

# POSITION PAPER

Free trade. Sustainable trade.



FTA  
Foreign Trade Association

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## FTA POSITION ON TTIP

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### SYNOPSIS

TTIP is designed to be the most modern free trade agreement between two economic blocs comprising all aspects of market access (goods, services and investment), regulatory cooperation and trade rules. Tackling specific trade related and regulatory situations in different industries and business sectors is as much a challenge as finding common ground for politically burdensome issues such as geographical indications, sustainable development and investor-state dispute settlement (ISDS).

In view of the comprehensive scope of the planned agreement, another challenge is the ambitious timeframe. The G7 Summit in Germany in June 2015 already underlined in the final declaration: “We will immediately accelerate work on all TTIP issues, ensuring progress in all the elements of the negotiations, with the goal of finalizing understandings on the outline of an agreement as soon as possible, preferably by the end of this year.” Now the goal is to finalize negotiations still under this US administration. Whatsoever, this timeframe, set up with a view to political circumstances is certainly very ambitious, but is needed if the negotiations are not to drag on over several years.

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#### MARKET ACCESS

A clear schedule to eliminate all industrial tariffs on imports of consumer goods.  
Harmonisation of rules for customs classification respectively and mutual recognition of classification schemes.

Ease market access for EU retailers to the US market.

Simplify the definition of the rules of origin by moving to a system where the changing in the four-digit heading should be the only criterion for determining the origin of goods.

#### REGULATORY COOPERATION

Harmonisation respectively recognition of diverging product safety standards for consumer goods.

Alignment of testing methods and procedures.

Common rules for labelling of textiles (names of fibres, care symbols etc.).

#### RULES

Include a reference to sustainability issues such as worker’s rights and environmental protection.

Embed the Trade Facilitation Agreement into TTIP. In particular alleviate customs procedures and revalue the concepts of the “Authorized Economic Operator” in the EU and the “Customs-Trade Partnership against Terrorism” (C-TPAT) in the US. Ensure confidentiality of customs information in the US.

Enshrine a professional and transparent investor-state dispute settlement mechanism (ISDS) based on the reform proposals of the European Commission.

Respect of the systems of geographical indications (GI).

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## INTRODUCTION

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After more than two years of difficult negotiations of the Transatlantic Trade & Investment Partnership (TTIP), accompanied by critical discussions in the public arena, the Foreign Trade Association (FTA) tables this position paper to underline the benefits for the US and the EU economies and their people and calls on the EU and US to strive to conclude an ambitious and comprehensive agreement.

Already today, the EU-US trade relationship is a driving force for economic growth and a factor of success whose full potential not yet has been realized. Bilateral trade in goods climbed to more than \$700 billion in 2014, double the level of 2000 and already supports 13 million jobs in the European Union and United States. This huge market accounts for more than 50 percent of the global GDP in terms of value and 40 percent in terms of purchasing power. Regardless of the generally favourable conditions, a variety of obstacles remain in place which complicate trade and investment and hamper growth across the Atlantic. Against this background, the TTIP presents a tremendous opportunity to achieve stronger market integration and to create even more jobs and growth.

Such a trade deal would give a strong signal that the EU and the US are bound to the principles of free and open trade and eager to prevent protectionist policies gaining ground. The economic dynamic of a transatlantic free trade area – combined with its symbolic influence – would also augment pressure on WTO members to revive multilateral negotiations. Transatlantic leadership on international trade policy should guide the way out of the current impasse at the WTO and promote the implementation of transparency and non-discrimination rules at a multilateral level.

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### 1.0 FTA REQUESTS FOR THE TTIP NEGOTIATIONS

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Several European retailers have significant business interests in the US operating an increasing number of shops and merchandising own brands – through direct and indirect channels of distribution. At the same time, the US has some importance as sourcing country for a number of FTA members. Therefore, a comprehensive and deep agreement on trade and investment would create significant business potential for the European retail sector. Moreover, the FTA sees the overarching value of TTIP in two respects:

- TTIP will contribute to improving the general business climate in the world, foster economic growth and help overcome the remainders of financial crisis and economic stagnation.
- TTIP will contribute to the progressive strengthening of global trade rules and set the stage for the World Trade Organisation to expand the commitment to multilateral agreements. Therefore, the FTA strongly supports the European Commission in the further negotiations for a successful conclusion of a comprehensive and meaningful TTIP. The FTA underlines the particular importance of the following issues for the retail sector:

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#### 1.1 MARKET ACCESS

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##### 1.1.1 TRADE IN GOODS AND CUSTOMS DUTIES

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Average customs duties between the EU and the US are generally low (2-3%) and a large portion of EU-US trade is not subject to customs duties. However, there are still high duties on a range of products important for European retail like many agricultural products but also apparel (peak of 28-32%), shoes (peak of 48%) and accessories.

The FTA advocates that TTIP sets a clear schedule to eliminate all industrial tariffs. The removal of tariffs would allow retailers and other trading companies to save costs and to gain in competitiveness.

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## 1.1.2 SERVICES

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The FTA is in favour of market access for services as broad as possible and based on a negative list approach (i.e. all sectors will benefit from liberalisation unless mentioned specifically). Representing retailers, importers and brands on foreign trade issues FTA keeps a special eye on distribution services. Several EU retailers have invested in the US market and have a commercial presence there. These companies have managed more or less successfully to cope with US regulations and requirements at both the federal and state level. However, for newcomers on the US market a multitude of different regulations have to be observed. TTIP should also serve to ease the access of EU retailers to the US market by lowering administrative burdens. The level of liberalisation should at least correspond to the offers of both parties in the framework of TiSA. In general, FTA supports the positions of the European Services Forum (ESF) of which FTA is a member.

## 1.1.3 INVESTMENT

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EU and the US are already today major investors in each other's markets. However, improved market access for investment and the respective provisions for investment protection would help to realize the full potential of bilateral business relations. In particular, TTIP should serve to make it easier for European companies – also SMEs – to be represented in the US market; to be present in the US market is often crucial for the success of the business. Therefore, FTA sees the inclusion of investment as an important cornerstone to promote EU-US business and trade.

### 1.1.1 RULES OF ORIGIN (ROO)

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Rules of origin are an essential part of any free trade agreement because they determine if a product benefits from the advantages of a free trade agreement. In a globalized world where the production chain is often split between several countries, and not only those within a free trade agreement, rules of origin constitute a limitation to free trade. The FTA welcomes the European Commission's goal to develop common rules on what is needed to prove a product's origin and agree on a common way to determine where a product is produced. In fact, it is important to come to a breakthrough in modernizing the RoOs for all preferential agreements. In this respect, TTIP should set an ambitious and innovative standard.

The FTA is of the opinion that rules of origin, just like any other rules in the field of customs and foreign trade law, need to be transparent, foreseeable and legally certain. Even if the Combined Nomenclature was not created for the purpose of the rules of origin, this register of goods within the Harmonised Commodity Description and Coding System is the only set of rules which meets the mentioned requirements.

Thus, the well-established practice in country-of-origin legislation of changing the four-digit heading should be the only criterion for determining the origin of goods under any free trade agreement. Should the application of this criterion lead to absurd results, a change of the six-digit subheading could be entertained as well. However, such cases are to be specified from the outset so as satisfy the principle of legal certainty.

Even if the use of this principle might occasionally lead to unfairness in determining origin, this undeniable disadvantage should be consciously accepted as eventually, across all the tariff chapters, a balancing of interests is likely to take place. Moreover, the realisation of this proposal and the associated harmonisation of the rules of origin will be of great benefit for all economic operators.

The Foreign Trade Association opposes a situation where importers increasingly refrain from the benefits of tariff preferences, just because the costs and efforts necessary to comply with the requirements for proof of origin exceed the benefits they would reap from tariff preferences.

As to the claim for preferential treatment, verification and denial of preference, the Foreign Trade Association is critical vis-à-vis ideas to shift the responsibility for the proof of origin in the end to the importers. The additional risk, administrative burden and related costs are not in balance with the easing of the process – for importers and exporters.

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## **2.0 REGULATORY COOPERATION**

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### **2.1 REGULATORY COHERANCE**

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In a globalized world with complex supply chains, economic operators need simple and flexible rules. In contrast, the current multiplication of rules and regulations creates impediments for trade and causes additional costs for importing and exporting companies. Therefore, the FTA supports the EU approach in the TTIP negotiations consisting of the three elements:

- Good regulatory practices
- Agreement to accommodate regulatory exchanges
- Creating an institutional mechanism for enhanced regulatory cooperation

In particular in the consumer goods sector, the US-American Consumer Product Safety Improvement Act (CPSIA) defines different quality standards than the equivalent EU legislation. Consequently, the retail sector has to invest time and additional resources to comply with two different sets of legal provisions. Regulatory cooperation at a higher level would help to promote the business of retailers in both directions.

In general, FTA sees the right of each Party to regulate at the level of protection it considers adequate as a crucial principle for the further negotiations as well as the inclusion of interested stakeholders into the regulatory process.

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### **2.2 TECHNICAL BARRIERS TO TRADE**

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The technical requirements and procedures for checking products in the EU and the US are fundamentally different. The FTA supports the EU goals to:

- Strive to use international standards like ISO
- Eliminate unnecessary duplicative or burdensome procedures for testing products
- Ensure access to information on regulations and standards
- Improve cooperation between EU and US standardization bodies

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### **2.3 TEXTILES**

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Trade in textiles plays an important role for European retailers and trading companies. Rules of origin and customs duties are critical issues in this context. The FTA supports the EU goals to:

- Find agreement with the US on labelling of textiles and clothing: different labelling rules are a constant source of misunderstandings and mistakes in labelling of textiles. This relates to the nomination of fibres and the placement of origin labels and care symbols. Agreement on the same rules and regulations respectively mutual recognition are crucial for the retail business.

- Work together on product safety and consumer protection: in particular different regulations regarding flammability of certain textiles are the problems in this sector. Also in this regard, cooperation with the goal of harmonization and mutual recognition has to be found.
- Work on standards and testing methods: even if standards and testing methods are often similar they are not always recognized in the US. Therefore, agreement on the recognition of certification bodies and testing methods is crucial for European retail.

## **2.4 E-COMMERCE AND DATA FLOWS**

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E-commerce has become of growing importance as a distribution channel for European retailers, in particular within the European Single Market. There is, however untapped potential to go beyond the European market provided regulations on cross border trade, commercial operations and tax provisions are transparent and easy to follow. TTIP should also serve to create a level playing field for retailers on both sides of the Atlantic.

Trade in services and goods depends more than ever on free cross border data flows and the internet. Therefore, regulations for cross border data transfer have to be transparent for all operators and ensure a high level of data security. The Digital Single Market program of the European Commission also has to take into account the international dimension of e-commerce.

## **3.0 RULES**

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### **3.1 SUSTAINABILITY**

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For many years, sustainability has played a crucial role for FTA: with the Business Social Compliance Initiative (BSCI) and the Business Environmental Performance Initiative (BEPI) FTA provides its members two platforms to improve the social and environmental performance in the international supply chain. Therefore, FTA is in favour of including sustainable development issues like worker's rights and environmental protection in TTIP with the goal to reinforcing labour and environmental governance and promoting the concept of Corporate Social Responsibility. It has to be ensured, however, that this happens in a balanced way and that trade goals keep the priority.

### **3.2 CUSTOMS AND TRADE FACILITATION**

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For many years, FTA had advocated in favour of concluding a Trade Facilitation Agreement (TFA) in the WTO. This agreement now being concluded, the FTA supports all endeavours to put the TFA into practice. There are a lot of possibilities to ease EU-US trade by more simple and efficient customs rules, creating one set of customs forms for EU-US trade and improving transparency of customs procedures.

As to the classification of goods, FTA advocates for harmonized rules of classification i.e. mutual recognition of the different classification schemes. Classification criteria often differ between the EU and the US as the Harmonised System (HS) code is not applied consistently. The US Harmonized Tariff Schedule is a very complex system difficult to use for European companies. The lack of uniformity and different interpretations of rules poses enormous problems for the proper classification of goods.

Another issue of concern for FTA members is the treatment of research and development (R&D) services in the context of customs valuation. Already today, the WTO customs valuation rules allow for a duty-free preferential treatment of certain own services exports when re-imported as parts of foreign goods. In the

European Union these “intellectual assists” are covered by Article 32(1)(b)iv of the EU Customs Code. As European companies often entertain R&D activities in the US – and US companies vice versa in the EU – the cost arising from these business activities in the US or in Europe should under TTIP be deducted from the customs value of the related products and not pay duties.

Moreover, the concepts of the Authorized Economic Operator (AEO) in the EU and C-TPAT in the US should be more advantageous for registered companies and alleviate still burdensome custom procedures in EU-US trade.

Finally, the principle which permits US customs information to be published and sold freely – thereby allowing US companies access to confidential business information of their European competitors – should be stopped as it does not comply with fair competition.

### **3.3 SMEs**

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FTA is in favour of all provisions included in TTIP to make the agreement work for SME's. A large portion of the FTA membership is SMEs – trading companies who trade with all parts of the world. For these companies in particular it is important to remove customs duties, alleviate customs procedures, simplify standards and certification procedures and improve the protection of intellectual property rights.

### **3.4 INVESTMENT PROTECTION AND INVESTOR STATE DISPUTE SETTLEMENT**

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Any investment agreement needs a dispute settlement system where investors can seek their rights. An investment agreement without such a system would be useless as regular national courts are mostly not in the position to judge on disputes resulting from international agreements.

FTA recognizes that there is a lot of scepticism in the public debate on this issue. It is often forgotten, however, that dispute settlement systems besides official jurisdiction are part of most international agreements – be it commercial agreements or agreements between governments, among others in all bilateral investment agreements (BITs).

It is important that dispute settlement systems are efficient, professional and transparent. Therefore, FTA supports the modernisation of the current system and recognizes the efforts of the European Commission to take on board the concerns about ISDS. However, an efficient investment policy has to ensure that EU investors are properly protected abroad. In this respect it is crucial to further clarify the impact of the elements of the proposed new Investment Court System, in particular to define clearly the limits of the “right to regulate” in relation to the understanding of “fair and equal treatment of foreign investment” and of indirect expropriation.

### **3.5 INTELLECTUAL PROPERTY (IP) AND GEOGRAPHICAL INDICATIONS (GIs)**

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In principle, the EU and the US follow the same goals when it comes to the protection of intellectual property and fighting counterfeiting products. These common political views should be the basis for good cooperation among both trading partners.

Moreover, the system of Geographical Indications for food products plays an important rule within the EU. There are producers in all EU member states who produce specific regional products with a certain tradition and quality. These products can be protected within the system of GIs. The FTA advocates for an effective solution to protect EU suppliers of GI protected products also on the US market – and vice versa.

### 3.6 GOVERNMENT-GOVERNMENT DISPUTE SETTLEMENT (GGDS)

A solid dispute settlement system is a crucial part of any trade agreement of this kind. The FTA welcomes the EU Commission's proposal to use the methods of the WTO dispute settlement system enriched with several improvements. These improvements will contribute to more professionalism and transparency of the system.

### CONCLUSION

In view of the difficult WTO negotiation process and the spread of negotiations of bilateral free trade agreements it would be of utmost importance that the two major trading blocs are successful in concluding a Transatlantic Trade and Investment Partnership. This would lay the grounds for a new impetus for world trade.

The negotiations should be conducted in a stringent and transparent way. Comprehensive information and involvement of stakeholders have proven to be indispensable to reach solutions which achieve the necessary political consent among political decision makers and the general public.

The EU and the US both should make a clear commitment in favour of a successful conclusion of WTO talks as the corner stone of international trade policy. A transatlantic free trade area can in no way replace a positive outcome of multilateral negotiations. The WTO must remain the source for and guardian of international trade rules.

**For further information, please contact:**

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*Foreign Trade Association (FTA) is the leading business association of The European and international commerce that promotes the values of free trade. We bring over 1500 retailers, importers, brands and national associations to improve the political and legal framework for trade in a sustainable way.*



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