



## GERMANY'S STANCE ON THE TTIP BACKGROUND, INTERESTS AND CONCERNS

Konrad Popławski

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## THESES

- The political and economic co-operation between the United States and Germany has for many years been a subject of disputes and tension. In addition to the differences over the US engagement in the resolution of international conflicts, bilateral relations have been strained as a consequence of the so-called Snowden scandal and the unproved allegations that Chancellor Angela Merkel's telephone was wiretapped. Many German economists and politicians have criticised the USA for contributing to the financial crisis in 2007 as a consequence of maintaining low interest rates and allowing banks to sell high-risk financial instruments. US politicians and economists have, in turn, criticised the manner in which the government in Berlin has been dealing with the eurozone crisis and the lack of consent given to the mutualisation of Eurozone debts. Germany and the United States have also disagreed over foreign trade on the international arena. Germany, a country with one of the world's largest trade surpluses, and the USA, a country with one of the world's highest trade deficits, have accused one another of pursuing a flawed economic policy, as at the G20 forum, for instance.
- The Transatlantic Trade and Investment Partnership (TTIP) appears to offer a chance for improving relations between Germany and the USA for the first time in many years. Producers and exporters from the two countries may benefit from the lifting of some barriers to transatlantic economic co-operation. Enhancing mutual economic dependence may create conditions for the improvement of the political climate. Furthermore, the emergence of what is in fact an internal EU and US market, with reduced customs tariffs and harmonised legal and economic rules, will pressure the emerging economies to make their markets more open. It may also help reduce the resistance of such countries as China and India in multilateral negotiations concerning liberalisation of global trade as part of the WTO. These countries may fear restrictions in the access of their domestic companies to the common transatlantic market. It may also be expected that future trade and investment agreements signed by the EU and the USA with other countries will have to include standards based on the TTIP (for example, as regards patent protection), which would make it possible to exert pressure on other countries worldwide into adopting transatlantic legislation.
- German companies may be among the key beneficiaries of the TTIP. According to data from the Federal Statistical Office, in 2014, the USA was

the second largest outlet for German exporters, who sold goods there worth 96 billion euros (8.5% of total German exports). In turn, US manufacturers supplied goods worth 49 billion euros (5% of German imports) to the German market. Germany thus had a considerable surplus in trade with the USA, reaching 47 billion euros. According to estimates, the prices of German goods on the US market could be as much as 20% higher due to customs duty and production standards differing from those applicable in the EU. German producers also hope that the US public procurement market will become more open to them. Foreign companies are currently given access to only 33% of such tenders in the USA, while the respective ratio in the EU is 90%.

- The TTIP may create conditions for exporting US raw materials from unconventional sources to the European Union; and this will be a benefit of geopolitical significance for Germany. The TTIP will automatically facilitate natural gas exports, since export permits are not required in the case of countries with which the United States has signed a free trade agreement. Berlin has put pressure on Brussels to make efforts towards convincing the USA to at least partially lift the ban on crude oil exports imposed in the 1970s. The German government is increasingly aware of the fact that diversification of supplies of fossil fuels to Europe will make it more difficult for Moscow to use such supplies as an instrument of political pressure on the EU. Russia's position as a reliable supplier of fossil fuels to Germany has been increasingly weakening due to its military activity in Ukraine.
- The government coalition in Germany initially supported signing the TTIP almost unreservedly. However, the Social Democrats (SPD) have found themselves under increasing pressure from left-wing circles. Even though the SPD leader, Sigmar Gabriel, who serves as the minister for the economy, can see the economic benefits from Germany signing the TTIP, he cannot completely disregard the criticism from some left-wing organisations and some German business. Therefore, he is likely to insist on the removal of the most controversial provisions (as viewed by German public opinion): the right vested in foreign investors under the TTIP to bypass the German legal system and sue state institutions in international arbitration courts, which is seen in Germany as a threat to the country's sovereignty. Given the resistance inside the SPD, the German government is likely to demand that the TTIP agreement be ratified in the national parliaments of EU member states. However, this solution carries the risk that some EU member states might veto the deal.

## I. TTIP – THE ESSENCE OF THE AGREEMENT

A joint declaration of the US president and the president of the European Commission (EC) at the G8 summit on 17 June 2013 marked the beginning of the negotiations concerning the Transatlantic Trade and Investment Partnership (TTIP). Officially, the negotiations have been conducted by the EU's Directorate-General for Trade and the Office of the United States Trade Representative. Among the reasons the EC has mentioned for embarking on the negotiations are: the global economic crisis, the lack of effects from the multilateral negotiations conducted as part of the World Trade Organisation and the difficulties in setting out common rules for subsidising agriculture in the EU and the USA<sup>1</sup>. The main goals of the TTIP include: eliminating customs duty in trade between the USA and the EU, reducing the non-tariff barriers (various regulations restricting the market access for goods), harmonisation of standards and technical norms, and adopting regulations that will offer stronger protection to foreign investment than the existing domestic legislation. Both parties hope that the boost in trade resulting from the liquidation of these barriers will contribute to improving the economic situation after the difficult years of the economic crisis. If the TTIP negotiations are successful, a market covering 800 million consumers, 50% of global production, 30% of global trade and 60% of global investments will be created within a few years' time.

The European Commission has been granted the mandate to enter into the most extensive agreement possible aimed at liberalising trade between the EU and the USA on a much deeper level than that happening as part of the World Trade Organisation. Trade in cultural and audiovisual goods has been excluded from liberalisation at the request of France<sup>2</sup>. The negotiations have been conducted in rounds scheduled every few months in over 20 working groups, and consultations on their repercussions have taken place within the narrowest possible circles. Both Washington and Brussels want thus to eliminate pressure from lobbyists and public opinion on the negotiation process. Both the EU and the USA hope that the presentation of the agreement in the final version, which can only be either accepted or rejected, will increase the likelihood of its being implemented. Furthermore, to avoid the growing concern in public opinion, an advisory group of 14 experts was formed, consisting of representatives of trade unions, consumer organisations and business groups. Since October 2014, the

<sup>1</sup> <http://ec.europa.eu/trade/policy/in-focus/ttip/questions-and-answers/>

<sup>2</sup> The European Commission's mandate to negotiate the TTIP is available at: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>

mandate and many details concerning the negotiation process on the part of the EU have been declassified as a result of pressure from European public opinion. Both parties to the negotiations have agreed to finalise the negotiation process by the end of 2015. It is still unclear what the procedure for ratification of the negotiated agreement will be like. One possible solution is that the Court of Justice of the European Union will decide whether the agreement is an ordinary agreement and will have to be accepted only by the Council of the European Union and the European Parliament (EP) or whether it is a so-called 'mixed agreement', in which case an additional consent from national parliaments will also be required<sup>3</sup>. If the latter variant is chosen, this will complicate the process of negotiating the agreement, since it may give rise to public concern in many countries which were plunged into economic crisis. Many states view the TTIP as another stage on the way towards the liberalisation of EU markets which may result in growing unemployment. Problems with ratifying the agreement may also appear at the European Parliament forum, since the left-wing and Euro-sceptic groupings may be unwilling to back it. For example, the election manifesto of France's National Front, which has had its representatives in the EP since 2014, includes a protest against this deal, which has been compared to an "ultraliberal, antidemocratic and anti-social war machine that serves mainly the Neo-Liberals and large corporations"<sup>4</sup>.

<sup>3</sup> <http://www.taz.de/!137588/>

<sup>4</sup> Polish Press Agency's dispatch, 26 May 2014, 'Sukces wyborczy Frontu Narodowego - początek nowych podziałów politycznych w UE'.

## II. THE POLITICAL CONTEXT OF THE NEGOTIATIONS FROM BERLIN'S POINT OF VIEW

From Berlin's viewpoint, the negotiations concerning the Transatlantic Trade and Investment Partnership with the USA may bring numerous benefits as well as some threats. First and foremost, the deal with the USA is in line with Germany's economic interests worldwide. An economic consolidation of Western countries that will be an outcome of the TTIP may offer both the United States and the EU more opportunities to influence the emerging economies. The USA fears the growing significance of China, whose GDP may soon be larger than that of the US. Germany is also more and more dependent on the emerging economies, but at the same time sees the risk of leakage of key German technologies, since it is difficult to impose Western legal standards on developing countries, for example as regards patent protection. Furthermore, the process of trade liberalisation and harmonisation of trade rules as part of the World Trade Organisation has failed to bring the expected results over the past few years due to the increasing assertiveness of the new economic powers, such as China, India and Brazil<sup>5</sup>. Germany has also been dissatisfied with the numerous restrictions on access to public tenders in the lucrative non-European markets such as China, for example<sup>6</sup>. Western countries, as an economic bloc with similar trade regulations, might have more opportunities to impose their standards and technological norms on other countries. One proof of this is in the European Commission's goals: the EC intends as part of the TTIP negotiations to set the conditions for promoting a common patent protection and create a common framework for the use of subsidies and anti-dumping instruments<sup>7</sup>. If the TTIP gave the EU a new external stimulus, given the absence of other promising projects in the EU's external policy at this moment, Germany would see this as an additional benefit accruing from the TTIP. Furthermore, the TTIP may also help improve the economic situation in the EU and thus counteract the economic stagnation linked to the eurozone crisis. Easier access to the US market will also certainly add strength to German exporters, who already hold a large share in the US market.

<sup>5</sup> 'WTO gescheitert: Indien verweigert Abbau globaler Handelshürden', <http://www.deutsche-mittelstands-nachrichten.de/2014/08/64679/>

<sup>6</sup> Konrad Popławski, 'Chasing globalisation: Germany's economic relations with the BRIC countries', *OSW Report*, Warsaw 2013, [http://www.osw.waw.pl/sites/default/files/raport\\_05\\_bric\\_ang.pdf](http://www.osw.waw.pl/sites/default/files/raport_05_bric_ang.pdf)

<sup>7</sup> [http://europa.eu/rapid/press-release\\_MEMO-13-564\\_en.htm?utm\\_source=API&utm\\_medium=twitter](http://europa.eu/rapid/press-release_MEMO-13-564_en.htm?utm_source=API&utm_medium=twitter)

The Russian-Ukrainian war is a new element that will make the German government more willing to support the TTIP. Berlin may fear that Russia, whose foreign policy is aggressive and ever less predictable, will also be a less reliable supplier of raw materials to the German market<sup>8</sup>. In 2014, Moscow made attempts to put pressure on EU member states to limit their support for Ukraine, for example, by embarking on negotiations concerning Russian gas supplies to China, and cutting gas supplies to those countries engaged in sending gas to Ukraine from the west, such as Poland and Slovakia. The continuation of talks on TTIP is a form of defence against such moves from Moscow, demonstrating that the EU also possesses strong arguments in the economic confrontation with Russia. Therefore, even if the scope of the TTIP is limited and fails to bring about a significant increase in imports of oil and gas from the USA to the EU, what is in fact the emergence of an internal Western market may be viewed by Russia and China as tightening a politico-economic alliance, something that could be defined as an economic NATO. As a consequence, they may fear that access for their companies to EU and US markets could be restricted. However, this perception of the TTIP deal by the emerging economies may also pose a threat to Berlin's foreign policy. Many German analysts are concerned that the transatlantic partnership could be viewed by the emerging economies as an attempt by Western countries to isolate themselves from the developing countries<sup>9</sup>. Germany does not want the TTIP to be viewed in this way, because it might harm its interests in the emerging markets, which have been an important engine for German economic growth during the time of the global economic crisis<sup>10</sup>.

Political relations between Washington and Berlin also provide an important context for the TTIP negotiations, especially given the fact that more and more economic disputes have been seen between them in international forums over recent years. The main tendency visible in relations between these two countries is Germany's increasing emancipation in foreign policy and unwillingness to continue playing the role of the US's younger brother. Washington and Berlin have already presented different stances, such as on the US intervention

<sup>8</sup> <http://www.haz.de/Nachrichten/Politik/Deutschland-Welt/DIW-Energieexpertin-Kemfert-ueber-Gas-Versorgung-in-Europa-aus-Russland>

<sup>9</sup> Evita Schmiege, 'TTIP - Chancen und Risiken für Entwicklungsländer', [http://www.swp-berlin.org/fileadmin/contents/products/zeitschriftenschau/2014zso1\\_scm.pdf](http://www.swp-berlin.org/fileadmin/contents/products/zeitschriftenschau/2014zso1_scm.pdf)

<sup>10</sup> Konrad Popławski, 'Chasing globalisation: Germany's economic relations with the BRIC countries', *OSW Report*, Warsaw 2013, [http://www.osw.waw.pl/sites/default/files/raport\\_05\\_bric\\_ang.pdf](http://www.osw.waw.pl/sites/default/files/raport_05_bric_ang.pdf)

in Iraq, and differed in their approaches to reform of the United Nations or other visions regarding the architecture of international financial markets as in the time of George W. Bush's presidency<sup>11</sup>. However, the economic crisis present since 2007 has brought out a major difference in their approaches to the economy. Consumption has traditionally played a major role in US economic development. As a consequence of this, the US has a long-standing problem with its high trade deficit. In turn, Germany's situation is quite the contrary; it has had a significant surplus in foreign trade owing to the frugality policy adopted by it over the past decade.

These different economic backgrounds have led to economic disputes between the USA and Germany. For example, the USA accused Germany at the G20 summit in 2010 of pursuing a harmful and mercantilist economic policy focused only on stimulating its own exports, which was not balanced by an equally rapid increase in imports, thus contributing to the emergence of economic imbalances worldwide. Berlin retorted, pointing out the chronic trade deficit in the USA combined with the low competitiveness of the US economy and the tendency toward excessive debt accumulation.

When the economic situation in the eurozone deteriorated, the USA intensified its criticism of the German economy, which, in the opinion of many American economists, such as the Nobel Prize winner Paul Krugman<sup>12</sup> or the financier George Soros, was based to an excessive extent on significant trade surpluses, thus being harmful to the eurozone and the world. According to them, Germany, capitalising on the economic boom at home, should have raised its investment spending and wages, and thus support the European economy. American experts also suggested that the European Central Bank should reprint money (launch loans to countries and commercial banks unsecured by the eurozone member states' real income) or find any other means for distributing the eurozone's debt among all its member states. Washington was interested above all in calming the situation in the eurozone as soon as possible, since the risk of its collapse might bring losses to US banks and investment funds. Germany also had a different stance on the eurozone crisis. Ever since the risk that monetary union might disintegrate emerged, Germany has promoted the need to introduce the frugality policy in those countries facing the highest risk of

<sup>11</sup> Andreas Geldner, 'Gerhard Schröder in den USA: Der ehemalige Bush-Kritiker preist Amerika an', <http://www.stuttgarter-zeitung.de/inhalt.gerhard-schroeder-in-den-usa-der-ehemalige-bush-kritiker-preist-amerika-an.54c2e595-d85d-4907-b633-9b7b3a43ebb1.html>

<sup>12</sup> <http://www.nytimes.com/2013/11/04/opinion/krugman-those-depressing-germans.html>

bankruptcy, and has blocked the possibility of joint responsibility for the eurozone's debts. No one in Berlin was ready to make such serious concessions and risk German taxpayers' money to save the eurozone member states at risk of insolvency. Given the economic disputes witnessed between Berlin and Washington over the past few years, the TTIP offers a chance for a new beginning in mutual relations and for fewer economic disputes.

### III. THE TTIP'S ECONOMIC SIGNIFICANCE FOR GERMANY

Germany may benefit strongly from the TTIP being signed, considering the large volume of US-German trade. The USA is Germany's fourth largest trade partner in terms of trade volume – only France, Holland and China are more important trade partners for Germany. German firms employ 600,000 people in the USA, while US companies offer 800,000 jobs in Germany. Berlin may expect economic benefits as a result of two changes: liberalisation of trade in goods and services, and diversification of energy supplies to Germany. In turn, harmonisation of investment regulations is the source of greatest concern in Germany.

#### 1. The liberalisation of trade in goods and services

According to data from the Federal Statistical Office<sup>13</sup>, in 2014, the USA was the second largest outlet for German exporters, who sold goods there worth 96 billion euros (8,5% of total German exports). In turn, US manufacturers supplied goods worth 49 billion euros (5% of German imports) to the German market. Germany thus had a considerable surplus in trade with the USA, amounting to 47 billion euros. Germany achieved this surplus mainly by selling cars, machinery, chemistry, optical products and electronic devices. US partners, in turn, benefited from trade in cellular telephones, aviation devices, precious metals and some chemical and electronic products<sup>14</sup>. Trade with the United States brought Germany the largest surplus, followed by other EU member states, such as France (36 billion euros), the United Kingdom (33 billion euros) and Austria (19 billion euro). It is worth emphasising that German exports to the USA have outweighed imports from this country even more since the financial crisis, mainly owing to the constant increase in the sales of German goods on the US market over recent years.

The large imbalance in German-US trade to Germany's advantage is often criticised by US politicians and economists. Germany has been accused of excessively stimulating exports by artificially withholding an increase in wages. The USA has also addressed similar accusations to China on a much larger scale. The USA criticises Germany even though it knows that the federal government lacks the ability (and also the will) to reduce the trade

<sup>13</sup> <https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/Aussenhandel/Handelspartner/Handelspartner.html>

<sup>14</sup> <http://www.census.gov/foreign-trade/statistics/country/>

surplus. Furthermore, Washington has failed to mention the benefits resulting from the influx of cheap German capital, which allows financing of investments and innovations in the USA. Data concerning German-US trade also proves that Germany has been rapidly developing trade and investment co-operation with the USA and has an economy which is more competitive than that of the United States. For this reason, German producers may benefit the most from the TTIP being signed. In turn, boosting service sales to EU countries may be used by the USA to stimulate its exports to Germany, since it has a competitive advantage in this area. US companies are the leaders in global rankings as regards offering various online services, software development and production of electronic appliances. Furthermore, Washington may expect that trade facilitations will make US firms more willing to export their goods and services at the expense of domestic sales. Germany is one of the most open economies. According to the World Bank's data, German exports account for 51% of the country's GDP, while in the case of the USA this coefficient is much lower, reaching 13%.

Curbing the so-called 'non-tariff' measures, i.e. various administrative barriers, such as licences, permits and approvals (especially as regards regulations concerning food and product safety standards), which increase the product price on the target market, might be a much more important benefit of the TTIP deal than the reduction of customs tariffs. According to the Germany Ministry for the Economy, the prices of German goods on the US market could be even 20% higher due to the need to meet additional requirements to those existing in Europe. Savings resulting from limiting the spending on bureaucracy in state institutions and companies could represent an additional benefit, since product certification procedures require engagement from the state apparatus and are time-consuming for firms. Furthermore, the TTIP is likely to result in liberalising mutual access to public tenders. For example, public institutions in the USA are required by law to favour US producers. Germany could benefit a lot from the opening up of the extremely lucrative US public procurement market to foreign producers. At present, foreign companies are provided access to only 33% of such tenders in the USA, while the respective ratio in the EU is 90%<sup>15</sup>. However, the USA expects that the EU's structural funds will become more open to US firms in exchange for this. Paradoxically, the TTIP may be used by Germany as a way of reducing the barriers for German producers in trade within the EU. For example, over the past few years France and Italy have

<sup>15</sup> [http://www.boeckler.de/pdf/p\\_arbp\\_303.pdf](http://www.boeckler.de/pdf/p_arbp_303.pdf)

protected their domestic markets from competition offered by German car manufacturers by introducing very strict ecological regulations under which CO<sub>2</sub> emissions must be on a very low level, a requirement difficult to meet for many German luxury car manufacturers.

Financial services are likely to be excluded from the TTIP, since it is already known at the present stage that the differences in mechanisms for regulating the capital markets are too substantial. The USA, which has significantly tightened supervision over the financial markets since the financial crisis, is concerned that these regulations might be diluted as a consequence of a possible alignment thereof with EU legislation<sup>16</sup>. The EU is not interested in harmonising standards in this area since numerous complex mechanisms for the supervision of financial institutions characteristic of the eurozone, for example as part of the banking union, have been introduced over the past few years<sup>17</sup>. Furthermore, the German political and economic elites have put the blame mostly on the USA for Germany's economic problems following the global financial crisis. German banks were among the major buyers of US bonds in the real estate sector. When the speculative bubble burst, the German financial sector sustained enormous losses, which forced the German government to bail out institutions at risk of bankruptcy, such as Commerzbank<sup>18</sup> and some *Landesbanken*<sup>19</sup>. The breakdown of the financial system and the losses Germany sustained as a consequence of this provoked criticism of the US economic model among German politicians and economists. This also gave rise to a feeling of failure, in particular the commonly shared impression was that "Germany had swapped its profits from the sale of its luxury cars into worthless US junk securities." German banks were free to check the financial instruments they were investing in, but their desire to generate higher profits than on the Ger-

<sup>16</sup> Benjamin Fox, 'EU and US aim for 2015 trade deal, exclude financial services', <http://euobserver.com/news/124159>

<sup>17</sup> Konrad Popławski, 'The shape of the banking union confirms Berlin's privileged position in the eurozone', *OSW Commentary*, 10 January 2014, <http://www.osw.waw.pl/en/publikacje/osw-commentary/2014-01-10/shape-banking-union-confirms-berlins-privileged-position>

<sup>18</sup> Commerzbank is Germany's second largest bank after Deutsche Bank. Until the financial crisis came, this institution was developing at a very rapid rate. For example, it bought a share in Dresdner Bank. However, the financial crisis caught it completely unawares and forced it to accept a bailout of €18.2 billion from the German government in exchange for a 25% stake in the company.

<sup>19</sup> *Landesbanken* are banks whose shareholders are German regions and whose main task is to handle clients in the regions and to finance investments. However, these institutions, in search of profits, also invested a significant share of the savings entrusted to them in US real estate bonds.

man market pushed them into taking greater risk. Thus the European Union is unlikely to agree to unilaterally adopt the American rules after the USA rejected the proposal to mutually harmonise such rules pertaining to financial markets.

The estimates of the economic benefits of the deal differ. The Centre for Economic Policy Research has assumed that the agreement will contribute to an increase in the EU's GDP within the next decade by only 1%, and has noted that trade would benefit much more if the fluctuation of currency exchange rates was limited<sup>20</sup>, since, for example, the euro strengthened against the US dollar between 2002 and 2008 by 64%. The customs duty rates between the USA and the EU are not high, ranging between 3% and 4% in the case of industrial goods. Although a reduction of these duties might lift part of the burden from the automotive industry, whose annual expenses related to this reached US\$1 billion (as a consequence of a 2% customs duty rate imposed on car import to the USA and a 10% rate on car imports to the EU). An analysis shows that the following industries will gain most: the metallurgical, the food processing, the chemical, the transport and the automotive industries and manufacturers of other industrial products<sup>21</sup>. This distribution of benefits from signing the TTIP suggests that Germany will be among the key beneficiaries of the deal. The European Commission believes, on the grounds of surveys, that countries uncovered by the TTIP will also benefit from it owing to the side effects of the two areas becoming richer and their increased demand for import of goods.

These estimates, somewhat optimistic for Germany, result from the forecasts provided by the Ifo Institute in Munich. They predict that, if trade between the EU and the USA is liberalised to a significant extent, the German economy over the longer term will gain 4.7% in GDP, and this will be the seventh largest gain after the USA (+13.4%), the United Kingdom (+9.7%), Sweden (+7.3%), Spain (+6.6%), Greece (+5.1%) and Italy (+4.9%)<sup>22</sup>. These profits will be generated mainly as a result of better availability of products to consumers and lower costs of international trade between the USA and the EU. If the maximum variant

<sup>20</sup> 'Währungskooperation bringt mehr als TTIP', [http://www.boeckler.de/46683\\_46737.htm](http://www.boeckler.de/46683_46737.htm)

<sup>21</sup> 'Transatlantic Trade and Investment Agreement Partnership: The Economic Analysis Explained', [http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc\\_151787.pdf#world](http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151787.pdf#world)

<sup>22</sup> 'Dimensionen und Auswirkungen eines Freihandelsabkommens zwischen der EU und den USA', Ifo Institut, Munich 2013, <http://www.bmwi.de/BMWi/Redaktion/PDF/Publikationen/Studien/dimensionen-auswirkungen-freihandelsabkommens-zwischen-eu-usa-summary,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf>

of trade liberalisation is implemented, as many as 109,000 new jobs could be created in Germany. The analysis criticised the possible negative repercussions the deal may have for the countries which are not covered by it.

## **2. The harmonisation of investment regulations**

Capital relations between Germany and the USA are similar to trade relation patterns between the two countries. Germany has for several decades invested its trade surpluses in the US economy, ensuring companies access to cheap loans. According to data from the Bundesbank, Germany invested €266 billion in the USA in 2012, while US investments in Germany reached only 20% of this sum. Since the global financial crisis in 2007, German investments in the United States of America have been regularly growing, while US investments in Germany have become stagnant. It appears that liberalisation of capital flows and legal regulations may offer opportunities from which both sides will benefit. The standardisation of investment conditions existing in the USA and the EU will also cut the bureaucracy costs sustained by German companies, which are the eight largest investor on the US market<sup>23</sup>. Investments have been included in the deal on the initiative of the Americans, who would like the EU to extend its protection over the entire investment cycle and not only at the time of planning. The TTIP negotiations in the bilateral format, between only the USA and the EU, will also enable new standards for trade and investment protection to be adopted; and this has been impossible as part of the World Trade Organisation. Given the great significance of the transatlantic market, other countries will have to adjust themselves, and the new standards will also be adopted by international organisations<sup>24</sup>. However, Beijing is still unwilling to enter into a similar agreement, because it does not always respect investors' rights and fails to provide sufficient protection for European companies' patents. In this context, including the investment protection clause in the TTIP would offer Brussels a strong argument in negotiations with Beijing<sup>25</sup>.

Despite the potential benefits offered by the regulations protecting investors, adopting these regulations as part of the TTIP has unexpectedly become the subject of the most serious dispute as yet between Brussels and Washington.

<sup>23</sup> [http://www.ofii.org/sites/default/files/FDIUS\\_2013\\_Report.pdf](http://www.ofii.org/sites/default/files/FDIUS_2013_Report.pdf)

<sup>24</sup> Speech given by the German minister for the economy, Sigmar Gabriel, on 5 May 2014 in Berlin, <http://www.bmwi.de/DE/Presse/reden,did=637294.html>

<sup>25</sup> <http://www.die-gdi.de/die-aktuelle-kolumne/article/ein-europaeisches-investitionsabkommen-mit-china-begrenzte-wirkung-aber-globale-bedeutung/>

The EU fears that including regulations concerning the protection of foreign investors in the TTIP will put into jeopardy the sovereignty of its member states. Brussels suspects that, using these regulations, the USA in fact wants to transplant American rules for the protection of foreign investors into European legislation. These rules guarantee the USA extensive competences in protecting their rights in front of supranational tribunals, bypassing national economic courts.

From the very beginning, Germany has strongly opposed such measures, including investor-state dispute settlement regulations in the TTIP, even though regulations of this kind are present in around 1,400 investment agreements concluded by EU member states with other countries worldwide. These regulations give investors the right to sue countries at international tribunals in cases where state institutions have infringed upon their economic interests. Regulations of this kind are at present included as standard in investment agreements between countries. Before the TTIP negotiations start, the introduction of such regulations is viewed by both Brussels and Washington as an opportunity to expand the scope of protection for foreign investments. The European Commission was only vested with the competences to negotiate agreements on the protection of investments with other countries following the amendment of the European Treaties in Lisbon in 2007, and intended to use these prerogatives during the TTIP negotiations. However, a debate unfolded in Germany at the beginning of 2014 as to whether such changes could lead to limiting the federal government's sovereignty in the area of economic policy, which sometimes may be contrary to the interests of global corporations. There is concern in Germany that US companies will misuse the regulations on the protection of foreign investors, and will use them for contesting the German government's decisions at international arbitration courts.

Meanwhile, Germany believes that its national legal system offers sufficient protection of private investors' rights, and foreign companies should not have additional privileges, since this would infringe upon the country's sovereignty<sup>26</sup>. In Germany's opinion, international arbitration courts work in a non-transparent manner, and no appeals procedure is envisaged. The German government has had problems linked to disputes being considered by an arbitration court in connection with the country's energy transformation policy.

<sup>26</sup> Konrad Popławski, 'The SPD presents its conditions regarding the acceptance of the TTIP', <http://www.osw.waw.pl/en/publikacje/analyses/2014-10-01/spd-presents-its-conditions-regarding-acceptance-ttip>

Following the disaster at Fukushima nuclear power plant in Japan in 2011, the German government announced that some of the German nuclear power plants would be closed immediately. The German companies which have sustained losses as a consequence of this decision have the right to claim compensation in front of domestic courts. In turn, Sweden's Vattenfall has chosen a different way. It invoked the investment clause in the European Energy Charter and sued the German government at the International Centre for Settlement of Investment Disputes in Washington. No one in Berlin is certain what the final verdict can be, and how much in damages Vattenfall might be awarded. Therefore, the German government is likely to strongly object to any additional regulations concerning investment protection to be included in the TTIP; and thus may also provoke the Americans to fight for specific concessions in other areas.

It is difficult to state beyond any doubt whether the German concerns over including regulations protecting foreign investors in the TTIP are reasonable. Before the TTIP negotiations started, it was believed that guaranteeing stable legal standards for investments that would apply in the USA and the EU was especially vital from the point of view of small and medium-sized companies, and would allow companies to cut expenses in connection with investing in new markets. In turn, Berlin has emphasised from the very beginning that the interests of small and medium-sized businesses must be taken into consideration in the TTIP. Investor protection has given rise to a political dispute, even though recent legal analyses conducted by the German Ministry for the Economy, for example, have shown that the investment clause poses no risk of limiting the federal government's sovereignty. If investment protection regulations analogous to those used in a similar agreement between the EU and Canada are applied in the TTIP, which seems very likely, companies will be rather more willing to rely on German law regulations in disputes with the government, because these regulations offer better protection to them. Furthermore, German business circles have suggested that this risk can be eliminated, for example, by developing appeals procedure rules. If investment protection regulations are eliminated from the TTIP, it will be more difficult to convince the emerging economies to introduce similar rules.

Furthermore, even if the law regulates this area correctly in many countries, the effectiveness of national economic courts is usually low. For this reason, investors find enforcing their rights extremely time-consuming. It appears that the dispute over the investor protection clause will not impede ratification of the agreement, but the related controversies may delay the adoption of the TTIP.

### 3. The diversification of energy supplies to Germany

The TTIP may turn out to be very important, especially if energy issues are included in it. Its signing could create a better legal environment for supplying Europe with fossil fuels produced in the USA, especially shale oil and gas. Chancellor Angela Merkel stated during her visit to Washington in May 2014 that the energy sector could benefit most from the transatlantic partnership. Germany's annual imports of raw materials for energy production are worth in total around €100 billion. The German economy also recently had problems due to growing energy prices resulting from the implementation of the energy transformation in Germany and generous subsidies offered to the renewable energy sector, while US companies could benefit from much lower energy costs. Although the German system of allowances for energy-consuming industry protects the largest companies from an increase in costs, many small and medium-sized businesses are facing ever more serious problems in connection with this, especially given the fact that the amended act on renewable energy sources of July 2014 restricted the number of firms eligible for the allowances. Public opinion in Germany is gradually coming to the realisation that a continuation of these tendencies may adversely affect the German industry's competitiveness in the immediate future, and in effect lead to a reduction of workplaces in their country.

Until 2013, companies operating in Germany expressed their dissatisfaction with growing energy costs, mainly in the press. In 2014, some of them started making attempts to counteract this. One example is BASF, Germany's largest energy consumer. The company announced its intention to build a propylene production plant in the USA, stating that the main reason behind this decision was the fact that gas prices there were three times lower than in Germany. The investment will be worth more than €1 billion and will be the largest investment in a single plant in the company's history<sup>27</sup>. BASF Board of Directors explained that their decision was strongly influenced by the company's financial results for 2013. The world's largest chemical corporation increased its revenues by 1% and profit by 50% in 2013 mainly owing to cheap US gas. The company has recently put into operation large gas processing installations in the USA, thus increasing its US branch's profit from €0.5 billion to €1.5 billion. This improved the entire corporation's profitability despite the stagnation on global markets. In the next five years, BASF intends to reduce the share of its

<sup>27</sup> 'Fracking: Billiges Erdgas lockt BASF in die USA', <http://deutsche-wirtschafts-nachrichten.de/2014/05/02/fracking-billiges-erdgas-lockt-basf-in-die-usa/>

investments in Germany from 1/3 to 1/4, and investment expenses in Europe to less than 50%. BMW has similar plans. It is planning to build its largest factory worth US\$1 billion in the USA by 2016. Although in the case of many other firms energy costs do not represent the largest share in the structure of expenses, energy prices at the time of the financial crisis are becoming an increasingly important factor in decisions concerning the location of the investment. One example is provided by Infineon, the manufacturer of electronic components, which spends annually around €120 million on energy (3% of its incomes). Even though Germany is not the main outlet for this firm (accounting for only 23% of its sales), as much as 47% of its energy costs are generated in this country<sup>28</sup>. Wacker, the manufacturer of chemical products, has had a similar experience. Its electricity expenses over the past five years have grown by 70% to a level of €0.5 billion, while the corresponding expenses of its US competitors have fallen by more than 20%<sup>29</sup>. According to questionnaires, almost half of large companies see that their competitiveness has worsened due to the implementation of the energy transformation, and one third of them are considering moving production to other countries due to growing energy prices<sup>30</sup>.

Diversification of energy supplies to Europe is an equally urgent issue for Brussels and Berlin, considering Russia's lessening reliability and predictability. Politicians in Berlin are increasingly aware of this problem. Russia is the largest supplier of crude oil (35%), natural gas (38%) and hard coal (27%) to the German market. On the one hand, Germany is not as strongly dependent on Russian supplies as are many Central European countries. However, on the other hand, Moscow's cutting of oil and gas supplies is no longer viewed as an unrealistic scenario in Germany. If this scenario is implemented, the economy will sustain major losses, and energy prices will certainly grow significantly. In particular, Russian gas supplies are difficult to replace, because the next two largest suppliers, Holland and Norway, are unable to increase their production potential significantly, and it is clear that in the case of Holland the output is going to fall<sup>31</sup>. In addition to this, the German public would not accept shale gas

<sup>28</sup> Ulf Sommer, Markus Fasse, 'Flucht nach Amerika: Industriekonzerne beklagen die teure Energie', *Handelsblatt*, 25 June 2014, pp. 4-5.

<sup>29</sup> Christoph Steitz, Ernest Scheyder, 'Special Report: How fracking helps America beat German industry', <http://www.reuters.com/article/2014/06/02/us-usa-germany-power-specialreport-idUSKBN0EDoCS20140602>

<sup>30</sup> 'Einigung bei Energiewende', *Handelsblatt*, 2 April 2014, p. 10.

<sup>31</sup> Anna Kwiatkowska-Drożdż, Konrad Popławski, 'The German reaction to the Russian-Ukrainian conflict - shock and disbelief', *OSW Commentary*, 3 April 2014, [http://www.osw.waw.pl/sites/default/files/commentary\\_132.pdf](http://www.osw.waw.pl/sites/default/files/commentary_132.pdf)

extraction on a large scale, even though large deposits of shale gas might exist there, according to estimates from US geological institutes. Ecological movements active in Germany are spreading information about the environmental risks posed by this technology. For this reason, the import of raw materials from the United States seems to represent the simplest way of diversifying energy supplies to Europe. An additional benefit from this solution would be a reduction of the competitive advantage of US industry resulting from low energy prices stemming from restrictions on gas exports imposed by the US government. This solution would thus protect Germany from the threat of its national companies moving investments to the USA and the ensuing liquidation of jobs in Germany.

The United States has been reluctant as yet to grant permits for export of American gas to Europe; and these were blocked by various supervisory offices. The US government did not want to lose the economic benefits offered by the price competitiveness of the US industry as a result of access to cheap natural gas. Over the past few years, many US corporations have decided to move investments back to their domestic market, noticing the profits offered by lower energy prices in the USA. Most analysts expect that the United States may become a major exporter of both LNG and crude oil in the coming decade. From the viewpoint of the EU and Germany, signing the TTIP may mark an important step towards the diversification of sources of gas supplies to Europe. If the TTIP is signed, it will no longer be necessary to apply for consent to export natural gas to the European market, since such consents are not required with regard to countries covered by free trade agreements under US law. Over the past few years, natural gas has been imported from the USA by Mexico, Canada, Chile and South Korea, with which the USA signed free trade agreements. A significant proportion of US gas exports has been supplied to the Korean market<sup>32</sup>. Even though gas prices have been much lower in Asia than in Europe over the past few years, it cannot be ruled out that this tendency will be reversed. Global gas prices may be aligned as a consequence of the discovery of new gas deposits worldwide, technological progress in gas liquefaction, reduction of gas consumption in Japan as a result of a possible bringing back into use of nuclear power plants, and probable pressure from Russia on European countries as a result of the conflict in Ukraine. All these factors may convince some US producers to export gas to Europe, where the prices are higher than in the USA, even when the liquefaction cost is taken into account.

<sup>32</sup> Cathleen Cimino, Gary C. Hufbauer, 'US Policies toward Liquefied Natural Gas and Oil Exports: An Update', Peterson Institute for International Economics, July 2014, p. 4.

According to media reports, the European Commission sees complete liberalisation of exports of raw materials from the USA to Europe as one of the key goals of the negotiations<sup>33</sup>. This means that Brussels will also want to bring about liberalisation of regulations concerning crude oil exports. The ban on oil exports was imposed in the United States in the 1970s, following the oil crisis and a significant rise in global oil prices. Since then, the USA has consistently blocked any opportunities of lifting this ban. However, given the recent US producers' successes in shale oil extraction, these restrictions have become a subject of debate. According to analyses presented by the US-based research firm HIS, lifting the ban would boost oil production in the USA, and would also create new jobs there<sup>34</sup>. It was hinted in mid 2014 that the US administration might agree to make concessions to Brussels as regards this issue, especially since in July 2014, for the first time in more than forty years, the USA agreed to grant consent for a firm to export small amounts of crude oil to South Korea<sup>35</sup>. Speculations have appeared that the Americans might agree to exporting oil to the EU in exchange for a reduction of EU customs duties on agricultural products<sup>36</sup>. At present, it is difficult to state how the downward trend in oil prices will influence the US government's decisions. It may be concluded from the changes visible on the fuel market that US shale oil producers are becoming the strongest competitors for Saudi Arabia, which has made attempts over the past few months to contain their expansion through maintaining its crude oil output at a high level and thus putting pressure on oil prices. It is unclear whether, given this situation, Washington will want US production firms to be offered broader access to the European market, which might protect them from bankruptcy.

<sup>33</sup> Benjamin Fox, 'Leaked paper: EU wants 'guaranteed' access to US oil and gas', <https://euobserver.com/news/124910>

<sup>34</sup> [http://www.wnp.pl/drukuj/227130\\_1.html](http://www.wnp.pl/drukuj/227130_1.html)

<sup>35</sup> <http://www.wnp.pl/wiadomosci/231549.html>

<sup>36</sup> 'Eksperci: możliwa ropa z USA za otwarcie rynku rolnego w UE', PAP, 29 September 2014.

## IV. GERMAN ACTORS IN THE NEGOTIATIONS

### 1. The federal government and the political parties

The German government has been one of the major promoters of signing the TTIP, wanting thus to strengthen economic bonds with the United States. Berlin also sees the positive impact of signing the deal on the diversification of raw material supplies to the EU, which has been emphasised on numerous occasions by Chancellor Merkel in her statements concerning the TTIP<sup>37</sup>. The government has also made efforts to ensure that Germany has a strong representation among the negotiators. Five out of the thirty-five members of the negotiating team are Germans, and they are the heads of five working groups: for competition policy, for state-owned companies and subsidies, for machinery and electronics, for the chemical industry and for services. However, neither the main negotiator nor his deputy are representatives of Germany<sup>38</sup>. There are two Germans in the group of fifteen negotiation advisors<sup>39</sup>. According to press reports, Chancellor Merkel made efforts to ensure that Günther Oettinger, who had previously served as the European Commissioner for Energy, was nominated Commissioner for Trade in the new European Commission<sup>40</sup>. She did not succeed in this, and Cecilia Malmström from Sweden was chosen the new EU Commissioner for Trade in 2014. Oettinger was nominated Commissioner for the Digital Economy.

It appeared for a long time that the government coalition would remain united in its stance, since it clearly backed the TTIP. The Christian Democrats support the deal, which has been emphasised on numerous occasions by Chancellor Angela Merkel. However, some deputies wanted the negotiations to be halted in response to the disclosure of information that US state agencies continued tapping Germany in July 2014. However, these views were quickly neutralised by Angela Merkel, who manifestly supported the continuation of the talks<sup>41</sup>.

<sup>37</sup> Chancellor Angela Merkel's press conference in Washington on 3 May 2014, <http://www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2014/05/2014-05-02-pk-obama-merkel.html>

<sup>38</sup> [http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151668.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151668.pdf)

<sup>39</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1019>

<sup>40</sup> [http://www.euractiv.de/sections/europawahlen-2014/merkel-will-oettinger-als-neuen-handels-kommissar-303608?utm\\_source=EurActiv.de+Newsletter&utm\\_campaign=b7b52cf4a0-newsletter\\_t%C3%A4gliche\\_news\\_aus\\_europa&utm\\_medium=email&utm\\_term=0\\_d18370266e-b7b52cf4a0-47178529](http://www.euractiv.de/sections/europawahlen-2014/merkel-will-oettinger-als-neuen-handels-kommissar-303608?utm_source=EurActiv.de+Newsletter&utm_campaign=b7b52cf4a0-newsletter_t%C3%A4gliche_news_aus_europa&utm_medium=email&utm_term=0_d18370266e-b7b52cf4a0-47178529)

<sup>41</sup> Stefanie Reulmann, 'Merkel will Gespräche über Freihandelsabkommen fortsetzen',

The Social Democrats revised their stance on the TTIP in October 2014. At the beginning, the SPD avoided criticising the deal, regardless of the numerous reservations from left-wing non-governmental organisations and think tanks. The party leader, Sigmar Gabriel, who serves as minister for the economy and deputy chancellor, promised that the SPD would become more oriented towards companies' needs, to strip the Christian Democrats of part of its electorate. For this reason, he presented himself as a staunch supporter of signing the TTIP. However, when the final version of the CETA trade agreement negotiated with Canada was published by the European Commission, which was seen as an important step towards signing the TTIP with the USA, Gabriel demanded that the investor protection regulations be removed from it. It is difficult to predict whether the parties to the CETA negotiations will meet the SPD leader's demands. However, if investor protection regulations are not included in the CETA, they will most likely not be present in the TTIP, as well. Gabriel has also suggested that Brussels should adopt a mixed procedure for the ratification of the TTIP and the CETA agreements, which means that these deals will have to be put to the vote at the national parliaments of EU member states. If this demand is successfully pushed through in the EU, it would increase the likelihood that investor protection regulations will be removed, because the SPD might warn Brussels that the Bundestag will oppose signing the TTIP and the CETA?<sup>42</sup>.

The other parties in the Bundestag, the Greens, the Pirate Party and the Left Party, are clearly against the TTIP. In principal, the two parties use similar argumentation: the TTIP is a deal negotiated under dictation from large corporations, it will lower food protection standards, allow the hydraulic fracturing method for shale gas extraction to be used in Germany, it will limit democratic legitimacy, and it will adversely affect the protection of workers' rights and environmental protection standards. The Green Party and the Pirate Party are lacking attractive political slogans at a time when Germany has been consistently implementing its energy transformation strategy, and cyber security issues have become less popular. For this reason, the two parties will want to build their political capital on fears linked to signing the TTIP deal.

<http://www.heute.de/bundestanzlerin-angela-merkel-im-zdf-sommerinterview-zur-spi-onageaffaere-und-dem-verhaeltnis-zu-den-usa-34027868.html>

<sup>42</sup> <http://www.zeit.de/2013/50/handelsabkommen-europa-usa>

## 2. The public

The German public is divided over the TTIP issue. Public opinion is concerned above all about the possible deterioration in food protection standards, since US standards are viewed as much lower than European ones. Several examples of food production and processing technologies seen as controversial in Germany have been publicised in the debate in the German media (for example the use of GMO by American food manufacturers, as with genetically modified maize, or washing chickens with chlorine for disinfection purposes as opposed to thermal processing used in the EU). Circles linked to the Left Party and the Greens view the deal as another example of businessmen and lobbyists from international corporations promoting their own interests, which are contrary to the expectations of the general public and which may result in higher unemployment levels in Germany. The manner of conducting the negotiations during secret meetings of EU and USA representatives has also been criticised. For example, the European Commission, under pressure from German public opinion, decided in October 2014 to declassify the negotiating mandate granted to it by EU member states<sup>43</sup>. Some left-wing politicians have made attempts to fuel up people's fears by comparing the TTIP to ACTA, the controversial agreement intended at combating piracy on the Internet. However, they have not succeeded at provoking unrest among the public at a level comparable to that caused by ACTA. Despite the many concerns, no major demonstrations against the TTIP have been seen as yet, apart from the activity of numerous organisations in cyberspace<sup>44</sup>.

Public opinion polls suggest that a small majority of the public in the USA and Germany see the benefits of signing the TTIP. According to Pew Research Center, 55% of Germans and 53% of Americans supported the deal in April 2014, while 25% of Germans and 20% of Americans were against it.<sup>45</sup> In the context of the TTIP, the German public is concerned above all about a possible deterioration in food quality standards, if genetically modified products are admitted as imports. 76% of Americans and only 45% of Germans backed the idea of harmonising US and EU standards concerning products and services. When asked about preferences concerning security standards, respondents from Germany chose EU food protection standards (94%), environmental protection

<sup>43</sup> <http://www.euractiv.de/sections/eu-innenpolitik/laengst-ueberfaellig-eu-veroeffentlicht-ttip-verhandlungsmandat-309069>

<sup>44</sup> <https://www.freitag.de/autoren/felix-werdermann/der-neue-anti-ttip-protest>

<sup>45</sup> <http://www.pewglobal.org/2014/04/09/support-in-principle-for-u-s-eu-trade-pact/>

standards (96%), car safety standards (91%) and personal data protection standards (85%). In the case of the American public, the answers are more diversified, and American standards are given preference over European standards by between 49% and 67% respondents, depending on the standard category.

Another argument raised by the German opposition parties against the TTIP deal is the threat to the German welfare model posed by integration with the US market, which – as viewed from Germany – offers much more modest social security. This is a typical argument raised in Germany with regard to threats linked to globalisation, and left-wing parties are especially sensitive to such argumentation. This argument resonates with the German public, because of the debate over growing poverty, especially as a consequence of so-called ‘trash contracts’, has been intensifying in Germany despite its good economic situation. However, as regards complete lifting of import duties and investment barriers, there are certain concerns on both sides of the Atlantic. These moves have been supported by only 41% of Americans and 38% of Germans. The concerns linked to this agreement widely shared among the German public have most likely influenced the fact that 65% of respondents prefer the federal government’s engagement in the negotiations, while 28% of them support EU institutions in this context. According to public opinion polls, the existing debate has slightly reduced the level of support for the TTIP among the German public. According to a survey conducted by Emnid institute in October 2014, 48% of Germans see this deal as beneficial for their country, 32% are of the contrary opinion, and 63% of respondents want the negotiations to be continued, while 24% want them to be discontinued<sup>46</sup>.

The TTIP issue has raised concern mainly among non-governmental organisations which are inclined to the left and deal with ecology, consumer rights protection and agriculture. The non-governmental sector has become united against the TTIP using the platform [www.unfairhandelbar.de](http://www.unfairhandelbar.de). The main supporters of this action include environmental organisations (Greenpeace, Friends of Earth Europe, Food and Water Europe, Attac, Powershift, Bund, NABU, Umweltinstitut München), as well as organisations engaged in the struggle for human rights and the rule of law (Menschenrechte 3000, Compact.de) and promoting healthy food (Gentechnikfreie Landwirtschaft, Bund Ökologische Lebensmittelwirtschaft, Zukunftsstiftung Landwirtschaft, Bio-land). They have raised the key ecological aspects of the agreement, pointing

<sup>46</sup> The Emnid survey is available at [http://www.foodwatch.org/fileadmin/Themen/TTIP\\_Freihandel/Dokumente/Emnid-Ergebnisse\\_TTIP-Umfrage.pdf](http://www.foodwatch.org/fileadmin/Themen/TTIP_Freihandel/Dokumente/Emnid-Ergebnisse_TTIP-Umfrage.pdf)

to the threat posed to EU climate policy (as a consequence of importing fossil fuels from the USA and supporting their production in this country, which is harmful to the climate). They are also concerned about the fact that the TTIP may result in lower food production standards being adopted. Furthermore, German consumer organisations have pointed to the fact that the EU and the USA have different food protection systems. European countries have systems which restrict market distribution of products which pose a health risk *ex ante*, while in the US system consumer health is protected through court trials and opportunities to bring complaints *ex post*. Many organisations are concerned that Washington will make efforts to push through its own food protection system at the expense of weakening EU control systems.

Regardless of these moves, the German NGO sector has not had any major successes in opposing the Transatlantic Trade and Investment Partnership being signed. As representatives of these organisations admit themselves, despite the numerous attempts to hold demonstrations against the TTIP in Germany, none of the initiatives has been given sufficient publicity by the media<sup>47</sup>. Their successes have been limited to online protests in social media (for example, 470,000 people signed the online petition against the TTIP on [www.campact.de](http://www.campact.de)) and propagation of actions aimed at signifying the resistance to the TTIP in intergovernmental consultations held by the European Commission. A demonstration of activists opposing the TTIP has also been observed in Brussels, where 250 were detained after riots<sup>48</sup>. According to the European Commission's data, Germans formed the third most numerous group engaged in social consultations concerning the TTIP. Almost 23% of the 150,000 responses sent to the European Commission came from Germany. It is worth noting that more than half of the opinion authors did not agree to their content being revealed, which may prove that they were sent on a massive scale by non-governmental organisations<sup>49</sup>. The European Commissioner for Trade, Karel de Gucht, shortly before leaving his function in 2014 admitted this indirectly, stating that many responses were identical, and thus they might have been sent using a single pattern by members of non-governmental organisations<sup>50</sup>. In January 2015, the

<sup>47</sup> <https://www.freitag.de/autoren/felix-werdermann/der-neue-anti-ttip-protest>

<sup>48</sup> <http://www.zeit.de/wirtschaft/2014-05/freihandelsabkommen-ttip-eu-usa-demonstrationen-bruessel>

<sup>49</sup> <http://www.euractiv.com/sections/trade-industry/commission-swamped-150000-replies-ttip-consultation-303681>

<sup>50</sup> <http://www.faz.net/aktuell/wirtschaft/wirtschaftspolitik/karel-de-gucht-attacke-gegen-ttip-13055875.html>

European Commission published the results of public consultations concerning the inclusion of the investment protection clause in the TTIP, where negative opinions clearly predominated. 97% of the responses sent presented a negative stance, and many of these were most likely completed by representatives of the non-governmental sector. Although NGOs have not managed to encourage the public into making any more decisive moves against the TTIP, a stronger mobilisation of the opponents of this deal cannot be ruled out in the coming months, especially if the Bundestag decides to ratify it. The NGO sector will most likely make attempts to spread the message in the mass media concerning new threats linked to the TTIP in such areas as food safety, ecology, digital security or social threats to German citizens. However, it appears that the government, regardless of existing divides in the coalition, will be able to present a common stance on the TTIP and to successfully defy opponents of the deal.

The concerns about a possible deterioration of food safety standards and environmental threats need to be viewed in the context of German-US relations. According to data from the German Marshall Fund, support for the USA significantly fell in Germany in 2013. 57% of German citizens wanted their country's policy to be more independent from the USA (an increase of 17 percentage points). Only 19% supported strong German-US relations (a decrease of 20 percentage points). Nevertheless, 60% expected that the USA would remain the global leader (a decrease of 3 percentage points). The worsened perception of the United States in Germany has certainly been influenced by the information revealed in 2013 by the former CIA worker, Edward Snowden, that US secret services had been tapping the communications of German citizens and firms for years on a massive scale. What raised special concern in Germany was the fact that the US services had violated the right to privacy, one symbol of which were the media reports<sup>51</sup>, which were later dispelled, that even Chancellor Angela Merkel's private phone was tapped<sup>52</sup>. However, Germany was unable to force the USA into signing an agreement that would set more detailed rules of co-operation between the secret services, under which US services would be obliged to reduce the scope of tapping in Germany<sup>53</sup>. Washington has

<sup>51</sup> 'Range: Kein Beweis für Ausspähung von Merkels Handy', <http://www.faz.net/aktuell/politik/inland/nsa-affeere-kein-beweis-fuer-ausspaehung-von-angela-merkels-handy-13315918.html>

<sup>52</sup> 'Man hört sich nicht ab unter Freunden', *Handelsblatt*, 24 July 2014, p. 8.

<sup>53</sup> Marta Zawilska-Florczuk, Kamil Frymark, 'The NSA: the impact of the wiretapping scandal on German-American relations', *OSW Commentary*, 14 January 2014, <http://www.osw.waw.pl/en/publikacje/osw-commentary/2014-01-14/nsa-impact-wiretapping-scandal-german-american-relations>

disregarded Berlin's demands to this effect. In July 2014, Germany accused two lower-ranking officers from the Federal Ministry of Defence and the Federal Intelligence Service of spying for the USA, and forced a resident of the US intelligence services to leave Germany. This unprecedented move with regard to an allied state was probably dictated by the desire to put pressure on the USA to limit the activity of its intelligence services, and also served the German government's interests, because it was intended to convince public opinion that German secret services needed better funding<sup>54</sup>.

The recent disputes between Germany and the USA over the operation of the secret services may adversely affect the TTIP. The German public may fear that the TTIP will offer US corporations more opportunities to interfere with German citizens' private data. Chancellor Angela Merkel, fearing public protests, did not decide to ratify the ACTA agreement on counteracting digital piracy in 2012 in the Bundestag. Furthermore, people in Germany are convinced that German-US relations are lacking balance. Examples of these include US corporations' failure to comply with German law and the strict treatment of European firms by US institutions. High financial penalties imposed on European banks violating US regulations and the forbearing approach adopted by German state institutions while controlling US-based Internet corporations that violate German regulations concerning privacy have become symbols of this asymmetry<sup>55</sup>.

### 3. The business circles

Representatives of business circles lie at the other extreme. They strongly support the government's actions, emphasising that signing the TTIP agreement will mean enormous opportunities for the German economy<sup>56</sup>. The largest industrial associations, such as the German Industry Association and the German Chamber of Industry and Commerce support the deal almost unreservedly. The two associations even want the controversial investor-state dispute settlement regulations to be included in the deal, although their representatives have made the reservation that the success of the entire deal might not

<sup>54</sup> Justyna Gotkowska, 'The consequences of the spy scandal in Germany', *OSW Analyses*, 23 July 2014, <http://www.osw.waw.pl/en/publikacje/analyses/2014-07-23/consequences-spy-scandal-germany>

<sup>55</sup> *Handelsblatt*, 22 July 2014, p. 10.

<sup>56</sup> <http://www.welt.de/debatte/kommentare/article127607351/Der-Mittelstand-braucht-das-Freihandelsabkommen.html>

depend on the implementation thereof. Company representatives are aware of the fact that legal disputes between European firms and US administration have dominated transatlantic relations over the past few years; and this may mean that European companies will benefit more from investor protection in the future. Criticism from business circles concerned only the scope of the negotiated deal. The head of the German Chamber of Industry and Commerce has emphasised, for example, that not only large corporations but also small and medium-sized businesses should benefit from the agreement. Associations of the key German industries, such as the chemical, the machine-building and the automotive industry, have been actively engaged in promoting the TTIP.

Although the key sectors of the German economy plainly support the TTIP, there are also opponents of the agreement, representing mainly smaller sectors of the economy. The German Farmers' Association sees more benefits than threats in the agreement being signed, but still emphasises that the USA with its large domestic market is for the time being a smaller outlet for German agricultural products than Russia. Representatives of this association have pointed out that meat must remain protected by import quotas. The USA has had a competitive advantage due to the use of hormones in animal breeding. Organisations of producers of cultural goods have also protested against the TTIP, even though the European Commission has no mandate to negotiate the consent to liberalise trade in audiovisual goods. Importers of goods from developing countries as part of fair trade also fear that the TTIP will sanction a system of subsidies between the USA and the EU, thus discriminating against producers from poorer countries. Since signing the TTIP will adversely affect the genuine interests of these sectors, one cannot exclude the possibility that they will support (also financially) the opponents of this deal.

## V. THE CONSEQUENCES OF SIGNING THE AGREEMENT

The chances that the TTIP will be signed seem high. Considering the long perspective of signing the agreement (a timeframe of as much as two years), it remains feasible that resistance among the German public will grow, especially if the economic situation in the country worsens or levels of popular support for the government fall. The effectiveness of the non-governmental sector, which as of yet has been unable to influence the public strongly enough for the deal to be torpedoed, will also be a major decisive factor. However, further moves to achieve this goal should be expected. At present, it is difficult to publicise the protests against the TTIP due to the tense international situation, where numerous conflicts worldwide attract the attention of public opinion (the Russian-Ukrainian war, the destabilisation of the situation in the Middle East and the debate on the risk of terrorist attacks in Germany). An intensification of the protests might reduce Germany's determination to sign the agreement. The German government has so far insisted that the TTIP should be ratified by consent from national parliaments. This solution is intended to add legitimacy to the deal, but this solution carries the risk that some EU member states might veto the deal. There is still a consensus in the government coalition in Germany that the TTIP should be signed. However, the SPD may still change its mind. Its leader has recently suggested that the SPD might be opposed to the investor protection regulations. Therefore, it is unclear what stance the Social Democrats will take on the TTIP, if the other countries disagree about eliminating these regulations from the agreement.

The TTIP also offers a chance for diversifying raw material supplies to the EU. Even though the deal is unable to guarantee competitive price conditions for the export of raw materials from the USA to the EU, the past few months have suggested that a reduction of high gas prices in Asia is increasingly possible. The liberalisation of US procedures will create stable institutional conditions for foreign trade in raw materials, especially if the TTIP lifts some of the restrictions imposed on American oil exports. The European market has been uncompetitive with the Asian market for US gas exporters for two reasons. Firstly, gas prices in the EU were lower than in Asia, where the prices went up after Japan had ceased using nuclear energy. Secondly, some Asian countries, such as South Korea and Singapore, signed free trade agreements with the USA, which eliminated the requirement to seek consent for the export of natural gas to these countries. The TTIP will automatically lift this requirement in the case of gas exports to the EU. Even with the present level of prices, the European market may be appealing to US producers of shale gas, especially

if there is a significant oversupply of gas on the US market. American producers may also find it more profitable to export gas without the required permits to the EU than, for example, to apply for permits to export gas to Japan.

If the TTIP negotiations succeed, stronger economic bonds will be established between the USA and the EU, which may also translate into better political relations. The two economic blocs, which have similar standards and production norms, will become connected through much stronger economic interests and will be able to adopt more similar stances on many economic issues in relations with the emerging economies. Change in this direction is something Berlin expects. Germany is wondering with a dose of anxiety whether attempts by BRICS countries (Brazil, China, India, Russia and the Republic of South Africa) to build an institutional architecture reminiscent of the Western one (a BRICS regional development bank reminiscent of the World Bank or a BRICS financial fund reminiscent of the International Monetary Fund) might lead to tension in relations with the West. Given this context, transatlantic relations reinforced through the TTIP may turn out to be an additional instrument for influencing the emerging economies, which will want to have access to the extremely lucrative EU and US markets. Furthermore, the sealing of the TTIP deal may also facilitate negotiations as part of the World Trade Organisation. Companies from emerging markets will want to be given similar conditions of access to the transatlantic market (similar standards and customs duty rates) like their European and American competitors. The German government wants German companies to be offered investment and trade facilitations on the emerging markets through such moves as liberalisation of trade, better protection of copyright and patents, protection of foreign investments and the introduction of Western norms and standards. However, Germany will make efforts to ensure that the TTIP negotiation process and the ramifications of its possible signing do not result in isolating the EU and the USA from the rest of the world. Such a solution would not be beneficial for a country which heavily relies on exports and has strong economic bonds with BRIC countries.

## APPENDIX

### EU and US customs duty rates on some groups of goods (an average from 2012)

Product group	EU	USA
Dairy products	52.9	19.9
Sugars and confectionary	32.1	14.4
Beverages and tobacco	19.9	14.0
Clothing	11.5	11.6
Textiles	6.6	7.9
Oilseeds, fats & oils	2.0	4.8
Fruit, vegetables, plants	10.7	4.7
Cotton	0.0	4.1
Leather, footwear, etc.	4.2	3.8
Coffee, tea	6.2	3.3
Cereals	17.1	3.1
Transport equipment	4.3	3.1
Chemicals	4.6	2.8
Preparations	2.7	2.4
Animal products	20.4	2.2
Minerals and metals	2.8	1.7
Electrical machinery	2.8	1.7
Non-electrical machinery	1.9	1.2
Other agricultural products	4.3	1.1
Petroleum	2.8	1.1
Fish & fish products	11.8	0.8
Wood, paper, etc.	1.0	0.5

Source: [http://www.kas.de/wf/doc/kas\\_38104-544-2-30.pdf?140618145124](http://www.kas.de/wf/doc/kas_38104-544-2-30.pdf?140618145124), p. 9