission and the UK Government should commission more detailed analyses of the possible practical effect of tariff reductions for consumers of particular goods and services in the EU, and on the effects that TTIP may have on investment, and by extension jobs, in particular sectors and EU member states, much like the material that has already been prepared for US audiences. (Paragraph 36)

# Other Purposes

- 227. TTIP is not just another trade deal: by virtue of the fact that the EU and US together account for nearly half of world GDP, any agreement they conclude would necessarily have ramifications for other countries and for the multilateral trading system. The initiative therefore has both a strategic dimension, and a geopolitical one. (Paragraph 73)
- 228. TTIP is in our view a political as well as an economic project, not least because it could serve to revitalise and rebalance the transatlantic relationship between Europe and the United States. One of its most important legacies may be the establishment of a structured dialogue on

- regulatory matters between the EU and US sustained into the future, through provisions for a living agreement. (Paragraph 74)
- 229. The initiative also provides the EU and US with an opportunity to set a high-standard precedent for future trade and investment agreements, and would to that extent serve a strategic purpose. We recognise that this avowed intention could prompt unease among other trading partners, but in our view it should not: agreement between the US and EU is pivotal to the progress of other multilateral initiatives, including, but not limited to, the Doha Round. Were TTIP negotiations to run aground, prospects for those other initiatives would look worse, not better. We therefore agree with Lord Green of Hurstpierpoint that a TTIP agreement should help to sustain momentum at the WTO following the Bali agreement, and help to promote China's full involvement. (Paragraph 75)

# Unintended Consequences

- 230. The EU and US should nonetheless address concerns that TTIP could be a "closed shop" in which the world's richest economies pull up the drawbridge. We welcome the UK Government's recognition that there should be an accession process to allow third countries to participate in TTIP; that regulatory approaches adopted as part of the TTIP should be based on existing internationally agreed best practice; and that any mutual recognition of standards achieved through TTIP should be open to third countries. Provided that an eventual agreement has the right features—including those we have listed—we anticipate that the positive external effects of a TTIP agreement could outweigh any negative effects on third countries. (Paragraph 76)
- 231. The design of a TTIP agreement will matter, and we therefore recommend that the UK Government should press its EU partners, the European Commission, and the US administration to choose design features that will allow third countries to participate in the benefits accruing through TTIP, in the same way that third countries have been able to benefit from the development of the European Single Market. (Paragraph 77)
- 232. We also recommend that, at a later stage in the negotiations, the UK Government and the European Commission should bring forward proposals to mitigate the possible adverse effects of changes in tariff preferences on developing countries, and to help their exporters to meet new standards. The UK Government should press for the implementation of such measures as an integral part of its approach to the initiative overall. (Paragraph 78)
- 233. Concerns about the effect that TTIP might have on jobs, on employment rights, and on consumer protection are in our view not equally well-founded, and need to be disentangled. This is because some of those standards—for example some product safety standards—are directly under negotiation, while others—such as specific employment rights—are not. We recommend that, in making the case for TTIP, the UK Government and the European Commission articulate more clearly which areas of regulation will be under discussion, and which will not. (Paragraph 79)
- 234. In principle, a trade and investment treaty between the EU and US could, over time, lead to a reallocation of investment—and with it, jobs—as tariffs and non-tariff barriers are reduced or removed. Once an agreement begins to take shape, the UK Government and European Commission should

- therefore ensure that the likely scale and direction of such effects are carefully evaluated—as recommended in Para 36 above. (Paragraph 80)
- 235. Employment rights—on either side of the Atlantic—are not directly under negotiation as part of the TTIP. We therefore see no prospect that labour regulation in EU member states would be watered down as part of the initiative. We nonetheless urge the UK Government and European Commission to seize the opportunity presented by the sustainable development chapter of the negotiations to press the United States to ratify the International Labour Organisation's core conventions. (Paragraph 81)
- 236. By contrast, product safety and food safety regulation are likely to be under discussion, and it is therefore vital that the UK Government and the European Parliament should be vigilant in making sure that there is no detriment to consumers and the environment from co-ordination between the EU and US. (Paragraph 82)

# Chapter 3: Content of the TTIP

#### Automotive Sector

- 237. We were warned that, when going from the objectives of the TTIP at 36,000 feet to the nuts and bolts, we would see a gap. We detect no such gap in the automotive sector. Consistent with projections that the sector may have most to gain from a TTIP agreement, the industry on both sides of the Atlantic is organised and vocal. The most striking aspect of this observation, in our view, is that other sectors appear to be considerably less mobilised, and that this sector may therefore be unrepresentative of the business community at large in terms of its engagement and advocacy of the initiative. (Paragraph 102)
- 238. Although we therefore see scope for other sectors to learn from the motor industry's approach to the TTIP negotiations, we anticipate that the sector will need to articulate more clearly the possible benefits for consumers from attainment of their objectives, and explain why they expect to see jobs added, rather than lost or reshuffled, if they are to build public and political support for their goals. We judge that for the largest companies with production facilities on both sides of the Atlantic those goals are primarily about reducing production costs and acquiring more flexibility on where to locate production. The extent to which this will increase trade between the EU and US will depend on a host of consequential decisions to be taken by the companies about how best to further their commercial interests. (Paragraph 103)
- 239. We note that the industry views TTIP as a platform from which to inject momentum into the existing multilateral process for developing Global Technical Regulations and are encouraged by this approach, which is consistent with our view that the TTIP should serve to catalyse multilateral negotiations, and not substitute for them. (Paragraph 104)
- 240. We recognise that there is merit in pursuing mutual recognition of environmental and safety standards for motor vehicles where they are assessed as producing equivalent outcomes. We nonetheless urge the UK Government and the European Commission to ensure that this only occurs

where EU and US standards are genuinely equivalent, so that existing environmental and safety standards are not compromised. (Paragraph 105)

## Financial Services

- 241. In a negotiation that is ostensibly between equals, it is in our view essential that one party should not be permitted to exclude a sector—which for these purposes includes not just the banking sector but also related industries, such as insurance—that is clearly central to both economies. We therefore judge that the EU is right to press the US on the inclusion of financial services regulatory matters in TTIP. (Paragraph 122)
- 242. We were nonetheless struck by the vehemence of the US Administration's opposition, and found lukewarm support for the EU's stance among several of its member states. We struggled to understand what the UK Government's objectives were, and believe they must be articulated much more clearly if they are to have traction elsewhere, including among other EU member states. The shroud of secrecy around UK and EU objectives thus far has been unhelpful, and stokes unnecessary suspicion. (Paragraph 123)
- 243. We see no threat to financial and prudential regulation from the establishment of a more effective dialogue between EU and US regulators, for the reasons set out by the Financial Conduct Authority. We nonetheless judge that the UK and the European Commission will need to build a more compelling case for why the TTIP is the right vehicle for securing that outcome. (Paragraph 124)
- 244. There is clearly widespread dissatisfaction with the Financial Markets Regulatory Dialogue (FMRD), both in terms of its capacity to deliver results and in terms of a perceived lack of transparency and accountability around discussions held in that forum. We recommend that, pending any progress that TTIP may deliver, the UK Government should press the European Commission to bring forward proposals to improve transparency around the existing process, and allow member state governments and industry to hold the Commission to account in respect of its engagement in the FMRD. (Paragraph 125)

# Flagship Issues: Procurement

- 245. We concur with Commissioner De Gucht's assessment that a deal on procurement is likely to be hard-fought, not least because the EU hopes to obtain commitments from US states as well as the US federal government. The precedent set in negotiations with Canada and its provinces, and our witnesses' suggestions for steps the US federal government could take to create incentives for states to participate nonetheless demonstrate that with political will, there would be ways to attain the UK and EU's objectives. (Paragraph 137)
- 246. Political will on the part of the US administration and state authorities will in part hinge on the attractiveness of the reciprocal offer from the European Union. We are not persuaded that all EU member states consistently apply EU public procurement rules as diligently as could be hoped. TTIP negotiations may therefore present an opportunity to examine what the EU still needs to do to monitor and enforce the rules it has set for itself, and may

to that extent help to spur the completion of the Single Market in this area. (Paragraph 138)

# Flagship Issues: Agriculture

- 247. On GMOs, we share the Commissioner's assessment that the area for compromise with the US lies in allowing existing EU procedures for cultivation and commercialisation of GMOs to work as intended. We note that the UK is in the unusual position of being closer to the US than the EU in its stance on this issue, and judge that it therefore has an important role to play in helping the Commission to win support for such a compromise among other EU member states. (Paragraph 146)
- 248. We are more pessimistic than Commissioner De Gucht about the ease with which an agreement on access for US beef products to EU markets could be reached, and note that parts of the UK industry could have difficulty in this area. We recommend that, as a possible compromise on this issue begins to take shape, the UK Government should produce a comprehensive impact assessment of the changes proposed on the UK's agriculture sector. (Paragraph 147)

# Flagship Issues: Geographical Indications

249. The prospects of reaching an agreement on Geographical Indications (GIs) are in our view better than Commissioner De Gucht predicted, at least insofar as the UK interest is concerned. We anticipate that, as in negotiations with Canada, protection for names potentially considered generic (parmesan, feta) will be hardest-fought. We see scope for the UK Government to attain its objectives, which mainly relate to protection for compound names, and should be correspondingly less contentious. (Paragraph 155)

# Flagship Issues: Investment Protection and Investor-State Dispute Settlement

- 250. We agree with those witnesses who emphasised that Investor-State Dispute Settlement (ISDS) provisions are in themselves only an enforcement mechanism: the substantive protections afforded to foreign investors in the investment chapter of a TTIP agreement would matter most. (Paragraph 167)
- 251. We are persuaded that, as appears to have been achieved in the CETA agreement between the EU and Canada, steps can be taken to strike a better balance between affording protection to investors and the right of states to regulate, notably by defining the grounds on which claims may be brought with more precision, and allowing for binding interpretations. Measures can also be taken to improve transparency around ISDS proceedings, for example by making hearings and documents public, allowing interested third parties to make submissions, and reviewing rules around the appointment of arbitrators. We deem the "loser pays" principle particularly important, as without it all these steps can be in vain. We recognise that the European Commission is already committed to pursuing all these improvements. (Paragraph 168)
- 252. We nonetheless conclude that proponents of investment protection provisions enforced by an ISDS mechanism have yet to make a compelling case for their inclusion in TTIP or to convincingly dispel public concerns. We recognise that there may be a precedent value in their inclusion and that

this may be an important consideration ahead of similar EU agreements with other countries such as China. We also recognise that for member states with an existing bilateral investment treaty with the United States, TTIP presents an opportunity to update such provisions. From the UK's perspective, however, we see two principal justifications for their inclusion: to attract more investment from the US, and to afford better protection to our investors in the US. We recognise the potential risk to UK investors in the US but judge that, to build a better case for the inclusion of investment protection provisions in TTIP, isolated cases would need to be supplemented by evidence that the UK could attract more investment from the US by signing up to such provisions. (Paragraph 169)

253. We see a risk that this issue could distract from, or even derail progress on TTIP negotiations—especially in view of the hostile stance of the German government and German public. We therefore recommend that, having expressed a preference for the inclusion of ISDS provisions in an eventual agreement, the UK Government should use the Commission's consultation period to take a more proactive role in the debate before valuable momentum and public confidence are lost. We support the Government's stance on the inclusion of investment protection provisions only on condition that the EU is able to secure the same range of safeguards in an agreement with the United States as were included in the CETA agreement with Canada. Those safeguards themselves require proper explanation—a task for which we believe member states including the UK should take their share of responsibility. (Paragraph 170)

# Chapter 4: Securing a Deal

#### *Timetable*

- 254. Without Trade Promotion Authority (TPA), the United States cannot make serious offers as part of the TTIP negotiations, lest they should put off the very people whose support they need to secure TPA. Although important technical progress can still be made, we anticipate that there will come a point when negotiations enter a holding pattern, and contentious issues are deferred until the US administration has secured TPA. The timetable for the latter is likely to be driven by the progress of Trans-Pacific Partnership negotiations. The TTIP initiative is therefore in danger of drifting. (Paragraph 187)
- 255. The political context in the US with mid-term elections and in the EU with elections to the European Parliament and the appointment of a new Commission can also be expected to limit progress on politically difficult issues until late in 2014, or early 2015. In 2015, we anticipate that there will be a relatively narrow window of opportunity to make progress on the issues that require political capital to be spent before the US Presidential election cycle takes over ahead of 2016. Due to the hold-up over TPA, it is not yet clear that the EU and US will be in a position to seize that opportunity. (Paragraph 188)

## Living Agreement

256. We support the establishment of a structured arrangement for future dialogue between EU and US regulators, and consider it a critical part of the long-term legacy of a TTIP agreement. We see no inherent reason why such

an arrangement need be complex or why taking account of the transatlantic impact of regulation—as one factor among many—should disempower democratic institutions. (Paragraph 193)

# *Transparency*

- 257. The European Commission is in our view going to considerable lengths to improve transparency around TTIP negotiations. Both Commissioner De Gucht and Chief Negotiator Ignacio Garcia-Bercero have readily assisted us with our inquiry. In respect of the confidentiality of the negotiating mandate, we believe the Commissioner is right to point to the Council of Ministers: it is the Member States—whose decision it was to keep the negotiating mandate out of the public domain—who need to defend that decision, which we judge to be correct. (Paragraph 197)
- 258. The European Commission cannot be expected to make the case for the TTIP initiative across 28 member states. In our view, EU member states are not bearing their fair share of responsibility for transparency and communication around the project. This may be exacerbated by the fact that although EU trade ministers lead on the initiative, the breadth of the negotiations means that many other national ministries are involved, and—in our experience of the UK—not necessarily seized of the importance of promoting TTIP to the public and other interested parties. (Paragraph 198)

#### Communication

- 259. We recommend that the UK Government should formulate a cross-government communications strategy in respect of the TTIP, involving ministers with sectoral responsibilities and building on cross-party support for the initiative. It should not be left to each Department to decide whether and how to engage with interested parties and the public. Although the Department for Business, Innovation and Skills is best placed to co-ordinate this task, it should be a shared responsibility across Departments. (Paragraph 208)
- 260. Insofar as a public debate on TTIP exists, EU member states are losing it. In part this is because they are engaging in it fitfully and invariably on the back foot. The UK business community—with notable exceptions, such as the motor industry—has not been vocal in support thus far. (Paragraph 209)
- 261. Proponents have yet to articulate the purpose or possible gains from TTIP in a compelling way, nor offer convincing responses to legitimate concerns. In too many cases, we have had to coax out of our witnesses what TTIP might deliver for the ordinary citizen. There is indeed a risk that transatlantic trade is perceived as "sending stuff across the ocean", and therefore not relevant to an ordinary household or small business. (Paragraph 210)
- 262. We recommend that the UK Government and the European Commission should review their account of what TTIP is about. We see scope to put more emphasis on investment and the jobs it may lead to—particularly in the UK which is a major recipient of US Foreign Direct Investment. We also see scope to emphasise the likelihood that small and medium-sized businesses stand to benefit disproportionately, not only from specific provisions under negotiation, such as protection for Geographical Indications, but also from any reduction in red tape associated with transatlantic trade, given that the vast majority of gains from TTIP are expected to result from reductions in

- non-tariff barriers. That case ought in our view to be made directly to small and medium-sized businesses who might otherwise consider that the initiative has no direct relevance to them. (Paragraph 211)
- 263. We recommend also that the Government should make clear the very considerable costs to the UK and the EU of potential failure in the TTIP negotiations (drawing on evidence set out in paragraphs 71 and 72 of our report). (Paragraph 212)
- 264. We recommend that, as more detail on potential provisions in each chapter becomes available, the UK Government should commission work on the potential impact of a TTIP agreement on specific regions and nations of the UK—in some respects like the 50 States study prepared for US audiences—in order to identify tangible benefits and risks for specific geographical constituencies. We believe that this would aid transparency and help to identify not only where gains may lie but also which concerns are warranted and need addressing. (Paragraph 213)

# Political Engagement

265. The UK Government have a particular role to play in spurring on other leaders and decision-makers, on both sides of the Atlantic, if momentum behind the TTIP initiative is to be sustained. We judge that the Government are according priority to this in their work in the United States, but that there is scope for them to do more in Brussels and in national capitals to develop and sustain coalitions with other EU member states, in particular Germany and France. This will be vital if the Government and their allies are to take charge of the public debate in the EU and help ensure that a new Commission is in a position to seize the narrow window of opportunity available to clinch a political agreement in the first half of 2015. (Paragraph 222)

# APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

The Members of the Sub-Committee which conducted this Inquiry were:

Baroness Bonham-Carter of Yarnbury

Baroness Coussins

Lord Foulkes of Cumnock

Baroness Henig

Lord Jopling

Lord Lamont of Lerwick

Lord Maclennan of Rogart

Baroness Quin

Lord Radice

The Earl of Sandwich

Lord Trimble

Lord Tugendhat (Chairman)

Baroness Young of Hornsey

## **Declarations of Interest**

# Baroness Bonham-Carter of Yarnbury

Prime Minister's Trade Envoy to Mexico

## **Baroness Coussins**

Independent consultant on corporate responsibility to two US companies (Brown-Forman Inc and Mars) and one Dutch company (Heineken) and to Camelot

President of the Peru Support Group

## Lord Foulkes of Cumnock

President of the Caribbean Council (non-remunerated)

## Baroness Henig

Baroness Henig's son works in the Department for Business, Innovation and Skills in the area to which this inquiry relates

# Lord Jopling

Receives funds from the Common Agricultural Policy

Secretary to the British American Parliamentary Group (1987–2002)

# Lord Lamont of Lerwick

Advisor to BC Partners

Advisor to Stanhope Capital

Director, Phorm PLC

Chairman, Jupiter Second Split Investment Trust

Adviser, Halkin Investments

Adviser, Abraaj Capital

Adviser to Official Monetary and Financial Institutions Forum Advisory

Council

Chairman, Small Companies Dividend Trust

Director, Compagnie d'Investiments et Participations Bancaires

## Lord Maclennan of Rogart

Farmer in receipt of monies from the Common Agricultural Policy

Chairman, Inwatur Ltd

## Baroness Quin

No relevant interests declared

## Lord Radice

Board Member, Policy Network

#### The Earl of Sandwich

Director and shareholder, Earl of Sandwich Licensed Co

#### Lord Trimble

No relevant interests declared

# Lord Tugendhat (Chairman)

Chairman, Advisory Council, European Policy Forum

Member, Official Monetary and Financial Institutions Forum Advisory Council

A portfolio of stocks and bonds in a range of industrial and financial companies, including companies in the banking and automotive sectors

# Baroness Young of Hornsey

All unremunerated unless otherwise stated:

Patron, Anti Slavery International

Patron, International Development (Ethiopia)

Board Member, Aid by Trade (NGO based in Germany)

Several, informal professional relations with organisations working on ethical and environmental issues in the garment industry

Collaborating with AFFORD on a joint Internship with a view to establishing an APPG on Migration, Development and Diaspora

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Lord Boswell of Aynho (Chairman)

Lord Bowness

Baroness Corston

Baroness Eccles of Moulton DL

Lord Foulkes of Cumnock

Lord Hannay of Chiswick

Lord Harrison

Lord Maclennan of Rogart

Lord Marlesford DL

Baroness O'Cathain

Baroness Parminter

Baroness Quin

The Earl of Sandwich

Baroness Scott of Needham Market

Lord Tugendhat

Lord Wilson of Tillyorn

During consideration of the report the following interests were declared:

# Lord Boswell of Aynho (Chairman)

Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho grounds, Banbury, with separate rentals from cottages and grazing

## Lord Hannay of Chiswick

Member, Advisory Board, Centre for European Reform

Member, Future of Europe Forum, Advisory Board for Centre for British

Influence through Europe

Chair, Senior European Experts Group (an independent group; makes briefing papers on contemporary European and EU topics)

# Lord Maclennan of Rogart

Working farm in Caithness jointly owned with wife from which grants from the EU are received

#### Lord Marlesford DL

Farmer in receipt of funds through the CAP

A full list of registered interests of Members of the House of Lords can be found at <a href="http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/">http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/</a>

Dr Dennis Novy acted as Specialist Adviser for this inquiry and declared the following relevant interests:

Research Affiliate, Centre for Economic Policy Research (CEPR)

Research Affiliate, CESifo Institute, Munich

Associate, Centre for Economic Performance (CEP) at the London School of Economics

Associate Professor, Department of Economics, University of Warwick

# Hospitality Received

While in Washington, the Committee held working lunches hosted by the US Chamber of Commerce and British-American Business.

# **APPENDIX 2: LIST OF WITNESSES**

Evidence is published online at <a href="www.parliament.uk/hleuc">www.parliament.uk/hleuc</a> and available for inspection at the Parliamentary Archives (020 7219 5314)

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked \* gave both oral and written evidence. Those marked with \*\* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

# Oral evidence in chronological order

**	QQ 1-8	Rt Hon Lord Brittan of Spennithorne QC
**	QQ 9-22	Professor Simon Evenett, University of St Gallen
*		Professor Jim Rollo, University of Sussex
**	QQ 23-34	Rt Hon Lord Mandelson
**	QQ 35–43	Christina Decker, Counsellor, Economic Affairs and Technology, German Representation to the EU
**	QQ 44–51	Maria Eleni Koppa MEP
*		Robert Sturdy MEP
**	QQ 52–60	Zhang Kening, Minister (Economic and Commercial Affairs), Mission of the People's Republic of China to the EU
**	QQ 61–72	Jean-Paul Thuillier, Minister-Counsellor for Economic Affairs, French Permanent Representation to the EU
**	QQ 73–84	Jan Procházka, Head of Trade Policy Unit, Czech Permanent Representation to the EU
**	QQ 85–98	Josefine Holmquist, Trade First Secretary, Swedish Permanent Representation to the EU; and Efraim Gómez, Ministry of Foreign Affairs, Swedish Permanent Representation to the EU
**	QQ 99–112	Commissioner Karel De Gucht, EU Trade Commissioner; and Ignacio Garcia Bercero, TTIP Chief Negotiator, DG Trade, European Commission
*	QQ 113–127	Lord Green of Hurstpierpoint, Minister of State for Trade and Investment; and Edward Barker, Head of Transatlantic & International Unit, Department for Business, Innovation and Skills
*	QQ 128–136	Gary Campkin, Director, International Strategy, TheCityUK
**		Alastair Evans, Head of Government Policy and Affairs, Lloyd's
**	QQ 137–143	David Lawton, Director of Markets, Financial Conduct Authority
**	QQ 144–157	Geoff Grose, Chief Engineer, McLaren Automotive Limited

*		Mike Hawes, CEO, Society of Motor Manufacturers and Traders
**		Andrew McCall, Executive Director, Governmental Affairs, Ford of Europe
**		Chris Scott, Senior Manager, Global Automotive Safety, Regulations, Compliance and Homologation, Jaguar Land Rover
**	QQ 158–173	Phil Bicknell, Chief Economist, National Farmers' Union
**		Andrew Kuyk, Sustainability Director, Food and Drink Federation
**	QQ 174–185	Ignacio Garcia Bercero, TTIP Chief Negotiator, DG Trade, European Commission
**	QQ 186–197	Mauro Petriccione, Director, Asia and Latin America, DG Trade, European Commission
**	QQ 198–207	Professor Richard Baldwin, Graduate Institute, Geneva and Director, Centre for Economic Policy Research
*	QQ 208–223	Rt Hon Lord Goldsmith QC
*		Dr Lauge Poulsen, Research Fellow, Nuffield College, University of Oxford, and Senior Research Fellow at University of London, SOAS
*	QQ 224–236	Bert Schouwenburg, International Officer, GMB
*		Owen Tudor, Head of European Union and International Relations, TUC
**	QQ 237–248	Pia Eberhardt, Corporate Europe Observatory
*	QQ 249–269	Lord Livingston of Parkhead, Minister of State for Trade and Investment, and Edward Barker; and Head of Transatlantic & International Unit, Department for Business, Innovation and Skills

Oral evidence was also taken from Elena Bryan, Senior Trade Representative at the US Mission to the EU. A note of this evidence is available online in the evidence volume.

As part of the inquiry the Committee visited Washington D.C., 27–30 January 2014. Evidence was taken from the following witnesses:

AFL-CIO; US Chamber of Commerce and member companies; Senator Thad Cochran; Congressman Fred Upton; US Department of Agriculture; Gary Hufbauer (Peterson Institute for International Economics); Kent Hughes (Woodrow Wilson Center); Dr Dan Hamilton (John Hopkins University); Claude Barfield (American Enterprise Institute); Senator Orrin Hatch; Senator Debbie Stabenow; American Farm Bureau Federation; and Ambassador Miriam Sapiro, Office of the US Trade Representative.

A note of this evidence is provided in Appendix 4.

## Alphabetical list of all witnesses

- \* American Federation of Labor and Congress of Industrial Organizations
- \*\* Professor Richard Baldwin, Graduate Institute, Geneva and Director, Centre for Economic Policy Research
- \*\* Claude Barfield, American Enterprise Institute

  British American Business and British American Business Council
- \*\* Rt Hon Lord Brittan of Spennithorne QC

British Chambers of Commerce

The British Screen Advisory Council

Chartered Institute of Arbitrators

- \*\* Mission of the People's Republic of China to the EU
- \*\* Senator Thad CochranConfederation of British Industry
- \*\* Corporate Europe Observatory
- \*\* Czech Permanent Representation to the EU
- \* The Department for Business, Innovation and Skills
- \*\* European Commission
- Professor Simon Evenett, University of St Gallen
   Dr. Elaine Fahey, Senior Postdoctoral Researcher, Amsterdam Centre for European Law and Governance (ACELG)
- \*\* Financial Conduct Authority
- \*\* Food and Drink Federation
  Food Standards Agency (FSA)
- \*\* Ford of Europe
- \*\* French Permanent Representation to the EU
- \*\* German Permanent Representation to the EU
- \* GMB
- \* Rt Hon Lord Goldsmith QC
- \* Dr Dan Hamilton Center for Transatlantic Relations, Johns Hopkins University; and Paul H. Nitze School of Advanced International Studies
- \*\* Senator Orrin Hatch

**HM** Treasury

- \*\* Gary Hufbauer, Peterson Institute for International Economics

  Iaguar Land Rover
- \*\* Kent Hughes, Woodrow Wilson Center

Suparna Karmakar, Visiting Fellow at Bruegel

Linda Kaucher, Independent researcher: EU's international trade agenda

- \*\* Maria Eleni Koppa, Member of the European Parliament
- \*\* Lloyd's
- \*\* Rt Hon Lord Mandelson
- \*\* McLaren Automotive Limited
- \*\* National Farmers' Union
- \*\* Office of the US Trade Representative

Tim Oliver, Center for Transatlantic Relations, Johns Hopkins University; and Paul H. Nitze School of Advanced International Studies

OurNHS openDemocracy

\*\* Dr Lauge Poulsen, Research Fellow, University of Oxford, Nuffield College, and Senior Research Fellow, University of London, SOAS

Producers Alliance for Cinema and Television (Pact)

- \* Professor Jim Rollo, University of Sussex, Chatham House and InterAnalysis Ltd
- \* Society of Motor Manufacturers and Traders
- \*\* Senator Debbie Stabenow
- \* Robert Sturdy, Member of the European Parliament
- \*\* Swedish Permanent Representation to the EU
- \* TheCityUK

Trade Justice Movement

\* Trades Union Congress

Unite the Union

- \*\* US Chamber of Commerce
- \*\* US Department of Agriculture

Which?

# **APPENDIX 3: CALL FOR EVIDENCE**

The EU Sub-Committee on External Affairs of the House of Lords, chaired by Lord Tugendhat, is conducting an inquiry into The Transatlantic Trade and Investment Partnership (TTIP). The Sub-Committee seeks evidence from anyone with an interest.

Written evidence is sought by 10 October 2013. Public hearings will be held from October 2013, and into the early part of 2014. The Committee aims to report to the House, with recommendations, in the first half of 2014. The report will receive responses from the Government and the European Commission, and is likely to be debated in the House.

In February 2013, the EU and US launched the TTIP. On 14 June, the Trade Council of the European Union agreed the negotiating mandate for the TTIP. In light of the objections of some Member States, the final draft reads that "audiovisual services will not be covered in this chapter". The first round of bilateral negotiations began on 8 July with the aim of concluding and ratifying the agreement within two years.

The EU and US already have a significant bilateral trade relationship. Trade in goods and services between the two economies amounts to nearly \$1 trillion each year. Together, the EU and the US account for nearly half of world GDP and 30 per cent of world trade. Each day, goods and services worth \$2.7 billion/€2.0 billion are traded bilaterally.

Studies have shown that the most ambitious and comprehensive agreement which eases behind the border impediments to trade and investment is likely to reap the highest benefit with estimates varying of an increase of 0.5 to 3.5 per cent of annual GDP to both parties. The UK Government have estimated that, in the long run, UK national income could rise by between £4 billion and £10 billion annually. Some commentators point out that estimates have not captured the long-term benefits of productivity growth as a consequence of trade and investment liberalisation. On the other hand, some warn of the adverse consequences of a deal, for instance on specific industries and sectors, or on third countries.

The House of Lords inquiry will aim to assess the minimal level of agreement necessary to make the negotiations worthwhile to the UK and will explore and evaluate the UK and EU's priorities in the negotiations.

The Sub-Committee seeks evidence on any aspect of this topic, and in particular on the following questions:

## The TTIP

- (1) What are likely to be the most challenging chapters of the TTIP and why? What is the minimum level of ambition necessary in each chapter? How can the ambition of each chapter be maximised?
- (2) Is the time-frame of completing negotiations within two years realistic? If not, when is it realistic to expect a deal to be agreed, and what can be expected to be achieved in the next two years?
- (3) How should the Commission most effectively conduct the negotiations in terms of ensuring appropriate transparency and communication, as well as full consultation with stakeholders, NGOs and EU Member States?

- (4) How will TTIP negotiations be affected by relations with third countries, such as China, and also developing countries, including in relation to existing and pending bilateral trade agreements? How do you anticipate the TTIP interacting with the Trans Pacific Partnership and NAFTA, for example?
- (5) What is the potential impact of TTIP on consumers, whether in the UK, EU or US?

# Impact of the TTIP for the UK

- (6) What aspects of the negotiations will be of the greatest significance to the UK, including its component parts?
- (7) For UK consumers and business, where are the greatest gains to be made and where could they be disadvantaged? What are the most significant non-tariff barriers for British exporters and importers?
- (8) What are the political and practical challenges within the UK to an agreement?
- (9) How can the UK seek to maximise its influence at EU level as the TTIP negotiations progress?
- (10) What might be the potentially adverse effects for the UK of a failure of the TTIP negotiations?

## The European Union and other Member States

- (11) How could the Commission seek to ensure that the interests of the Member States are represented, and that a satisfactory outcome with regard to Member States' interests is secured?
- (12) What are likely to be the most significant potential gains and difficulties for other Member States? How do UK interests and those of the other Member States coincide or run counter to each other? What would you identify as areas of common European interest?
- (13) From the EU perspective, what are likely to be the biggest political, institutional and practical challenges to a deal? How can they be overcome?

#### The United States

- (14) From the US perspective, what are likely to be the biggest political, institutional and practical challenges to a deal? How can they be overcome?
- (15) What would be a mutually beneficial solution for the EU and US? Is that the same as a mutually beneficial solution for the EU and UK?

# APPENDIX 4: EVIDENCE TAKEN DURING VISIT TO WASHINGTON, D.C.

# Monday 27 January-Thursday 30 January

Five members of the Committee (accompanied by the Specialist Adviser and Clerk) visited Washington, D.C. The aims of the visit were to take evidence from relevant witnesses in the United States, and to explore US objectives and concerns in regard to a prospective TTIP agreement.

Members visiting: Lord Tugendhat (Chairman), Baroness Bonham-Carter, Lord Foulkes of Cumnock, Lord Jopling, Lord Radice. In attendance: Miss Julia Labeta (Clerk) and Dr Dennis Novy (Specialist Adviser).

# Day One: Tuesday 28 January

# British Embassy

The Committee met with HE Sir Peter Westmacott, UK Ambassador to the United States, for a private briefing.

#### AFL-CIO

The Committee took evidence from Celeste Drake, Trade Policy Specialist, Brad Markell, Executive Director, and Damon Silvers, Director of Policy at the American Federation of Labor and Congress of Industrial Organization (AFL-CIO).

- 1. Ms Drake explained that the AFL-CIO was concerned that the TTIP should not become a tool to drag standards—such as labour and environmental standards—down. For the EU, this would involve levelling down to US standards. In the hands of "aggressive and litigious" US companies, Investor-State Dispute Settlement (ISDS) provisions could serve as a mechanism for bringing standards down.
- 2. The AFL-CIO was also keen that the ability to use public procurement to promote economic and social policy should be maintained. Ms Drake emphasised that they did not wish to see "Buy America" provisions obliterated by a TTIP agreement.
- 3. Asked about whether there were any useful precedents on ISDS in CETA, the EU-Canada free trade agreement, Ms Drake said that including ISDS provisions was not a good precedent, and that the AFL-CIO's preference is not to have ISDS provisions included at all, because they view them as undermining, rather than advancing, the rule of law.
- 4. Asked about the reaction of the US Administration to the AFL-CIO's views on ISDS, Ms Drake explained that opinion in Congress varied, with approximately one-third of members sympathetic to their concerns, one-third strongly in favour of ISDS provisions, and one-third in the "mushy middle". The Administration had, however, told them that it regards ISDS as a good system and will continue to include it in US Free Trade Agreements (FTAs).
- 5. Mr Markell added that in Congress, turnover was so great that many members were not aware of the issues. He suggested that the inclusion of

- ISDS provisions in TTIP would reflect a presumption that EU legal systems are not up to the task of adjudicating commercial disputes.
- 6. Asked about whether labour standards might not be pulled up rather than dragged down as the result of regulatory dialogue between the EU and US in the context of TTIP negotiations, Ms Drake suggested that in practice, trade agreements signed by the US tended to set a floor for labour standards, and that mechanisms to enforce those standards were generally weak at best.
- 7. Responding to a suggestion that things might work out differently when dealing with a developed economy like the EU, Ms Drake was pessimistic, arguing that the way US corporations do business is to drive down standards. They might start in Bulgaria or Romania, but ultimately UK workers would also be affected. Mr Markell suggested that the phenomenon might also apply in reverse, as had been seen with German car companies coming to low-wage America—such as Mercedes Benz in Alabama—and pushing unions out.
- 8. Asked about whether TTIP might bring any benefits to consumers in terms of lower prices, Ms Drake dismissed such effects as "marginal", noting that European goods were already widely available, and that in their view, any prospective benefits on that front were more than outweighed by the risk of dragging down standards, for example food safety standards. Big food conglomerates did not want to label growth hormones or GM ingredients, and would therefore try to sideline the EU's precautionary principle and "go after" labelling rules. "Sound science" was no more than "code words" to get rid of safeguards, leaving no room for future improvement in US standards.
- 9. Responding to the suggestion that the negotiations on TTIP might be used to raise US standards in this area, Ms Drake argued that although the AFL-CIO would welcome such a development, they would not wish to foreclose future opportunities to change US regulations. If, for example, there were to be future challenge under the terms of a TTIP agreement, and it were to be found that labelling GMO ingredients in a breakfast cereal was more restrictive than necessary under the terms of that agreement, then that would foreclose that type of regulation in Europe, but also in the US. It is not that by signing the agreement, US or EU standards would automatically change, but it's the policy space box that they would not want to lose, so that the US could get better than it is now.
- 10. Mr Markell described the chapters of the TTIP as a "corporate wishlist" and suggested that, as someone from Detroit, his view was that the downfall of the auto industry had been trade-linked. The automobile industry and now increasingly the aerospace industry had moved to low-wage Mexico as a result of NAFTA. Developed nations could not compete with markets where there was still labour repression. Recognising that the TTIP would be concluded between two developed economies, Mr Markell suggested that the equation he had described would be very much flipped, with the EU on the receiving end.
- 11. He went on to suggest that NAFTA is what put bad trade deals on the political map with workers in the United States and that it has never really gone away. Ms Drake noted that, "in the comparison to NAFTA, the US would be Europe's Mexico"—particularly the southern states that are lowerwage, that are "right-to-work", that would be less tolerant of workers exercising their labour rights.

- 12. Responding to a question about transparency, Mr Markell took the view that transparency around TTIP negotiations has been very low. "There are about 600 people who can see what's being written, and nobody else can. What is it you're doing that is so horrible that it needs to remain in secret until you're ready to pull it all out?" The idea that none of this can be discussed publicly was "a real red flag".
- 13. Ms Drake suggested that secrecy is a holdover from the days when agreements were about tariffs, and "you didn't want the potato farmers to know that their protectionist tariffs were being cut until you could show them that the tariffs on automobiles were going to be cut too. But now that we're talking about food safety policy and financial services regulation and all of these additional things, those are the kinds of things that, in a democracy, need to be discussed in the open, and not behind closed doors."
- 14. Responding to the suggestion that it would be infinitely more difficult to give and take in public, and the answer might thus be to put together a package which people can then vote against if they want, Ms Drake countered that in the AFL-CIO's experience, Congress has never rejected a trade deal that was presented under fast-track. All legislation is difficult to do in public. She went on to suggest that the WTO does release draft texts, before it gets to final texts, and that is one better and more legitimate way to do it.
- 15. Mr Silvers noted that his colleague Celeste is among the 600 people who have access to the texts, and that he personally had talked to Mr Froman "about as many times as most people in the policy-making process in the United States". He suggested that it was not the case that the American labour movement is radically isolated from the policy-making process, but rather that, "you can be talked to without genuinely participating." He noted that having formal standing in the process did not mean being part of policy formulation, and that the only way to be included in the policy formulation process was to have a process that was sufficiently broadly open that you could marshal allies in the conversation.
- 16. Mr Silvers suggested that if one put the question of what the goal of a trade agreement between the world's two largest economies should be to a rather open process, there would clearly be a consensus in both societies that the goal of such an agreement would be to try and further develop the things that make EU and US societies particularly successful—the social values of the EU, the extent to which those values are shared with the United States, the values of openness, of democracy. "Every indication that we have of the strategic purpose of this agreement is that it is intended to go in the opposite direction, and that it has been set up to do that by people with a very specific agenda, and that is to diminish the power of democratic institutions vis a vis the power of large corporations. And the only way that kind of agenda gets imposed on two large democratic polities is by having a closed process." He went to add that this was nowhere more concerning to the AFL-CIO than in the area of financial regulation.
- 17. The AFL-CIO strongly supports a robust common floor between the US and EU on financial regulation, and see it as critical to achieving the purpose of the Dodd-Frank Act. However, they have no reason to believe that the TTIP would produce a financial regulatory framework that they would support. Indeed they feel certain, based on their understanding of the politics, that it would be a weakening, a least-common-denominator agenda. They therefore

- support Secretary (Jack) Lew's position that financial regulation should not be in the TTIP.
- 18. Mr Silver noted that they had had to fight very hard to protect the regulatory framework for derivatives that came out of Dodd-Frank against pressure from European financial services institutions and from transatlantic financial services institutions working through the EU, seeking to weaken that regulatory framework and make it possible for US institutions to use European platforms to avoid US derivatives regulation. "That sort of experience colours our view of what is possible in the TTIP framework".
- 19. He went on to suggest that US business would like to dismantle European food safety regulation, European data privacy regulation, European anti-trust rules, and that "US financial services institutions would like to ally with European institutions to come back at Dodd-Frank from offshore." Mr Silvers went on to describe the TTIP negotiations as "a coalitional effort by global corporations based in both societies aimed at the societies themselves."
- 20. Ms Drake emphasised that the AFL-CIO had not come out against the TTIP and do not think it is a lost cause, but that it was right to go in "with our eyes open" based on previous experience with trade agreements and with the WTO, which in their view seems to primarily benefit the large global corporations. Ms Drake pointed out that the US had twice lost WTO challenges against attempts to label tuna as dolphin-safe. What the consumer wants to know about the product had been relegated below the right to sell the product in another country. The AFL-CIO did recognise the potential benefits to the consumer from lower prices, but based on what they have seen, they expect it to be outweighed by the potential negatives.
- 21. Mr Silvers suggested that the TTIP is unique in the sense that the United States is the low-wage participant in the agreement, because US wages are lower than in the major manufacturing economies in the EU. He set out the view that what is problematic about TTIP is not the attempt to address tariff barriers and long-standing tensions between the two economies on e.g. aerospace or the automotive industry, but what the AFL-CIO sees as the dominant regulatory component of the negotiations and the balance of power between civil society, the state, and the corporate sector in both societies. He suggested that this was "a choice that has yet to be locked in"—policy makers are still in time to change course, and this would change the AFL-CIO's view. He added that if there were to be a more open process and both societies were able to more genuinely pursue what the publics in both societies would want, then this could be something quite positive, but at the moment they [the AFL-CIO] see another agenda.
- 22. Mr Silvers rejected the suggestion that broadly speaking, the EU had higher standards of regulation than the US, arguing that this might have been true five years ago, but is no longer the case. In financial regulation, for example, the US had in his view gone further in dealing with the causes of the financial crisis than the EU has. In terms of basic workers rights, to the extent that there are EU-wide standards, there is no question that there is a higher standard in the EU, but in crisis-hit countries like Greece or Spain, standards have been slipping even if they are probably still just above those found in southern US states.

- 23. Responding to a question about procurement, Ms Drake expressed concern about privatisation and outsourcing of public services. In the United States, there is almost no public service that is not privatised somewhere. The AFL-CIO view public procurement as "not a trade issue" but about "how a domestic government chooses to spend its very precious resources". Being able to use that money in targeted places for target people is very important. If the rules say that all public procurement must be open to European companies, then the funds raised through taxes aren't necessarily going to recirculate in the community and have that multiplier effect.
- 24. Responding to the suggestion that foreign companies would still employ local workers to provide local public services, at a lower cost to the taxpayer, Ms Drake argued that the discretion to allow a local public service to be administered by a foreign company should still rest with each municipality, state or the federal government. She also added that workers typically lose benefits when they are contracted out from the federal government to a private company.
- 25. Mr Silvers made a distinction between two different concerns. One is about whether the TTIP will be used as an instrument to force privatisation. That is not a suitable issue for a trade agreement to address. There the issue is not who the contractor is, but whether it's a public or private company. Then there's a second issue around the procurement of manufactured goods. According to Mr Silvers, the US and the UK are the two major industrialised economies that have most radically de-industrialised, which is now regarded as a mistake. If the US is to re-build its manufacturing sector, it needs to compete with economies who are clearly—and rightly, in the AFL-CIO's view—using their industrial policy around procurement. "We don't want the US to be barred from playing that game which everyone else is playing by the TTIP."
- 26. Responding to a question about data protection in the wake of the Snowden revelations, Ms Drake suggested that the issue had not captured the public's attention in the US in the way it had in the EU. The AFL-CIO has long been supportive of greater privacy than US law affords and what USTR includes in trade agreements. USTR has in their view not been responsive enough yet to real concerns and would continue to learn by getting pressure from the European side that its status quo approach would not work. The large US internet companies like Google and Microsoft, who are quite influential with the US administration, would have to learn that what has been the practice simply isn't good enough. The AFL-CIO has not, however, dealt with the issue directly, nor taken any position on the CIA and Snowden revelations.

#### US Chamber of Commerce

The Committee met informally for a roundtable discussion hosted by the US Chamber of Commerce, and chaired by Marjorie Chorlins, the Chamber's Vice-President for European Affairs. Also in attendance were her colleague Philip Finiello and representatives of the following member companies: Lisa Schroeter of the Dow Chemical Company, Stephen Biegun of the Ford Motor Company, Kevin Mundt of Chrysler, David Short of Fedex, and Michael Fitzpatrick of General Electric.

27. Ms Chorlins began by welcoming the group and explaining how the Chamber was helping to generate political support for the Transatlantic

Trade and Investment Partnership (TTIP). The Chamber favours a comprehensive and ambitious TTIP agreement. In addition to its direct thought leadership, the Chamber serves as secretariat for a broad business coalition known as the Business Coalition for Transatlantic Trade (BCTT). The BCTT includes hundreds of companies and associations. There are 11 working groups that have developed position papers on agriculture, digital trade, mobility, public procurement, goods, services, trade facilitation, regulatory cooperation, competition, investment and intellectual property. These papers are publicly available and have been submitted to both EU and US interlocutors.

- 28. Mr Biegun (Ford) stated that his company seeks to narrow regulatory differences that exist between US and European markets, in addition to reduction/elimination of tariffs that hinder transatlantic trade. But tariff elimination alone would not be enough to facilitate the increase in trade that they would like to see. They are also looking for sustained, high-level political support to achieve this outcome. He pointed out that it was not the first time that the US and EU had begun this conversation, but "it withered on the vine last time" because it lost political attention on both sides of the Atlantic. He therefore suggested that it was critical to sustain a high degree of top-level attention this time around.
- 29. He added that his company TTIP to enhance trade and improve the investment climate for future investments in the US and Europe, which are two of the largest markets in Ford's worldwide operations. Without the scale that can be achieved by creating a more open and common regulatory scheme between the markets, the European and US markets might begin to lose favour compared with the scale that is achievable in countries like China. Global vehicle safety standards are no longer set by the US alone but rather by markets where sales are greatest. Last year [2013] Chinese consumers bought 22m new automobiles, compared to 13.5m new automobiles in Europe, and 16.5m new automobiles in the US Separately the US and Europe do not have markets of sufficient scale to compete with China, but together they do.
- 30. Michael Fitzpatrick of General Electric noted that if the TTIP were to succeed in creating mechanisms for more coherence and alignment in regulation, it would be the most important trade agreement to date. It would provide a model for the next generation of trade agreements that are likely to be seen over the next 25 years as economies become more complex. Thus TTIP is not only critical in its own right but also because of the example it would set.
- 31. GE was interested in three segments in particular: first, improvements in transparency and openness in the way policy is made on each side of the Atlantic. Second, better analysis and greater communication between regulators on proposed new regulations so that solutions can be sought that don't necessarily impinge on economic activity. This can be done without sacrificing regulators' sovereignty or forcing a "raise to the bottom" in regulations. Third, addressing the large stock of regulations already on the books on both sides of the Atlantic. Here there are efforts already underway to look at sectoral initiatives, for example in autos, to reach back and better align the rules already on the books. It was GE's sense that it would only be possible to tackle a limited number of sectors as part of the negotiations and what would therefore be really important would be to set up a horizontal

- mechanism, so that as new proposals emerge, there is a way for regulators to engage with one another.
- 32. There needs to be in GE's view some mechanism established, a Council of some sort, that includes regulators from both sides of the Atlantic, but also central, high authorities, e.g. the Vice-President of the US and a suitable EU counterpart, who will guide/police/manage/oversee these efforts into the future. Some legacy institution with the highest authority should manage the mechanisms and provide sustained political accountability.
- David Short of Fedex explained his company's enthusiasm for TTIP and 33. that they had already testified before the Senate Finance Committee on the subject. He identified two reasons why his company was so enthusiastic: one was that anything that promotes GDP growth was good for their business, because it meant people were shipping more packages; and second, anything that promotes trade is vital since it is the essence of their business. The biggest area of focus for Fedex is trade facilitation—making the customs processes more streamlined and efficient. Stansted is the company's main gateway for the UK, and from there they can ship to 95 per cent of the world within 72 hours. If customs did not do its part to clear the goods efficiently, the value proposition offered to their customers would be negated. What good is it to offer to ship something from the UK to country X in 72 hours if the parcel is going to sit in customs for hours, days or weeks? Of the 28 member states of the EU and the US, only one was in the World Bank's top five jurisdictions for ease of trading across borders—Denmark. He suggested other EU countries and the US needed to catch up and should not concede the advantage of being world leaders in trade facilitation. Tariffs serve to reallocate resources from one place to another. Improving trade facilitation eliminates the waste of resources, and so the payback is higher.
- 34. Responding to a question about financial services, Marjorie Chorlins explained that the Chamber's view was that no sector should be off the table for the purpose of these negotiations. There had been a lot written and opined about potential downsides of including financial services, but from both from a market access perspective and from a regulatory perspective, the Chamber's members believe there are only upsides to be had. This is not about a race to the bottom in regulatory protection and the application of prudential measures, but rather an opportunity to ensure that regulators on both sides take the time—as they look forward in particular—to think about the impact of a new regulation on transatlantic capital markets. The two economies opted for very divergent approaches to dealing with the economic crisis of the late 2000s, and some of that has had a negative impact on the integration of transatlantic capital markets. So the idea is not to roll back what's been done—some think the American business community wants to roll back Dodd-Frank, but that's not what the Chamber is suggesting. Both the US and Europe still have hundreds of measures being promulgated to implement their approaches to the financial crisis. As in other sectors, financial services regulators should utilize "best regulatory practices," including consideration of potential transatlantic impacts. What this is about is looking at the regulations, especially as they're being promulgated—there is still something in the order of over a hundred regulations still to be promulgated from Dodd-Frank, so that those regulations as they're developed take into account the transatlantic impact.

- 35. The Treasury Department had made clear its desire to keep financial services out of the TTIP negotiations, and instead rely on existing mechanisms both at the multilateral level and the bilateral level to address concerns about divergences on financial regulatory matters. Ms. Chorlins observed, "No-one really disagrees with relying on existing mechanisms provided that they are efficient and effective. There are many in the financial services sector who will tell you that the existing mechanisms, particularly at the bilateral level—the FMRD—is not as transparent or productive as they would like or as they think the situation calls for." We understand where Secretary Lew is coming from, and we know that Ambassador Froman appreciates where the private sector is coming from. For those who think they can divine whether financial services are in or out—"it's too soon".
- 36. Mr Fitzpatrick (GE) concurred with Ms Chorlins' statement. He explained that GE Capital is the largest non-bank financing company in the world, so they have a large stake in these issues. They are strongly in support of the inclusion of financial services in the negotiation. There are bilateral and multilateral regulatory cooperation efforts in many other domains, and yet those are not being carved out of TTIP as is being proposed for financial services.
- He explained that it has been his impression over the last five or six years of working on regulatory cooperation that one of the good qualities was that it is generally a non-partisan issue. Generally speaking it had been viewed as good government, as cutting away the fat and the undergrowth that is unnecessary, and not dangerous to anyone. He was sensing in some of these discussions particularly on the European side but it could easily spread to the US side some growing rhetorical anxiety among some interest groups and some factually inaccurate views, especially around investment issues. He suggested it was critical that perspectives on this agreement stay rooted in fact and there be a clear understanding of what is being sought and what is not being sought as part of this agreement. We in the business community are being very careful to be clear what we're not trying to do. Nobody is under any illusion that somehow this is a back door to getting regulatory regimes on both sides lowered in their stringency, that there is going to be a race to the bottom. The business community's perspective is that there more than enough work to be done in alignment and coherence where the regulatory standards basically stay the same—that is the whole point, we have equivalent outcomes in these areas—and that we can benefit from that without playing any games. He also argued that he had "zero expectation that regulators on either side are somehow going to capitulate their missions and their authority to serve up all kinds of pro-business weakening of regulation"—that is just not going to happen. He suggested that the business community needed to be clear on their objectives and be vigilant to push back on those who might try to mischaracterise what is being negotiated.
- 38. One of the issues on the US side is the distinction between non-independent and independent regulators. Almost all financial regulators are independent: the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), Commodities Futures Trading Commission (CFTC), the Securities and Exchange Commission (SEC)—all of these are independent regulatory entities.
- 39. The Treasury Department is a non-independent regulatory entity though may operate independently in some regards. If the Europeans could give way

- on certain issues on their side vis-à-vis transparency perhaps the US can find ways to bring closer the operations of the independent regulatory system.
- 40. Lisa Schroeter of Dow Chemical explained that as large-scale manufacturers, a lot of other companies had also been weighing in on this subject, as access to capital is crucial to run their operations. Turning to issues around the rhetoric surrounding the negotiation, she noted that the chemicals industry had been very vocal around regulatory cooperation, and had tried to put the message out that it is not about getting rid of anybody's regulatory system. "We are a heavily regulated industry, we expect to be." They were working at that time on the US system of chemicals regulation, known as TOSCA, which had not be been updated for about 20 years. What they had in mind was keeping the existing systems—TOSCA on the US side, REACH on the EU side—but making them more efficient. Since they are meant to achieve equivalent outcomes, they would like to see discussion on processes, datasets and the risk assessment methodology. The more that could be done to streamline the process and make it more transparent, the better it would be in terms of the access people have to information. It would also have value for the regulators themselves, in that they would view how regulatory decisions come about. Dow and companies like it can go through the regulatory processes on both sides of the Atlantic without unnecessary duplicative procedures. For small businesses, many of whom larger enterprises such as Dow rely upon, the easier it is for them to make their applications simultaneously, the more likely they can enjoy transatlantic growth.
- 41. Ms Schroeter added that the business community has consistently stated tariff elimination is not enough. And while that is, the benefits of full tariff phase out on both sides of the Atlantic is not insignificant. Dow alone spends tens of millions of dollars a year paying tariffs on goods it is essentially trading with its own company—a reflection of the fact that a large portion of transatlantic trade is intra-company. The idea that some things still need to be protected sends the wrong sign to the rest of the world. If even the US and EU can't agree to eliminate tariffs, what incentive is there for the rest of the world.
- 42. She noted that there is a strong community that is and will always be antitrade. Anything that starts to sound like NAFTA—some call TTIP the 'TAFTA'—it automatically creates a negative impression to certain elements of the public. There is a huge opportunity to turn that rhetoric around into a much more positive discussion of what trade really means. "At the end of the day, most Americans are not worried about their jobs going to Germany. They probably already work for the Germans over here anyway."
- 43. Marjorie Chorlins suggested that one of the challenges with a protracted negotiation like TTIP is that there is a tendency for negative rhetoric to balloon, almost immediately, at the front end of the talks. The business community is doing what it can to explain to elected officials why they think TTIP is important. But often these issues are only of interest to government officials when they are truly ripe, that is, when negotiations are on the verge of being concluded. "This negotiation is far from being concluded, and so getting the attention of members of Congress, is extraordinarily difficult." The business community must communicate on a regular basis but also pace their communications through what will be a long negotiation. Ms Chorlins suggested that there was an imbalance at present, where "naysayers" have the

- airwaves a bit more than the business community and that was something that they would be looking to balance out over the coming year.
- Asked about concerns about the offshoring of jobs, for example in the motor vehicle industry, Steve Biegun of Ford suggested that "rarely if ever" had Ford moved a plant to another country because wage rates were lower instead there would be a collection of factors that would lead to that decision, including tariffs. For example, a high tariff of 25 per cent in China meant that it was very likely one would build cars in China. When looking at the cost contribution of labour, it is only one small factor of that equation. Raw materials, the efficiency of business, the ability to source parts and suppliers, energy costs, etc. also played a role. In the US and Europe, that debate was largely moot in any event, whereas in the case of US FTAs with Latin America or the poorer parts of Asia it was a reasonable area of debate. Between the US and Europe, there was not a situation in the transatlantic marketplace where you had a huge advantage on one side or the other, either in terms of regulation or from the cost of labour. There are more important issues that will weigh on their considerations, including and especially the degree to which the market in which they are investing is growing. That is the most compelling producer of jobs. Creating the efficiencies in the market that something like TTIP presumes to do was in their view one of the lowestcost incentives in investment that Governments could make.
- 45. Asked about US labour unions concerns that foreign auto manufacturers coming to the United States were building their plants in non-unionised areas, Mr Biegun recognised that this was an issue that was sensitive in the US, but saw it as a competitive equation between the unions and the employees that they seek to organise. There is nothing in TTIP that would impact that.
- 46. On the subject of agriculture, Lisa Schroeter pointed out that Dow AgroSciences was one of their largest global business units. They are not looking to force product into a market that doesn't want it, but they are asking for the existing regulatory process to be allowed to work. Looking at the way the EU is meant to regulate agricultural products, the approval system is "actually quite functional", if it were allowed to operate. Very often applications are stopped along the way, politics takes over, and applications no longer move. They are looking for a "fair chance" to work through the current system.
- 47. Marjorie Chorlins rebutted the suggestion that all the US wants to do is flood Europe with GM products. The reality is that the EU does have processes to allow for the inclusion of GMOs, the challenge is not that they want that process eliminated, but that they want the process to work better.
- 48. Ms Schroeter added that this is not a case of the US pushing on the EU but a common transatlantic viewpoint: industry associations on both sides are in agreement on this objective.
- 49. Responding to a question about what a living agreement might mean in practice, Steve Biegun of Ford noted that while agreeing with the concept, it should not take away from the urgency of concluding the agreement. There is a need to recognise that the eyes of the world are on the US and EU, but so is "the hot breath of the world, breathing down our neck". In the automobile sector, US regulators had existed for 50 years in a world that had seen the automobile industry relocate overseas and yet they continued to act

as if the US determines the global standards in the automobile sector. The US's Federal Motor Vehicle Safety Standards (FMVSS) are now a minority standard globally and are exceed by both Chinese and EU standards. If they do not embrace a more common global standard that achieves the exact same outcome on safety, they run the risk of forfeiting their ability to effectively uphold standards, because "someone else will write our standards for us". He predicted that the industry would follow the standards that represent the largest portion of their business. It was a question of business survival, not patriotism. Regulators need to recognise that the world they are operating in is significantly different from when the US dictated those standards to the rest of the world.

- 50. On the subject of the US public procurement, and the limitations of what the federal government could impose on the states, Ms Chorlins suggested that the US government has not yet determined how best to approach this. Noone should expect a radical shift in the way states approach the issue of procurement, but there may be a hint of opportunity that might not have been there in the past: States are much more actively competing for investment on the one hand, and they are also faced with tighter and tighter budgets. Against that backdrop, they may see the need to identify the most cost-effective solutions—which in some cases might not be solely US content.
- 51. Ms Schroeter pointed out that the business community had also been reaching out to state governors, and the importance of reaching out to the states early so that they see their vested interest in access to the broader market.
- David Short of Fedex added that it was very instructive to look at the recent EU-Canada agreement. It was really giving a push and could act as a catalyst, for example wheat farmers in Montana who supply a lot of high-value durum wheat to Europe had found that their competitors just across the border in Alberta, Canada who grow the same product now have duty-free access to the European market and the Montana farmers do not. the former Senator from Montana, Max Baucus (now US Ambassador to China), was hearing from the farmers in Montana who were facing losing market share to their neighbours in Alberta because they have a trade agreement and the US doesn't. So in turn he was "putting the fire under" US negotiators to get this done and get this done quickly, in order to avoid the loss of market share, because once a customer was lost, it was much harder to win them back.
- 53. On the subject of geographical indications, Mr Short pointed out that during stakeholder days as part of TTIP negotiating rounds, his observation was that American producers—Napa wine, Kona coffee from Hawaii—wanted to have a scheme that would product the geographical origin of their products. So a key to that issue might be to find allies and identify synergies.
- 54. Mr Finiello stated that a separate GI system in the US or any attempt to 'claw back' generic foods terms in the US would face stiff opposition from the US dairy foods industry. The US currently protects GIs through its collective mark system.
- 55. On the subject of whether there is competition with TPP, Ms Chorlins suggested that if there was a challenge, it would be in terms of resources on the US side, the availability of negotiators. USTR is very small by

comparison to other agencies and subject matter experts must juggle to work on both agreements. Recognizing this constraint, the Chamber has advocated for higher budget levels for the agency.

## Mr Edward Luce

The Committee held a private discussion with Mr Edward Luce, Chief US Columnist at the Financial Times.

#### Senator Thad Cochran

The Committee took evidence from Senator Thad Cochran (Republican—Mississippi).

- 56. Senator Cochran explained that in his situation, representing the state of Mississippi, the state's economic interests had been served for many years by export relationships in Europe and the United Kingdom. The state of Mississippi is synonymous with the cotton belt in the United States, and agriculture is a huge provider of jobs and income and related business activity. A large part of the purchasing that sustains that and grows that economy is based in Europe.
- 57. Asked about how much interest there was in Congress in the TTIP negotiation, the Senator suggested that there was "a very important amount" of interest, and that members of Congress—certainly in the Senate—recognise the importance of trade relationships and other cooperative relationships the US enjoys with Europe.
- 58. Asked about negotiations between the US and EU on agriculture issues as part of TTIP negotiations, and whether trade-offs might be necessary, Senator Cochran stressed that he was "not interested in trading off anything". US export-import policies should be based on mutual benefit, fairness, openness, and so on.
- 59. Responding to a question about the openness of the negotiations, the Senator noted that openness in government is very popular in the US, and particularly in Congress.
- 60. Asked about whether there was majority support in Congress, or the Senate in particular, for a TTIP agreement, Senator Cochran said that as the details were not yet known, it was too soon to make a judgment. His aide suggested that a large majority of the Senate did want to see the TTIP succeed, but that as the details were not yet known, it was too soon to say "where the votes would come down".
- 61. On the subject of Trade Promotion Authority, and whether Congress was more reticent to grant it than it had been in the past, Senator Cochran insisted that as long as it meant supporting American products being sold in overseas markets, members of Congress would not be bashful about supporting whatever serves US economic interests. The agreement would, however, have to be mutually fair and beneficial. The Senator also emphasised that the agreement would initially be a proposal, not a deal—it would not be a deal unless and until it is ratified.
- 62. Asked about genetically modified crops and livestock, and the use of growth-promoting hormones, the Senator said he would keep an open mind, but recognised the issues were enormously important to the countries involved,

- so that the Senate would have to be very diligent in examining the benefits, and the dangers, if any, that an agreement might pose to the US economy.
- 63. Responding to a question about how people in the state of Mississippi would look at a deal optimistically, looking for gains, or with suspicion, looking at risks, the Senator judged it would be "a balance of both". The benefits that might accrue to the state would be the number one consideration, but if there were any negative aspects that ought to be considered or that benefits should be balanced against, they'd want to know about them and would feel betrayed by their representatives if they were not told about them.
- 64. On the subject of public procurement, and whether people in the state of Mississippi would be open to provision by foreign suppliers, the Senator said he expected that local arbiters of these issues, politically active constituents, would prefer local, home-grown workers to be doing that work and to own the company that employs them.
- 65. Asked about whether the authorities in his state would be open to public procurement of manufactured goods, such as cars, from foreign suppliers if they were cheaper and better, the Senator judged that the political pressures on local officials would be very great. He pointed out that Mississippi is an auto-producing state—Nissan, Toyota, and other auto suppliers all have plants in the state. Foreign auto makers are hiring local Mississippians to make their automobiles "and we all seem to be happy about it", the Senator observed.
- 66. Asked whether trade and trade policy is ever an issue that is raised with him when he is back in his state, the Senator responded that it is not the top concern he hears from constituents. However, his constituents do recognise that agriculture, especially cotton, and soya beans that are grown in Mississippi, provide export revenues to the state and they know that the market for those products includes Europe, and indeed that the European Union is one of the biggest markets for those products.

# Congressman Fred Upton

The Committee took evidence from Congressman Fred Upton (Republican—Michigan), Chairman of the House of Representatives Committee on Energy and Commerce.

- 67. Congressman Upton noted that it was still early in the process, but that all eyes were on that night's State of the Union address. In his view, "the President really has to say something about trade" and the issue "really is right now on his shoulders." Congressman Upton explained that he was close to a lot of businesspeople across the country and that there are two main advocacy groups in that community, the US Chambers of Commerce, and the Business Round Table (BRT). The BRT has four issues, one of which is trade.
- 68. On the subject of Trade Promotion Authority, Congressman Upton suggested that the President has a real issue within his own party. Around 150 Democrats had just that day signed a letter effectively asking the President not to move TPA. It was known from the beginning that most House Republicans were going to vote for TPA, but the Republicans have about 30 or 40 members in the House who are "Ron Paul-types" and against any trade agreement, so to pass something, around 50 House Democrats would be needed to offset those Republicans and get it done.

69. According to the Congressman, NAFTA, which he supported, would never have passed under George Bush. It only passed because Bill Clinton "was a remarkable guy and convinced enough Dems to vote with enough Rs to get it done". He warned that by contrast, so far, "Obama has not been able to find a Democrat in the House". If the President "cannot get people to be with him—and he hasn't shown much in five years—it's not going in this Congress". This need not mean it won't go in the next Congress—the Republicans are for the most part pro-trade—but there is a shortened timetable to contend with. In the November 2014 mid-term elections, the Senate may well flip. The Republicans may well pick up 8 or 10 more seats, and their Speaker is pro-trade, but primaries start again as early as March 2015 (in Texas), meaning there is much-shortened legislative time, and so it is not clear whether TPA could happen in a lame-duck session or not. TPA "is a pretty heavy lift", according to the Congressman. "But without any real leadership in getting people to move, it doesn't happen."

# Day Two: Wednesday 29 January

# US Department of Agriculture

The Committee took evidence from Darci Vetter, Deputy Under Secretary for Farm and Foreign Agricultural Services at the US Department of Agriculture.

- 70. Responding to a question about the most important objectives for the US in the agriculture element of the negotiations, Ms Vetter emphasised that the TTIP was a huge opportunity not only for the US and EU economies but also for other economies in the world, by sending important signals. It was an opportunity to expand two-way trade, to take a hard look at the way agricultural products were regulated, and to try to find commonalities of approach, particularly by encouraging the use of science-based decision-making. She suggested that the agriculture element of the negotiations had been mischaracterised as one of defence for the EU and one of offence for the United States. There were significant opportunities for the EU and the US, and the two sides should find ways to take advantage of these opportunities.
- 71. When asked what the US's main objectives would be, Ms Vetter said that meat and poultry access would be very important. Additionally, the US wants more normalised trade in areas where they have experienced real regulatory barriers, such as in biotechnology food products, and where they have seen real impediments not only in the form of tariffs on meat but also impediments on the use of certain food safety practices used in the US.
- 72. In terms of the most difficult concessions for the EU to make, Ms Vetter said they had seen a real hesitation on further opening of the meat sector—beef, pork and poultry. There would be difficult conversations on how each side operated their regulations. On SPS issues, there was an opportunity to look at bilateral issues, specific products currently blocked or inhibited because of SPS barriers, and look for ways to solve those specific issues, but also to look more broadly at the way each side operates their regulatory regime and try to avoid simply creating another list of issues in the future. The two sides have the opportunity to align food safety standards by using international standards. "If we (the US and the EU) do this well, we could lead the world on regulatory approaches in a way that increases trade opportunities and

- assists in the regulation of food safety and animal health in other countries as well."
- 73. Responding to a question about the extent to which the EU-Canada agreement might serve as a catalyst, Ms Vetter said that in agriculture, the US has seen its share in the EU market decrease while other countries' trade relationships with the EU strengthened. The US is one of Canada's competitors in the EU, and is therefore watching closely.
- 74. Asked about potential domestic threats to concluding an agreement, Ms Vetter suggested that the difficulty for the US would be a lack of ambition on the EU's part, the US agricultural groups would be concerned if an agreement were not comprehensive enough. Consistently showing solid progress in addressing regulatory barriers and eliminating tariffs would be necessary to win agricultural support. Other sectors of the US economy were known to complain that when it came to agriculture, the sector might provide 20 per cent of the economic support but 80 per cent of the political support. It would be difficult to get an agreement through Congress without having a high-standard agreement in agriculture. She therefore suggested that she was not looking at people pulling her back, but rather pushing her forward, at a pace that might be difficult for the EU.
- 75. On the subject of geographical indicators (GIs), Ms Vetter explained that a TTIP agreement would not necessarily be a US compromise on GIs. She said she did not think that the CETA agreement offered a suitable precedent, since the US has different views than Canada. The US is concerned with the protection of generic names. The market circumstances for the US and Canada are different. Canada has a highly protected, supply-managed dairy sector. The US dairy sector is looking at opportunities for export to the EU. The US was concerned by the breadth of protection the EU was seeking for names that the US considers generic. She predicted that there would be a lot of GIs, particularly compound GIs very specific to European places, where the US and EU would not have a disagreement, but in the broader area of protection for names the US considers generic and recognises as generic in their US intellectual property system, that would difficult for the US. The US was not a huge fan of the deal that Canada had struck with the EU so far.
- 76. She added that the US was willing to engage on the basis of a system that recognises generics and trademarks. If it were possible to engage on that level and have a "granular" conversation, then it should be possible to make progress. She explained, for example, that they would consider "parmesan" to be a generic name, but would not consider "parmiggiano reggiano" to be a generic name. The latter was quite specific and indicated to their consumers an association with place. In the US market, parmesan is widely used as a generic term.
- 77. On the subject of Genetically Modified Organisms, Ms Vetter explained that it was important for the US to be able to address this issue, but she believes there is an opportunity to make progress. She said it was encouraging that EFSA's assessments are the same as US assessments suggesting that products are safe both for consumption and cultivation. She noted that the EU does have a procedure for approving new products, starting with the EFSA evaluation, but the procedure does not always operate on the timeline that it is supposed to. Even when the timeline is observed, every application takes the maximum number of days for consideration. The US needs improved predictability and timeliness of approvals for new biotechnology

products. That would do a lot to normalise trade in those products, if there were greater predictability in those processes, and a greater preponderance for looking at the science. "We are not asking that EFSA take our word for it, we think it's essential that countries be able to carry out their review, and we understand that getting dossiers to the EU for timely consideration is part of making sure that commerce flows well."

- 78. On the subject of hormone-treated beef, Ms Vetter suggested that the main issue is access for US beef to the European market. She pointed out that it has been possible so far to put in place phases on a path towards a negotiated resolution of the hormone case that the US won against the EU in the WTO due to a lack of scientific basis for the ban. She expressed scepticism that a quota increase for US beef would be sufficient in a US-EU agreement. The US is looking for results on tariffs and quotas across all beef products, and simply expanding that quota was not what they had in mind for a fuller negotiation on beef.
- 79. On the more general issue of tariffs, Ms Vetter reiterated the objective set out in the report of the HLWG that the TTIP should seek to eliminate all tariffs on goods, and that included the full suite of agricultural goods. Looking back at US trade agreements with other countries, it could be seen that they largely did achieve that, with all tariff lines going to zero save for a very few exceptions. That is the level of ambition they were seeking. She recognised the US had sensitivities just like Europe does, where staging for tariff reductions and tariff rate quotas might be used to help deal with those sensitivities. Such devices should not, however, be permanent.
- 80. On non-tariff barriers and regulatory collaboration, Ms Vetter suggested that the comprehensive nature of the TTIP conversations was an opportunity to address issues where other regulatory dialogues have been unsuccessful. In the agriculture and food sector in particular, when looking around the world, more and more of the impediments to trade were not tariffs but due to the regulatory structure. "Once tariffs go down, sometimes other barriers go up", and so they wanted to take a more comprehensive look at regulatory coherence and science-based regulations, also in the TPP negotiations. She expressed hope that a committee on SPS might be able to prevent new barriers from arising.
- 81. Ms Vetter suggested that both the EU and US were disappointed that the multilateral system had not been more effective in moving forward, and suggested that the only way of getting back to that table would be when developing countries felt like they had something to gain from, and could fully participate in, that global trading system. Navigating competing standards and layers of regulation was in her view one of the reasons why industries in those countries were not more competitive and could not quite figure out how to participate. To the extent that the EU and US, as leaders in creating high standards for food safety and animal health, could take common approaches to new challenges, even if they do not end up with the same regulation, then they would be creating an environment that would be easier for third countries to take advantage of.
- 82. On the subject of consumer prices, Ms Vetter suggested that expanded choice and increased competition did tend to lower prices. She did think it would be a significant benefit of trade, but noted that in terms of using it as an argument for winning support in Congress, the case would be more compelling on industrial goods, whereas in agriculture the EU's competitive

- advantage was in high-end products so arguments around a lower price for basic food basket commodities would be less relevant. The US generally had low tariffs in most of their sectors, and therefore saw most of those benefits already.
- 83. On TPP, Ms Vetter argued that it was neither a hindrance nor a help, the negotiations were at different stages. Nonetheless, both TPP and TTIP would send a very important message to other countries that those countries that were willing to make hard choices, that were willing to have a comprehensive and difficult dialogue, were not going to wait for everybody else to get on board. In the past, the EU and US had wanted to wait for Doha, but they have been waiting for going on 13 years now, and it just did not happen. Both sides had heard criticism that they were leaving the WTO behind or were not committed, to which the US response was that when there was an offer on the table, they would be the first ones in line. She added that these developments could therefore be "a bit of a wake-up call" for those countries, and that it was the natural outcome of the lag in Geneva.

## Think-tank Roundtable

The Committee took evidence from Gary Hufbauer (Peterson Institute for International Economics), Kent Hughes (Woodrow Wilson Center), Dan Hamilton (John Hopkins University) and Claude Barfield (American Enterprise Institute).

- 84. On the subject of TPA, Kent Hughes drew attention to the fact that the last time there was a battle over TPA, it was very contentious. George W. Bush had a great deal of trouble getting it. There were three votes in the House and very close margins. The rise of the tea party in the Republican Party has shifted what one would have previously expected to be an overwhelming vote in favour of Trade Promotion Authority into something that is more of a question. The Democrats, often reflecting a labour union point of view, are increasingly sceptical. The bottom line was that the President could get TPA, but it would depend "on what he is willing to offer in response", for example trade adjustment assistance for people who lose their jobs because of a trade agreement.
- 85. He added that the President had other priorities, notably immigration reform, and would also have to spend some political capital on ongoing problems with the Affordable Healthcare Act.
- 86. Asked about a realistic time-frame for TTIP, Kent Hughes suggested one would want to say 2015, because even then one would be in the middle of a Presidential election, and 2016 even more so. Already major groups were talking about raising money for prospective presidential candidates.
- 87. Dr Hamilton suggested that the administration had waited so long on TPA that the issue of the TPP had been conflated with the TPA debate, to the detriment of the latter. He too thought the administration would get TPA, but at some pain. There was a lot of noise at the moment that Congress should have more direct influence in the negotiations. The real battle lines would be over TPP. In terms of "one tank of gas", Dr Hamilton suggested "they would have to go back to the filling station". The timetable was not as problematic on the US side as on the European side. Not until next November/December would there be any clarity on the European side. Also, interest groups were much more engaged in Europe. He suggested that the

free-trade member states in the EU had not done a very good job of engaging publicly on this agreement, and at the moment were losing the public debate. The concerns from European interest groups appeared to be that the American system, broadly conceived, was going to come in and steamroller the European way of life. EU member states who are in favour of this would have to do a much more activist job to get TTIP moving and to understand what it is and what is not about.

- 88. On the subject of the NSA revelations and data privacy, Dr Hamilton argued that no-one should doubt that there was a political link with TTIP even if there was no formal link, because when it came to ratification, the European Parliament would not do so unless it was satisfied that there was some US-EU arrangement on data privacy.
- 89. Gary Hufbauer suggested that the TPP would take all the heat, and so far as TPA went through, if it went through, TTIP would get a free ride. He identified two political issues. For the regulatory agenda which the EU has espoused, to be serious, it would require trimming the authority of the US independent regulatory agencies by some oversight as they write their regulations going forward. This would produce push back from the constituencies and the regulators themselves. The second issue would be the US states. Most services are regulated at the state level, as is procurement, so there would be a lot of pushback from the states about being subjected to or included in a TTIP agreement. The USTR formula up til now had been "come along if you wish", and in recent trade agreements, none of the states have wished, so they would have to be forced or some very strong incentives would have to be provided.
- 90. In terms of the timeline, Mr Hufbauer argued that it would not happen in this Administration. It might be set up in this Administration, in the same sense that Korea was set up in the Bush administration, or NAFTA in the previous Bush administration, but ratification would be an issue for the next Administration, because President Obama's ability to push through any thing is a rapidly wasting asset, and they would run out of steam, although there was still much useful negotiation that could be done.
- 91. He added that the State of the Union address had been truly underwhelming on trade—at the low end of his expectations, which had already been low. He also suggested that there was not the pro-trade strength in the Congress that had been there in the past.
- 92. Claude Barfield suggested that the timeline for concluding TTIP would be sometime after 2017 and before 2020. Because of the timing, the battles would be fought over TPA and TPP. He suggested that the big fight in 2002 over TPA was anomalous in that it was a highly personal contest. The then Chairman of the Ways and Means Committee had given up on winning support from Democrats and decided to rely solely on Republicans to get it through. That could be done only by not losing many Republicans, and that was his problem. There were still some protectionist Republicans, and so it was a battle. The pattern of TPA is that the key is the House of Representatives. Even with a Democratic president, you can get two-thirds or maybe three-quarters of the House Republicans, but beginning with NAFTA, a Democratic president is not going to get a majority of House Democrats to go along with a free trade agreement or TPA. 150 Democrats voted against NAFTA when Bill Clinton had backed it. The President would have to get enough Democrats to go along with the Republicans to make sure

- that it carries. The Republicans had in his view made a mistake in demanding that the President get 50 Democratic votes—the Speaker should have asked simply for enough Democratic votes to get it through.
- 93. In regard to the Senate, he suggested that normally there was no need to worry, but that there are now some anti-globalisation senators in key positions, including on the Finance Committee, who could be more trouble than one would expect.
- 94. On the subject of the US states, Gary Hufbauer suggested that a plain reading of the Constitution indicated that the federal government has power over inter-state commerce, if the Congress decides to exercise it. The USTR was known to have a "waffly and different" view, which he felt was wrong, and that if Congress to chose to exercise it and determine that state procurement should be subject to a trade agreement, the Supreme Court would uphold it. But as a political matter it was a different story than as a legal matter.
- 95. He suggested that if TPA was drafted in a way that for a state, it was "all or none", that would be constructive cooperation. The TPA should also say that companies that have most of their employment in a state that signs up—that company will then be eligible for procurement in Europe. But if it had most of its employment in a state that does not sign up, then it would not be eligible. In his view this would create an incentive for that company, which is far stronger than the USTR, to lobby the Governor on procurement or on aligning professional certification standards or other state competences. The other thing he thought could be done would be for the federal government to say that if there is a significant amount of federal funding for procurement, that would have to be open under the terms of the TTIP. So access to federal funding could be made conditional in that way.
- 96. Kent Hughes seconded the suggestion of finding creative ways of "using the carrot". Some states had already introduced certain regulations—e.g. speed limits—in return for federal transportation money, so the federal government already had practice in using incentives to influence the states, and this was a more likely path to success.
- 97. Claude Barfield suggested that while this was a great idea substantively, it might be difficult to shoehorn into either the TPA or TTIP. He warned that the federal government would face opposition not only from the states but from the separate and equally influential Buy America groups.
- 98. Dan Hamilton noted that if one looked at the WTO procurement agreement, only 37 states were party to that, and there was also a separate US-Canada agreement where not many US states got involved even though the provinces did. He went on to suggest that the EU-Canada agreement would maybe have some relevance for the TTIP, because the provinces were at the negotiating table. His assessment was that the EU goal for government procurement was maybe the top goal, or one of them, and it was a very sensitive issue for the US side.
- 99. Asked whether after Presidential elections, it would become harder to press ahead with TTIP, Dan Hamilton predicted that any executive branch would try to continue, but that it would be a new composition of Congress in both the House and the Senate that would be hard to predict. Claude Barfield pointed out that Tea Party Republicans' voting record on previous FTAs was higher (more supportive) than the normal Republican vote, as in the past

they had seen it as part of "getting the state off people's backs" but that they were under some pressure now not to be seen to give anything to President Obama.

- 100. Asked about how many people talk about trade policy, Gary Hufbauer suggested that it would be very few, 1-in-50 or 1-in-100, but the way they would talk about it would be to associate trade with all the bad things in American life: inequality, unemployment, environmental degradation, etc. This atmosphere among opponents, who are few but vocal, was very strong. It had never come up as a presidential issue, but does come up in congressional races.
- 101. On the subject of governors' support for TPA, Claude Barfield suggested that governors were all trying to attract investment, and saw trade as about jobs, but that it would depend on the state. Dan Hamilton suggested that much would also depend on how it is framed. TTIP was not a normal trade agreement, because trade barriers across the Atlantic are not very high, but if it were framed as just another trade agreement, then it would be in more trouble than if it were framed as something else. In his view, the lifeblood of the transatlantic economy was investment, not trade. US commerce with Asia was trade-driven, while US commerce across the Atlantic was investment-driven—this simple distinction made all the difference. When talking to a Governor, this would mean talking about onshore jobs, and investment coming to the states, and that would be what they would want to hear. Across the board, and across the United States, the main investors in all the states, the main investors creating jobs that were on average better paid and with better benefits, came from Europe. The UK in particular was a huge piece of that. He therefore suggested there was a need to explain that what the US and EU were trying to do with the TTIP agreement was to keep standards high, and set a benchmark for global standards, and that if they did not do it then the result would be to end up with Chinese standards, and that was the simple choice.
- 102. Dan Hamilton warned, however, that framing the TTIP as an "anti-China strategy" would be the easy way to win support, but that it was not what TTIP was really about. Instead, it was about helping to define the terms of China's integration into the world economy. The question was on what terms China and other developing countries could be integrated. EU and US messages to those third countries had thus far been a divided message at best, and a competitive message at worst. Each side had been talking to third countries separately in an attempt to shore up their standards rather than those of the other side, and the result had been a lowest common denominator approach. He cited the example of lead in toys, an issue that had arisen in both the EU and US in respect of toys coming from China. Instead of doing what they usually do, US and EU officials joined forces and created a trilateral consumer safety process with the Chinese, in which their major customers got together and indicated they were happy to keep importing the toys but subject to certain standards. That was not about containing China, but about the US and EU protecting a certain standard. That was in his view what the logic of the TTIP was in terms of influencing third parties—to influence their own debates. His critique of it at the moment, was that leaders had not said for TTIP what they had said for TPP, which is whether it will be part of open architecture trade or not. TPP leaders have said that although there are 12 countries negotiating, it is also open to all members of APEC and even beyond. In the TTIP, the US and

EU had not said anything about that, and so the impression they could create is that it is a closed agreement, about trade diversion rather than trade creation, and about rich countries pulling up the drawbridge. Although that was not the logic of what was being attempted, without saying it—even in just a general way—the US and EU would start to lose others. He proposed that at the EU-US summit in March, leaders should affirm that the TTIP was part of open-architecture trade, and would be WTO compatible. In his view they did not need to specify modalities of what that would mean yet, but without saying something they would lose some of the PR/public diplomacy debate.

- 103. On the subject of financial services, Gary Hufbauer suggested the real problem was Senator Warren and her allies in the Democratic party. If financial services were included, it would be one of the regulatory issues on which one could guarantee strong opposition, because they would see it "as a way of putting more money in Jamie Diamond's pocket, and to keep the big banks strong and out of control and ripping off consumers, etc."
- 104. Returning to the subject of China, Claude Barfield suggested that TTIP did not have the same near-term diplomacy and security overlay that TPP did. For that reason, it would be a disaster for the US if TPP went down. Dan Hamilton agreed, but argued that the TTIP did also have a security and diplomacy overlay.
- 105. Dan Hamilton added that looking at the components of TTIP, it would reach deeply into both domestic societies. Aligning regulatory differences would be where the politics and the tough trade-offs would be. This is where TTIP would go beyond previous trade negotiations, including the TPP. Claude Barfield warned that the Obama administration did not appear to have prepared the business community for where it might have to compromise, for example on IP protection, or on services.
- 106. On the subject of how to engage with the public about TTIP, Dan Hamilton suggested that leaders should be talking about spurring on investment flows, which means more investment, translating into real jobs. "When you do trade, you send stuff across the ocean. Investment is going to be in your community." That would be the sort of case people could relate to. Talking about transatlantic barriers had led some to think that the agreement was about and for big companies. It would be important to counter that by pointing out that a big part of the reason why small companies don't engage in trade is because it was too much paperwork, and too complicated. If those barriers could be cleared away with two-thirds of the world's richest economies, then the artisan cheese maker in Wisconsin would have a market in Europe that he might not want to engage in right now because it's too complicated.
- 107. Returning to the lead in toys example, he went on to suggest that if the EU and US could at least agree on some basis, it would not set the global standard anymore, but at least there would be an orientation point. If the US could not do that with the system most like theirs, how could they possibly do it with other countries. These kinds of arguments were more likely to have traction than expert studies. Governments had not yet been able to boil the case down to the types of arguments people could relate to.
- 108. He also warned that the TAFTA label was misleading in suggesting that the TTIP was predominantly about trade, and would invite all sorts of

arguments that could be avoided if one made clear that it was about something different. Beyond the economics, there was in his view another diplomatic/security argument to be made. "NATO is a little wobbly, it is the only glue across the Atlantic, it is our only commitment to each other." Calling TTIP an economic NATO was bad for a lot of reasons, but was good shorthand in that it conveyed the message quickly. But it was the wrong label because it gave the impression that there was an enemy. The idea of TTIP as a "second glue" across the Atlantic could, however, be helpful. Having another link across the Atlantic at a time when the old link we have (NATO) was for an old purpose which doesn't seem to be there. Arguing that case could be helpful. The notion of keeping standards high, not letting the US-EU way of life deteriorate in the international global system, and explaining that that meant doing a bit more with European colleagues, would also have a bit of resonance in some circles, he predicted.

- 109. In the end, when it came down to the US Senate or members of Congress, they would ask to questions: first, what it would mean for their constituents. Studies about what the TTIP would mean for states would therefore be quite important. Second, there would be a lot of other questions unrelated to the agreement about the US-EU geopolitical relationship in general. The geopolitical argument would therefore have to be in place as well as the economic.
- 110. There was a danger that the US-EU relationship would be seen in the US as a legacy relationship that was less relevant to the current world. Unless there was adjustment of the nature of the relationship, rebalancing of the pivot, it would increasingly be seen as that. Why would you do a deal with Europe if it is seen as sick and sclerotic economically. The US was basically saying to the Europeans that they needed to rebalance the relationship in three ways. One was in the security partnership. There was still a commitment to the NATO alliance, still a commitment the US would provide assets only it has in crisis, but it doesn't have to run the show every day or be in command of everything. The Europeans would have to pick up some of the slack, especially around their periphery. The second was to suggest there was a need to rebalance the economic security relationship. The health of the transatlantic relationship had for decades been defined primarily through the military prism, and had failed to tap the huge potential of the economic dynamic, and that was what TTIP was an attempt to do—to add this second glue to NATO. It would help with the rebalancing in that area. The third rebalancing was that Europe needed to help with issues beyond European shores. Europe was no longer the problem, but wasn't at present part of the solution either.
- 111. Gary Hufbauer cautioned that this point of view was what people in Washington might think, but that beyond D.C., outside the beltway, no-one would care about NATO and that there was not a security complaint outside the beltway, where Europe was still seen as a reliable partner e.g. on Iran, Syria and Afghanistan. He described the US pivot to Asia as a pivot of economic opportunism, but not a realistic substitute for the US security relationship with Europe.

## US Treasury

The Committee then held a private discussion with Sharon Yuan, Deputy Assistant Secretary for Trade & Investment Policy and Susan Baker, Director of the Office of International Banking and Securities Markets at the US Department of the Treasury.

## Senator Orrin Hatch

The Committee also took evidence from Senator Orrin Hatch (Republican—Utah), ranking member of the Senate Finance Committee, and Everett Eissenstat, Chief International Trade Counsel in the Senator's office.

- 112. Asked about the level of political backing for TTIP, the Senator said it was very high on his agenda, but had somewhat slowed down because of the appointment of Senator Baucus to become Ambassador to China. The Senator and his colleagues would like to pass TPA before Senator Baucus went to China. Without TPA, he was concerned that the EU would not take the US seriously. So TPA was an extremely important instrument for the US. With Baucus leaving, the new Chairman of the Finance Committee would be Ron Wyden from Oregon. It remained to be seen whether the incoming Chairman would want to revamp the whole agreement. If he did, the agreement would probably have a difficult time making it through even the Senate. TPA was absolutely critical to doing the TPP with 11 nations and TTIP with 28 nations. The Senator was under the impression that the Administration did not think they could get TPA passed before Baucus left. This would mean having to work with Senator Wyden. Senator Hatch was confident that were they to bring up TPA at that moment in the Finance Committee, it would pass overwhelmingly. If it were brought to the floor it could be passed there too. But first the Administration needed to ask the Committee to get it done. The President had made all the appropriate gestures about it, but so far had not really weighed in.
- 113. Asked about financial services, the Senator confirmed that he did want to see financial services included in the agreement, but noted that he also felt strongly about intellectual property issues, because that was where much of the future was, in his view. International trade would be a mess without those protections.

#### Senator Debbie Stabenow

The Committee took evidence from Senator Debbie Stabenow (Democrat—Michigan), Chair of the Senate Agriculture Committee.

114. The Senator explained that continuing to open up markets and create export opportunities for US businesses and farmers was very important. There were a number of trade agreements presently under negotiation. The TPP was much more complicated. The question of TPA was controversial. Members of Congress were interested in seeing agreement by agreement, rather than giving overall authority, so there was a split on that among Democrats. Among the different trade agreements, the agreement with the EU was probably the one that people were most comfortable with. They had not gotten into specifics yet. There was a new incoming Chairman of the Finance Committee, who she expected to be very pro-trade but who would want people to be working together. Senator Stabenow described herself as "falling in the middle on this": she wanted open markets and trade, but would be looking at benchmarks in terms of fairness, such as currency manipulation. From an agriculture standpoint, one area of difference would be GMOs.

- 115. Asked about whether the impression that the Democratic party was not very keen on TTIP, the Senator suggested that it would depend on how it was written and what it would look like when it was done. There was not a "knee-jerk, automatic no"—it would really depend on the details. She and other Democrats had voted in favour of the trade agreement with South Korea, but it had taken time to get it to a point where she and others felt it was right and fair for their industries. It would therefore in her view not be right to make a blanket statement. For the Democratic party it would be very much about the details: enforcement, non-tariff trade barriers, and so on.
- 116. Asked about the main concerns among Democrats about the TPA, the Senator said that in general people were concerned about TPA giving the President authority to negotiate without elements that relate to the environment, labour standards, making sure that TPA would require certain parameters around different issues so as to create a level playing field and prevent trade from creating a race to the lowest common denominator for protections. They were concerned about making sure that trade raised all boats in terms of standards of living. The US and EU shared the problem of competition from other lower-wage countries and so it was about how to raise standards in other countries instead of lowering their own.
- 117. Responding to a question about the President's commitment, Senator Stabenow indicated that the Administration were very committed to TPA and both trade agreements (TPA and TTIP). People in the Democratic party had very different perspectives on trade depending on which part of the country they came from. Those that were on the coast—California, Oregon, Washington State—that were more export-focused were more likely to say "yes" immediately to TPA, than those in the middle of the country like herself. The President would not automatically get TPA just by indicating he wanted it, but the Administration had already started talking to her and colleagues about it. The process that would be necessary had only just begun: there had been only one hearing on the TPA bill.
- 118. On the prospects of getting some sort of agreement on agriculture, Senator Stabenow suggested everything was on the table. She had met with members of the agriculture committee in the European Parliament. Most of them still felt that GMOs were inherently unsafe, even though the science did not show that. In the farm bill they had just passed there were those that wanted products labelled in a way that would scare consumers without any evidence that anything was unsafe, and that had been rejected. Which was not to say that something could not be unsafe, but that it needed to be judged on the science. Every agricultural product was modified in some way, starting with hybrid varieties of wheat and corn. Many GM modifications were good for the environment. From an agriculture standpoint, US producers would want to make sure that they could continue to sell into the European market and wanted open markets, and were thus pro-TPA. They were concerned about SPS issues and non-tariff barriers. She suggested that people were probably open to looking at everything, including geographical indicators, depending on how it all came together as a package.
- 119. On financial services, the Senator said that she did not have the same views as the US Treasury. Through the Agriculture Committee, she was involved in the regulation of agriculture derivatives, and the Committee also had oversight of the Commodity Futures Trading Commission (CFTC). They had been looking at a lot of cross-border issues, and had passed stronger

- regulation. There was a real concern about stepping into the middle of that through a trade agreement and changing the things they were trying to do.
- 120. On the auto industry in Michigan, Senator Stabenow suggested that it appeared to be an opportunity for the industry. They were very nervous about Japan, but optimistic about Europe.

## Alliance of Automobile Manufacturers

The Committee held a private discussion with representatives of the Alliance of Automobile Manufacturers and representatives of the member companies of the Alliance.

# Day Three: Thursday 30 January

## American Farm Bureau Federation

The Committee took evidence from David Salmonsen, Senior Director, Congressional Relations, and Veronica Nigh, Economist, American Farm Bureau Federation.

- 121. Mr Salmonsen suggested that the issues in transatlantic trade in agricultural products were the old ones, including issues around meat exports—EU barriers on beef, poultry and pork—and issues around the movement of GMO products, for example the timing of approvals. He went on to suggest that many of the issues that the EU presented as food safety issues—such as GM or hormone treatment—were in fact trade issues, and restrictions served as a trade barrier. This was why the US had taken the WTO case on hormone-treated beef. The TTIP provided an opportunity to get an agreement to open the market up again.
- 122. On the subject of GMOs, Mr Salmonsen suggested that for the US industry, the issue was about timeliness of approvals. The European Food Safety Agency was coming to the same conclusions as the US Food and Drug Administration, but then the process would grind to a halt when it got to the political level. In their view, the concerns in some EU member states around GM were to do with the structure of agriculture, rather than food safety.
- 123. On the subject of Geographical Indications, Mr Salmonsen noted out that where the US industry had balked at EU proposals was in regard to single names, such as parmesan or feta. If one were talking about combination names, perhaps there might be room to discuss. If a compromise were there, it would be along those lines.
- 124. Mr Salmonsen explained that in respect of Greek yoghurt, for example, the dairy industry in New York State had made a significant investment which they would not wish to give up.
- 125. Ms Nigh suggested that the issue of GIs would resolve itself over time. There was a big change underway in the way American consumers view food products. Consumers were now seeking the two-name products. As the American palate adapted and changed, these things would find a place, and a way would be found to allow co-existence of the two types of products.
- 126. In respect of tariffs, Mr Salmonesen explained that the higher EU tariffs on for example beef, pork, poultry and feed grains—were where the US agriculture sector had offensive interests. They had defensive interests on dairy, and also on meat exports from the EU. A lot of the US dairy industry

- was regulated at the state level, meaning an organisation of state dairy regulators would have to get together and agree to changes.
- 127. Ms Nigh added that on processed food products, it was very difficult for US exporters to understand what tariff their product would face. There was therefore also work to be done on the administration of tariffs, and Tariff Rate Quotas.
- 128. On unpasteurised cheese, Mr Salmonsen noted that it was a huge health concern, ever since a tuberculosis problem in the 1920s. Nonetheless there was no outright ban—instead products need to be stored and cured in a certain way, and these restrictions also applied to US products. Such products did however tend to be regulated state-by-state. The organised dairy industry would be concerned about anything that made their industry look unsafe.
- 129. Ms Nigh noted that 20 years ago, the US sent only bulk products to Europe, while the EU sent only processed products, whereas now transatlantic trade in food and agriculture products was much more complex. Accordingly, the cumulative effect of lots of small changes would make a TTIP deal in agriculture successful. No single change would provide multi-billion dollar benefits.
- 130. On the subject of political representation for the US agriculture sector, Mr Salmonsen noted that there were agriculture interests in every seat in the Senate. In the House of Representatives, around 120 members paid close attention to agriculture issues.
- 131. He suggested that since the 1970s, US labour unions had been hard-wired to oppose trade agreements, out of concern about losing jobs. In the case of the TTIP, people would not be shifting manufacturing to get a cost benefit, but the labour unions might nonetheless stay quiet rather than support the initiative. He went on to suggest that the Democrats would not want a trade agreement hitting Congress this year [2014], as they would need funding and on-the-ground political muscle from the labour unions.
- 132. Mr Salmonsen nonetheless pointed out that trade agreements concluded by the US administration did get passed, even if they sometimes needed to wait for political conditions to fall right. The best odds of passing a TTIP agreement might be in 2015, or early 2016. It would not be possible to go further into 2016 and closer to the presidential election unless the labour unions were to support the initiative. It had often happened in the past that one administration negotiated an agreement, and a subsequent one got it passed.
- 133. One-third of the value of US agricultural production is exported, Mr Salmonsen noted. Ms Nigh pointed out that trade was an abstract notion for most voters, with import penetration in the US being relatively low (around 15 per cent of sales). It would therefore take a long time for elected officials to work up the voter appeal of the initiative.
- 134. The American Farm Bureau Federation strongly supported Trade Promotion Authority. Some crops were almost entirely exported. It would be better to have the debate on trade on the procedural TPA bill and not on the substantive agreement itself.
- 135. The US agriculture industry also had an interest in trade facilitation measures, to the extent that many of their products—e.g. fruit and

vegetables—were perishable, and keeping them refrigerated raised costs the longer they were left sitting around.

## EU Delegation to the United States

The Committee held a private discussion with Mr François Rivasseau, Deputy Head of the Delegation.

#### British American Business

The Committee held a private discussion with representatives of British American Business and representatives of member companies of BAB.

# Office of the US Trade Representative

The Committee took evidence from Ambassador Miriam Sapiro, Deputy US Trade Representative.

- 136. Ambassador Sapiro began by noting that the European Union as a whole was the US's largest trading partner, and there was a substantial relationship already: nearly \$4 trillion in two-way trade and investment, that supported about 13m jobs on both sides of the Atlantic. As impressive as the numbers already are, they felt that there was scope to do more together to promote economic growth and support and create jobs on both sides of the Atlantic. She suggested that in view of the economic challenges that the US and EU are still facing, there was a common view that they "cannot afford to leave any jobs on the table".
- 137. USTR had told the European Commission that they were "ready to work as hard and as fast as they want to". They recognised that the European Parliament would be having elections in May, but were hoping that it would not affect their work, as most of it was still at the technical level, in working groups going over a range of issues. It would be important to keep the momentum going.
- 138. On the subject of financial services, the Ambassador stated that the US strongly supported having financial services market access issues as part of the agreement. These issues were part of their other trade agreements and should also be part of this one. It had been proposed that under the topic of regulatory cooperation, they should also look at regulatory issues affecting the financial services sector. Their response was that they had some very sound existing mechanisms already working on this very question, and they did not see the value added of introducing another channel when the FMRD, various G20 initiatives, the FSB and other groups were already in place. Both sides had an interest in making sure those processes were working well, but they did not see the rationale for trying to move processes already working into a new agreement that isn't even written yet, much less being presented to Parliament or enforced.
- 139. The discussions already underway in several for should continue in parallel to TTIP. TTIP should be used on problems that do not currently have solutions and where solutions could only be found in a trade agreement.
- 140. Asked about their efforts to bring regulators on board in order to learn the lessons of past attempts to conclude an EU-US agreement, the Ambassador said that they were determined at the highest levels to find a new way forward. From the outset of the negotiation, they had worked very closely

- with their regulators and were under the impression the European Commission had done the same. If there is a way to improve the status quo, they believed they would find it.
- 141. On the subject of the TPA bill, the Ambassador said that they were very pleased that Congress had introduced a bill, there were many members taking a look at it, and what had changed since 2002. Things had changed—US standards had gotten higher, for example on labour issues and environmental protection, and it was appropriate to reflect that in new legislation. She saw it as Congress' opportunity to tell the Administration what it would like to see in a trade agreement. Even though the exact timetable was not known—and they hoped it would be soon—it did not directly affect their work. They had had over 1,000 consultations with Congress on the TPP since it was launched. So they were actively engaged with Congress. It was a similar process with TTIP. They had formally sent a letter to Congress last year setting out their intention to open negotiations with the European Union, and since opening negotiations 90 days later, they had already had hundreds of consultations with Congress on TTIP.
- 142. On the subject of agriculture, the Ambassador said that whether it was a question of hormones or GMOs or any of the other agricultural issues that had plagued the relationship, it came down to whether or not the EU and US were using scientific assessments and risk assessments in an appropriate and non-protectionist way. They would fight for that principle. They wanted to make sure the agreement had high standards on SPS and decisions on both sides were made reflecting science and risk. In terms of GIs, it was less of a concern for the UK, she questioned whether there were practical problems in accessing the US market. They did not accept that the US should not be able to sell products like parmesan cheese in Europe or in any other country in the world, but they did want to know if someone with a product from Europe was having trouble getting access to the US market. The US operated a trademark system. Many GIs were registered as trademarks and were functioning fine as far as she knew. Broad protection for GIs would create as many problems as some people thought it would solve. On the Canada agreement, she would be happy to take a look to see if there were provisions that would be useful to take into account.
- 143. On the use of hormone treatments, the Ambassador pointed out that there had been a number of cases where EFSA had agreed with the United States, but where under comitology and weighted voting it had taken a while for the Commission to get to the right decision.
- 144. On the subject of procurement, Ambassador Sapiro explained that they were still in the process of discussing interests on both sides. The EU had indicated interest in more access to US states. They currently had 13 states not signed up to the relevant WTO agreement. The EU was seeking more access across the 50 states and more access to federal procurement. The US had similar interests in Europe. There was sometimes a perception that Europe was more open, but when one looked at the detail it could be seen that that was not the case. There were instances where Europe had indicated openness to certain programmes, but when reading the small print one saw they were not open to the US. So there were challenges on both sides. Sometimes it might be a matter of transparency, or information only being published in certain languages that are not spoken outside a certain country or two.

- 145. Responding to a question about ISDS, the Ambassador welcomed the Commission's public consultation on the issue. They had had a similar consultation in the US about 2 or 3 years ago. The dispute settlement provision, if balanced, could successfully weigh the interests of regulators and the interests of investors operating overseas who were concerned about getting a fair hearing.
- 146. On the automotive sector, the Ambassador suggested that regulators on both sides were determined to see whether they could find more common ground and ways to address similar situations. She did not see either side changing their safety standards.
- 147. On tariffs, the Ambassador pointed out that tariffs were already relatively low, but that the volume of trade was so high, particularly on industrial goods, that the lowering of tariffs would have an impact and that they hoped to go to zero across the board, in time. The biggest "bang for buck" would however be on the regulatory side. The regulatory process needed to be more transparent, needed to have more participation by more people, needed to be more accountable. Their hope was that the EU would inject that kind of transparency into some of its processes. It would also help the Commission to be seen as more responsive to European citizens.
- 148. On GMOs, the Ambassador pointed out that Europe has a regime for approving GMO applications, it just takes a while, usually several years, when it is supposed to take a few months or one year. The system is backed up, but there is a system, the EU does process GMOs, they are not illegal.

# APPENDIX 5: GLOSSARY OF TERMS AND ABBREVIATIONS

ACEA European Automobile Manufacturers' Association

AFL-CIO American Federation of Labor and Congress of

**Industrial Organizations** 

APEC Asia-Pacific Economic Cooperation

BIS Department for Business, Innovation and Skills

CEPR Centre for Economic Policy Research

CETA Comprehensive Economic Trade Agreement (between

the EU and Canada)

CRD IV package Capital Requirements Regulation and the Capital

Requirements Directive

Dodd-Frank Act Dodd-Frank Wall Street Reform and Consumer

Protection Act 2010

Doha Round Current round of trade negotiations among the WTO

membership

EFSA European Food Safety Authority

EU European Union

FMRD Financial Markets Regulatory Dialogue

Group of Eight leading industrialised countries

G20 Group of twenty major economies

GDP Gross Domestic Product

GE General Electric

GI Geographical Indications

GM Genetically Modified

GMB UK trade union

GMO Genetically Modified Organisms

GPA Government Procurement Agreement

GSP Generalised Scheme of Preferences

GTRs Global Technical Regulations

ILO International Labour OrganisationISDS Investor-State Dispute Settlement

INTA Committee European Parliament Committee on International Trade

MEP Member of the European Parliament

NAFTA North American Free Trade Agreement

NATO North Atlantic Treaty Organisation

NFU National Farmers' Union

PGI Protected Geographical Indication

QC Queen's Counsel

SAIS Johns Hopkins University's School of Advanced

International Studies

SMMT Society of Motor Manufacturers and Traders

Solvency II The capital adequacy regime for the European insurance

industry

SPS Sanitary and phytosanitary standards

TAFTA Transatlantic Free Trade Area
TPA Trade Promotion Authority
TPP Trans-Pacific Partnership

TTIP Transatlantic Trade and Investment Partnership

TUC Trades Union Congress

UK United Kingdom

UNECE United Nations Economic Commission for Europe

US United States of America

USDA US Department of Agriculture

USTR US Trade Representative WTO World Trade Organisation