



DIPLLOMA THESIS

The European Union and TTIP/TAFTA

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UNIVERSITY OF MACEDONIA

Petr Kminek
Kminek.petr@gmail.com

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List of Abbreviations:

BEUC The European Consumer Organization
 BITs..... Bilateral Investment Treaties
 BRICS Bilateral Investment Treaties
 CEPPI..... Centre d’Etudes Prospectives et d’Informations Internationales
 CEPR Centre for Economic Policy Research
 CETA Comprehensive Economic and Trade Agreement
 CGE Computable General Equilibrium
 CM Common Market
 CU..... Customs Union
 EI Economic Integration
 EMU Economic and Monetary Union
 EU the European Union
 EU-US the European Union and the United States
 EC European Commission
 EPRSEuropean Parliamentary Research Study
 FDA.....Food and Drug Administration
 FTA Free Trade Agreement
 GATT General Agreement on Trade and Tariffs
 GDAE Global Development and Environment Institute
 GDP Gross Domestic Product
 GM Genetically Modified
 GMOs..... Genetically Modified Organisms
 GPM..... the United Nations Global Policy Model
 HLWGHigh-Level Working Group on Jobs and Growth
 ICSID International Centre for Settlement of Investment Disputes
 IIAs..... International Investment Agreements
 ISDS..... Investor State Dispute Settlement
 IPLCInternational Product Life-Cycle theory
 MEPs Members of the European Parliament
 NAFTA North American Free Trade Agreement
 NGOs Non-Governmental Organizations
 NSA..... National Security Agency
 NTA..... New Transatlantic Agenda
 NTBsNon-Tariff Barriers
 NTM Non-Tariff Measures

NTT	New Trade Theory
OECD.....	Organization for Economic Co-operation and Development
OFSE	Austrian Foundation for Development and Research
OTCs.....	Over-The-Counter drugs
PTA.....	Preferential Trade Agreement
RCB	Regulatory Cooperation Body
SMEs	Small and Medium Enterprises
TEC.....	Transatlantic Economic Council
TEP	Transatlantic Economic Partnership
TNS.....	Taylor Nelson Sofres research agency
TTIP	Transatlantic Trade and Investment Partnership
UNCITRAL	United Nations Commission on International Trade Law
UNCAD	United Nations Conference on Trade and Development
USTR	United States Trade Representatives
US.....	United States
WTO.....	World Trade Organization

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1. Introduction

The European Union and the United States are currently negotiating the biggest bilateral free trade agreement. Transatlantic Free Trade Agreement (TAFTA) or also known as Transatlantic Trade and Investment Partnership (TTIP) originates from a long-lasting economic partnership between the EU and the US that stretches back more than a century ago. Since their formalized cooperation took place, both regions have been trying to ease the trade exchange mainly through the cutting of tariffs. For the last decade, however, the EU and the US have been losing their leading position in the world trade. Thus, willingness to deeper transatlantic trade liberalization has been one of the strongest drivers of bilateral (FTA) initiatives. This time, though, lowering tariffs would not play any significant role, as they are already at their minimum. As the empirical study conducted by CEPR (2013) shows, by reducing only tariff barriers the expected gains for both economies would be rather negligible. On the other hand, it was found that non-tariff barriers (NTBs), emerging from regulatory differences across the countries, create the most significant impediment in the transatlantic trade and investment relations. Therefore, NTBs reduction and harmonization of standards are regarded to be the key elements of the new bilateral FTA – the TTIP agreement. Regulations on both sides of Atlantic, however, cannot be simply removed since many of them have been established to serve legitimate domestic purposes. Thus, bearing this in mind, both NTBs differences across many sectors and an incompatible regulatory approach between the EU and the US refer to the most sensitive areas in the TTIP negotiations. Even though the negotiations have not been finished yet and the final decisions and results may still change, this paper is going to tackle a set of following questions:

Why the EU and the US have initiated the TTIP agreement just recently and what could have been the reasons for it? Which were the underlying studies analysing the effect of TTIP on economies? What econometric models have been used? Are their findings reliable? What the alternative analysis suggest concerning the potential impact of TTIP? What are the most challenging regulations in the negotiations? Why is TTIP regarded as a living agreement? Which will be the scope of TTIP's horizontal regulatory cooperation chapter? How this system will be designed, operated and by whom? What kind of investment protection standards will be embedded in TTIP? What about the transparency of the TTIP negotiations? And, finally, what is public general opinion about the agreement?

2. The evolution of international trade theories

The purpose of this chapter is to outline the fundamental theoretical framework on international trade theories. Moreover, the second part is going to provide with a guide through the history of theories of economic integration.

To start with, it is essential to outline the important role of scientific theories. It is generally accepted that major decisions in human's history have been based upon scientific theories and profound econometrics models. Their intention is to predict a future behaviour or to measure a probability of an outcome, in order to eliminate a potential risk that may occur in future. One of the most important area, in which the establishment of fundamental theories is essential, regards international trade.

The mainstream theory throughout 16th century to 18th century was Mercantilism. It was believed that prosperity of the nation depends on the encouraging export and collecting precious metal in return while discouraging import through use of tariffs. In terms of international trade, Mercantilism theory estimates that a gain by one nation result in a loss of another. Thus, the main goal was to achieve a "favourable" proportion between export and import by adopting protection policies. Such policies that would bring gold and silver into the country as well as maintain domestic employment (Zhang, 2008). Nonetheless, this system was beneficial exclusively for the rulers, but not for the consumers. Citizens mostly struggled with the high duties on imported goods. In late 18th century classical economist Adam Smith (1776) started to criticize Mercantilism. In his book, *The Wealth of Nations*, he explained that the wealth of a nation is not reflected by its treasure but rather by its productive capacity. He claimed that international trade is beneficial for all participants. Moreover, he argued that economy of scale that is beneficial in terms of lower costs, and can be achieved by specialization and labour division. His theory of absolute advantage is based on assumption that country should specialise in production of goods in which it has absolute advantage i.e. producing goods in which the country is most efficient and trade for those goods in which is not efficient. Adam Smith and David Ricardo are considered to be the fathers of classical theory of international trade (Zhang, 2008).

The Ricardian model (1817) is based on comparative advantage (in so called opportunity costs) and gains from trade. In particular, Ricardo reasoned that the substantial variables in international trade are technology and costs of production. His model of comparative advantage stands on assumption that a country should focus on producing those goods in which is relatively more cost-efficient and productive than other country. This is the simplest underlying assumption of classical model and differ from neoclassical trade models in that it

only regards one factor of production. Ricardo showed that industry specialization (that leads to low-cost production) along with free international market will always conduce to positive result. Nevertheless, it is argued that Ricardo did not provide a detailed explanation why a particular nation possess a comparative advantage in a specific product. (Zhang, 2008, pp. 2-5).

Subsequent leading international trade theory was developed within a neo-classical framework by Swedish economics Eli Heckscher and Bertil Ohlin. This theory is superior to Richardian theory of comparative advantage. Heckscher-Ohlin model introduces a second factor 'capital', so that this model considers two production factors – 'labour and capital' – a basic assumption of neo-classical macroeconomic model. It contributes to Ricardian theory and gave explanation why a nation possess comparative advantage in certain commodity. Heckscher-ohlin theory (1933) is based on assumption that two countries are identical apart from the difference in relative factor endowments (labour or capital). The country that is relatively richer in capital - capital-abundant country - will produce capital-intensive goods at lower costs than a labour-abundant country, and vice-versa. Thus, "a capital-abundant country will export the capital-intensive good, while the labour-abundant country will export the labour-intensive good." (B. Ohlin, 1933). This model has been one of the basic models of comparative advantage in modern economics. However, it was pointed out that Wassily Leontief, in a 1953 article, published data that undermined this theory. Consequently, in early 1960's a new theory was necessary to be established to give an insight into the trade pattern that could no longer be explained on the basis of earlier theories (Zhang, 2008, pp. 5-10).

To sum up the (neo)classical international trade theories, it is suggested that every country has a comparative advantage over others, therefore, one country could produce a commodity at lower cost than other country. Such comparative advantages stem from the factor endowment – abundant natural resources, climate or labour. Furthermore, specialization and labour division could further contribute to a comparative advantage. Hence, it should be the country's main goal to specialize in certain goods and trade those goods for others. Nevertheless, in late 70's a peculiar international trade pattern took place. Countries that produced similar commodities kept on trading with one another, in spite of the fact that they had 'nothing' to gain. Thus, traditional 'old' theories were no longer able to explain these changes. As a consequence, a group of economists challenged traditional view on international trade and it gave a rise to creation of New Trade Theory.

New Trade Theory (NTT) has a revolutionary conception of international trade. The NTT is built upon traditional models of comparative advantage. Moreover, it assumes certain elements, particularly, increasing returns to scale, imperfect competition, and product

differentiation, which were not reflected in classical 'old' trade theories. NTT highlights that comparative advantage does not just stem from the factor endowment but rather, from the economies of scale and network effects that are considered as substantial determinants of international trade patterns. Paul Krugman, a Nobel Prize laureate from 2008, pointed out that it is in countries' best interest to specialize on production of certain goods and thus attain the economy of scale in those goods – the higher rate of production the lower costs are achieved. It was emphasized that narrow market specialization will result in decline of spectrum of goods at national level. Therefore, this pattern creates an incentive for countries to be engaged in international trade in order to increase variety of goods at consumer level. At global level, though, the spectrum of products decrease since the individual countries are more specialized on particular products. This theory further suggests that economy of scale is more easily attained by early market entrants, since they have the time advantage in order to adapt to market conditions. Therefore, Krugman was convinced that newly emerging industries in developing countries are likely to have difficulties in currently established global market. Furthermore, NTT opposes the traditional wisdom of unlimited free trade and suggests a more complex view. It highlights the important role of government and the establishment of regulations. Krugman emphasizes the crucial need to protect the emerging industries particularly by such tools as domestic subsidy, export subsidy or temporary tariffs. As a result, it could enhance the efforts of the domestic industries to attain the economies of scale, and thus, a better competitive position at the global market could be obtained (Krugman P., 1994, pp. 1-8).

Taking into account the EU-US trade environment from the standpoint of competitiveness, development stage and production and trade structure, it has been concluded that New Trade Theory explicitly appears to be the theoretical ground to explain and analyse the new free trade agreement between the European Union and the United States - Transatlantic Free Trade Agreement (TAFTA) or Transatlantic Trade and Investment Partnership (TTIP) (Sorhun, 2014, pp. 288). Moreover, it was stressed that similar size of economies plays an important role for the potential members of economic bloc. As the empirical evidence suggests, the greater economic size discrepancies among the cooperating regions, the lower potential gains from the economic integration are generated. The US and the EU economic size is similar, considering EU as a whole. For this reason, the EU should act as a united entity in order to obtain greater economic gain from TTIP (Sorhun, 2014, pp. 288-289).

The classical and modern theories play critical role in deepening and liberalizing trade. As a consequence of more integrated economies, the international trade has witnessed a significant growth over the last decades. Trade liberalization can take several forms.

According to Balassa, who is considered as one of the main authors in this area, Economic Integration (EI) can be defined as “the abolition of discrimination within an area” (Balassa, 1961, p. 1). In his seminar work, *The Theory of Economic Integration* (Balassa, 1961), it is described as a process and a state of affairs. As far as the process is concerned, it comprises of measures designed to abolish discrimination between different states. Regarding the state of affairs, it encompasses the absence of different forms of discrimination between national economies. In this definition of EI, the process is characterised as a dynamic concept while the state of affairs is viewed as a static concept (Balassa, 1961, p. 1). It is vital to note that the definition of EI may vary among the scholars. For instance, in Kahnert’s opinion it is a “process of removing progressively those discriminations which occur at national borders” (Kahnert, 1969). Furthermore, Balassa (1961) pointed out that there is a discrepancy between economic integration and economic cooperation. He defines cooperation as an action that aims to lessen discrimination, whereas process of economic integration “comprises measures that entail the suppression of some forms of discrimination” (Balassa, 1961, pp. 2). Consequently, measures that only decrease discrimination among countries cannot be regarded as economic integration but rather economic cooperation (Balassa, 1961, pp. 2).

Balassa (1961) classifies different forms of EI depending on the degree of integration. He distinguishes five fundamental stages of EI – free-trade area, customs union, common market, economic union, and complete economic integration. The forms of economic integration have evolving characteristics – a higher form of EI encompasses both all characteristics of the lower stage of EI and new elements that expand the scope and content of the integration process (Balassa, 1961). In essence, higher stages can be viewed as progress in the integration process aiming its ultimate goal (depending on the desire of the participating countries) to achieve full integration - common monetary, social and economic policies and supranational institutions whose decisions are binding on member-states (Marinov, 2014, pp. 364-365).

Moreover, regarding evolving characteristics of integration, a higher form of integration regards lower level of national sovereignty for the participating countries. This sovereignty is given to the hands of central supranational authority. In other words, supranational authority in advanced form of EI possess more power than in the lower form. Although the economic integration is defined as a gradual process, it is believed that countries can start their integration from one of the higher levels, depending on their objectives (Marinov, 2014, pp. 365).

It is also worthy to note that current literature does not provide a consensus in the exact number of development forms of EI. This paper is going to provide a classification that includes six fundamental stages. Their content and description are mainly based on Balassa's approach.

According to Panagariya (2000), the first and the lowest form of integration is regarded the Preferential Trade Agreement (PTA). The underlying characteristic of this form of arrangement is that tariffs imposed on specific goods produced in the member countries are lower than on those produced outside the union. (Panagariya, 2000, pp. 288).

Free-trade area (FTA) is a PTA in which tariffs are eliminated entirely within the union. (Panagariya, 2000, pp. 288). Particularly, not only tariffs are abandoned but also quantitative restrictions (quotas) between the participating countries are abolished on the goods produced within the union. Nonetheless, each country keeps its own tariffs to the trade with non-members (Balassa, 1961, pp. 2). FTA is defined in paragraph (8) of article (XXIV) of the General Agreement on Trade and Tariffs (GATT, 1994), as follows: "A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce... are eliminated on substantially all the trade between the constituent territories in products originating in such territories" (GATT, 1994, pp. 792).

A Customs Union (CU) may be regarded as a further integrated FTA. It involves, besides the elements of FTA, an abolition of discrimination, in the terms of commodity movement and common external tariff on a good imported from non-members countries. This common external tariff is likely differ across goods but not across union partners. GATT (1994), paragraph (8) of article (XXIV), defines CU as follows: "A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that (i) duties and other restrictive regulations of commerce... are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and, (ii)... substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union" (GATT, 1994, pp. 792).

The next step in EI is attained in a Common Market (CM). CM therefore involves all characteristics of CU and, in addition to that, it allows free movement of labour and capital among member nations. In order to achieve a CM, it is substantial for its members to remove all trade barriers (including non-tariff barriers). Thus, physical (borders), technical (standards) and fiscal (taxes) barriers are diminished at maximum extent among the members of CM.

Moreover, it is necessary for the Member states to have a certain degree of coordination of some of the economic policies (J.P.C. Bento, 2009).

A deeper form of EI is regarded as Economic union. It “combines the suppression of restrictions on commodity and factor policies, in order to remove discrimination that was due to disparities in these policies” (Balassa, 1961, pp. 2). The ultimate goal of the Economic union is the Economic and Monetary Union (EMU). It encompass unified monetary and fiscal policies that are supervised by central authority. Moreover, the members of economic union use the same currency and apply the same monetary policy (J.P.C. Bento, 2009)

The highest form of EI, according to Balassa (1961), is a complete economic integration where all the members become literally one nation. In this stage supra-national authority, whose decisions are binding for member states, possess the sovereignty of nation’s government and controls unified policies, in particular monetary, fiscal, social, and anti-cyclical policies (Balassa, 1961, pp. 3; J.P.C. Bento, 2009, pp.4). “The formulation and implementation of economic policy is an exclusive competence of the institutions of the integration community”. (Marinov, 2014, pp. 369)

3. A Brief Outlook on EU-US Partnership

The long-standing partnership between the European Union and United States stretches back to 1953, when the first diplomatic relationship was established. Nevertheless, it was only on 27th November 1990 when the 'Transatlantic Declaration' - which for the first time formalized EU-US cooperation - was signed. Since then, a sustained political dialogue and regular summit meetings between the leaders of European Community and the United States began. Their cooperation addressed such areas as on the economy, education, science, and culture. Further step in EU-US bilateral collaboration emerged in 1995 when the New Transatlantic Agenda (NTA) was launched. NTA objectives encompassed four main areas: promoting peace and stability; sustaining democracy and development around the world; responding to global challenges; contributing to the expansion of world trade and closer economic relations; and building bridges across the Atlantic. Subsequently, on 18 May 1998 at the London EU-US Summit, a new initiative to create the Transatlantic Economic Partnership (TEP) was launched. The main goals of TEP were to intensify and extend multilateral and bilateral cooperation and common actions in the field of trade and investment. Under TEP, EU-US agreed to remove technical barriers to trade by mutual recognition of conformity assessment, and to work together on custom procedures (EC, 2006). Later on, in 2007, within the framework of the NTA and in line with the TEP, the Transatlantic Economic Council (TEC) was established in order to intensify transatlantic economic integration, improve competitiveness and achieve bilateral economic convergence of both partners the EU and the US (The White House, 2014; USEU, 2015). At the present time the TEC is the only EU-US high level forum where the economic issues can be discussed in a coherent and coordinated manner. Herein, the Members of the European Commission and US Cabinet Members are brought together in order to discuss strategic global economic questions and closer EU-US economic ties. In November 2011, at the EU-US summit meeting, TEC established a particular group called High-Level Working Group on Jobs and Growth (HLWG) that is governed by the EU Trade Commissioner and the US Trade Representative (EC, 2015). The major purpose of HLWG was to identify the policies and measures that would contribute to an increase of trade and investments, and to attain job creation, economic growth, and international competitiveness. According to its final report from 13th February 2013, the HLWG, after considering various scenarios, came into conclusion that the most significant mutual benefit would be achieved by a comprehensive, ambitious agreement that would address a broad range of bilateral trade and investment issues - including regulatory issues- that could contribute to the development of global rules (HLWG report, 2013). In February 2013, the EU presidents (European Council President Herman Van Rompuy and European

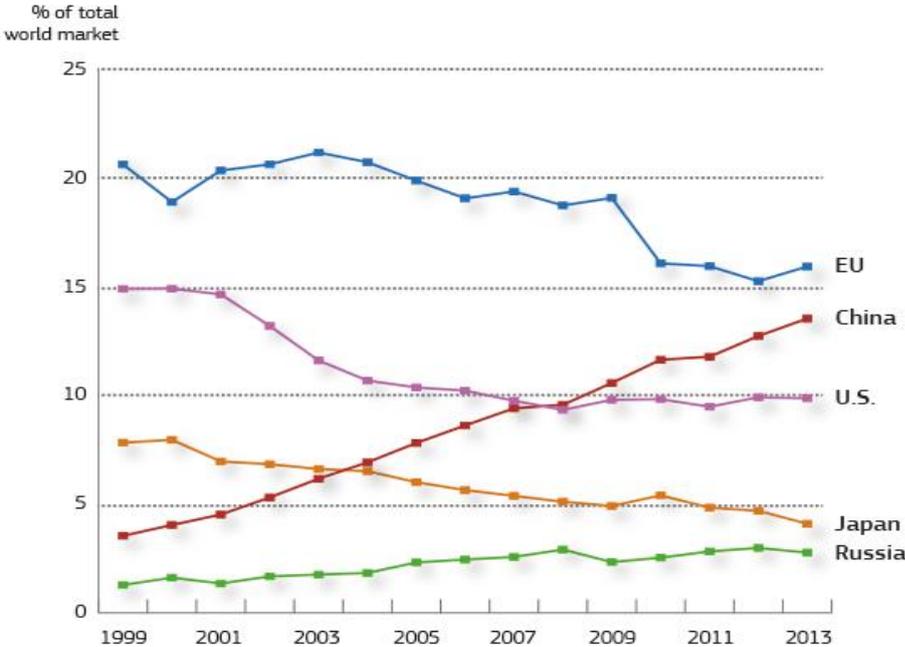
Commission President José Manuel Barroso) and the US president (Barack Obama) endorsed recommendations of the HLWG and announced to start necessary procedures in order to launch negotiations on a Transatlantic Trade and Investment Partnership (TTIP) (MEMO, 2013). When the negotiations are completed, the EU-US agreement would be the biggest bilateral FTA ever negotiated.

4. EU-US position in world market

The mutual trade between the EU and the US is the largest bilateral trade relationship which enjoys the most integrated economic relationship in the world. The data revealed by European Commission (EC), in 2015, showed that the total US investment in the EU is three times higher than in all of Asia; EU investment in the US is around eight times the amount of EU investment in India and China together; and the EU and the US economies account together for about half the entire world GDP and for nearly one third of world trade flows (EC, 2015)

Nevertheless, according to the EC working document (EC-SWD 69, 2013) it was emphasized that the relative share of total trade of these two economies has been on decline over the last decade (EC-SWD 69, 2013).

Figure 1 – *Relative Market Share in % of world total, 1999-2013*



Source: EC-ECFIN, March 2015

The chart depicts a significant decline of the EU and the US relative market share concerning the world market. In the decade preceding the crisis, the EU experienced relatively stable market shares, fluctuating around 20 per cent between 2000 and 2007. However, the severe consequences of the crisis constituted a significant loss of the EU market share. The drop of the EU market share, shortly after the crisis, was much greater than in the case of the US. In contrast, the US had already lost significant export market shares before the crisis in the period of 2000-2007. The US market share has been relatively stable after the crisis hit, in 2009, hovering around 10 per cent. Japan's market share has similar nature to that of the US. China, on the other hand, after the initial period of opening up has strengthened its position on the global market and become more competitive. For more than a decade, China has been gaining significant market shares mainly at the expense of the US and Japan and has become one of the major global players. Moreover, its growth was not significantly affected by the global crisis (EC-ECFIN, March 2015).

5. Towards TTIP

As the brief history outlook in the third chapter outlined the EU and the US have been undergoing incremental integration for more than 60 years. By virtue of their mutual effort, both regions became the biggest economic powers in the world. Nonetheless, due to the growing economic power of China and other faster-growing emerging economies the global economic power in the last decade has been shifting away from the advanced western economies (Cox M., 2012), as portrayed in the Figure 1. Therefore, we can assume that both the European Union and the United States have common incentive for deeper integration that might contribute to an increase of relative share in the world trade. At the same time, it can be argued that both partners have viewed an ambitious and comprehensive trade agreement as a rational further step in the EU-US integration process.

With the aim to facilitate the integration process, in April 2007, The Transatlantic Economic Council (TEC) was established to guide and stimulate the work on transatlantic economic convergence. TEC fosters ongoing economic cooperation activities in areas of mutual interest as well as it works as a platform to ensure a political guidance and directions (EC, 2013). Since the work of TEC started, there have been published several economic studies that analyse the economic nature on both sides of Atlantic. These studies tried to find out what create the most substantial impediment in bilateral EU-US relationship, as well as to suggest the best alternative that would accelerate their mutual trade and investment flows.

The first key econometric study was published, in December 2009, by Ecorys (2009). Its research was funded by EC (Ecorys, 2009, pp i). It was stated that although economic relationship between the EU and the US are among the most open in the world, “various non-tariff measures (NTMs) on both sides of the Atlantic continue to hinder the emergence of a truly free transatlantic market and constitute important impediments to greater transatlantic trade and investment flows”. The published report - ‘Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis’ (Ecorys, 2009) - identifies NTMs and regulatory divergences between the EU and the US constitute important impediment in their mutual trade. The paper considers economic potential of both regions that could be attained by reduction of NTMs and better aligning regulations across the Atlantic.

In an effort to examine the potential effects of the EU-US Transatlantic Trade and Investment Partnership (TTIP), TTIP have been accompanied by series of econometric studies aiming to project net economic gain for all countries involved. Likewise Ecorys (2009), studies that were conducted in following years by Centre for Economic Policy Research (CEPR, 2013), Centre d’Etudes Prospectives et d’Informations Internationales (CEPII, 2013) and Bertelsmann Stiftung (2013), highlighted that the Non-tariff barriers (NTB) are currently the basic obstacle in the EU-US economic relationship.

All four above noted studies estimate that a new kind of FTA between the EU and the US, which particularly addresses non-tariff barriers reduction and harmonization of regulations and standards, would deliver considerable benefits for both partners.

In particular, the empirical study called ‘Reducing Trans-Atlantic Barriers to Trade and Investment’ conducted by CEPR (2013) is considered to be a cornerstone of the TTIP agreement. With regard to TTIP negotiations, papers released by European Commission primarily refer to the CEPR’s report (2013) and its findings. CEPR is regarded as a leading independent pan-European economic research organization. Substantial part of this analysis originates from the empirical study published by Ecorys in 2009. CEPR (2013) has taken into consideration two scenarios: first, reducing specific tariffs; second, ambitious comprehensive trade and investment liberalization. The results showed that the second scenario - the comprehensive complete tariff removal and *harmonization of regulations and standards* - would bring greater benefits to both economies. It is also vital to note that the researchers from CEPR admitted it has been a very challenging task to precisely estimate the hypothesis benefits that TTIP would bring, as it is extremely ambitious and comprehensive FTA aiming to integrate two biggest economies in the world. (CEPR, 2013).

6. Regulatory coherence

Indeed, TTIP is a new kind of FTA that primarily focuses on reduction of NTBs. In Ecorys (2009) study, non-tariff barriers are defined as “all non-price and non-quantity restrictions on trade in goods, services and investment, at federal and state level. This includes border measures (customs procedures, etc.) as well as behind-the border measures flowing from domestic laws, regulations and practices” (Ecorys, 2009, pp. xiii). Unlike traditional NTBs (such as import quotas), different regulations (e.g. chemicals in cosmetics, car safety or food safety) contribute to the rise of production-cost for foreign firms resulting from different and mostly expensive reconfiguration of products for export. In this regard, it can negatively affect foreign firms in terms of market concentration and economic power (CEPR, 2013, pp.16).

It should be stressed that many regulations cannot be simply removed by the reason that they serve legitimate domestic purposes. Nevertheless, it is argued that the potential benefits of TTIP will be substantial, and hence, “the costs involved may still be mitigated or reduced through partial regulatory convergence and cross-recognition of standards” (CEPR, 2013, pp. 9). Once the regulations between the EU and the US are more compatible the transaction costs will be reduced. Accordingly, firms will meet easily all the necessary requirements for shipping commodities over Atlantic. They will be able to obtain new customers as well as to expand their businesses. It is suggested that this will lead to growth creating, new jobs and higher wages. EC also supposes that Small and Medium Enterprises (SMEs) “will be among the biggest beneficiaries, since they are disproportionately affected by regulatory barriers to trade” (EC-TTIP and Regulations, 2015, pp. 4). Moreover, it is suggested that TTIP will contribute to wider range of products for customers on both sides of Atlantic. Finally, it is believed that a closer cooperation between the EU and the US could lead to the development, update and implementation of international regulation and standards (EC-TTIP and Regulations, 2015).

Even though the EC proclaims that “both sides have some of the highest quality regulation in the world, managed by some of the most qualified experts” (EC-TTIP and Regulations, 2015, pp. 5) many concerns about the ‘regulatory convergence’ and ‘regulatory cooperation’ have been expressed among civil society organizations and general public. Such concerns stem from the fact that there are significant discrepancies between the American and the European regulations and generally accepted standards. Therefore, many consumer groups and independent studies fear that the attempts to convergent regulations will contribute to a potential welfare loss to society, to the extent that this elimination threatens public policy goals (e.g. consumer safety, public health, environmental safety) (OFSE, 2014, pp. IV). Nonetheless,

the EC re-assures that the protectionism of citizens will not be diminished in favour of trade. Consequently, it was stressed that in areas where the EU and the US has different approaches to regulations “it is not possible to make the systems compatible, because we have [implying the EU] taken different democratic decisions through our legislative processes about what rules are right for our societies” (EC-TTIP and Regulations, 2015, pp.6).

6.1 Divergent regulatory regimes

The following subchapters are going to introduce some of the most striking examples of different regulations and standards between the EU and the US that have been accompanied with social distemper since the TTIP negotiations begun. Particularly three EU-US regulations are going to highlighted and discussed in detail.

It is argued that legislative frameworks between the EU and the US in terms of underlying values and approach differ considerably. For instance, regarding medical devices the US regulation imposes very strict requirements and a great pre and post marketing surveillance, while the EU regulation in this area is far behind. On the other hand, in the US there is no statutory recognition of privacy, whereas the EU regulation recognize data privacy as a fundamental right. Food and agriculture are another areas where the legislation frameworks between the EU and the US often differ significantly. The different approaches include hygiene and control system, labelling standards, basic cultural, ecological and ethical values. In contradiction to the US regulations, the European-ones strictly ban hormone-treated beef, chlorine-washed poultry or food products from cloned animals. In addition, while the US legislation do not require labelling of Genetically Modified (GM) food in most of its federal states, the EU consumers enjoy strict labelling of GM foods and ingredients (Cardoso and colleagues, 2013).

6.1.1 Genetically Modified Organisms (GMOs)

Genetically Modified Organisms (GMOs) induce very controversial debate throughout the Europe. “GMOs are organisms whose genetic material has been modified artificially in order to give them new properties, such as resistance to droughts or insects” (EU-parliament, 2015). Both the US and the EU legislations allow Genetically Modified Organisms (GMOs) to be cultivated and used as feed and food in their territories. Even though accumulating data and extensive studies are pointing to the potential role of GMOs, either directly or indirectly, to be linked with the rise of chronic diseases further research is required (Diamanti-Kandarakis E., 2009).

Despite the pronounced concerns about health, environmental and overall benefits/threats of GMOs they have been authorised and placed on market. The first GM maize 'MON 810' has been commercially cultivated in the EU since 1998. Nevertheless, in the last decade Europe has experienced significant decline in GMOs cultivation. Most of the EU Members, namely, France, Germany, Luxembourg and Austria, Bulgaria, Greece, Hungary, Poland and Italy have adopted safeguard measures prohibiting the cultivation of GMOs on their territories. Currently only the Monsanto GM maize, authorised in 1998, is grown on really small amount of hectares in just four European countries: Spain, Portugal, the Czech Republic, Romania and Slovakia (EU-Parliament, 2015). On the contrary, as the quantitative data of US Department of Agriculture shows, on average, in 2014, 93 per cent of biotech crops - in the area of 73.1 million hectares - cultivated in the US were classified as GMOs (USDA, 2014). Notwithstanding, despite the EU restrictions on GMOs cultivation it is essential to note that the Member States keep on importing GMOs, particularly soymeal and soybean. In 2013, 32 million tonnes of soymeal and soybean (96% of EU consumption from which 90% was GMOs origin) were imported to the EU, where most of it was used as a feed for livestock - please see also Appendix I (EC-GMOs, 2015).

With regard to the TTIP negotiations, in February 2015, the EC stated that the legislation will not change in pursuit to make the systems more compatible, as the different democratic decisions about the rules have been taken through its legislative processes. Moreover, it was stated that EU basic law on GMOs is not up for negotiations (EC-TTIP and Regulations, 2015, pp. 5). Somewhat in contradictory to those statements, EC on its official website, regarding TTIP, proclaimed that "Regulators in the EU and US already exchange information about GMOs - on policy, regulations and technical issues. TTIP could help them do so more effectively. This would help limit the effect on trade of our different systems for approving GMOs" (EC-TTIP Questions and Answers, 2015). In addition, in April 2015, a new political agreement towards allowing Member States to restrict or ban GMOs cultivation in their territory was reached. This agreement shifts the responsibility - regarding GMOs cultivation - to the State level (EC-GMOs, 2015). In this concern, Marco Contiero, Greenpeace EU agriculture policy director, argues that this agreement has some major flaws: "It grants biotech companies the power to negotiate with elected governments and excludes the strongest legal argument to ban GM crops-evidence of environmental harm" (Greenpeace, 2015).

6.1.2 Chemicals in cosmetics

Regulatory systems between the EU and the US in this area are also rather different. European new regulation on cosmetic (including prohibited chemicals in cosmetics), which came into

force in 2013, defines a cosmetic in a very broad spectrum. Thereby, there exist so many categories of products that fit into this regulation. On the contrary, the US exercises different system where the category of cosmetic is quite narrow one. For instance, Over-The-Counter drugs (OTC), in which category falls also toothpaste or sunscreens, are not considered as cosmetics (Euroactive, 2014; BEUC, 2014). Furthermore, in comparison of prohibited or restricted substances and ingredients used in cosmetics the EU has remarkably higher safety standards than its counterpart the US. According to the EC regulation, the EU prohibits 1378 chemical substances that cannot be used in cosmetics products (see the list of substances on EC-Cosmetics, 2015). On the other hand, U.S. Food and Drug Administration (FDA, 2015) prohibits or restricts only 11 substances that cannot be used in cosmetics products (see the list of substances on FDA, 2015). As a consequence, a mutual recognition of standards and regulatory convergence in this area come to be seen as inconceivable.

The primary goal of TTIP, however, is a mutual recognition of standards and regulatory coherence, and this area has not been an exception. As The European Consumer Organization (BEUC) revealed, in the first EC - Position paper on Cosmetics published in May 2014, the primary idea of TTIP was to promote regulatory convergence in the cosmetics sector. This particularly implied that TTIP could cover “Mutual recognition of lists of substances that can be used in cosmetic products (positive lists) and of lists of substances that are prohibited or restricted in cosmetic products (negative list)” (BEUC, 2014). Nonetheless, BEUC stated after repeated appeals by public interest organisations and media reporting on allowing mutual recognition of systems and thereby accepting banned chemicals in cosmetics, the EU position paper on chemicals in cosmetics has been altered. Public interest organisations highlighted that mutual recognition would be major threat to the EU’s cosmetic safety regulatory framework. After protracted negotiations the position of EU on cosmetics has changed. The major change in the new EU position on cosmetics in TTIP, from March 2015, implies that there is no longer a reference to the feasibility of ‘mutual recognition’ of lists of banned and authorised substances in cosmetics (BEUC, 2014). Nevertheless, as long as the negotiations are not completed, the final outcome is not guaranteed.

6.1.3 Data Flows and Data Protection

In last couple of months the issues considering data flows, data protection and privacy have drawn a lot of concerns and attention in Europe. The highest cross-border data flows in the world take place between the EU and US – 50% of total world data flows, therefore this component is just as substantial in TTIP negotiation as the trade of physical goods. In essence,

cross-border data flows might be viewed as a form of services or goods that can be purchased on international market. This can include a wide range of services from finance to consulting, from software and apps to intellectual property rights. It is stressed that as a result of removing non-tariff barriers through regulatory convergence the trade in digital goods and services will sharply increase by making flows between the different parties more fluid and more transparent (Thieulin and colleagues, 2013). Consequently, “access to the Internet and the ability to move data freely across borders increases the productivity of businesses and reduces trade costs, thereby creating economic growth and jobs” (Meltzer, 2014, pp. 1).

It is important to emphasize, however, that free flows of information across the Atlantic, from which all parties benefit, should never be mixed up with the flow of commercially valuable personal information. Nowadays, consumers are subject to increased tracking and commercial surveillance as they move through their online and offline worlds. Extensive online tracking enables a creation of enormous personal profiles that can potentially compromise individual privacy and security. This is a subject of the regulatory framework on data protection and privacy. The EU and the US protection regimes, however, are thoroughly different. In the US there are currently no comprehensive data protection laws (BEUC-Data Flows, 2015). On the other hand, privacy in the EU is a fundamental right - “under EU law, personal data can only be gathered legally under strict conditions, for a legitimate purpose”. Moreover, the EU is currently undergoing a comprehensive reform of data protection rules that should be completed in the course of 2015 (EC-Data Protection, 2015).

TTIP should be used as a vehicle to accelerate maximum interoperability between the EU and the US systems. Nevertheless, it is argued that in such sensitive areas like privacy protection, a broad trade agreement is not a correct framework. It has been underscored that in this context a specific agreement on data protection is necessary (Cardoso and colleagues, 2013). Therefore, it was emphasized by BEUC (2015) that the EU and the US should discuss common data privacy standards outside of the proposed TTIP negotiations (BEUC-Data Flows, 2015).

7. Regulatory Cooperation - Horizontal Chapter

While the above noted EU-US regulatory coherence is a part of TTIP negotiations that address the reinforcement of comprehension, trust and confidence in the domestic rule-making procedures between the two partners, the regulatory cooperation part aims to set up obligations that are generally respected and applied by all regulatory agencies on the both sides of Atlantic. This will be a new mechanism that is set to ensure awareness of both sides

about the implications of proposals and decisions on the other transatlantic partner (Chase and Pelkams, 2015). While writing this section, only one party, the EU, has publicly exposed its text proposal for the 'Horizontal' (cross sectorial) chapter on Regulatory Cooperation - an innovative approach to international regulatory cooperation.

Whilst the proposed texts of the US remain a secret, a sketch of the US position on regulatory cooperation has been outlined on its official website of US Trade Representatives (USTR, 2015). According to this draft the US primarily focuses on the promotion of greater transparency, participation and accountability in the development of regulations. This essentially means "applying the US system of public online consultations and other administrative review processes to all EU primary and secondary law making, including for the national laws of the 28 EU member countries" (TACD, 2015). It is also believed that embracing sound regulatory objectives in TTIP will not only put this two economies closer together, but may serve as a positive example for third-country markets around the world (USTR, 2015).

In the European Union, on 10 February 2015, an introduction to the first legal text on regulatory cooperation was revealed by the EC. During the 9th round of TTIP negotiations, which took place in April 2015, EU Commission's initial proposal on regulatory cooperation was submitted and came in public on 4 May 2015. The EU proposal on regulatory cooperation covers only specific regulatory acts that have or may have a significant effect on EU-US trade or investment (EC-Regulatory Cooperation, 2015). Ultimate goal of this proposal is to set up a "new model of economic integration based on a permanent bilateral regulatory cooperation mechanism through horizontal provisions complemented by a number of specific commitments across sectors" (Alemanno A., 2015, pp. 7). These commitments largely focus on regulatory cooperation in areas of common interest. In order to frame such an enhanced regulatory cooperation the establishment of an institutional mechanism is inevitable. The overall aim of this new concept is to identify, facilitate and increase the level of future regulatory compatibility and convergence between the EU and the US, where feasible. "TTIP will therefore emerge as a 'living agreement' where new areas of cooperation can be identified without the need to re-open the initial international agreement nor to modify each-others' institutional frameworks" (Alemanno A., 2015, pp. 10).

Once the TTIP negotiations are concluded, new objectives for future regulatory cooperation may be identified. For this reason, the EU proposal for permanent regulatory cooperation suggests that regulators should be flexible in order to identify new priorities for regulatory cooperation. The EU-US regulatory cooperation need to be conducted in transparent manners including stakeholders' input. This can be achieved through the Annual Regulatory Cooperation Programme of the Regulatory Cooperation Body (see Articles 14 and 15 of EU-

Proposal, 2015). The EU proposal for regulatory cooperation seeks to cover particularly two types of regulations (see Article 3 of EC-Proposal, 2015): (1) “that contain precise requirements on how products should be designed to be marketed and used in the EU or the US”; (2) “that provide specific conditions for the supply of services, including for example licenses or qualification of service providers” (EC-Regulatory Cooperation, 2015, pp. 5).

The EU-US regulatory cooperation would be facilitated by application of ‘good regulatory policy’ instruments and practices such as early warning, early regulatory cooperation, stakeholder consultation, transparency, impact assessment of proposed regulation, etc. (see Articles 5-7 of EC-Proposal, 2015). By embedding for the first time good regulatory practices into their respective systems the likelihood of mutual convergence on both the existing and new important regulatory standards is elevated (Alemanno A., 2015, pp. 20). Moreover, their cooperation would be beneficial in terms of exchanging experiences. In order to produce more compatible regulations, the regulatory cooperation mechanism would be based on regulatory exchange practices. This is a model of voluntary cooperation based on common interest. The EC proposal suggests establishing of the so called ‘Focal Points’ – each party will establish its respective office that will act as facilitator in the process of exchanging information about envisaged and existing regulatory acts (see Article 8 of EC-Proposal, 2015). As a consequence of shared experience, in terms of regulations, a better outcome is expected when developing new regulations. In cases where there is no room for compatibility the exchange may conduce to, at least, clarifying the respective positions of regulators. In order to promote regulatory compatibility (Article 10 of EC-Proposal, 2015) the regulators would act at central level i.e. at the EU and US federal level. This would stimulate regulators to jointly assess appropriate concept to promote compatibility when developing new innovative regulations, for instance, on modern IT technologies or hybrid cars.

It is essential to note that this proposal suggests that the new mechanism will foster the initiation of procedures that could result in a greater convergence, but not to predetermine any particular outcome. The final decision and the conclusions will be based on the joint assessment of the regulators concerned, providing that stakeholders’ position has been taken into consideration (see Article 15 of EC-Proposal, 2015). It should be emphasized that stakeholders’ participation is a crucial element of this proposal. In this concern, Alemanno, Jean Monnet Professor of EU Law and Risk Regulation, in his paper (Alemanno A., 2015, pp. 12) claims that one of the driving forces of permanent negotiations will be stakeholders’ request on new regulations. This was underscored by the EC stating that “all stakeholders would be offered a way to submit observations and concrete suggestions to regulators which would be carefully examined by the sectorial working group in charge or directly by the Regulatory Cooperation Body (RCB)” (EC-Regulatory Cooperation, 2015, pp. 10). The RCB would most

probably be an institutional framework, as proposed by EU Commission. It would monitor the work done in sectors and identify new opportunities for cooperation. Moreover, the progress achieved in agreed cooperation programmes would be reported to the Joint Ministerial Body. The key function of the RCB would be to promote future regulatory compatibility and convergence between the EU and the US by providing guidance to the process of on-going interactive cooperation. This body would be composed of representatives of public bodies (high level representatives of the regulators and competent authorities from both sides as well as departments of general oversight and implementation). The RCB should proactively collaborate with stakeholders, including businesses, consumers, NGOs and trade unions. Nonetheless, it would have solely consultative role, and hence, regulatory or rule-making competences would remain in the hands of domestic regulatory and legislative bodies or institutions (see Article 14-16 of EC-proposal, 2015; and EC-Regulatory Cooperation, 2015, pp.11-12).

The EC Proposal (2015) also envisages a wider international regulatory cooperation with the involvement of third countries. This could be accomplished through the establishment of an international fora that could lead to development and implementation of international instruments (see Article 13 of EC-Proposal, 2015).

In reflection to this new complex mechanism, the EC assures that regulatory cooperation, as proposed by the EU, will not hamper or delay the process of adopting important measures and regulations – a sketch of the new complex regulatory mechanism has been drawn up by BEUC, see Appendix II. It was stated that “early cooperation and exchange of information can help regulators to be more effective and efficient from the start in achieving their objectives” (EC-Regulatory Cooperation, 2015, pp. 10). Moreover, it was stressed that regulatory cooperation will not lead to future reductions in levels of protection as all the states will continue to regulate in accordance with their regulatory framework, procedures and principles (EC-Regulatory Cooperation, 2015).

Nevertheless, Alemanno (2015) argues that if this new system is not carefully designed and thoughtfully handled, its ongoing function may rather “quickly turn into a plethora of additional advocacy avenues within the actual respective policymaking systems” (Alemanno A., 2015, pp. 20). Moreover, Chase and Pelkams (2015) pointed out that currently proposed texts on Horizontal cooperation do not refer to such essential tools as Regulatory Compatibility Assessments or/and the Regulatory Equivalence Assessments, in order to ensure informed decision-making without trying to predetermine the outcomes (Chase and Pelkams, 2015, pp. 25-26). In addition, Alemanno (2015) is convinced that the major beneficiaries of the mechanisms of regulatory cooperation, are industry lobbies rather than civic advocates. He

also critically views this innovative governance mechanism as a tool that inevitably ‘reopen’ the legislative and rulemaking processes. Thus, TTIP “horizontal coherence chapter – due to the commitment to the promotion of regulatory compatibility – may lead the regulators away from the previously agreed regulatory standards” (Alemanno A., 2015, pp. 20). Therefore, it was further emphasized that TTIP’s bilateral cooperation mechanism requires legitimate and accountable process. This can be satisfied through an inclusive, truly multi-stakeholder advisory process that must be comprised of representatives of citizen, consumer and public interest groups who are nominated by these sectors through a public process (Alemanno A., 2015).

Nevertheless, it is vital to state that the introductory chapter (first section – ‘General notes’) of the EU proposal assures that the current text proposal “represents an initial draft which will need to be completed and refined by more detailed proposals in a number of areas” (EC-Proposal, 2015, pp. 1). Thus, in accordance with this statement, the anxiety or disarray of many scholars arguing that the proposal appears to neglect some important areas is rather premature. It was stressed by the EC that there is a need for comprehensive discussion in many important areas. Moreover, this proposal has hinted a possible resolution of very controversial debate on the dispute settlement system (in other textbooks described as Investor State Dispute Settlement (ISDS) in TTIP. The concept of ISDS mechanism, its implications on signatory states and the recent innovative proposal on alternative mechanism are going to be discussed in detail in following chapter.

8. Investor State Dispute Settlement - ISDS

International Investment Agreements (IIAs) usually give a wide range of protection to foreign investors against the actions taken by the state in which they invest in. In any kind of investment agreements a country has to agree upon a number of limited rules - called ‘investment protection standards’ - on how to legally treat its foreign investors. One of those enforcement mechanisms is also Investor State Dispute Settlement (ISDS). Regarding TTIP negotiations, ISDS has drawn one of the most controversially debated among politicians, civil society organizations, lobbies, lawyers, intellectual public and general public. As this part of the TTIP negotiations have been one of the hottest topics, it is going to be discussed in greater details in this chapter.

It is going to be introduced an overview of ‘traditional’ ISDS model that is incorporated in most of the BITs. It will be portrayed an escalating use and/or abuse of ISDS mechanism by the

foreign investors in the last decade as well as the consequences of such trials are going to be highlighted. Moreover, it is going to be discussed a gradual development of the traditional protection ISDS mechanism towards the new EU approach. Finally, this chapter is going to reveal the current proposal of an alternative protection mechanism in TTIP.

The dispute settlement mechanism was established in early 1960's. The main purpose was to guarantee the foreign investors to obtain a compensation if their investments – factories, mines or land – were expropriated. In the third-countries with unreliable domestic court systems the expropriation was likely to occur, thereby, the establishment of such mechanism was welcomed (Stiftung, 2014, pp. 3-4). Nowadays, ISDS mechanism is broadly used in international investment agreements to safeguard that commitments, which countries have made to one another to protect mutual investments, are respected. By the 2014, there have been 3268 International Investment Agreements (IIA) (2,923 BITs and 345 “other IIAs”) containing ISDS provision (UNCTAD, February 2015). EU Member States account for around 1400 of these. The key objective of ISDS mechanism is a provision of a neutral forum to resolve disputes between state and foreign investor. The jurisdiction of arbitral systems operates by the World Bank's International Centre for Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNCITRAL) (Stiftung, 2014, pp. 3-4). The lawsuits cannot be invoked before domestic courts as the International Investment Agreements (IIA) are part of the international legal system (EC, March 2015). In this regard, ISDS mechanism has been widely criticised as “the investors are able to ‘leapfrog’ domestic courts” (BFoGP, 2014, pp. 74-77). Moreover, in the ISDS tribunal the disputes are judged by one or more arbitrators chosen by the parties. The foreign investor is entitled to a monetary compensation in the situation when he is able to prove that the measures taken by the host state has violated the investment treaty and caused him a significant damage such as reduced profits, cancellation of a contract, or changes in tax laws (EC-ISDS, March 2014).

Furthermore, ISDS trials lack transparency as the tribunals operate behind the ‘closed doors’. The complaining party (a company, an association or an individual) has an absolute discretion to set compensation amounts, to order payment of compound interest, and to allocate costs. In addition, it is not compulsory for foreign investors to exhaust the domestic remedies before going to the ISDS tribunals, although the primary exhaustion of those remedies is an underlying principle of international law. As an implication of ISDS privilege the “foreign investors have superior substantive and procedural rights relative to domestic investors and firms” (Stiftung, 2014, pp. 3-4).

In addition, the monetary compensation, lawyers' fees for processing the cases or other bills related to the trial, are paid out of the public purse. It was revealed by UNCTAD (2015) that, in

2014, 8 out of 42 rendered decisions were awarded. This includes a combined award of approximately USD 50 billion in three closely related cases, the highest known award by far in the history of investment arbitration (UNCTAD, February 2015, pp. 7-8). UNCTAD (February 2015) has examined claims and awards across a large number of ISDS cases. It was found out that on average states were significantly more successful than investors - from the total number of 356 concluded cases by 2014 - 37% (132 cases) had been decided in favour of the State, while 25% (87 cases) were found in favour of the investor, with monetary compensation awarded (UNCTAD, February 2015, pp. 8). Nevertheless, despite the proportionally greater success of the state it was underscored that “under the ISDS regime, only investors can initiate suits and while governments have obligations to investors, there is no reciprocal responsibility for investors with respect to host governments” (Stiftung, 2014, pp. 2).

Last but not least, in the last decade the investment lawyers and corporations has been using the threat of legal cases trying to alter inconvenient policies or prevent proposed measures and regulations that could negatively affect their profits (Olivet and Eberhardt, March, 2014). Generally speaking, as a consequence of ISDS provision in BITs, the democratic principles are often jeopardized by the reason that it “formally prioritizes corporate rights over the right of governments to regulate and the sovereign right of nations to govern their own affairs” (Stiftung, 2014, pp. 4). This effect is also known as “regulatory chill”. On this account, enforcing the ISDS trials has had damaging and direct impacts on peoples’ daily lives and on overall wellbeing. Additionally, international firms are increasingly abusing ISDS privilege to attack a loads of policies, in particular food safety, natural resource, agricultural, financial, environmental, tobacco and other policies.

The number of initiated ISDS lawsuits have experienced boom in the last fifteen years (see Appendix III). Since the 1960s – when the first Bilateral Investment Treaties (BITs) with ISDS provision were established – until 2000, there were barely 50 ISDS cases in total. However, since 2001 onwards the ISDS arbitrations have been sharply rising to the total number of 608 ISDS cases (of which 356 cases were concluded), at the end of 2014, not including numerous cases that are kept out of the public eye (UNCTAD, February 2015). This enormous increase by twelve-fold in just 14 years can be interpreted as a rising abuse of the investor’s privilege to sue the host state in the situations they feel that the new or proposed measures or regulation may contribute to the reduce profit.

8.1 A Proposal to Include ISDS in TTIP

As any other BITs also TTIP must include some sort of investment protection standards in order to ensure a fair legal treatment of foreign investors as well as to encourage and protect the high volume of EU investment in the US and, reciprocally, the investments held by the US

in the EU. On 17 June 2013, the mandate for negotiating the Transatlantic Trade and Investment Partnership Agreement (TTIP) was provided to the European Commission by the 28 EU Member States. It was stated this agreement should include investment protection and Investor-to-State dispute settlement (ISDS), providing that certain conditions would be fulfilled (TTIP-Mandate, 2014).

Although the official version of the TTIP mandate was released on 9 October 2014 by the European Commissioner Karel de Gucht (TTIP-Mandate, 2014), it was in early June 2013, when leaked texts of the first drafts of the EU negotiating mandate were being published and freely accessible online on various of websites (see for example a draft on Netzpolitik.org, 2013). The pronounced statement that TTIP agreement will most likely encompass the ISDS provision has led to an increasing opposition from public and civil society organizations.

The following subchapter is going to outline the past attempts made by the EU to reform the traditional ISDS mechanism as well as the current proposals of the new approach of ISDS provision in TTIP is going to be discussed.

8.2 ISDS's reform is desirable

Europe is a place where the international investment rules, including investment protection standards and ISDS, were invented. As noted above, traditional ISDS system was established more than a century ago, and since then this 'old' dispute settlement mechanism has not experienced any significant change. However, as soon as foreign investors recognized the weakness of the mechanism and the possibility of its exploitation the number of the ISDS claims have been rising rapidly (see Appendix III). This was probably a signal for the EU that recognized the need for a substantial reform of the traditional approach to the strong investment protection and the associated ISDS system. The most challenging task is to find a right balance between investors' protection and the reinsurance of states' autonomy. The reform must ensure that the aim to protect and encourage investment does not affect the ability of the EU and the Members to regulate in pursue of legitimate public policy objectives. Moreover, it is required to set up the ISDS system transparent and independent. The opportunity for profound reform was triggered in 2009, when "the Lisbon Treaty conferred competence for the protection of investments to the EU" (EC-TTIP&ISDS, May 2015, pp. 1).

The EU has initiated the revision of the system through the process of negotiations concerning the new generation of EU trade agreements that encompass the investment protection and ISDS. The new approach in terms of investment protection rules and ISDS mechanism was introduced in 2014, when the FTA between the EU and Singapore, and the EU and Canada (CETA) were concluded. This reform includes such change as preservation of partners' right to regulate, precise definition of the key concepts like 'fair and equitable treatment' or 'indirect

expropriation' in order to prevent abuse, mandatory transparency, a code of conduct for arbitrators, prohibition of parallel proceeding – claims initiated in two different venues i.e. domestic court and ISDS, 'loser pays principle', and possible creation of appeal mechanism (EC-TTIP&ISDS, May 2015).

TTIP negotiations, in general, have been associated with an increasing opposition. Moreover, the proposal to include ISDS in TTIP was met with fierce resistance from the intellectual and general public, anti-globalization NGOs or leftist politicians within the EU Parliament. In these circumstances, an online petition was set up to 'stop these sinister trade deals' (referring to TTIP and CETA). Eventually, it was collected a total number of 3,284,289 signatures (Stop-TTIP, 15 October 2015). As a result of the increasing resistance, the EU in 2014 took a decision to suspend the negotiations on TTIP and open an online public consultation that would be held between 27 March and 13 July 2014. The objective of the consultation was to identify a possible innovative approach to investment protection and ISDS in the TTIP.

The online public consultation drew unprecedented interest. By the 13 July 2014 the EU Commission received in total 149.399 of submissions (see the complete statistical report EC-ISDS Consultation, July 2014). Subsequently, on 13 January 2015, the report on the results of the consultation was released (see the final report: EC-ISDS Consultation results, January 2015). Four key areas were identified where further improvements to the EU's approach were required. The proposal included: 1) the protection of right to regulate; 2) the establishment and functioning of arbitral tribunals; 3) the review of ISDS decisions through an appeal mechanism; 4) the relationship between domestic judicial system and ISDS (EC-ISDS Consultation results, January 2015, pp. 8-28) Moreover, the EU Trade Commissioner Cecilia Malmström in her concept paper '*Investment in TTIP and beyond – the path for reform*' (EC-TTIP&ISDS, May 2015) stressed that the EU should pursue creation of a permanent court and a bilateral appellate mechanism. Nevertheless, after protracted consultations and the best efforts of C. Malmström (a great supporter of ISDS) most of the Members of the European Parliament (MEPs) remained unconvinced and wary of such a mechanism. It was pointed out that the new proposal was "a step in the right direction but it still does not go far enough to restore public confidence on this issue" (The Parliament Magazine, May 2015).

Given the public objection and the MEPs' opposition to ISDS the ongoing detailed discussions with Member States, the European Parliament, national parliaments and stakeholders have been conducted. The latest proposal, as at the date of writing this chapter, took place on 16 September 2015 when a new 'Investment Court System' was submitted by the EU Trade Commissioner Malmström for consideration. As presented, a new Investment Court System would be established in order to replace the current investor-to-state dispute settlement (ISDS)

mechanism in all ongoing and future EU investment negotiations, including TTIP. This new system should ensure the governments' right to regulate in public interest through transparent and accountable manners. It is suggested that the major elements for improvement would include: the establishment of a public Investment Court System; a requirement for highly qualified judges (not arbitrators) who would be publicly appointed in advance; a guarantee of no conflict of interest; high transparency of the system – it is suggested that all documents would be made online and all hearings would be opened to the public; last but not least, a new Appeal Tribunal, operating on similar principles to the WTO Appellate Body, would be established. It is deemed that this new Investment Court System will restore public confidence in investor dispute mechanism once it is highly transparent, accountable and subject to democratic principles (EC-Investment Court System, September 2015; Malmström, September 2015).

Last but not least, it was noted that the EU Commission will start working, along with other countries, on the creation of a permanent International Investment Court. Its future goal is to “replace all investment dispute resolution mechanisms provided in EU agreements, EU Member States' agreements with third countries and in trade and investment treaties concluded between non-EU countries” (EC-Investment Court System, September 2015).

This new proposal will be submitted and discussed with the EU's Member States and the European Parliament, and as soon as the round of discussions are completed the formal EU text proposal will be presented to the US (Malmström, September 2015). It is still difficult to estimate the final date and the form of the proposal taking into consideration that this issue is extremely controversial as far as democratic principles are concerned.

9. The Economic Impact of TTIP

The above noted chapters shed a light on the main challenges of the TTIP negotiations. This section is going to introduce the main findings of the major studies trying to project what the mutual cooperation between the EU and the US will bring to the economies. It is going to be done through a brief revision of the projections of the four main pro-TTIP studies. Moreover, an alternative perspective on TTIP is going to be discussed.

The TTIP agreement is accompanied with series of ex-ante economic analysis projecting its effect on the global economies. The impact assessment of TTIP has been exceptionally difficult as it is an unusual and ambitious bilateral trade agreement. Not only because of the enormous economic size of the two partners and their current economic relationship (which roughly

accounts for a half of the world GDP), but also because of the nature of the TTIP agreement. This kind of new FTA particularly focus on NTBs reduction (non-tariff barriers - mostly 'regulatory barriers') and the regulatory coherence, by the reason that these differences between the US and the EU create the most significant costs for market access. In this regard, it was stated that "the regulatory core of the TTIP makes it extremely difficult for economists to come to grips with the expected economic meaning of the outcome of the negotiations" (EPRS, 2014, pp. 1)

The European Commission (EC) is the main advocate of the TTIP agreement in Europe. Its advocacy and projections are primarily based on findings of the background study conducted by the Centre for Economic and Policy Research (CEPR). CEPR's report (2013) is built upon a detailed study conducted by Ecorys (2009). Ecorys (2009) benchmarked the existing level of NTBs between the EU and the US. The results of this study pointed out a substantial gain for both parties providing that the NTBs are diminished (Ecorys, 2009). CEPR analysis (2013) has applied for the economic assessment of the impact of the EU-US bilateral trade agreement the Computable General Equilibrium (CGE) model 'GTAP' while using current dataset. The same model has been applied by Ecorys (2009). It includes the GTAP8 database that provides a strong and continuously updated source of the data (projected to 2027), more recent trade and tariff information as well as existing investment income data from Eurostat. Moreover, CEPR (2013) worked on the basis of the NTB estimates reported in the Ecorys (2009) study (CEPR, 2013).

9.1 Methodology assessment

The European Parliamentary Research Study (EPRS), in April 2014, published a report that examines the appropriateness and validity of the methodology that lie behind the EC's impact assessment of TTIP. It is noteworthy that this study was conducted after the opening of the TTIP negotiations.

According to the EPRS (2014) the CGE model applied by CEPR (2013) and many other studies (such as Ecorys, 2009; CEPRII, 2013; and Bertelsmann Stiftung, 2013) correspond to the analytical needs of the impact assessment of TTIP. Moreover, it was emphasized that "there are indeed no better alternatives to assess the impacts of trade agreements than the CGE modelling" (EPRS, 2014, pp. 51). However, it was also admitted that this model has some specific drawbacks, especially when assessing deep trade agreements such as the one between the EU and the US, which is mainly based on (partial) removal of non-tariffs measures (EPRS, 2014, pp. 51). Moreover, the unreliability of the model was confirmed, in 2008, in a study conducted by UNCTAD (2008). It analysed the appropriateness in application of CGE models, particularly GTAP, when measuring the impact of NTBs reduction on economies. It

was demonstrated that “while using the same robust estimates of NTB incidence [researchers] obtain vastly different results under different model specifications” (UNCTAD, 2008, pp. iii)

EPRS concluded, however, that since better alternative tools were not applicable to estimate the long-term impacts of such a complicated trade agreement the CGE models have been used by most of the TTIP analysis (EPRS, 2014). Last but not least, these models are also criticized by the Austrian Foundation for Development and Research (OFSE, 2014). It is claimed that the underlying hypothesis of the CGE models (both GTAP and MIRACE) include (i) full employment of factors, including labour, (ii) price clearing markets and (iii) a constant government deficit. Therefore, it is stressed that the assumptions based on this models are unrealistic (OFSE, 2014, VIII).

The EPRS report (2014) and OFSE report (2014) also compares the assumptions and findings of other studies on EU trade and investment agreements regarding their methodologies and assumptions. It is pointed out that the final outcome (in terms of GDP gains) do not vary dramatically compared to the CEPR (2013) findings (EPRS, 2014; OFSE, 2014). Interestingly enough, CGE models are applied by all four ‘pro-TTIP studies’ – implying: Ecorys (2009), CEPR (2013), CEP II (2013) and Bertelsmann/GED (June 2013).

9.2 The estimated positive outcome

CEPR, as a credible research organization, has been appointed to conduct a study that explores current transatlantic trade and investment flows and existing barriers to these. It has been used CGE economic modelling ‘GTAP’ to estimate the potential impact of different policy scenarios. The final report from 2013 called ‘Reducing Transatlantic Barrier to Trade and Investments’ estimates significant and beneficial impact by removing tariff and especially non-tariff barriers to transatlantic trade and investment relation. The two scenarios have been taken into consideration – first scenario estimates the net-gains when only specific tariffs are reduced; second scenario predict the net-gains by adopting ambitious comprehensive trade agreement and investment liberalization. It was concluded a positive and a significant gains for both the EU and the US, as well as for the whole world economy. Moreover, the estimated outcome suggests that the second scenario - the comprehensive tariff and non-tariff reduction - would bring much greater benefits to both economies as well as to the global economy (CEPR, 2013).

The key findings of CEPR (2013) outlined that TTIP will bring: 1) *In case of a less ambitious agreement* (reduction of 10 per cent in trade costs from NTBs and nearly full tariff removal - 98 per cent of tariffs) it is expected an extra GDP of €68 billion for the EU and €49.5 billion for

the US. 2) *In case of ambitious comprehensive scenario* (elimination of 25 per cent of NTB related costs and 100 per cent of tariffs) would contribute to an extra €119 billion for the EU economy, €95 billion for the US economy and €99 billion for the rest of the world. These findings can be translated to an extra €545 in disposable income annually for a four-member family in the EU, on average, and €655 per family in the US. Furthermore, the CEPR calculates an increased level of economic activity and productivity gains created by the agreement. The EU and the US labour markets will benefit in terms of overall wages and new job opportunities for high and low skilled workers. Regarding total exports, it is estimated an increase by 6 per cent in the EU and by 8 per cent in the US (CEPR, 2013).

In accordance with these findings, it was stressed that major attention of the transatlantic economies should be paid to the reduction and elimination of NTBs to trade as these are critical to the logic of transatlantic liberalization. The same regulatory challenges which both partners face are approached differently and this result in increasing costs for firms, and so dragging down labour productivity. It was further stated that TTIP will create a magnificent opportunity to eliminate these NTBs by a composition of cross-recognition and regulatory convergence of different regulations (CEPR, 2013)

Another important empirical analysis considers a private foundation Bertelsmann Stiftung. The study examines the impact of TTIP on the global economy, in particular, on German economy. The Computable General Equilibrium (CGE) has been applied to analysis the impact of a new bilateral trade agreement between the EU and the US. In spite of other analysis, in which a commercially available modelling framework 'GTAP' has been used – namely, Ecorys (2009) and CEPR (2013) and two other studies¹, a different approach has been chosen by Bertelsmann/GED. The model is based on a simulated scenario, computed on the basis of existing agreements (e.g. the EU, NAFTA). This approach, however, was proclaimed by EPRS (2014) to be “clearly unrealistic” - considering the fact that the predicted percentage change in terms of GDP are very high in comparison with the other three pro-TTIP studies (see EPRS, 2014, pp. 55).

In the final report (Bertelsmann/GED, June 2013), it is predicted that a bilateral free-trade agreement between the USA and the EU will have an important welfare effect on the countries which are directly involved and also on countries that are only indirectly affected by the agreement. The study considers two scenarios: 'Tariff scenario'- a reduction to zero or virtually

¹ Regarding the EU-US bilateral FTA, there have been published two other studies - a study conducted with a specific focus on Swedish economy (Kommerskollegium, 2012), and on Austrian economy (Francois and Pindyuk, 2013). While further discussion of these analysis is beyond the scope of this paper, it is worth pointing out that both reports came into a very similar conclusion, i.e. both the EU and the US economies would benefit from this agreement.

zero for all goods and services, and a 'Comprehensive liberalization scenario' – reduction of NTBs: by mutual recognition of different standards, by harmonization or by elimination of unnecessary measures. On the one hand, in the case of the comprehensive liberal scenario, it is estimated a large real per capita income changes especially for the US and the EU. The trade between Germany and the US would gradually rise up to 90 per cent. In addition, the real per capita income in Germany is estimated to increase by 4.68 per cent (Bertelsmann/GED, June 2013, pp. 23- 26). It is also predicted that TTIP will contribute to a rise of employment in the USA and the EU. The projections also suggest substantial increase in real pre-capita income, especially for the US (Bertelsmann/GED, June 2013, pp. 30-43). On the other hand, it is projected a sharp decline in the intra EU trade, in particular, the trade between Germany and BRICS countries, between Germany and other EU countries (especially France). Moreover, the EU trade with neighbouring states in North Africa or Eastern Europe would diminished. It is also predicted that TTIP would also lead to the job losses in some countries, particularly in Canada (100 000 lost jobs). Therefore, it is believed that these countries will have strong incentives to participate in negotiating the liberalization of non-tariff barriers.

Next important analysis concerns CEPII, a French research centre in international economics. CEPII in September 2013 commissioned its own study to examine the impact of the new EU-US bilateral FTA on both economies. Moreover, its second objective was to verify the figures obtained by EC's background study conducted by CEPR (2013). The Computable General Equilibrium (CGE) model 'MIRAGE' developed by CEPII has been used to carry out such an assessment. The analysis estimates that TTIP would also contribute to considerable gains in terms of GDP. The estimates are comparatively lower than those of CEPR (2013) or Bertelsmann/GED (June 2013) but still pronounced. It was found out that, in the long run, both partners by cutting the tariff and especially non-tariff barriers would reap non-negligible GDP gains. On average, the annual long run GDP gains would expand by \$98bn for the EU and of \$64bn for the US. Corresponding to an average long run increase by 3 per cent for both economies (CEPII, 2013, pp. 10). Last but not least, it was underlined that as a result of the spill-overs effect from trade liberalization the third parties would benefit as well (CEPII, 2013, pp. 11). This assumption is also expressed in CEPR (2013) report, and hence, both are consistent with the EU's commitment to Policy Coherence for Development (OFSE, 2014, pp. 6).

9.3 Contradictory studies

TTIP is very controversial trade agreement. Given the importance of the new EU-US bilateral FTA there have been published a large number of studies trying to project the final outcome of the TTIP agreement. Despite the fact that most of analysis have been conducted by different

institutions many of them concluded that this new trade agreement would be beneficial for the EU, the US and the world economy. Nevertheless, the promising results have been challenged by other studies pointing out that these estimates ought to be rather unrealistic - in terms of obtained figures, but most importantly, selected CGE econometric models.

In the line with above noted 'pro-TTIP' studies, which were commissioned by the EU Commission (OFSE, 2014, pp V), particularly, Ecorys (2009), CEPR (2013), CEPPII (2013) and Bertelsmann/GED (2013), there have been published other independent analysis that predict an adverse effect of TTIP on economy. The report published by researchers from Austrian Foundation for Development Research (OFSE, 2014) and the Global Development and Environment Institute (GDAE, 2014) critically assess the findings of the four 'pro-TTIP' studies and their underlying methodology. Moreover, GDAE offers its own analysis of the potential impact of TTIP on the two economies while using different econometrics modelling.

First of all, it is argued that even in the most optimistic liberalization scenarios of the four official studies the gains in terms of GDP, trade flows, and real wages in the EU and the US are positive but relatively small, extra GDP growth in a range from 0.3 to 1.3 per cent. Moreover, it is stressed that these positive effect refers to the cumulative GDP growth, thus, this change is expected in the course of 10 years. Consequently, the extra annual GDP growth during this transition period would account for merely 0.03 to 0.13 per cent, in the ambitious comprehensive scenario (OFSE, 2014). Moreover, it was pointed out that the predicted results of TTIP stands on rather unrealistic assumptions and on inadequate methods. "Projections by different institutions have been shown to rely on the same Computable General Equilibrium model that has proven inadequate as a tool for trade policy analysis" (GDAE, 2014, pp. 2). A hesitation about this model, with regard to TTIP, has been also expressed by EPRS (EPRS, 2014, pp. 51). Furthermore, it is stressed that the EC's reference to CEPR (2013) an 'independent report' seems to be quite misleading as it is evident that EC was a client for whom the study has been produced (GDAE, 2014, pp. 5).

According to the OFSE report (2014), there are some important issues that have been frequently neglected by trade impact assessments in the main four studies. It is stressed that although TTIP agreement is intended to have a positive effect on total exports, there are concealed trade diversion effects. Researches from OFSE (2014) and GDAE (2014) are convinced that particularly intra-EU trade will be negatively affected by the cheaper imports from the US (OFSE, 2014, pp.15; GDAE, 2014, pp. 7). Furthermore, it is predicted an adverse effect on the global trade, particularly on developing countries such as Latin America, Sub-Saharan Africa or Low Income Countries. A negative impact on the third countries is also reported by Bertelsmann/GED report (June 2013). These assumptions appear to be a potential

violation of the EU's commitment to Policy Coherence for Development as they undermine the EU commitment to reduce poverty in developing countries (OFSE, 2014, pp. 6-7).

OFSE (2014) also argues that the adjustment costs are generally ignored by the most of the 'pro-TTIP' studies. As a consequence, in order to provide more realistic insight, OFSE (2014) in its final report considers these costs of TTIP. Firstly, it is pointed out the tariffs (currently around 2 per cent) elimination will contribute to the revenue losses for the EU budget of about €20bn over the transition period of 10 years (OFSE, 2014, pp. V). Moreover, it is stressed that although CEPR (2013) study expects workers temporary displacement, none of the main studies have taken into account a permanent unemployment. Another type of costs that have been generally disregarded by main 'pro-TTIP' studies, particularly Ecorys (2009), concern social costs. It is pointed out that NTBs elimination, harmonization and mutual recognition will result in a potential welfare loss to society. It is explained that NTBs elimination threatens public policy goals such as environmental safety, consumer safety and public health (including GMO products, hormone beef, chickens washed in chlorine, chemicals in cosmetics etc.) (OFSE, 2014, pp. VI). On contrary, Ecorys (2009), assume that a reduction of NTBs is welfare-enhancing as a result of cheaper imported products (Ecorys, 2009, pp. 18).

In order to provide an alternative assessment of the effect of TTIP the Austrian research centre GDAE (2014) conveyed its own analysis using different model - the United Nations Global Policy Model (GPM)². While taking into consideration current economic situation of protracted austerity, relatively high unemployment, low growth especially in the EU and US and increasing pressure on labour incomes it is assumed that TTIP would further hamper economic activity and could lead to a deeper crisis. The projections of the TTIP impact on global economy differs dramatically compared to the four main 'pro-TTIP' studies. GDAE (2014) report has shown that TTIP would lead to: losses in terms of net exports after a decade, compared to the baseline "no-TTIP" scenario; net losses in terms of GDP; a loss of labour income (particularly in France); job losses - approximately 600,000 jobs would be lost in the EU; a reduction of the labour share; a loss of government revenue and thus Government deficits would also increase as a percentage of GDP in every EU country; higher financial instability and accumulation of imbalances; and increase of EU vulnerability to any crisis coming from the US (see full report GDAE, 2014, pp. 2-3).

To summarize the results from all presented analysis there is no clear-cut consensus on the potential effect of TTIP on the economy.

² The GPM is a demand-driven, global econometric model. The dataset applied in this model is based on a consistent macroeconomic data for every country. Moreover, its estimations consider a level of employment using International Labour Organization data. Last but not least, projections of this model "necessarily make assumptions on the way economies will stabilize after a policy change" i.e. after initiation of TTIP. (GDAE, 2014, pp. 10)

10. Transparency and Public opinion on TTIP

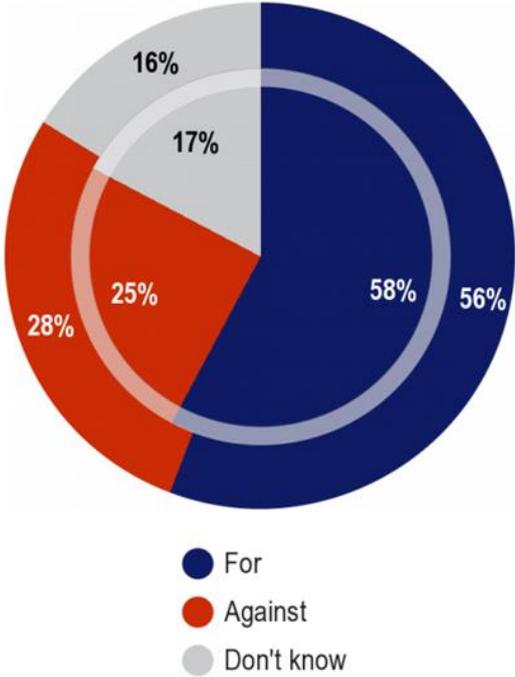
Although TTIP is considered to be the major bilateral trade agreement in the history, its negotiations are held in considerable secrecy. In this regard, the EU Trade Commissioner Karel de Gucht (2013) was arguing that “a certain level of confidentiality is needed in the negotiations for the EU to succeed and reach its objectives” (BFoGP, 2014, pp. 22). This argument is somewhat in contradiction to the fact that transparency is a fundamental democratic principle. The lack of officially available information, concerning NTBs, makes it difficult for the public to identify and/or influence many important policy areas, such as environmental aspects, health, food safety, chemicals in cosmetics and several other areas. Insufficient public communication and unavailability of information in mass-media, especially in the initial phases of the TTIP negotiations, contributed to a lot of speculations about what is happening behind the closed door. After a year of intense debate and opposition, in November 2014, a Trade Commissioner Cecilia Malmström stated her intentions to make the TTIP negotiations more transparent (EC-Transparency, November 2014). The first official texts were published on 7 January 2015, one and a half year after the TTIP negotiations started.

A standard Eurobarometer survey held in autumn 2014 and spring 2015, conducted by TNS - one of the largest research agencies worldwide, at the request of the European Commission. It was found that, in spring 2015, 56 per cent of Europeans support a free trade and investment agreement between the EU and the US (this corresponds to a decline by - 2 per cent since fall 2014). The opposition towards such an agreement was expressed by 28 per cent (+3), while 16 per cent (-1) answered that they “don’t know”. Thus, it can be stated that the opposition has been slightly growing. Nevertheless, in general, the EU supports this mutual EU-US trade agreement. On the other hand, there were exceptions like Austria with the lowest support of 23 per cent only (a decline by -16 percentage points from fall 2014), while 67 per cent is “against”. The second lowest support was expressed in Germany. Only 31 per cent (-8) of respondents were in favour, while opponents reached 51 per cent (+10). Luxembourg showed support of 37 per cent (-3) vs opposition 49 (-6) – the third lowest position. In total, support has fallen in 14 Member States, strengthened in nine countries and remained stable in five (see also Appendix V - a map from November 2014 displaying the EU Members and their support for TTIP) (Eurobarometer 83, spring 2015)

Figure 2 – Standard EuroBarometer – public opinion on TTIP spring 2015

**QA18.5. What is your opinion on each of the following statements?
Please tell me for each statement, whether you are for it or against it.**

A free trade and investment agreement between the EU and the USA



Inner pie : EB82 Aut.2014
Outer pie : EB83 Sp.2015



Source: Eurobarometer 83, spring 2015, pp. 35

In April 2014 as well as in May 2015, Pew Research Centre observed public opinion in the US and Germany about TTIP. The support of TTIP in Germany has been falling. Only 41 per cent of Germans think that TTIP would be beneficial for their country. This number represents a deterioration by 14 percentage points compared to the Pew Research Centre survey from April 2014 (see Table 1).

On the other hand, 36 per cent of Germans believe that TTIP would not be beneficial for their country. From this group of people, 61 per cent fear that TTIP would negatively affect food, environmental and auto safety standards. Whereas 18 per cent are concerned that TTIP would give to foreign companies that invest in Germany undue advantages. While merely 17 per cent are afraid of losing job or a decrease in workers' wages as a result of TTIP.

In the US 21 per cent of respondents believe that TTIP will not be profitable for their country. Among those Americans who are not supporters of TTIP, 50 per cent fear of potentially adverse impact on jobs and wages, 22 per cent expect unfair advantage for foreign investors, and 12 per cent are concerned of lower US food standards as a result of TTIP - see Figure 3 (PEW, May 2015).

Table 1 – US/German Survey – Public Opinion on TTIP

Decreasing Support for TTIP in Germany

TTIP will be ___ for country

	2014	2015	Change
	%	%	
Germany			
Good thing	55	41	-14
Bad thing	25	36	+11
U.S.			
Good thing	53	50	-3
Bad thing	20	21	+1

Source: 2015 Pew Research Center survey. Q5.

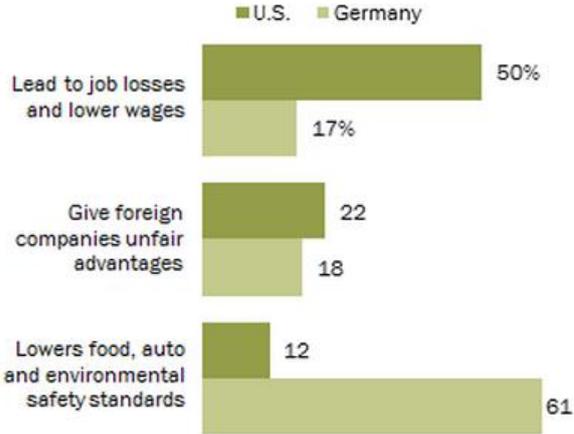
PEW RESEARCH CENTER

Source: PEW, May 2015

Figure 3 – US/German Survey – Public Opinion on TTIP

Among Those Who Think TTIP Is Bad, Americans, Germans Differ on Why

Of those who say TTIP will be a bad thing (21% of Americans and 36% of Germans), their reasons why a free trade agreement would be bad for their country:



Source: 2015 Pew Research Center survey, Q6.
PEW RESEARCH CENTER

Source: PEW, May 2015

11. Conclusion

The formal negotiations between the EU and the US on TTIP started in July 2013. TTIP is an agreement designed to boost economy, increase trade and investments between the EU and the US – these two economies together accounts for a half of world GDP. Among economists it is generally accepted that trade liberalization is beneficial, as it enables better allocation of economic resources. Greater trade liberalization between the EU and the US will allow both regions and their states to specialize in production of goods in which they have comparative advantage (for these goods the opportunity cost of production is lower). As a result of deeper trade liberalization, more consumption opportunities will become available as well as the final prices will fall. In addition, the new trade theory also shows that even if there is no specialization in particular production, free trade will constitute to an increase in variety of goods. Moreover, the deeper integration of the Western regions is expected to counterbalance the strength of other economic powers, first and foremost growing China.

Unlike conventional FTAs, TTIP is a new kind of FTA focusing on both tariff and particularly non-tariff barriers (NTB) removal. The main objective of the TTIP is to harmonise the different regulations and standards on both sides of Atlantic. It is expected that the regulatory coherence will boost the EU-US investments and increase transatlantic trade. It is calculated that the potential benefits of TTIP for both regions would be substantial, and thus “the costs involved may still be mitigated or reduced through partial regulatory convergence and cross-recognition of standards” (CEPR, 2013, pp. 9). However, many regulations on both sides of Atlantic cannot be simply removed since they have been established to serve legitimate domestic purposes. Moreover, providing that the legislative frameworks between the EU and the US, in terms of underlying values and approach, differ considerably, it is extremely difficult and sometimes nearly impossible to make the systems more compatible and coherent. This incompatibility of different systems and NTBs disparity across the sectors, confirm the sensitivity in the TTIP negotiations. It is also suggested that TTIP will emerge as a ‘living agreement’. As soon as TTIP is implemented there may be identified new areas of cooperation. In order not to re-open the initial international agreement neither to modify EU-US institutional frameworks, a new mechanism called regulatory cooperation will be established. The principal objective of this new concept is a permanent bilateral regulatory cooperation based on identifying, facilitating and increasing the level of future regulatory compatibility and convergence between the EU and the US, where feasible.

In the section eight of this paper, a particular attention is paid to the ISDS mechanism. It is outlined that ISDS was primarily set up, more than a half-century ago, to protect foreign

investors operating in the third countries. However, this protection mechanism was lately embedded in most of the FTAs, including FTAs between two developed countries. However, since the foreign investors recognized weaknesses of this system, they have started abusing it. From 2001 onwards, the number of initiated ISDS cases, especially within developed countries, have skyrocketed. This mechanism empowers foreign investors and corporations to attack domestic policies. When investors feel that the new policy or regulation are threats to their property rights or investments they are allowed, on the basis of ISDS, to litigate against the state. Moreover, they are entitled to a monetary compensation if they are able to prove that the measures taken by the host state has violated the investment treaty and caused him a significant damage. Current ISDS system thus hampers the ability of states to 'freely' generate new policies and to regulate in public interest, since the state firstly consider whether the new regulation or policy do not harm its foreign investors. Baring this in mind, the possible inclusion of ISDS into TTIP has evoked the major disagreement in the TTIP negotiations. As a result of increasing opposition, the negotiators have initiated a discussion to reform this mechanism or to find an alternative solution to protect foreign investors. The last proposal the 'Investment Court System' was submitted in the middle of September 2015 by EU Trade Commissioner Malmström. This new system is based on certain elements such as high transparency, accountability, a guarantee of no conflict of interest, and establishment of a new Appeal Tribunal. Last but not least, it should guarantee the governments' right to regulate in public interest.

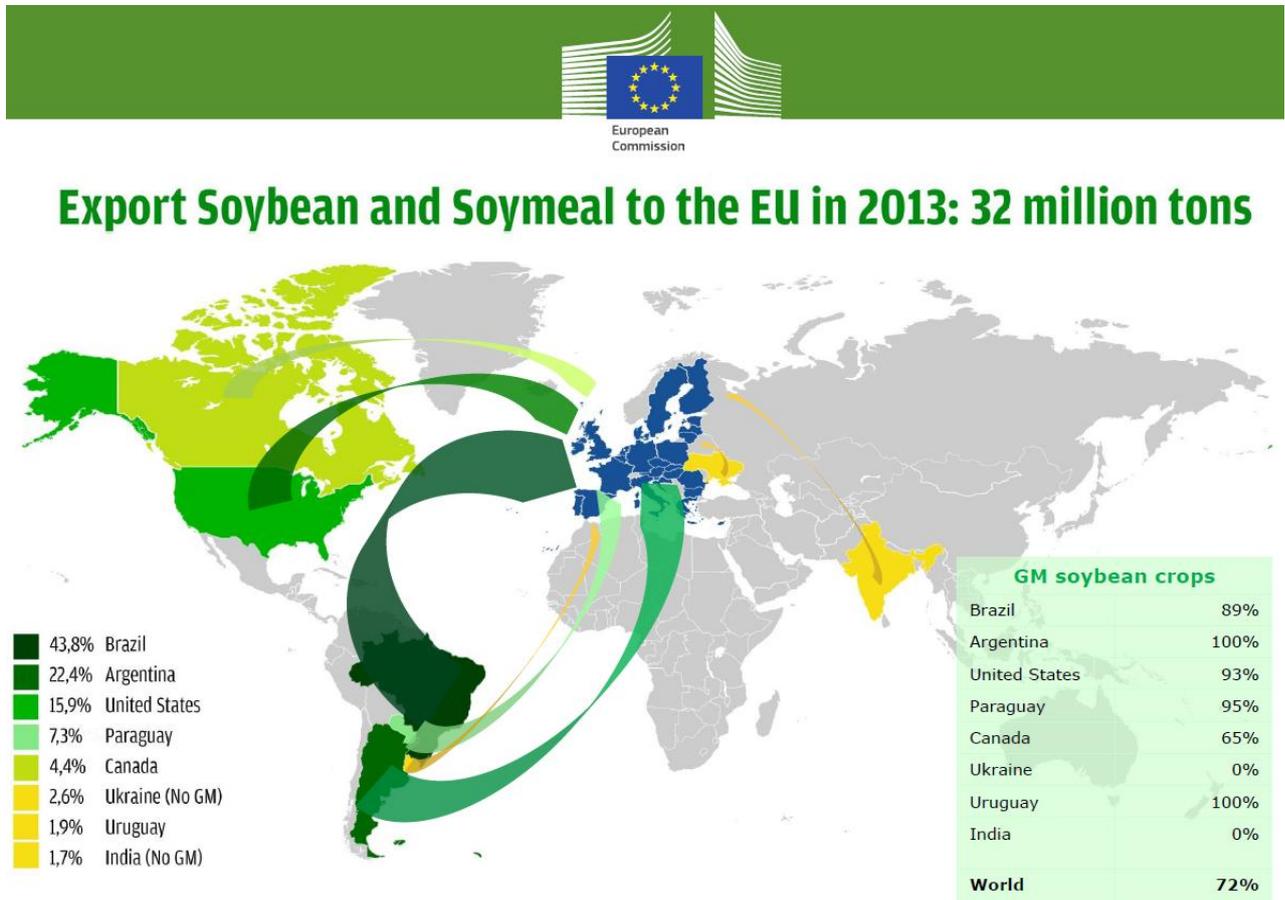
The last section of this paper overlooks the main empirical studies of TTIP - their findings and methodology were summarized and compared. It combines both the main 'pro-TTIP' studies, namely: Ecorys (2009), CEPR (2013), CEPPII (2013) and Bertelsmann/GED (June 2013), and two other alternative analysis, particularly OFSE and GDAE, that assess critically the findings and the underlying methodology. According to the 'pro-TTIP' studies, TTIP will be beneficial for the EU, the US and global economy in terms of GDP growth. Furthermore, it will enhance competition, as well as it will increase export and import, job creation and overall wages. These findings, especially those of CEPR (2013), are also the main argument of the EC while presenting TTIP's benefits. On the other hand, all these four analysis are criticized by Austrian Research Foundation OFSE and by US Global Development and Environmental Institute GDAE. It is argued that all four 'pro-TTIP' studies have used the same underlying methodology (the CGE model - GTAP and MIRACE) that is considered to be inappropriate, and thus, their assumptions (GDAE, 2014; OFSE, 2014). In addition, GDAE commissioned its own alternative analysis in order to provide unbiased estimates. Applying different model (GPM), it has been concluded that TTIP will mostly have negative effect on export, jobs, wages, government revenue, financial stability, social and environmental costs etc. What is more, it is stressed that

neither of the four 'pro-TTIP' analysis has considered the adjustment costs, such as social and environmental costs, in the calculation of TTIP's outcome.

TTIP is an exceptional bilateral trade agreement that pursues to liberalise two biggest economic players in the world. Considering the magnitude and the gravity of such an agreement, its negotiations give a unique opportunity to reconsider the current 'old' paradigm of FTAs. Moreover, it provides a room for establishment of a new futuristic model that may serve as an example for forthcoming FTAs. An evidence for such an assumption regards the TTIP negotiations on, for instance, ISDS mechanism or regulatory cooperation body. Last but not least, in certain areas, particularly ISDS, it has been shown the power and the significance of civil society and of the public voices. Therefore, it can be further anticipated that the final form of TTIP will be, to some extent, based on the direct input of civil society, thus, in accordance with democratic principles.

Appendix I

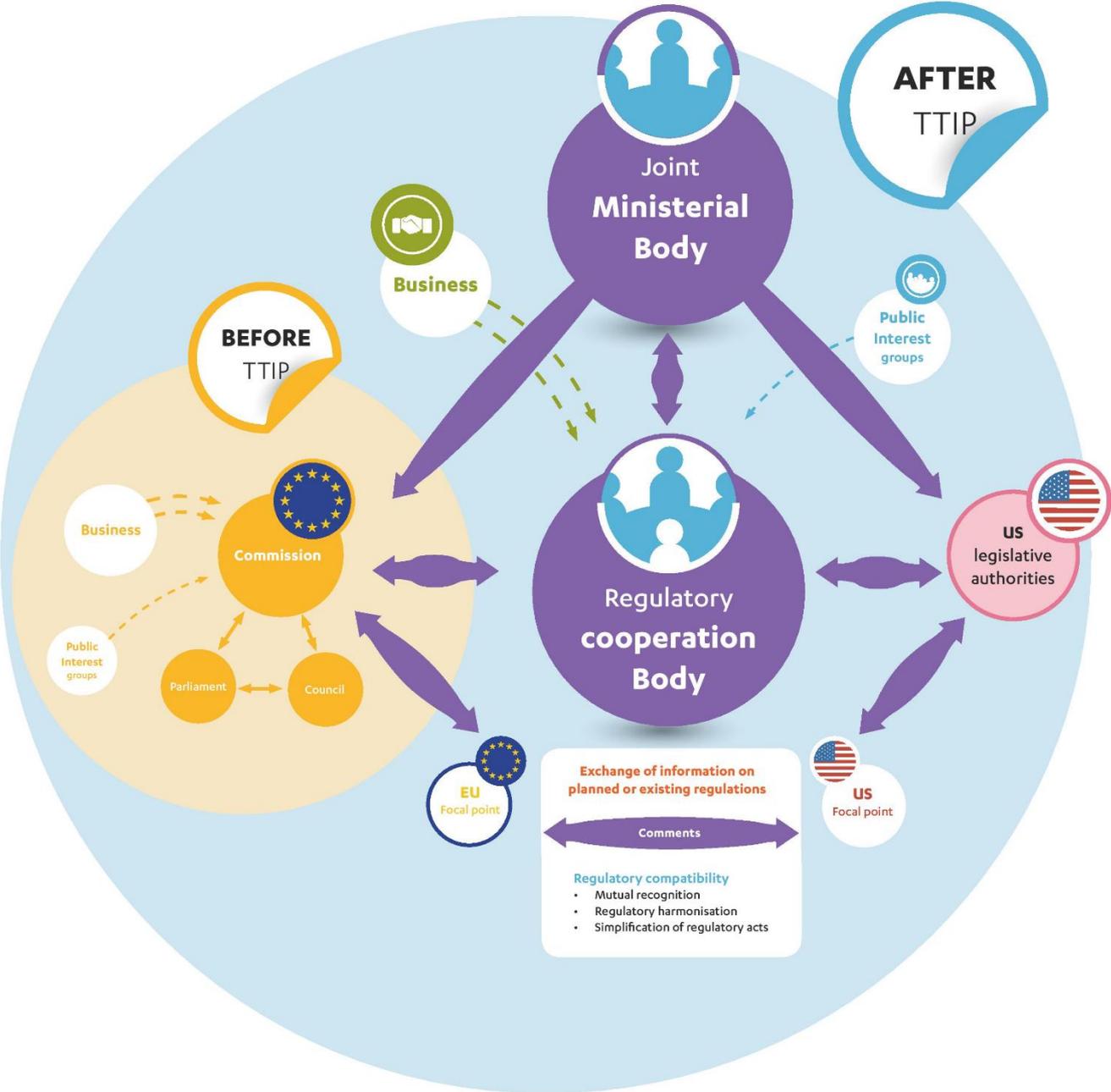
Figure 4 – Export Soybean and Soymeal to the EU in 2013



Source: EC-GMOs, 2015

The map represents data from 2013, 32 million tonnes of soymeal and soybean (96% of EU consumption from which 90% was GMOs origin) were imported to the EU, where most of it was used as a feed for livestock

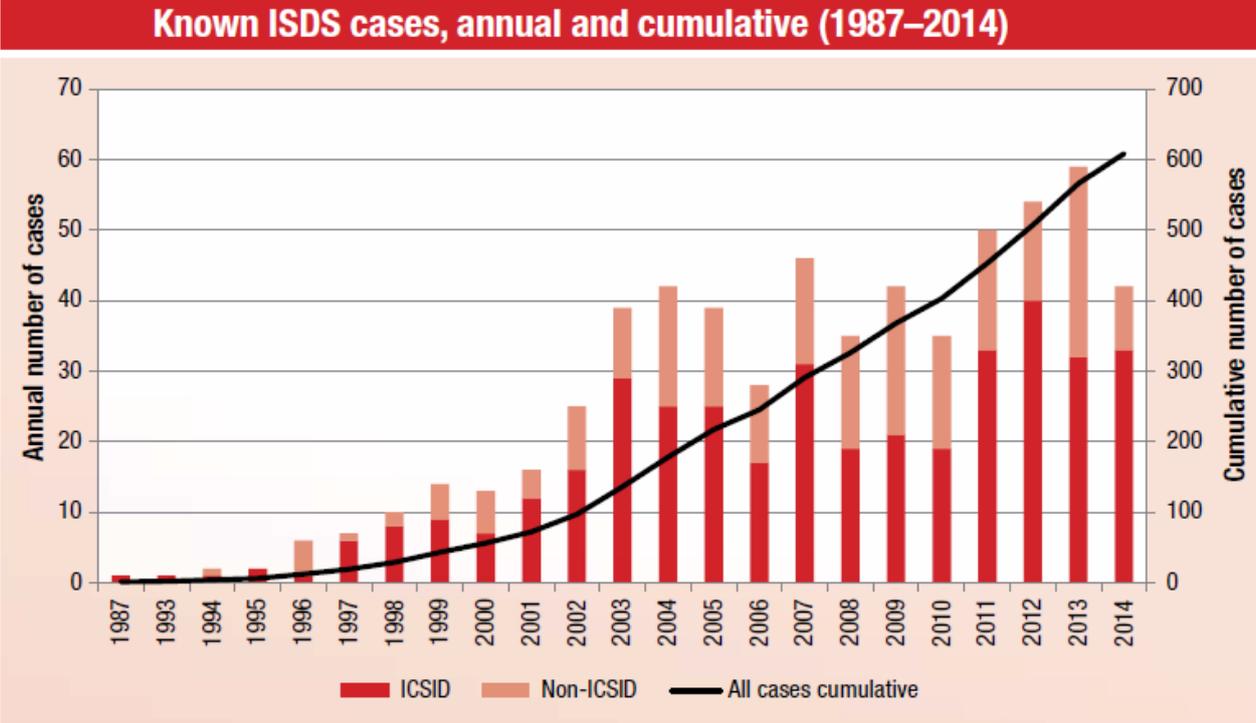
Figure 5 - Regulatory Cooperation Under TTIP



Source: BEUC, 2015

Figure 5 represents a draft of horizontal structure of regulatory cooperation under TTIP. BEUC argues that the complicated structure is likely to become an impediment in pursuit of new regulations.

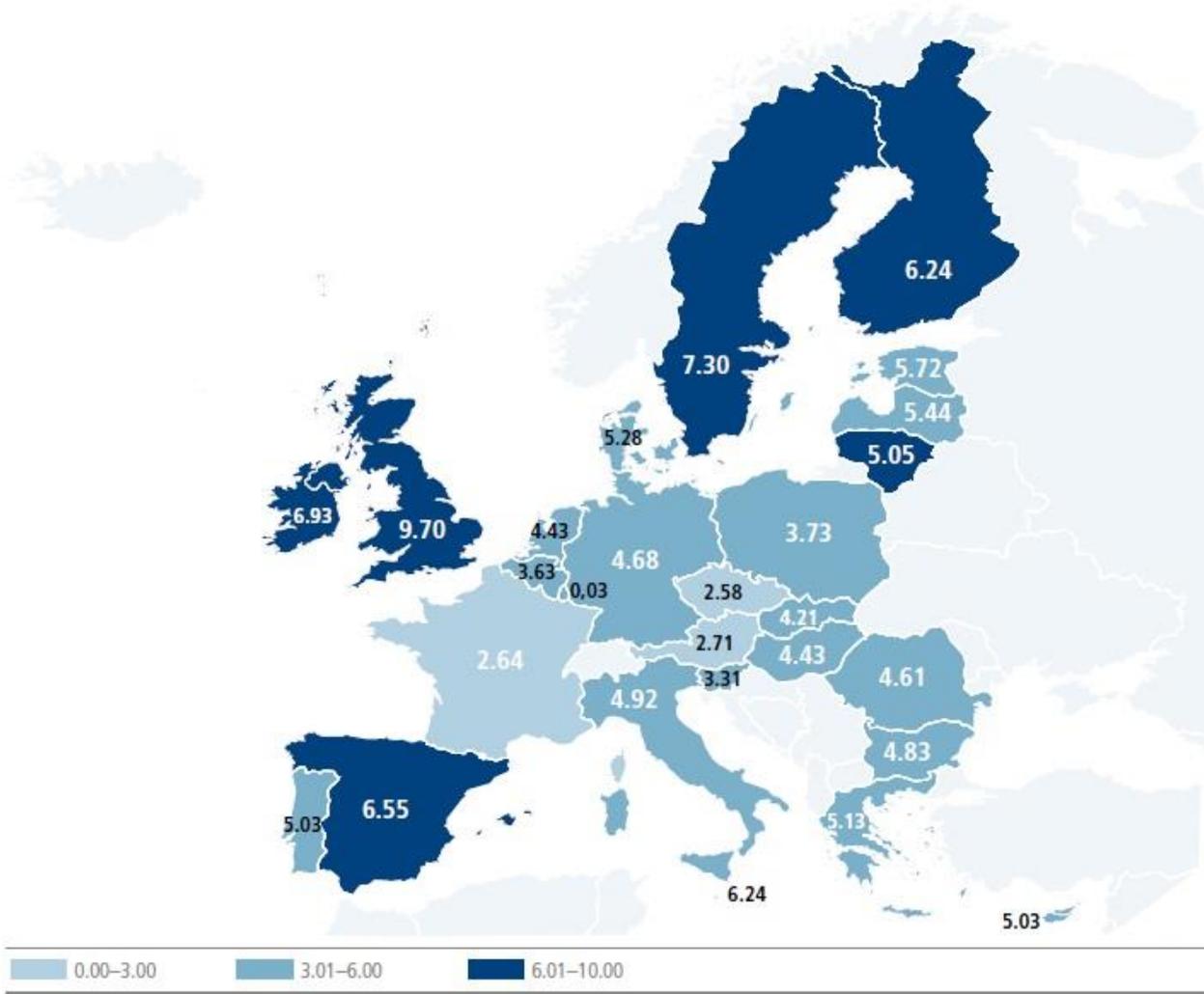
Figure 6 – Known ISDS cases, annual and cumulative (1987-2014)



Source: UNCTAD, February 2015, pp. 5

From the graph is obvious that relative ISDS claims have been dramatically increasing for the past decade. The most frequent accused state, in 2014, was Spain, followed by Costa Rica, the Czech Republic, India, Romania, Ukraine and the Bolivarian Republic of Venezuela (UNCTAD, February 2015, pp.5)

Figure 7 - An Increase of Real per capita Income in EU Members



Source: Bertelsmann/GED, June 2013

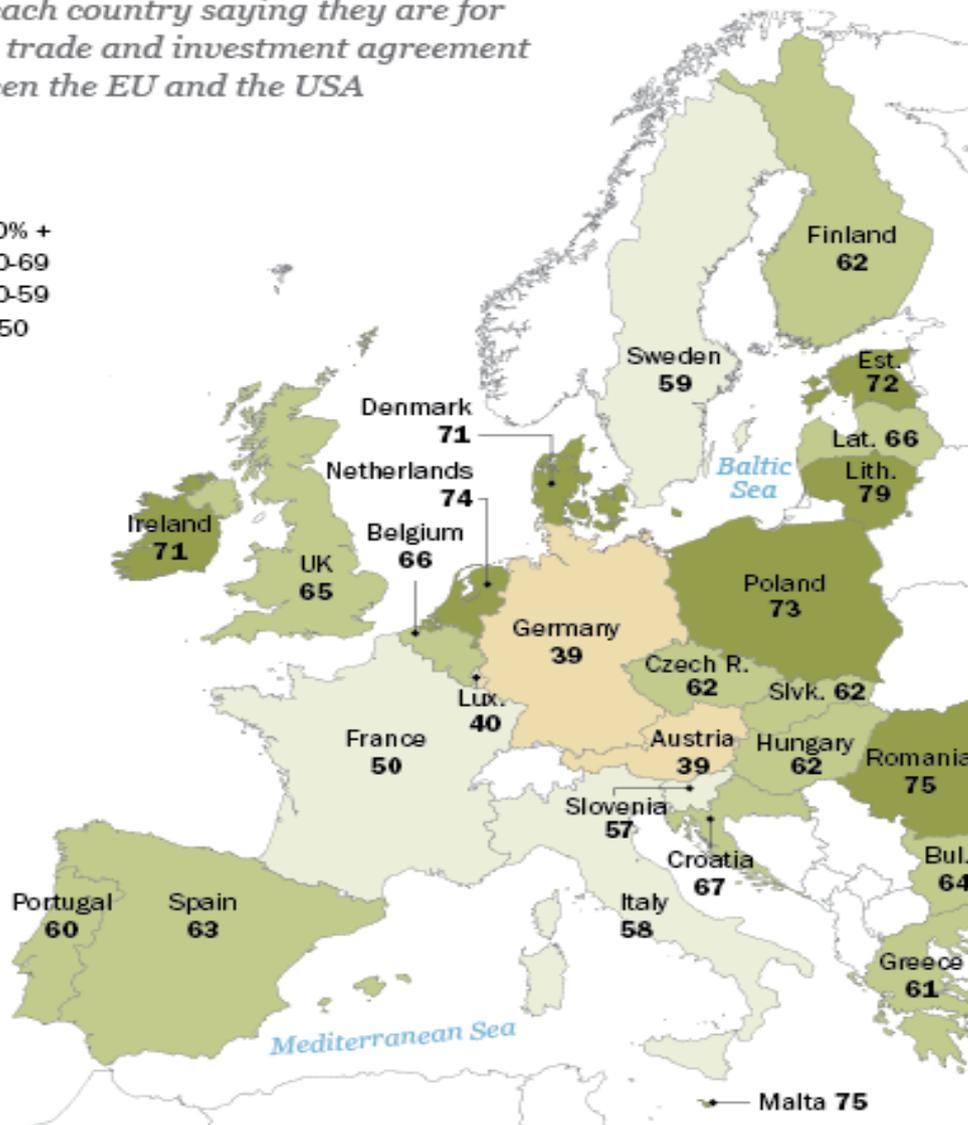
The Figure 7 represents an estimated increase of real per capita income in the EU Member States. The researchers from Bertelsmann/GED assume that under comprehensive liberal scenario of TTIP, it is expected a significant increase of real per capita income in all EU Member States.

Figure 8 - EU Members and their support for TTIP

EU Support for a Free Trade Agreement with the U.S.

% in each country saying they are for a free trade and investment agreement between the EU and the USA

- 70% +
- 60-69
- 50-59
- <50



Note: In Cyprus, not pictured, 59% support a EU-US trade agreement.
Source: November 2014 Eurobarometer survey.

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Source: PEW 2015

The map from November 2014 displaying the EU region and particular countries and their support for free trade agreement with the US.

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