

BRIEFING

The Transatlantic Trade and Investment Partnership (TTIP): The US Congress's positions

Authors: Wanda TROSZCZYNSKA-VAN GENDEREN and
Elfriede BIERBRAUER

Abstract

The US Congress is mandated by the US Constitution to exercise a regulatory and oversight role in international trade. It also has a role to play in negotiating external trade agreements, exercising its oversight, legislative and advisory functions. To date, the Congress has played an active role in the negotiations on the Transatlantic Trade and Investment Partnership (TTIP), overseeing the negotiations, gathering the views of key stakeholders during hearings and events it has organised, and flagging issues it considers politically important. While the US Congress has been broadly supportive of the negotiations, there appears to be no political consensus at the moment on the key issues under consideration, including the potential desirability and likely impact of the measures under discussion. Contentious issues include agriculture, intellectual property rights, regulatory cooperation and the EU's access to the US public procurement and energy markets.

This paper is an initiative of the Policy Department, DG EXPO

AUTHORS:

Wanda TROSZCZYNSKA-VAN GENDEREN and Elfriede BIERBRAUER
Directorate-General for External Policies of the Union
Policy Department
SQM 03 Y 076
Rue Wiertz, 60
B- 1047 Brussels

Editorial Assistants: Jakub PRZETACZNIK and Simona IACOBLEV

CONTACT:

Feedback of all kinds is welcome. Please write to:

wanda.troszczynska@europarl.europa.eu.

To obtain paper copies, please send a request by e-mail to:

poldep-expo@europarl.europa.eu.

PUBLICATION:

English-language manuscript completed on 09 September 2014.

© European Union, 2014

Printed in Belgium

This paper is available on the intranet site of the Directorate-General for External Policies, in the [Regions and countries](#) or [Policy Areas](#) section.

DISCLAIMER:

The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the publisher is given prior notice and sent a copy.

Table of contents

1	Role of the US Congress in the TTIP negotiation process	4
2	The key structures dealing with TTIP within the Congress	5
3	Themes of Congressional TTIP debates	5
4	Summary of recent Congressional actions and statements on TTIP	6
5	The principal TTIP issues of concern to the US Congress	7
	5.1 Market for agricultural products	7
	5.2 Intellectual Property Rights	7
	5.3 Regulatory Cooperation	8
	5.4 EU Access to US Public Procurement Market	8
	5.5 EU Access to US Energy Market	9
6	Future scenarios of the Congressional role in the TTIP process	9

1 Role of the US Congress in the TTIP negotiation process

The US Congress is constitutionally mandated to play an oversight and regulatory role in international trade.

Looming mid-term elections and strong protests from the unions make it unlikely that the Congress will grant the US president the authority to negotiate the TTIP with a rapid procedure known as the 'trade promotion authority' (TPA).

Congress has worked to be involved in the process from early on, requesting regular briefings and access to information. Congress has also voiced its opinions on issues considered political priorities.

Immediately, following the 20 March 2013 notification of US President Barack Obama's administration to the US Congress that it intended to enter negotiations on a comprehensive trade and investment partnership with the European Union, Congress members expressed their unequivocal, bi-partisan support and defined their expectations for the outcome. Initially, legislators called for the removal of all unnecessary barriers to trade (reducing tariffs to zero where possible, including on trade in services), negotiating an investment chapter and further opening public procurement markets. As negotiations went on, Congress members voiced more specific interests, while also growing more defensive on certain issues.

One of the competences of the US Congress foreseen by the US Constitution is an oversight and regulatory role in external trade. Consequently, Congress plays a role in negotiating external trade agreements, exercising oversight, legislative and advisory functions. The relevant Congressional committees involved in the process are regularly debriefed by the US Trade Representative (USTR) Michael Froman and other high officials, enjoying access to at least some strategic documents related to the negotiations. (*More on the key Congressional structures and actors involved in the Transatlantic Trade and Investment Partnership – or TTIP – can be found in Chapter 4.*)

If the Congress grants the US president 'trade promotion authority' (TPA, also called 'fast track negotiating authority'), the executive gains the authority to negotiate trade agreements, while keeping Congress in the loop. Congress retains the right to vote for or against the agreements or treaties negotiated by the president, without making amendments and without holding filibusters.

In the TTIP context, the TPA procedure would be considered an advantage by the key stakeholders in the negotiations, as it means that Congress could not attempt to introduce changes to an agreement. However, given the US mid-term elections will be held in November 2014, it appears unlikely Congress would grant the president TPA before this date. What is more, the Congress has been sensitive to the views of the unions, who have repeatedly objected to negotiating TTIP with a fast track procedure.

Whichever procedure is adopted, Congress will ultimately have to vote on the TTIP. Approval requires either a majority in both houses ('an agreement') or a two-thirds vote in the Senate (a 'treaty').

Since the beginning of the TTIP negotiations in July 2013, Congress has monitored the progress of negotiations, while trying to influence official US positions and flagging issues it considers priorities. It has organised various hearings, featuring debriefings by the Office of the US Trade Representative and the Office's team, as well as exchanges of views with various constituencies and interest groups implicated in the process. Later the Congress can also be expected to review the TTIP-related legislation on implementation.

While a Congressional majority has been broadly supportive of the TTIP (for reasons explained below), Congressional views on specific issues under negotiations differ significantly. (Focus areas of the Congressional TTIP-related debates are discussed in the following section of this briefing.) The Congress has adopted a broad geopolitical view on the TTIP, weighing its implications for the future of global economic governance – the potential impact on multilateral structures (notably the World Trade Organisation) – and for other significant, on-going trade negotiations (the Trans-Pacific Partnership, or TPP) and key economic partners (China).

Moreover, the recent resurgence of economic patriotism (most recently demonstrated in a bi-partisan wave of condemnation of 'tax evaders' and in Congress's continued support of the 'Buy American' Act) suggests that protectionism is on the rise and that Congressional consensus on the TTIP may be eroding. Congress's recent track record and its inability to reach agreement on key current issues (including the budget deficit and health and immigration reforms) also suggest that the legislature may disagree about how to respond to the TTIP negotiations.

2 The key structures dealing with TTIP within the Congress

The House Ways and Means Committee and the Senate Finance Committee, together with their Trade Subcommittees, have been the lead Congressional structures for the TTIP files. These committees have organised thematic debriefings featuring the USTR and teams from the White House. The executive has also arguably given members of these Committees the broadest access to information on the content and the status of on-going negotiations.

While the main committees dealing with TTIP are the House Ways and Means Committee and the Senate Finance Committee, other committees are involved as well.

All committees have apparently favoured an inclusive approach, and have ensured that members from committees without an explicit trade focus remain informed and engaged. Other relevant authorities, including various departments and agencies, have been invited to brief legislators and offer their views, as have non-governmental stakeholders (both business and non-profit).

The TTIP negotiations are attracting greater attention in the US Congress, both from supporters and from those who criticise different aspects of the negotiations. A TTIP caucus was established earlier this year to support the final outcome¹. This bi-partisan caucus² is expected to facilitate communication between members of Congress and TTIP negotiators.

3 Themes of Congressional TTIP debates

While some concrete issues (examined more closely in Chapter 5) have already been considered in some detail in Congressional debates, the core

¹ EP Liaison Office with the US Congress, Feedback Notes, 7 July 2014.

² The TTIP Caucus was launched by Reps William Keating (D/MA), Richard E. Neal (D/MA), Erik Paulsen (R/MN), and Todd Young (R/IN).

debates have instead focused on more general topics, such as the overall economic impact of the TTIP, or the global implications of the agreement for international economic governance and global standards.

Congress members' views on the TTIP are very diverse and do not fall along party lines.

The debates have shown that Congress's views on the TTIP cannot be simply summarised and do not fall along partisan lines. Opinions appear to be shaped less by political affiliation than by legislators' local affiliations, interests and sensitivities. Debates have reflected a clash of views and a lack of consensus about the advantages of the TTIP and the likely impact of the agreement.

Congressional debates on the TTIP have generally concerned the larger implications of the agreement.

Nevertheless, its added value in creating global norms, regulatory convergence and technical standards has been identified as something that would boost the US's and EU's standing in the world and that would potentially increase the two partners' economic and international standing, particularly *vis-à-vis* Asia (and China in particular).

The TTIP has also been hailed as a potential anchor for global economic governance, which may later integrate others willing and able to adhere to its standards and commitments. Increased cooperation in other fields, most notably energy, has been identified as a potential advantage of the TTIP, and this could, in turn, provide a source of leverage with Russia and deter Moscow from intervening further in Ukraine and elsewhere.

Only recently have legislators delved into the details of some concrete areas under negotiation.

The need for transparency in the TTIP negotiations has been repeated by US Congress members from both sides of the political aisle. Legislators have frequently requested full access to information and have complained that their access to documents so far has not been satisfactory. They have also reiterated the importance of better engaging key stakeholders, to properly inform them of the content of the negotiations and the potential practical implications of the outcome.

One practical issue repeatedly flagged by Congress has been the feasibility – and difficulty – of simultaneously negotiating TTIP and the Trans-Pacific Partnership (TPP). USTR Froman remarked on the lack of sufficient human resources on his team.

4 Summary of recent Congressional actions and statements on TTIP

Congress continues to stress the geostrategic importance of negotiations.

Congress has continued to stress the geostrategic importance of the negotiations, particularly in view of the fragile situation in Ukraine.³ The need to pursue transatlantic efforts to help Ukraine's national security and macro-economic revitalisation has frequently been mentioned during TTIP debates.

The recently created, bi-partisan 'TTIP Caucus' is expected to intensify

Among the issues that have recently been hotly debated is the investment protection chapter. A political majority has resisted maintaining 'geographic indicators' in the agreement. (More on this specific issue can be found in the next section.) Before the fifth negotiation round, 177 members of the US

³ 'Ukraine Crisis Boosting Washington's Interest in TTIP,' *Europolitics*, 30 April 2014, <http://europolitics.info/external-affairs/ukraine-crisis-boosting-washingtons-interest-ttip>.

contacts and facilitate the exchange of information between the Congress and the negotiation team.

House of Representatives (from both sides of the political aisle) signed a letter to USTR Froman in which they asked US negotiators to ensure that the TTIP not include exceptions for EU products under the 'pretext' of geographical indications. The issue was also raised in a recent hearing on trade and agriculture in the Ways and Means Committee of the House of Representatives⁴.

5 The principal TTIP issues of concern to the US Congress

US legislators have become more defensive as they have focused on specific issues.

While the Congress initially provided strong bi-partisan support for the TTIP negotiations, more protectionist impulses and greater caution has followed, particularly with regard to the issues of market for agricultural products, intellectual property rights, regulatory cooperation, and the EU's access to the US public procurement and energy markets.

5.1 Market for agricultural products

The US Congress called on the EU to open its agricultural market for US products completely, removing both tariff and non-tariff barriers.

Regarding access to the EU's market for agricultural products, House of Representatives member Devin Nunes (R/CA) emphasised the importance of all markets, including the EU's, remaining completely open for US agricultural products. This necessitates eliminating all existing tariffs without exception and reducing non-tariff barriers, in particular those related to sanitary and phytosanitary (SPS) measures. Nunes's statement – the opening statement for a Ways and Means Committee hearing on 11 June 2014 – contended that US exporters of agriculture products often faced barriers that purported to protect human, animal and plant health, while in reality being 'veiled protectionist barriers that ignore science and international standards'⁵. US trade negotiations, including those with the EU, were good opportunities, Nunes said, for doing away with all existing barriers, both tariff and non-tariff measures. Although the EU import ban on US poultry that has undergone pathogen reduction treatments (chlorine-washed poultry) was not mentioned, it is the issue that US representatives had in mind when advocating science-based standards.

5.2 Intellectual Property Rights

The Congress called on the EU to revise its policy on geographic indications (GIs), arguing that 'parmesan' or 'feta' are 'commonly used

At the same hearing – and on various other occasions – a large bipartisan group of Congress members from both houses expressed their concerns with the EU's efforts to use the intellectual property rights chapter of the TTIP to impose the EU's geographical indications (GIs) on the US⁶. According to Nunes, what the EU 'improperly designates as geographical indications' are in fact restrictions on the use of generic food names. If the US complied with the

⁴ EP Liaison Office with the US Congress, Feedback Notes, 7 July 2014.

⁵ http://waysandmeans.house.gov/uploadedfiles/camp_033_xml.pdf

⁶ Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, http://europa.eu/legislation_summaries/internal_market/businesses/intellectual_property/l66044_en.htm

names which should not be restricted.'

European request, the EU could reserve GIs for cheese such as 'parmesan' and 'feta', as well as for 'bologna' meat, while all these names are commonly used in the US. More than 200 US legislators have called on the US administration to block such 'protectionist' moves by the EU.

5.3 Regulatory Cooperation

With regard to regulatory cooperation, bridging transatlantic approaches to GMOs was a focus of Congressional debates.

Within the closer regulatory cooperation envisaged in the agreement, some members of Congress have voiced their support for EU proposals to include financial services in the regulatory chapter. At present, however, the US government considers the G20 a more appropriate framework for treating financial services regulation than the TTIP.

Other US legislators have suggested using the TTIP as a vehicle to bridge transatlantic differences in the regulation and treatment of genetically modified organisms (GMOs). The proposal, however, is starkly opposed by the EU. Trade Commissioner Karel De Gucht has said repeatedly before of Members of the European Parliament that EU safety standards and import bans would remain unchanged, be they for chlorine-washed poultry or GMOs.

5.4 EU Access to US Public Procurement Market

The Congressional resistance to opening the US public procurement market to the EU stems from its desire to protect local suppliers.

The EU will face strong opposition from Congress when seeking improved access to US public procurement. Currently, the 'Buy American' Act of 1933 requires the US federal government to purchase US-made iron, steel and manufactured goods whenever possible. Congress members argue that, unlike specific provisions are added to a free trade agreement, suppliers from signatory countries to such an agreement with the US would have to be granted the same 'national treatment' access to US public procurement as US suppliers. This would essentially neutralise the 'Buy American' policy – an outcome unacceptable to Congress. In a letter to President Obama, 122 Congress members demanded that 'Buy American'-related procurement policies not be endangered by the TPP or any other trade negotiations⁷.

Congress members are likely to resist opening the US procurement market to the EU even more strongly than to the Pacific, as European suppliers are considered more competitive than most trans-Pacific suppliers. As a result, US negotiators for international trade agreements are under pressure to exclude 'national treatment' to US government procurement from prospective trade agreements.

⁷ Letter signed by 122 Congress Members to President Barack Obama regarding the support of Buy American procurement policies within the negotiations on the Trans-Pacific Partnership (TPP) of 30 June 2014, [http://op.bna.com/itr.nsf/id/mcan-9mhlqn/\\$File/TPPBuyAmerican%20Final%207-30-14.pdf](http://op.bna.com/itr.nsf/id/mcan-9mhlqn/$File/TPPBuyAmerican%20Final%207-30-14.pdf)

5.5 EU Access to US Energy Market

The Congressional support to opening the US energy market to the EU can be explained by both market and geopolitical reasons.

The US energy market represents another sensitive issue, although one in which EU aims have been supported by the US House of Representatives. On 25 June 2014, the House voted 266-150 to approve legislation aimed at expediting approvals for shipments of liquefied natural gas (LNG) to countries that are members of the World Trade Organisation. According to the draft legislation, the US Department of Energy would ensure that export permits for LNG be issued within 30 days after an environmental impact assessment - following the current procedure - by the Federal Energy Regulatory Commission (FERC); this would be speedier than current practice. The Department of Energy could also waive the requirement that the importing country have signed a free trade agreement (FTA) with the US; today, only the US's FTA partners – Canada, Mexico, Chile, South Korea and the Dominican Republic – import LNG from the US. The bill is currently before the US Senate, where approval is uncertain.

6 Future scenarios of the Congressional role in the TTIP process

Congress's support for the TTIP should not be taken for granted.

US legislators have suggested that close consultations and better access to information would help rally its support.

While the US Congress has commonly been considered broadly favourable to the TTIP, there is no political consensus on most of the key issues under consideration. Viewed from a critical distance, the cooperation between the US executive and legislative branches leaves much to be desired, and the divergence has been exacerbated by the upcoming mid-term elections. The vote could delay Congress's TTIP-related work, and approval of the president's trade promotion authority may be one of the casualties. Congress's support for negotiations and its uneventful approval of an agreement should not be taken for granted.

Various members of Congress have made proposals for improving the process, including by increasing Congress's involvement in the negotiations and its access to information, as well as by conducting broader stakeholder consultations. Time will tell whether such efforts – which may well be necessary to rally legislators' support – are undertaken.