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The Transatlantic Trade and Investment Partnership and the Developing Countries

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Final draft

Introduction

After a year of preparation under the aegis of a High Level Working Group on Jobs and Growth (HLWG), the US and EU have agreed in June 2013 to open negotiations on a Transatlantic Trade and Investment Partnership (TTIP). The initial target year for ending the current negotiations was mid 2014—though the successive delays in TPP negotiations have made this target increasingly unrealistic. No new target date has been mentioned.

The TTIP negotiations are far to be the first attempt to establish a 'Transatlantic Market Place'. The acronym 'NAFTA' was forged in the 1960s for designating the North Atlantic Free Trade Agreement among the US, Canada, Britain and the then European Community. The 1990s and 2000s have witnessed a long list of meetings of all kinds among officials, businessmen and 'civil society' aiming to get rid off of the barriers between the US and the EU. The most important initiative was the "New Transatlantic Agenda" (NTA, 1995) which gave birth to four transatlantic "dialogues" focusing on business, labor, environment and consumer issues. As all these dialogues had difficulty to provide concrete outcomes, the German Chancellor Angela Merkel relaunched in 2006 the whole process by tabling a 'Transatlantic Free Trade' initiative—the direct predecessor of the TTIP.

This short history suggests to keep in mind two important points when assessing the potential impact of the TTIP on developing countries (DCs):

- as illustrated by the NAFTA initiative which was clearly targeting the Soviet Union, the US-EU negotiations have a geo-political dimension: the desire to shape world rules and governance and occasionally to challenge other super-powers. This

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dimension is undoubtedly present when TTIP negotiators talk about 'norms-setting', raising the following question: if such a goal could have been made sense a few decades ago, is it still the case now that the US and EU are diminishing (relative to the rest of the world) economic giants?

- the TTIP negotiations are the latest initiative in a sequential process of negotiations of preferential trade agreements (PTAs) among the largest world economies. They are launched after those of (i) the Trans-Pacific Partnership (TPP) among twelve Pacific economies, (ii) the Economic Cooperation Framework Agreement (ECFA) among China Mainland and Taiwan, (iii) the China-Japan-Korea (CJK), (iv) the Regional Economic Comprehensive Partnership (RCEP) involving ASEAN countries, China, Japan, Korea, India, Australia and New-Zealand, and (v) the Japan-EU (JEU) Free Trade Agreement. This sequence raises a question: why has the TTIP not been launched first?

This paper aims to provide an overview of the main aspects of the TTIP negotiations and an very early assessment of the results that could be expected with a focus on the possible TTIP discriminatory impact on non-TTIP countries. The paper often refers to the Korea-US (KORUS) and Korea-EU (KOREU) agreements because it argues that the TTIP is unlikely to go beyond the KORUS and KOREU for two converging reasons. First, TTIP countries have similar economic sizes, hence the asymmetrical leverage existing in the KORUS and KOREU cases does not exist. Second, and much more importantly, Korea took firmly the view that KOREU and KORUS were essential for her future growth. This determination made Korea a very accommodating partner. It is far to be certain that such a situation exists in the EU or in the US.

The paper is organized in seven sections. The six first ones deal with a distinct negotiating "block": industrial goods, farm and food products, services, investment, government procurement, and "new rules". There is no section on the intellectual property rights *per se* because the three main issues in this domain are included in the negotiating block to which they pertain (patents in the industrial goods block since it focuses on pharmaceuticals and chemicals, geographical indications in the farm and food products block, and copyright protection in the services block because of its relation with cultural and audiovisual services). The seventh section focuses on a key question: what could and should do non-TTIP countries?

The TTIP endeavor is the biggest mega-PTA to date, hence it can legitimately raise concerns on its discriminatory impact on non-TTIP countries.

Section 1. Industrial goods

This block consists in seven inter-connected broad issues: (i) tariffs, (ii) rules of origin, (iii) bilateral (that is, specific to the TTIP) safeguards and antidumping measures, (iv) tariff-equivalent barriers to trade (taxes, fees, imports and export quotas, authorization requirement for exports, etc.), (v) subsidies and antisubsidy measures, (vi) technical barriers to trade (TBT, that is, industrial norms and standards, testing and certification procedures) and (vii) patent issues (often included in the chapter on intellectual property rights for legal reasons, but taken on board in this block because it deals essentially with two industrial sectors, pharmaceuticals and agricultural chemicals). These seven areas offer a first possibility of trade-offs among them in terms of concessions—for instance, the speed of tariff elimination vs. the speed and coverage of NTB changes (the second level of potential trade-offs is among the seven building blocks).

The most likely scenario for this block would include

- almost certainly a complete tariff elimination (with maybe a few exceptions), provisions on rules of origin and an agreement on bilateral safeguards. Provisions on rules of origin and on bilateral safeguards are a legal necessity in any PTA since they are necessary for discriminating between the goods considered as produced by the TTIP partner and those coming from the rest of the world. That said, the EU and US regimes of rules of origin are so far apart that it is far to be certain that a TTIP compromise on these regimes will be ultimately market-opening.
- possibly, some progress on TBT in certain sectors, some disciplines on tariff-equivalent barriers to trade and subsidies, and some common provisions on patent issues. But, it remains to be seen whether these provisions will be exhortatory or effective.

Negotiations on previous PTA (and well as in the Doha Round) have amply shown that unexpected problems often emerge when one negotiates market access in industrial goods—including in tariff cuts. Past PTAs have shown to be unable to eliminate a substantial portion

of the remaining tariffs among the members [WTO Secretariat 2011]. As a result, caution on the final outcomes of this block is required [Lester 2013]. This is due to the fact that negotiations in this area are going into great details, hence the possibility of unexpected deadlocks on tiny topics brought by some vested interests—as best illustrated by the Baltic surimi at the end of the KOREU negotiations. The fact that the provisions on industrial goods represent roughly 12 and 43 percent (respectively) of the total number of words in the KOREU text and annexes, and 24 and 52 percent of the total number of words in the KORUS text and annexes is the best illustration of this complexity.

Tariffs. The HLWG report recommends that "*the goal of the agreement should be to eliminate all duties on bilateral trade, with a substantial elimination of tariffs upon entry into force, and a phasing out of all but the most sensitive tariffs in a short time frame*". The general interpretation of this recommendation is a full elimination of bilateral industrial tariffs. However, Table 1.1 shows that peak tariffs (higher than 10 percent) are numerous enough to create serious problems—especially from the US side—to the negotiators for two reasons:

- if the US and the EU have almost the same number of industrial peak tariffs (7.5 percent of all their industrial tariff lines have tariffs above 10 percent), one third of these US peak tariff lines exhibit tariffs above 15 percent (an extremely high level of protection) compared to only one-tenth for the EU.
- US tariffs are generally less uniform than EU tariffs (the coefficient of variation of US tariffs is systematically higher for the industrial sectors than the one for EU tariffs). Cuts in a less uniform tariff structure are more difficult to negotiate than those in a more uniform structure: they require more drastic decisions from domestic producers when adjusting the location of the various stages of their production processes.

Table 1.1 shows that very few industrial sectors have no peak tariffs—hence that the risks of discrimination against non-TTIP producers are widespread (and high) over the whole range of industrial products. That said, it should be stressed that even the elimination of bilateral low or moderate tariffs can have an discriminatory impact on non-TTIP countries. The whole possibilities for discrimination can be illustrated by the car sector. Of course, car production from Japan (if the TPP and the EU-Japan FTA are not successfully concluded) or from China will be discriminated against by the conclusion of the TTIP for auto products protected by

high EU or US tariffs. But, even the elimination of small or moderate tariffs may hurt producers of auto-parts located in the non-TTIP countries if these producers are involved in the current global value chains of US- or EU-based car makers. This is because moderate or even low EU or US tariffs imposed at several steps of the auto production process can still generate substantial costs.

Table 1.1. Range of industrial tariffs in the US and EU

	United States (2012)			European Union (2011)		
Description	#lines	Avg	Max	#lines	Avg	Max
Fish and fishery products	331	1.5	35.0	375	11.1	26.0
Minerals and metals	1547	2.4	38.0	477	2.5	12.0
Chemicals	1847	3.7	6.5	1247	4.4	17.3
Wood, paper, and furniture	525	0.7	14.0	446	1.2	10.0
Textiles	1082	7.8	42.3	1207	8.0	12.0
Clothing	571	11.6	32.0			
Leather, rubber, footwear	422	7.4	57.7	275	4.9	17.0
Non-electric machinery	799	1.4	9.9	885	1.7	9.7
Electric machinery	526	2.3	15.0	451	2.8	14.0
Transport equipment	241	2.5	25.0	257	5.0	22.0
Others n.e.s.	898	3.0	39.9	633	2.5	13.9
WTO Industry (excl. petroleum)	8789	4.0	57.7	7255	4.1	26.0

Source: WTO Trade Policy Reviews.

As mentioned by the HLWG report, the (usual) solution to the political problems raised by peak tariffs is to allow longer implementation periods. The liberalization time frame expected for the TTIP could be expected close to the one for the TPP, that is, definitively less ambitious than the KORUS and KOREU time frames shown in Table 1.2. This difference reflects the more favorable circumstances faced by the KOREU and KORUS, compared to TTIP (and TPP)—namely Korea's strong determination to conclude and her negotiating partners' high negotiating leverage.

Table 1.2. Time frame for industrial liberalization, TTIP, TPP, KORUS and KOREU

HLWG recommendations	TPP: expected outcomes
elimination, reduction of all tariffs [a]	elimination entry in force: 90% tariff lines
substantial elimination in a short time frame	elimination within 7-10 years: most of the rest
options for the 'most sensitive' products [a]	reduction only: remaining tariff lines

Korea-US: US commitments	Korea-EU: EU commitments
elimination within 3 years: 91% tariff lines	elimination within 3 years: 99% tariff lines
elimination within 5 years: 4% tariff lines	elimination within 5 years: 1% tariff lines
elimination within 10 years: 5% tariff lines	

Sources: Korea-EU and Korea-US agreements; Schott 2013, HLWG Report.

Rules of origin. The HLWG makes no reference to this issue, and the final outcome in this domain is highly uncertain because the US and the EU have very different regimes of rules of origin. The US system relies mostly on a "change in tariff classification" (CTC) approach while the EU combines a CTC regime with a regime based on the "value-added rule". Such a situation may lead to badly conceived compromises between the EU and US which could end up by limiting substantially the market access generated by tariff elimination.

This problem will be particularly acute in textiles-clothing and footwear. Compared to the EU, the US regime for the textiles-clothing sector has more complex methods for calculating duties, specific provisions on the mandatory use of inputs (in particular the "yarn forward" clause which implies that nearly every step of the garment manufacture for textiles to be exported to the US shall be with fabric using US yearn), less generous possibilities of cumulation among the various US-PTA partners and a stricter monitoring. Interestingly, the textiles-clothing sector has its own safeguard provisions in the KORUS and KOREU, as well as annexes on its own special rules of origin. Any notable progress in relaxing the rules of origin among the two TTIP partners in these sectors while keeping untouched the US rules on imports from the rest of the world will make the US the main source of trade diversion against non-TTIP producers.

Bilateral safeguard and antidumping measures. As any PTA, the TTIP needs a bilateral "general" safeguard clause ("general" meaning that this provision can be used for all the liberalized goods). The language of the TTIP safeguard is likely to be (much) weaker than the corresponding WTO provision—opening the possibility of a "WTO-minus" TTIP safeguard with, for instance, no reference to the GATT Article XIX expression of "unforeseen developments". This expression aims to limit the use of the safeguard since invoking

"unforeseen" developments could make sense only during a few years after the start of the liberalization process. That said, the WTO minus dimension of the TTIP safeguard is somewhat counter-balanced by the fact that the TTIP safeguard is likely to be limited to the period of implementation (as in the KOREU or KORUS cases). But, this limit may not be so severe for sensitive products since the implementation period for cutting the tariffs on such products is generally very long (more than seven years).

In addition to the general safeguard, the other US and EU-PTAs suggest that the TTIP would have a few sectorial safeguards—certainly in textiles and clothing, possibly in cars, electronics, chemicals and pharmaceuticals. These TTIP sectorial safeguards may be even more WTO-minus than the TTIP general safeguard, the worst possibility being that they could add up the WTO-minus features of the KOREU and KORUS provisions. For instance, the KOREU safeguard in cars introduces elements of "early warning" which are thinly disguised threats (and calls for collusion among EU and possibly Korean carmakers) by the car producers of one party against those of the other signatory. And, the KORUS safeguard includes a "snap-back" provision which makes possible to re-impose the eliminated tariffs on a non-proportional basis—definitively a WTO minus feature.

A TTIP antidumping clause is also very likely, but its impact may be limited because PTA-specific antidumping provisions are usually largely exhortatory. They mostly re-affirm the WTO antidumping principles, as in the KORUS. The KOREU emphasizes a few provisions (public interest, *de minimis* standard, lesser duty rule, etc.) which are also present in the WTO disciplines and could reduce the protectionist impact of the use of antidumping—but are rarely used in reality. In short, there is very little substance to expect—only a few "window-dressing" procedures (more transparency, advance notification, etc.).

Tariff-equivalent barriers to trade. The HLWG does not mention explicitly these barriers (taxes, fees, imports and export quotas, authorization requirement for exports). However, addressing these barriers in the TTIP is a must at least for the EU since it echoes a large body of economically sound rulings of the EU Court of Justice on the "equivalent impact" of all these instruments.

The item in the HLWG report which refers to such kind of barriers is the energy exports item (see block 7 below) which alludes to the problem of US barriers on exports of oil (shale gas)

to the rest of the world. Since mid-2013, the US has begun to emit a number of authorizations for exporting limited amounts of oil. What the TTIP could do then is to bind (on a bilateral basis) this new unilateral approach which so far is *ad hoc* (the US law still puts a general ban on such exports) and unbound at this stage.

Subsidies and antisubidy measures. There is no language in the HLWG report which evokes subsidies in market economies. The only reference to subsidies covers "*subsidies and other privileges granted to state-owned enterprises*" (see block 7 below). The silence of the HLWG report suggests that the TTIP in this domain could echo the KOREU and KORUS provisions which repeat the WTO language or refer to the WTO disciplines.

One of the reasons behind this silence is the conviction that meaningful disciplines on subsidies can be only multilateral. But, the other reason is the US and EU complacency with respect to their own subsidies. Industrial subsidies still exist in the EU and the US, either under relatively direct financial schemes (mostly in the EUMS) or under the form of tax rebates (US States) [The Economist April 27, 2013] . Such subsidy schemes are particularly important in the energy sector (covering many products competing with oil, from coal to nuclear energy to wind turbines to photovoltaic cells) and in the energy-intensive sectors, as best illustrated by the car sector with "green" subsidies granted for selling old cars and/or buying new ones. Evidence suggests that these apparently "non-discriminatory" subsidies have often *de facto* favored the domestic car producers under the "green" label at the detriment of foreign producers.

Industrial subsidies have an interesting twist. As they are often provided at "sub-federal" level (EUMS and US States), they can be discriminating against other EUMS or US States as well as against non-TTIP producers. For instance, the French subsidies on green cars granted between 2008 and 2011 favored French cars at the detriment of German cars as well as of Japanese and Korean cars [Messerlin 2012a].

Technical barriers to trade. Annex 1 provides a synopsis comparing the HLWG report with the KOREU and KORUS texts in this domain. The language of the HLWG report on a "TBT-plus" chapter (compared to the WTO TBT provisions) is largely exhortatory when it states that "*the objectives of the chapter would be to yield greater openness, transparency, and convergence in regulatory approaches and requirements and related standards-development*

processes, as well as, inter alia, to reduce redundant and burdensome testing and certification requirements, promote confidence in our respective conformity assessment bodies, and enhance cooperation on conformity assessment and standardization issues globally". The last two decades have witnessed endless transatlantic discussions on all these issues with very limited results.

Non-tariff barriers (NTBs) in the US and the EU: an assessment

Table 1.3 which is based on a study done for the European Commission [Ecorys 2009] shows that indeed NTBs are very substantial barriers to trade. Columns 1 and 2 provide estimates of the *ad valorem* tariff equivalents (trade costs) of the NTBs. As calculating these estimates rely partly on econometric work, Table 1.3 presents also the raw indexes of bilateral NTBs in trade and investment (columns 3 to 6) that have been assessed by the experts (and used as inputs for calculating *ad valorem* tariff estimates). Finally, Table 1.3 columns 7 and 8 provide the estimated degree of "actionability" for the various sectors, that is, the degree (as assessed by Ecorys experts) to which NTB can "realistically" be reduced by 2018 if the political will to do so exists.

Table 1.3. Non-tariff barriers in manufacturing: tariff equivalents and basic indexes

	Tariff equivalents (%)		NTB indexes Trade		NTB indexes Investment		'Actionability' [a]	
	US [a]	EU [b]	US [a]	EU [b]	US [a]	EU [b]	US [a]	EU [b]
	1	2	3	4	5	6	7	8
A. Sectors relatively more protected								
Cosmetics	32.4	34.6	48.3	52.2	38.2	63.8	52	58
Automotive	26.8	25.5	34.8	31.6	19.9	27.0	42	48
Chemicals	21.0	23.9	45.8	53.2	38.2	27.9	57	63
Office and Communication equipment	22.9	19.1	37.9	32.3	37.9	32.3	51	52
Aerospace & space	19.1	18.8	56.0	55.1	56.0	55.1	51	59
B. Sectors relatively less protected								
Textiles, clothing & footwear	16.7	19.2	35.6	48.9	14.0	27.0	54	50
Iron, steel & metals	17.0	11.9	35.5	24.0	28.1	17.5	50	62
Pharmaceuticals	9.5	15.3	23.8	44.7	15.5	23.4	47	42
Wood & paper	7.7	11.3	30.0	47.1	11.7	2.4	61	60
Electronics	6.5	6.5	30.8	20.0	21.9	25.8	39	41
C. Sectors with no estimated tariff equivalents								
Biotechnology	n.a.	n.a.	46.1	50.2	29.8	44.4	42	41
Medical, measuring & testing appliances	n.a.	n.a.	49.3	44.5	20.5	24.3	42	45
Machinery	n.a.	n.a.	50.9	36.5	18.5	14.9	49	55
ICT	n.a.	n.a.	20.0	19.3	15.0	13.7	43	35
D. For reference sake (see Table 2.3)								
Food & beverages	73.3	56.3	45.5	33.6	21.8	20.9	51	53
Average of all sectors	18.0	18.6	38.9	40.0	26.1	28.5	48.6	50.8
Average of the more protected sectors	24.4	24.4	44.6	44.9	38.0	41.2	50.6	56.0
Average of the less protected sectors	11.5	12.8	31.1	36.9	18.2	19.2	50.2	51.0

Notes: [a] US barriers to EU exports; [b] EU barriers to US exports. Source: Ecorys, 2009.

Table 1.3 suggests several observations which are important from the perspective of non-TTIP countries:

- there is a highly positive correlation between the NTB indexes in trade and those in investment, meaning that the risks of discrimination in trade against non-TTIP producers are compounded by the risks of discrimination in investment.
- there is a smaller but positive correlation between the sum of the two (trade and investment) NTB indexes and the degree of actionability, meaning that the risks of discrimination in trade and investment against non-TTIP producers (generated by a high degree of actionability leading to much lower transatlantic non-tariff barriers) may be particularly high in the most protected sectors in trade and investment.
- US and EU tariff equivalents by sector are relatively similar for half of the individual sectors (the most protected), meaning that the risks of discrimination against non-TTIP producers in these sectors would flow from both TTIP markets and would be high since both the EU and US producers would have easier access to the highly protected markets of the partner.

- the US and EU tariff equivalents are relatively different (mostly) in the less protected sectors, meaning that the lower risks of discrimination against non-TTIP producers in these sectors would be limited mostly to one TTIP economy.

The condition for significant reductions of TBT: a new instrument of negotiation

Very few (if any) PTAs have succeeded in eliminating or reducing technical barriers to trade, be norms imposed on products or on production processes. Econometric studies show that if trade costs within PTAs are smaller than those outside PTAs, the gap between these two trade costs has steadily declined in the 2000s [Miroudot and Shepherd 2012]. The EU Internal Market is a good illustration of this situation: despite the renewed efforts undertaken during the last thirty years, it is still struggling with this issue, as illustrated below with the emblematical coolant case in the EU car industry.

In this context, it is interesting to stress that the HLWG report calls for specific "*provisions or annexes containing additional commitments or steps aimed at promoting regulatory compatibility in specific, mutually agreed goods and services sectors, with the objective of reducing costs stemming from regulatory differences in specific sectors, including consideration of approaches relating to regulatory harmonization, equivalence, or mutual recognition, where appropriate*".

The chances of substantial successes in the TBT area within the TTIP depend heavily on the negotiating instruments that the negotiators will agree to use. If TTIP negotiators use the traditional approach based on "harmonization" or "mutual recognition", the best outcome could expect to achieve would be close (but probably inferior) to the KORUS outcome. For instance, the KORUS provisions on cars rely on traditional mutual recognition plus the acceptance by Korea to import "non-conform" US cars—that is, US cars that have lower environmental and safety norms than Korean cars. This notion of "non-conform imports" is quite new and is developed in two provisions:

- a "leniency rate" states that all US cars are deemed to be compliant with the 2015 Korean environmental standards if they achieve 119 percent of the Korean standards.
- a temporary "low volume seller exemption" requires that Korea agrees to import US cars with lower safety regulations if US imports per carmaker in Korea does not exceed 25,000 vehicles.

In fact, this notion reflects two factors: first, Korea's strong willingness to get an agreement (these provisions were added to the original agreement in order to get Congress's ratification) and, second, the recognition that some differences in norms may have no noticeable impact on consumers—in other words, that Korean and US norms were different, but "equivalent" enough from the consumers' point of view.

This "equivalence" factor is crucial, hence the brief presentation in Box 1. It echoes an approach to norms based on "mutual equivalence"—a negotiating instrument first used by Australia and New Zealand in their Trans-Tasmanian Agreement on trade in goods [Laplagne 2009]. It is also present in the 2012 EU-US "Organic Equivalence Cooperation Arrangement" on organic food (see below section 2) and in the intra-EU service liberalization context under the EU 2006 Services Directive (see below section 3).

Box 1. An efficient instrument for negotiating TBT: "mutual equivalence"

What is the most efficient instrument to address differences in technical norms? There are only three options: harmonization, mutual recognition, and mutual equivalence [Messerlin 2011, 2014a].

A long history of failures has amply shown that *harmonization* is very rarely the solution—both for defining harmonized norms and for implementing them. The EU car industry has recently illustrated the host of problems attached to harmonization in modern economies. In 2013, Daimler decided not to adopt a new coolant (in breach with a EU regulation adopted in 2006) for its cars because it has discovered that the new coolant was less polluting but also more flammable than the old coolant. In other words, one norm can be better in one respect than another norm, but it can also be worse in another respect. In short, there is no absolutely better norm—a key assumption behind the quest for harmonization.

The EU frustrating experience with harmonization has given birth to *mutual recognition* (MR). Under MR, each party accepts the norms of its partner for the good at stake conditionally upon the adoption of a core of common principles to be defined by negotiations among the parties. MR has been the exclusive approach for the EU Internal Market from 1979 to 2006. After a few years, MR has rapidly shown its limits: many forces (political pressures fuelled by anti-competitive business pressures) tend to push for an expansion of the core conditions to the point that MR has become increasingly close to harmonisation, without creating enough trust among the countries involved because of endless enforcement problems (testing and certification).

Finally, in the current context of uncoordinated negotiations on mega-PTAs, harmonization faces a challenge: how could the EU harmonize with the US in the TTIP, with Japan in the Japan-EU PTA, while Japan and the US will harmonize among themselves within the TPP? MR with its harmonization component and its heavy enforcement problems looks also very difficult and costly.

Under *mutual equivalence* (ME), each party recognizes the norms and procedures of implementation of its partner as fully equivalent to its own norms and procedures. To be acceptable, ME requires a systematic preliminary step—a joint process of "mutual evaluation" of their respective regulations at stake by the two partners allowing to list the goods or services to be excluded from MR in the sector in question. Mutual evaluation offers the unique opportunity to build trust—probably the most important input in this norm issue—among the signatories.

Interestingly, ME requires the participation of the regulating bodies of the negotiating countries—not only of the trade negotiators. In the TTIP case for instance, TTIP trade negotiators could draw a list of sectors to be candidates for mutual equivalence. Then TTIP sectorial regulators in charge will have to undertake the mutual evaluation of the regulations in question, agree on which regulations could indeed be considered as equivalent—possibly with agreed exceptions and reviews. US goods under mutual equivalence would then by produced under US norms and certified by US bodies and put to sale in the EU markets with no EU additional administrative procedure. EU similar goods would benefit from the same regime in the US markets.

The main conclusion to be drawn from Box 1 is that mutual equivalence emerges as a much more powerful instrument for reducing as much as possible technical barriers to trade. TTIP negotiators will not achieve substantial results in the norms issues, except if they start to use this instrument of negotiation. Indeed, there are some voices in the business community advocating such an approach in the Transatlantic dialogue since some time—for instance in the car sector [Morall 2011].

Patent issues. The KORUS and the KOREU diverge substantially on these issues, auguring difficult negotiations in the TTIP since they reflect differences between EU and US offensive interests. In these matters, the KORUS is somewhat wider and more detailed than its KOREU counterpart, reflecting "*the United States' broad negotiating priorities concerning IPRs: greater IPR enforcement, the exportation of US law and protections, higher standard abroad and the protection of digital content*" [Maskus 2012].

It is hard to expect that the EU would accept easily the "exportation" of US patent law and protections. For instance, a strict "linkage rule" (which requires a generic producer to get prior consent from the original patent holder before marketing its generic product) may be hard to introduce at a time where EUMS social security systems are under such high financial stress—hence eager to shift as quickly as possible to generic drugs.

Section 2. Farm and food goods

It is remarkable that the HLWG report never mentions the terms "agriculture", "farm" or "processed food"—leaving thus no clue on this essential block of the TTIP negotiations. As a result, what follows assumes that TTIP negotiators will follow the Doha Round negotiating approach defining agricultural goods as the universe of farm products (strictly speaking) and processed food (fundamentally industrial goods).

This block consists in six inter-connected broad issues: (i) tariffs, (ii) tariff-rate quotas, (iii) agricultural subsidies, (iv) TTIP specific agricultural safeguard, (v) sanitary and phytosanitary (SPS) measures (safety norms and standards, testing and certification procedures, origin of the goods, etc.) and (vi) geographical indications (GI). The issue of the origin of the products goes deeper in the farm and processed food sectors than in the manufacturing sector because of the "traceability" objective—a point at the core of the SPS measures. Legally speaking, the GI issue is classified as an intellectual property right item, but negotiations on this topic will be largely influenced by the farm and food lobbies—hence the inclusion of GI in this block.

The most likely scenario for this block would include:

- tariff elimination (to an extent hard to predict) combined with tariff reductions and changes in tariff-rate quotas for the other products (and possibly no changes for the most sensitive products) and an agreement on a special agricultural safeguard;
- possibly some (modest) progress on SPS, and an agreement on GI which is very unlikely to go further than preserving the *status quo* (implicitly entrenched in the KORUS and KOREU) with some face saving exercise for the future.
- agreements on export and domestic farm subsidies are unlikely to go beyond exhortatory provisions—despite the fact that the EU and US represent a share of world farm subsidies big enough to enable them to take some initiatives even in a bilateral context for the best interest of the whole world.

That said, the farm and processed food sectors may not be the most difficult aspect of the Transatlantic negotiations they used to be. World farm prices have increased, and by the same token the wedges between world prices and domestic US and (above all) EU farm products

have decreased, as reflected in the decline of the producer support equivalents calculated by the OECD. However, as in the negotiations on industrial products, unexpected problems can emerge because of tiny issues (this block represents roughly 10 and 30 percent of the total number of words in the total KOREU and KORUS texts and annexes, respectively—much more than the share of agriculture (2 to 4 percent) in the EU or US GDP).

Tariffs. As said above, the most likely scenario is a mix of elimination, reduction and exceptions for the "*most sensitive*" products. Table 2.1 shows the very high number of peak tariffs (higher than 10 percent). This time, the EU would be clearly the most important source of discrimination against non-TTIP producers with its average tariff of 15 percent (40 percent of EU agricultural tariffs are above 10 percent and 26 percent above 15 percent). But, the US would remain a non-negligible source of discrimination with an average tariff not much below 10 percent (10 percent of US tariffs are above 10 percent and 5 percent above 15 percent) and with some peak tariffs even higher than those of the EU.

It is important to stress that the products with the highest tariffs are generally processed food—not farm products. This is an illustration of the classical case of tariff escalation (the products at the end of a production process enjoy higher tariffs than raw materials, a way to compensate the increased costs on final goods of the tariffs granted to the inputs). As a result, the highest risks and levels of discrimination will occur in the food products segment—diverting EU imports from non-TTIP sources to US sources.

Table 2.1. Range of farm and food tariffs in the US and EU

	United States (2012)			European Union (2011)		
Description	#lines	Avg	Max	#lines	Avg	Max
Animals and products thereof	161	3.0	26.4	323	22.2	157.8
Dairy products	167	22.6	190.1	151	32.6	164.8
Fruit, vegetables, and plants	527	5.4	131.8	428	15.0	200.6
Coffee and tea	82	9.9	34.8	293	15.6	120.6
Cereals and preparations	182	8.3	97.9	55	21.6	70.8
Oil seeds, fats and oils	107	6.7	163.8	164	7.3	159.3
Sugar and confectionary	53	10.7	50.3			
Beverages and tobacco	149	21.7	350.0	279	13.8	117.7
Cotton	16	4.8	20.2			
Others n.e.s.	246	1.5	54.3	231	5.9	93.0
WTO Agriculture	1690	8.5	350.0	1998	15.2	200.6

Source: WTO Trade Policy Reviews.

As in the case of industrial goods, a way to solve tariff problems is to allow longer implementation periods. Table 2.2 shows that, indeed, the liberalization time frame for farm and processed food products in the KORUS and KOREU is longer in agriculture than in manufacturing.

Table 2.2. Time frame for agricultural liberalization, TTIP, TPP, KORUS and KOREU

HLWG recommendations	TPP: expected outcomes
elimination, reduction of all tariffs and TRQs options for the 'most sensitive' products [a]	no information available

Korea-US: US commitments	Korea-EU: EU commitments
elimination within 3 years: 59% tariff lines	elimination within 3 years: 92% tariff lines
elimination within 5 years: 27% tariff lines	elimination within 5 years: 8% tariff lines
elimination within 15 years: 14% tariff lines	
rice excluded	rice excluded

Sources: Korea-EU and Korea-US agreements; Schott 2013, HLWG Report.

Table 2.2 also shows that KORUS and KOREU have achieved very substantial results in terms of agricultural liberalization. But this situation again reflects largely Korea's readiness to use the KOREU and KORUS negotiations for preparing a key shift in its agricultural policy. KORUS and KOREU have spared the key rice sector, but this sector has anyway to be open by 2015 under Korea's commitments in the WTO. In short, the KORUS and KOREU do not seem appropriate references for predicting the outcome of the TTIP negotiations in agriculture.

Tariff-rate quotas. The HLWG report mentions explicitly the elimination or reduction of tariff-rate quotas (TRQ). TRQs are not very numerous, but there are politically very sensitive because they are concentrated in labor-intensive farm and food sectors. The 87 EU TRQs are mostly in meat (22), grains (15) and dairy (12), while the 54 US TRQs are mostly in dairy (24). The term used by the HLWG of "reduction" is ambiguous in the case of TRQs: does it mean an increase of the quota component of the TRQ, or an increase combined with a reduction of the tariff component of the TRQ? (Strictly speaking, it could also mean a reduction of the quota; but this negative interpretation is discarded in what follows).

Taking into account the current magnitude of the quotas in the TRQs, there is little chance that giving quotas to the US exporters will have an impact on EU domestic prices (and vice-

versa for the US) except if these quotas are very large. This is a very unlikely turn of events for the products concerned as illustrated by the difficulties in the TPP negotiations and in the Canada-EU negotiations on the products under TRQs. For instance, the Canada-EU PTA would grant an annual quota to Canadian beef producers amounting to 50,000 tons to the EU. This new quota represents roughly 30 percent of all the existing quotas granted by the EU under the Uruguay Round agreement (160,000 tons) but it is less than one percent of the EU consumption (and production) which is close to 8 million of tons. As a result, new TRQs would generate only two possible consequences:

- if the TRQ reduction consists in a mere increase of the quota, it will end up in rents (the difference between presumably low US export costs and high EU prices) that could be captured by the US exporters or by the EU importers, or shared among them—depending the legal aspects of the quota management.
- if the TRQ reduction consists in both an increase of the quota and a decrease of the in-tariff for the TTIP partner, then the rents will be even larger for the exporters of the TTIP partner.

In short, this domain of the negotiations is very tricky [WTO 2002]. Its economic impact on the Transatlantic trade and on the EU and US domestic markets is very likely to be ultimately minor. But, this domain is politically very sensitive, hence could trigger bitter disputes—as illustrated by ongoing fights among EUMS in order to share the Canadian beef quota into EUMS sub-quotas (fuelled by the economically unjustified fear that the 50,000 tons could destabilize one EUMS market). And it will be so all the more if it becomes a source of large rents and if it is associated with highly politically toxic SPS measures—bovine spongiform encephalopathy (BSE or "mad cow" disease) for beef, Genetically Modified Organisms (GMOs) for some crops.

Bilateral agricultural safeguard. As any PTA, the TTIP will include a bilateral agricultural safeguard clause. The similarity of the agricultural safeguards in the KOREU and KORUS Agreements leaves little doubt on the weak disciplines to be expected: the safeguard can be adopted as soon as the aggregate volume of the imports of the good in question is higher than a trigger level defined in the Agreements. The constraint that the safeguard duty should not be higher than the applied MFN tariff is minimal since such tariffs are often high or even prohibitive.

Subsidies. If, in agriculture, the tariff issue is mostly a processed food product issue, the subsidy issue is mostly a farm product problem. For trade negotiators, there are two main kinds of farm subsidies: export subsidies (granted when the farm products are exported to the rest of the world) and domestic subsidies ("domestic support" consisting in subsidies to some farm productions and in direct income support to farmers).

Export subsidies are largely an EU specific instrument. However, the EU has always argued that some forms of US food aid should be considered as equivalent to export subsidies. The Doha Round did make some progress in this respect, with a conditional commitment of the EU to eliminate its export subsidies and with some consensus on the equivalence of some forms of aid to export subsidies. TTIP could take on board some of these progresses, but it is very unlikely.

Domestic farm subsidies have been extremely resilient to the financial crisis and its aftermath—the ongoing budgetary crisis in the US and the EU. Their nominal global amounts have not much changed on the two sides of the Atlantic—meaning a *de facto* increase of subsidies per farmer (since the number of farmers has substantially decreased on both sides of the Atlantic).

In addition, US and EU farmers are enjoying a huge new source of subsidies—those related to the bio-fuel-related crops—a huge setback with respect to the decoupling principle of the CAP reform in Europe. In 2009, the biofuels subsidies (granted to a small set of specific crops) in the EU amount thus to roughly 18 percent of the total EU farm income. As a result, the estimated level of protection (all instruments of protection aggregated) to the biofuel production chain (farmers, industrial plants, etc.) has been estimated to reach the astronomical level of almost 10,000 percent for some crops in four EUMS [do Amaral 2008].[2]

Sanitary and phytosanitary (SPS) measures. Annex 1 provides a synopsis comparing the HLWG report with the KOREU and KORUS texts in this domain. Table 2.3 shows that

[2] Moreover, the EU biofuels production is unlikely, to say the least, to reach their environmental target whereas it requires an amount of land equivalent to the whole arable land of Ireland. This helps to understand the high to very high estimates—often in the range of 30 percent—of the contribution of biofuels production to various food price rises of the world prices in 2006-2008.

indeed SPS measures (TBTs) in the farm and food sectors are much higher barriers to trade than the TBTs in manufacturing (for comparison, see Table 1.3).

Table 2.3. Non-tariff barriers in agriculture: tariff equivalents and basic indexes

	Tariff equivalents (%)		NTB indexes Trade		NTB indexes Investment		'Actionability' [a]	
	US [a]	EU [b]	US [a]	EU [b]	US [a]	EU [b]	US [a]	EU [b]
	1	2	3	4	5	6	7	8
Food & beverages	73.3	56.3	45.5	33.6	21.8	20.9	51	53

Notes: [a] US barriers to EU exports; [b] EU barriers to US exports. Source: Ecorys, 2009.

However, the language of the HLWG report on a "SPS-plus" chapter is less ambitious that the language on the TBT-plus chapter since it only calls for "*establishing an on-going mechanism for improved dialogue and cooperation on addressing bilateral sanitary and phytosanitary (SPS) issues. The chapter will seek to build upon the key principles of the World Trade Organization (WTO) SPS Agreement, including the requirements that each side's SPS measures be based on science and on international standards or scientific risk assessments, applied only to the extent necessary to protect human, animal, or plant life or health, and developed in a transparent manner, without undue delay*".

Moreover, the TTIP capacity to provide a substantial solution to three thorniest issues—the EU ban of beef hormones, the US ban on beef imports in case of mad cow disease, and the EU inability to take clear decisions on GMOs—is also very doubtful. The GMOs case may be the only one where things could somewhat move because EU farmers are increasingly realizing that these bans go against their own interests since they need GMOs for becoming more efficient.[3] The GMOs case is by far the most important for most non-TTIP producers. Of course, a TTIP agreement on opening EU markets could create serious risks of discrimination against non-TTIP farmers, depending the details.

As in the TBT domain, the chances of substantial successes in the SPS area depend heavily on the negotiating instruments that the negotiators will use. If the negotiators use the traditional approach based on "harmonization" or "mutual recognition", the best outcome they could expect to achieve would be close to the KORUS or KOREU outcome—that is, not much. As argued above in the industrial goods section, much more notable results could be

[3] In March 2012, French farmers have challenged the French ban on GMO maize—a very unusual move. But, there are also strong pressures to counter-balance any flexibility on GMOs by imposing constraints on their effective use.

achieved if the TTIP negotiators have recourse to a "mutual equivalence" approach (see Box 1). The chances to take such an approach on a wide range of farm and food products may be very slim. But, as noted above, the 2012 US-EU Organic Equivalency Arrangement opens such a perspective by stating that the EU and US organic products produced and handled under the US and EU respective Organic Programs are considered as equivalent on both sides of the Atlantic.

Geographical indications (GI). The EU and the US are at odds on this component of the WTO TRIPs Agreement since the Uruguay Round negotiations. The US takes the view that GI are mere trademarks, whereas the EU considers them as monopoly rights that can be used only by those who meet strictly the "locational" conditions. As a result, the EU has pushed for a mandatory list of GI-based products in every country that no other country could use.

Since both countries have included their views on GI in their previous PTAs, the TTIP negotiators do not have much room of maneuver, except in the unlikely event that one party gives up. Alternatively, they could build on the Korean interpretation of GI if they want to settle this issue since KORUS and KOREU follow the US and EU lines, respectively. Pressed by some US food producers to explain how such a co-existence is possible, Korean officials draw a line between "compound names" and their individual components, and they argue that the KOREU applies only to compound names and not to their individual components.[4] It remains to be seen how the US and the EU will buy this argument to the point to use it as a basis for a TTIP outcome.

Section 3. Services

The HLWG report has a careful wording on market access in services—balancing "binding", calls for new market access, and the recognition of the sensitive nature of certain sectors: "*in the services area the goal should be to bind the highest level of liberalization that each side has achieved in trade agreements to date, while seeking to achieve new market access by addressing remaining long-standing market access barriers, recognizing the sensitive nature of certain sectors*".

[4] For instance, Provolone Valpadena is protected under KOREU, but not Provolone [Schott 2013]. Provolone Valpadena is a Provolone cheese produced in a region called Valpadena covering, in part or in totality, ten Italian provinces.

This block consists in four main inter-connected broad issues: (i) market access (where regulations are viewed as similar to tariffs in goods), (ii) regulatory barriers (where regulations are seen as similar to non-tariff barriers in goods), (iii) special safeguards in services, and (iv) copyright protection (an issue generally classified under the legal heading of intellectual property rights, but so closely related to the cultural services that it deserves to be included in this block).

Services is one of the most uncertain domain of negotiations in the whole TTIP endeavor. It is facing old and new sources of disputes—such as the cultural services (audiovisuals have been one of the most contentious issues at the end of the Uruguay Round negotiations and during the following decade) and internet services (data protection). Old disputes may seem less active today, but they could reignite easily. In sharp contrast, data protection has emerged as probably the most potentially toxic item of the whole TTIP negotiations.

Market access. A first signal of the depth of the negotiations in services will be given by the choice among the two negotiating modalities available to the TTIP negotiators:

- would the negotiators work on "negative" or "positive" lists of services to be subjected to liberalization? The EU traditionally relies on positive list (only the sectors listed are liberalized, as in the KOREU agreement) while the US relies on negative lists (every service is deemed to be liberalized, except those listed, as in the KORUS agreement). As well known, negative lists offer a much clearer view of what is effectively liberalized. Positive lists often require from the services providers a deep knowledge of what has not been liberalized but is crucial for taking advantage of the agreed liberalization provisions—hence imposing particularly high informational costs on foreign newcomers.
- would the TTIP negotiators introduce "ratchet" provisions which specify the conditions locking in any new liberalization measure so that this measure could not be revoked or nullified over time, introducing a dynamic pattern to the negotiations.

There are indications that the EU would be ready to shift to a negative list approach. Such an approach creates serious challenges to both sides. The EU would need to harmonize its TTIP commitments with its previous PTAs which are based on a positive list. But, this EU shift

would in turn require that, in sharp contrast with what it did so far, the US would list all the US States in its TTIP commitments—by symmetry with the EU has done previously.

Concerning the binding of existing market access, it is important to stress that this goal is far to be as obvious as it seems at a first glance (and as it is in the goods sectors). This is illustrated by Table 3.1 which relies on a database on barriers to market access in services provided by the OECD—the 'product market regulations' indicators available for 19 EUMS for the years 2003, 2008 and 2013. The indicators range from 0 to 100, with 0 standing for a completely open market and 100 for a completely closed market.[5] The PMR indicators are not figures to be interpreted as tariff-equivalents: they only rank the existing level of protection associated to current services regulations in the services sectors covered. Unfortunately, there is no similar indicators for the US States. Anecdotic information suggests that the level of protection in many services—such as, for instance, professional services—differ among the various US States.

Table 3.1 provides the highest and lowest PMR indicators, with the name of the corresponding EUMS for the year 2013. Naming the EUMS allows to highlight the 'large' EUMS which could have more weight in the negotiations. Table 3.1 suggests three remarks:

- A majority of services sectors (7 out of 9) is still highly protected in 2013.
- Except in airlines (and to a lesser extent telecoms) the level of protection of a large EUMS is close to the highest level of protection among the 19 EUMS.
- PMRs vary a lot among the various EUMS, stressing on how much the EU 'Internal market' for any service covered is 'fragmented' [Messerlin and van der Marel 2012, Miroudot and Shepherd 2012]. If it were possible for US or EU firms to export their services from a relatively open EUMS to a more protected EUMS, then US and EU services providers would have established their activities in the most open EUMS and operate from it towards the rest of the EU. If this were the case, keeping high barriers would make little sense for the most protected EUMS. In other words, the survival of high PMRs across EUMS is a sure sign that the EU Internal Market is fragmented.

[5] The initial range of the PMR indicators used is 0 to 6 from least to most restrictive (Conway, Janod and Nicoletti 2005). We use the range 0 to 100 in order to have a presentation easier to read.

Table 3.1. Barriers to market access in selected services and EUMS, 2003-2013

	Highest PMR		A: Highest PMR 2013		B: Highest PMR in large EUMS 2013		C: Lowest PMR 2013	
	2003	2008	PMR	EUMS	PMR	EUMS	PMR	EUMS
Electricity	68	67	54	Estonia	53	France	15	Spain
Gas	89	69	63	Greece	42	France	0	Britain
Post	78	72	56	Slovenia	56	Italy	11	Netherlands
Telecoms	52	38	33	Slovenia	19	Germany	5	Britain
Airlines	82	83	59	Slovenia	8	France	0	5 EUMS [b]
Rail	100	88	81	Ireland	67	Spain	4	Britain
Road	100	71	71	Italy	--	--	25	8 EUMS [c]
Retail	78	76	68	Belgium	53	Italy	10	Sweden
Prof. services [a]	59	50	48	Hungary	44	Germany	9	Sweden

Notes: [a] Accounting, Architect, Engineer, Legal. The "large" EUMS are Britain, France, Germany, Italy and Spain. [b] Austria, Germany, Greece, Hungary, Slovakia. [b] Austria, Denmark, Finland, Germany, Ireland, Slovakia, Sweden and Britain. Source: OECD [2014].

Table 3.1 helps to realize how elusive the notion of "binding" on which the HLWG report relies is. Does it mean binding the autonomous liberalization done between 2003 and 2013 by the most protected EUMS (the one(s) having the highest PMR in 2013), or binding the PMRs at the level of the second highest PMR among the large EUMS in 2013, or binding the PMRs at the level of even more open EUMS? Clearly, the liberalization impact is vastly different depending upon the definition adopted.

Bilateral safeguards in services. It should be expected that special safeguard provisions would be adopted. The most frequent safeguard provisions are in financial services (because of the systemic importance of this sector) in telecom services (the so-called "competitive" safeguard aiming at limiting the market power of some incumbent firms) and in public services (health, education services, etc.). Indeed, such safeguards have been included in the KOREU and KORUS agreements in terms close from those in the WTO GATS-related texts.

Regulatory barriers. Annex 1 provides a synopsis comparing the HLWG report with the KOREU and KORUS texts in these matters. Concerning regulations shaping services markets—which are of similar nature to norms and standards in goods—it is interesting to note that the HLWG report has no paragraph on services equivalent to those on the "TBT-plus" or the "SPS-plus" approach for industrial and agricultural goods. Rather, it simply insists on the improvement of procedures: "*the agreement include binding commitments to provide transparency, impartiality, and due process with regard to licensing and*

qualification requirements and procedures, as well as to enhance the regulatory disciplines included in existing U.S. and EU trade agreements".

Table 3.2. Non-tariff barriers in services: tariff equivalents and basic indexes

	Tariff equivalents (%)		NTB indexes Trade		NTB indexes Investment		'Actionability' [a]	
	US [a]	EU [b]	US [a]	EU [b]	US [a]	EU [b]	US [a]	EU [b]
	1	2	3	4	5	6	7	8
A. Sectors relatively more protected								
Financial services	31.7	11.3	29.7	21.3	11.7	12.5	55	49
Insurance services	19.1	10.8	29.5	39.3	8.5	21.8	48	52
Communication services	1.7	11.7	44.6	27.0	22.5	15.0	66	70
B. Sectors relatively less protected								
Other business services	3.9	14.9	42.2	20.0	10.9	17.5	49	51
Construction services	2.5	4.6	45.0	37.3	8.3	12.0	57	38
Personal, cultural & recreational services	2.5	4.4	35.8	35.4	6.5	21.3	47	37
C. Sectors with no estimated tariff equivalents								
Travel services	n.a.	n.a.	35.6	17.6	13.6	20.3	61	60
Air & water transport services	n.a.	n.a.	39.9	26.3	7.4	12.3	59	56
Average of all sectors	10.2	9.6	37.8	30.1	11.4	16.7	53.7	49.5
Average of the more protected sectors	17.5	11.3	34.6	29.2	14.2	16.4	56.3	57.0
Average of the less protected sectors	3.0	8.0	41.0	30.9	8.6	16.9	51.0	42.0

Source: Ecorys [2009].

In order to get a sense of these regulatory barriers, Table 3.2 presents the same indicators of NTBs in services than those in goods [Ecorys 2009]. It suggests several observations:

- the level of "tariff equivalents" is notably lower than the level observed in goods, except for a few services.
- there is a negative correlation between the level of NTBs in trade and the level in investment in the case of services (in contrast to the positive correlation in goods).
- there is a positive (but smaller than the one observed in goods) correlation between the level of NTMs and the degree of actionability in services.
- there are marked differences (on average) among the US and EU indexes of NTB in almost all the services sectors.
- the level of "actionability" as assessed by the experts is relatively high.

This description of the existing barriers to trade and investment in services raises the same basic question than the NTBs in goods: how can one negotiate on regulations shaping the functioning of the services markets? As regulations in services are of similar nature than norms in goods, it is not astonishing that the answer is also similar to the one discussed for the norms in goods.

- harmonisation emerges as an even less credible option in services than in goods since, for any service, it is even harder to think about an 'ideal' regulation that would be better than all the alternatives in any possible dimension.
- mutual recognition has not a strong success track in the EU as best illustrated by Table 3.1: the huge differences among the EUMS PMRs for the same services are a testimony of the inability of the 600 Directives (laws in the EU legal jargon) or so to have generated an effective EU Internal Market in services.

In sharp contrast with the case of goods, the EU has drawn the conclusion of these poor performances, and has adopted the mutual equivalence approach in its 2006 Services Directive—the only example to date of a liberalisation in services based on mutual equivalence in the EU. The HLWG report may have alluded to this approach when it mentions in a paragraph devoted to cross-cutting disciplines on regulatory coherence and transparency the need for "*early consultations on significant regulations, use of impact assessments, periodic review of existing regulatory measures, and application of good regulatory practices*". In this perspective, two Articles of the Services Directive could be used as useful guidelines for the TTIP negotiators, as argued in Box 2).

Box 2. The 2006 Services Directive: a guideline for the TTIP negotiators?

Article 14 lists "prohibited requirements", such as those on nationality, on having an establishment in more than one Member State, on the freedom to choose between a principal and secondary establishment, on the existence of reciprocity, on economic test, etc. It is important to stress that these bans have not been decided by negotiations among the EUMS. Rather, they systematize the rulings of the European Court of Justice. In other words, Article 14 should be seen as the outcome of many legal cases in the EU.

Article 15 gives the list of the provisions ('requirements' in EU legal jargon) that the legal cases have shown as ambiguous, with a possible capacity to protect unduly the domestic providers of the service in question. Examining these requirements would be the main point of the 'mutual evaluation' exercise by the US and EU in order to check whether they prevent truly and unjustifiably market access, or not.

Article 15 constitutes the most innovative part of the Services Directive because it changes the perspective on liberalization and on its dynamics. It is based on the fundamental proposition that it is not so much liberalization that counts than the dynamics of better regulation that should go with it. And getting better regulation requires impact assessment, and cross-examination of the existing legislations.

Such an approach could inspire the TTIP negotiators. Note that Articles 14-15 suggest some kind of coordinated work among the trade negotiators on the one hand and the regulatory agencies on the other hand. Once the US and EU trade negotiators would have broadly defined the content of Articles 14 and 15 appropriate for the TTIP and the list of services to be candidates for mutual equivalence status, the appropriate sectorial regulators in charge of these services would apply these two Articles in detail to the service activities they oversee.

Copyright protection. The KORUS and the KOREU converge substantially on these issues, hence it is likely that the TTIP will have similar provisions. Both KORUS and KOREU have extended the copyright protection of all works (including photographic, performance and phonogram) to 70 years after the death of the author (or 70 years after the first publication or creation of the work). However, the KOREU states that the rights of broadcasting last only 50 years after the first transmission. In a related domain—the protection of registered designs—which grants to design owners the same exclusive (that is, monopoly) rights as to authors, the KOREU establishes protection for 15 years for the registered designs, and 3 years for the unregistered designs. Finally, both the KORUS and KOREU agreements include protection of the rights management information and measures against piracy.

Indeed, copyright protection may be one of the reasons for which the conflict on audiovisual services which was raging in the 1990s is much less active today: US firms may be unhappy about EU audiovisual protection, but they like EU enforcement of copyright protection and the fight against piracy in some EUMS, including France.

Section 4. Investment

The HLWG report on investment recommends that a "*comprehensive U.S.-EU trade agreement should include investment liberalization and protection provisions based on the highest levels of liberalization and highest standards of protection that both sides have negotiated to date*" (Annex 1 provides a synopsis comparing the HLWG report with the KOREU and KORUS texts in this domain). Despite the appearances, this language is very ambiguous. An investment agreement could include two very different types of provisions in terms of political risks:

- relatively uncontroversial provisions on national treatment (NT) and most-favored nation (MFN) for operating foreign investments, and on expropriation conditions (public purpose, prompt, adequate and effective compensations),

- much more controversial provisions on NT/MFN for establishing investments, on unconstrained capital transfers (in and out), and—above all—on the investment-state dispute (ISD) settlement, that is, the capacity of firms to sue the host state in international arbitrage tribunals.

Viewed from the US perspective, the HLWG words of the "*highest levels of liberalization*" put the bar very high since the US has achieved to include in certain PTAs (KORUS being the prime example) most of the controversial provisions. But, that has not been easy. For instance, the ISD provision in the KORUS agreement was a source of intense political fights in Korea, to the point of threatening the KORUS ratification. The problem was solved by excluding from the scope of the ISD provision large areas of economic activity, such as health, safety, environment and policies regarding real estate price stabilization [Lee 2013]. Similarly, the US seems to have a lot of (and increasing) difficulties to get these controversial provisions (in particular, the ISD settlement) from its TPP negotiating partners.

Viewed from the EU perspective, the picture is quite different. There are two standards—one at the EU level, one at the EUMS level—because this topic was roughly under EUMS competence until the Lisbon Treaty (2009) and became legally under EU competence since then.

- from a strictly EU perspective, the existing EU PTAs have few provisions on investment (not under EU competence) limited to restating commitments to free movement of capital. That said, many provisions related to investment in KORUS are included in the services chapter in KOREU.
- from an EUMS perspective, as of today, the U.S. has recent bilateral investment treaties (BITs) with only 8 EUMS (all from Central Europe) and much older "friendship, commerce and navigation" (FCN) with 17 more. Moreover, as often in the EU, a long delay should be expected between the statement of the EU competence principle in the Lisbon Treaty and its full and effective enforcement. This is because the EUMS having been able to negotiate high quality BITs with non-EU countries (this group includes Germany) are not particularly keen to be absorbed in a global EU BIT, with the risk of sharing the benefits of their better BITs with the other EUMS (which act as free-riders since they did not give concessions for getting these BITs).

In short, it is hard to have a sense of what could be the TTIP provisions in the most controversial areas in the investment area—if only because it is yet unclear whether it will be easy for the EUMS to adopt a common position on this topic. The only prediction is that it looks very unlikely that there would be new far-reaching provisions on the investor-state principle—for the same reasons than those having prevailed during the negotiations on NAFTA, on the aborted Multilateral Investment Agreement negotiated at the OECD in the mid-1990s, on the discussions of KORUS at the Korean National Assembly, and in the recent setbacks in the TPP negotiations.

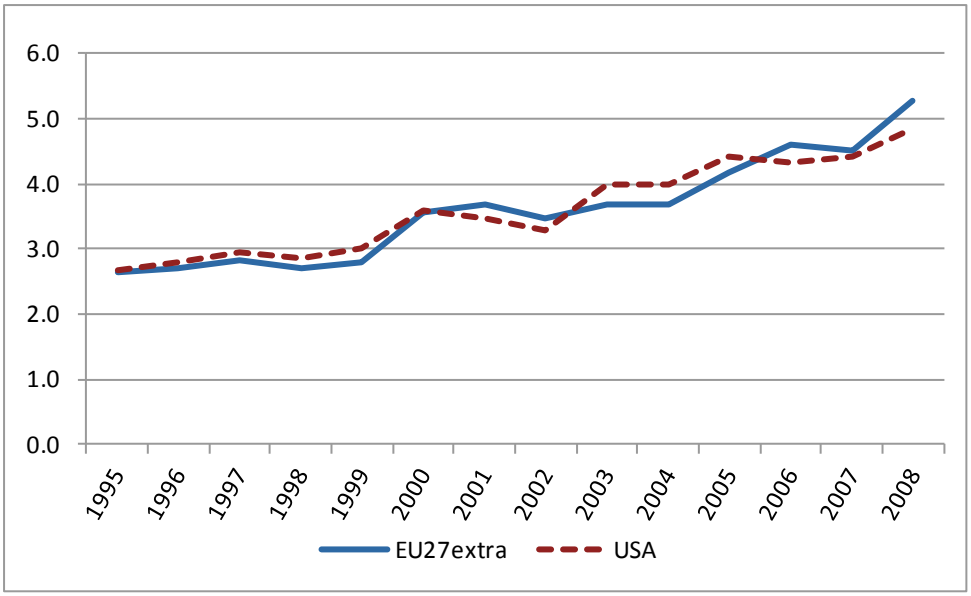
Section 5. Government Procurement

While investment is an issue mostly pushed by the US, public government is a topic mostly advocated by the EU. In March 2012, the European Commission tabled a proposal for a "*Regulation establishing rules on the access of third countries' goods and services to the EU internal market in public procurement*". If adopted, this Regulation would allow the EU to deny access to its public procurement markets to firms originating from countries with public procurement markets that the EU would feel less open than its own markets—the so-called "reciprocity" sticks in public procurement. For justifying this proposal, the Commission released data allegedly showing that the EU public procurement markets were much more open than those of its trading partners.

However, an analysis based on much more robust National Accounts data than those used by the Commission's background study shows that the EU markets are not more open than those of its major trading partners [Messerlin and Miroudot 2012]. In fact, a careful reading of the (apparently rarely fully read) Commission's study leads to a similar conclusion which indeed makes much more sense when one remembers how much the US and the EU were careful for balancing their concessions during the Uruguay Round negotiations [Messerlin 2012b].

Graph 5.1 illustrates this similar starting point and the almost parallel evolution of the openness ratios (public procurement-related extra-EU27 imports and US imports as a share of public demand in the EU27 and US, respectively) calculated on National Accounts.

Graph 5.1. Openness ratios in public procurement, 1995-2008



Source: Messerlin and Miroudot, 2012.

The HLWG report recommends that the "*goal of negotiations should be to enhance business opportunities through substantially improved access to government procurement opportunities at all levels of government on the basis of national treatment*" (Annex 1 provides a synopsis comparing the HLWG report with the KOREU and KORUS texts in this domain). What is at stake is thus essentially a market access issue.

The KORUS and KOREU agreements offer the two options for expanding market access in public procurement.

- in the KORUS agreement, better market access has been mostly achieved by lowering the thresholds of the 1994 Government Procurement Agreement (GPA, concluded in the wave of the Uruguay Round).
- in the KOREU agreement, new market access has been achieved in two ways: lowering the existing thresholds (focusing on built-operate-transfer contracts and public works concessions) and expanding the number of entities covered by the commitments of the two parties. The KOREU includes thus a list of Korean local authorities to the 1994 GPA list.

The HLWG report makes an explicit reference to an expansion of the list of entities to be covered by the TTIP government procurement chapter, a clear allusion to the US States. This is because the 1994 GPA balanced deal between the US and the EC could be achieved with the US side involving all the federal entities but only some (39) US States and 7 cities while the EU decided to involve all its Member States.

Section 6. "New rules"

The "new rules" component of the TTIP is a very heterogeneous list of broad "social norms" that the EU and the US have tried to promote, more or less successfully, in their respective bilateral PTAs since the mid-1990s. In many respects, this block is the catalog of the most worrisome aspects of the TTIP since it presents the TTIP as a coalition eager to shape the world governance in accordance to the interests of the (sooner or later) declining dominant economies. However, the very limited success in introducing such new rules during the last twenty years may be a robust sign that these efforts of the EU-US "duopoly" to be "norm-setters" are doomed to fail. These new rules are split under two main headings by the HLWG report.

Environment and Labor. After stating that the EU and the US are both committed to high levels of protection for the environment and workers, the HLWG report recommends that the two sides "*explore opportunities to address these important issues, taking into account work done in the Sustainable Development Chapter of EU trade agreements and the Environment and Labor Chapters of U.S. trade agreements*". The language cannot be clearer.

If they follow the HLWG report, TTIP negotiations in these matters lack basic credibility—an essential feature for being a successful norm-setter. First of all, it is hard to see how the US could adopt many EU labor laws, and the EU the US environmental approach. Second, the recent years have witnessed many setbacks of the EU sustainable development goal: the collapse of the CO2 prices set by the European Emission Trading System, the withdrawal of the unilateral EU CO2 scheme on air transport, the inability to remove the subsidies on biofuels and on fossil fuels, the hasty retreat from nuclear energy and the increase of imports of coal—all evolutions culminating in an increase of CO2 emissions in the EU. Similar observations could be made on the US side.

Other Globally Relevant Challenges and Opportunities. The HLWG report recommends to reach a "*bilateral agreement on globally relevant rules, principles, or modes of cooperation in the following trade-related areas:*

- *customs and trade facilitation: ensuring effective measures to facilitate trade between the two sides, with a level of ambition that goes beyond the disciplines under negotiation in the WTO;*
- *competition policy;*
- *state-owned enterprises and other enterprises that benefit from special government-granted rights;*
- *localization barriers to trade: measures designed to protect, favor, or stimulate domestic industries, services providers, or intellectual property at the expense of imported goods, services, or foreign-owned or foreign-developed intellectual property;*
- *raw materials and energy;*
- *small- and medium-sized enterprises; and*
- *transparency*".

This list deserves two main observations:

- It is hard to see what the TTIP could really achieve in competition policy (the OECD has intensively worked on these topics during the three last decades) in transparency (after 20 years of Transatlantic dialogue on this topic) and in SMEs (while this topic has been severely downgraded in the TTP negotiations).
- The topics of raw materials and state-owned enterprises will have also hard time to pass a consistency test. After all, the US ban on oil exports is the law in place (as said above). Moreover, many US and EU firms have benefited from implicit but massive subsidies since 2008—from General Motors, dubbed Government Motors, to most US and EU large banks. In this context, the rest of the world can only look with some amazement and amusement to the above HLWG wording on state-owned or "state-influenced" enterprises.

Finally, the other topics are very unclear (such as the "localization barriers") vague (small and medium enterprises) or exhortatory (transparency).

Section 7. What can non-TTIP countries do?

The description of the potential outcome of the TTIP negotiations suggests serious risks of substantial discrimination against non-TTIP countries. However, recent estimates of the TTIP impact on the rest of the world economy do not bring into light such discriminatory effects when general equilibrium forces are taken into account [Francois et al. 2013]. But, it should be stressed that these results rely on three critical assumptions:

- All the regulations generated by a successful TTIP outcome would be cost-decreasing.
- "Direct spill-over" effects would decrease (by 20 percent) trade costs not only between the US and the EU but also between the non-TTIP countries and the US-EU markets.
- "Indirect spill-over effects" would decrease (by an additional 10 percent) trade costs between the TTIP and non-TTIP countries on the basis that non-TTIP countries would adopt some post-TTIP regulations (in short, would liberalize unilaterally).

If these assumptions are not met, TTIP will inevitably generate trade distortions. The related costs depend on three key elements:

- the higher the initial (pre-TTIP) MFN protection of the TTIP countries is,
- the deeper the intra-TTIP liberalization is, and
- the stronger the long term intra-TTIP competition dynamics are,

the higher the risks and magnitude of discriminatory impacts on non-TTIP economies are. In this context, there are two groups of non-TTIP countries: those which have already such an "insurance" scheme against TTIP-generated discrimination in place under the form of PTAs with one or two TTIP members, and the other non-TTIP countries.

Non-TTIP countries with a PTA with the US and/or the EU.

Table 7.1 provides the list of the non-TTIP countries having a PTA with at least one TTIP partner as notified to the WTO. These PTAs are of very different quality, most of them being shallow, a few others being deeper or deep. In order to have a sense of this quality, Table 7.1 provides the dates of the PTA signature which is a good indicator of the PTA quality. PTAs signed before 2003-2004 are probably of modest quality compared to the deepest TTIP possible, with a few exceptions before 2004 (deep NAFTA) and after 2007 (shallow EU-ACP Economic Partnership Agreements). Table 7.1 shows that:

- 15 countries, representing 10 percent of the non-TTIP GDP in 2012, have a PTA with both TTIP partners. Most of these PTAs are relatively recent—hence of a relatively better quality.
- The EU has many more PTAs partners (53) than the US (20). However, the GDP covered by the EU and US PTA are almost the same—roughly 20 percent of the non-TTIP GDP. EU PTAs (again excluding those with ACP countries) tend to be older than US PTAs—not a sign of quality.

Table 7.1. Countries with PTAs with the EU and/or the US, 2013

USA	EU	Countries	(billions of US dollars)	US	EU	Countries	(billions of US dollars)
Countries with a PTA with USA and/or EU							
2003	2002	Chile	268		2008	Côte d'Ivoire	25
2006	2012	Colombia	370		2008	Dominica	0
2004	2008	Costa Rica	45		2001	Egypt, Arab Rep.	257
2004	2008	Dominican Repu	59		1996	Faeroe Islands	..
2004	2008	El Salvador	24		2008	Grenada	1
2004	2008	Guatemala	51		2008	Guyana	3
2004	2008	Honduras	19		1992	Iceland	14
1985	1995	Israel	258		2008	Jamaica	15
2000	1997	Jordan	31		2002	Lebanon	43
2007	2010	Korea, Rep.	1130		1992	Liechtenstein	..
1992	2000	Mexico	1178		2001	Macedonia, FYR	10
2004	1996	Morocco	96		2009	Madagascar	10
2004	2008	Nicaragua	11		2009	Mauritius	10
2007	2008	Panama	36		2007	Montenegro	4
2006	2012	Peru	197		1992	Norway	500
2004		Australia	1521		2009	Papua New Guinea	16
2005		Bahrain	29		2008	Serbia	37
1992		Canada	1821		2009	Seychelles	1
2006		Oman	70		1999	South Africa	384
2003		Singapore	275		2008	St. Kitts and Nevis	1
	2006	Albania	13		2008	St. Lucia	1
	2002	Algeria	208		2008	St. Vincent and the	1
	1991	Andorra	..		2008	Suriname	5
	2008	Antigua and Bar	1		1972	Switzerland	632
	2008	Bahamas, The	8		1977	Syrian Arab Republi	74
	2008	Barbados	4		2008	Trinidad and Tobago	24
	2008	Belize	1		1995	Tunisia	46
	2008	Bosnia and Herz	17		1995	Turkey	789
	2009	Cameroon	25		2009	Zimbabwe	11
Major economies without a PTA with US and/or EU							
		Brazil	2253			Indonesia	878
		China	8358			Saudi Arabia	711
		Japan	5960			Iran	514
		Russia	2015			Argentina	471
		India	1842			Taiwan (2011)	469

Source: Regional Trade Agreements database. WTO website.

For all these countries, the deeper their PTAs with the EU and the US is, the best their insurance scheme are. Of course, the current preferences of these countries will be eroded or eliminated depending on whether the US or the EU will have a market access to the TTIP partner equivalent to the one these non-TTIP countries are enjoying so far. For instance, the 49 LDCs covered by the EU 'Everything but Arms initiative' (EBA) will face stiff competition from US farmers (rice), from non-US farmers associated to US processors and services providers (bananas) and they will operate in very protected and cartelized US and EU markets (sugar). Moreover, the TTIP is running into collision course with the EU GSP reform enforced since January 2014. This reform consists in reducing the number of GSP beneficiaries, allegedly for reinforcing the effectiveness of the EBA scheme. Hence, ironically, a successful conclusion of TTIP means that the EBA producers will face less GSP competitors, but more US competitors. That said, there is no reason to complain about preference "erosion" which is a systemic and to a large extent desirable "down-side" of PTAs in a world subjected to permanent forces of further liberalization. But, it remains that the EU and the US would be well advised to take into consideration the inevitable serious transition problems for the countries concerned.

Finally, some countries having a PTA with only one TTIP member may face difficulties from a purely mercantilist perspective if they want to negotiate with the other TTIP member. The best illustration is Turkey which has delegated its tariff policy to the EU by signing a customs union with the EU. As a result, Turkey will engage in a PTA negotiation with the US with little or no bargaining chip on industrial tariffs.

Non-TTIP countries with no PTAs with the US and/or EU. Table 7.1 (bottom block) provides the ten largest economies which have no PTA with the US and/or the EU (Japan is included in this list because, at the time of the writing, the TPP has not been yet notified by the US to the WTO, inducing to do the same for the Japan-EU). These countries represent a combined GDP of USD 23 trillion (three-quarter of the combined EU and US GDP).

This impressive list strongly suggests that pressures from the rest of the world on TTIP negotiators will be powerful all the more because these non-TTIP countries will face serious risks of discrimination. The more concentrated their exports in industrial and agricultural products with high pre-TTIP protection of the US and EU markets are, the more severe their problems will be. And the more exposed to TTIP regulations (from norms to services to

government procurement to IPRs, etc.) their exports are, the more severe their problems will be.

The actions to be taken by non-TTIP countries can be split into two groups: those related to pure market access issues (tariffs, tariff quotas, access to public procurement markets) and those dealing with regulatory matters having a market access component (norms in goods, regulations in services, IPRs).

Non-TTIP countries have only two options for eliminating the discrimination generated by TTIP cuts in tariffs, increases of tariff quotas and better access to public procurement.

- They could put collectively pressure to re-launch the Doha Round on tariffs and non-tariff barriers, and to accede (if not already done) to the revised Government Procurement Agreement. This option depends largely on the overall—not only trade—relations between the US and China, since the EU has always said that it is ready to go back to the WTO negotiations.
- They could ask—on a one by one basis—to negotiate a bilateral PTA with the US and EU. It seems safer not to wait for the end of the TTIP negotiations for taking such an initiative. But this option depends also on the negotiating capacities (staff, money, etc.) of the EU and US which are already under high stress.

Paradoxically, regulatory matters as market access issues (norms, services) may be a domain where non-TTIP countries may get some benefits from the TTIP in two cases. First, the TTIP could in fact open in a non-discriminatory way some services markets. The difficulty to make deals in services which are discriminatory (that is, to define domestic regulations capable to make a distinction among the trading partners of a country) is often mentioned. However, it is fair to add that there is no systematic evidence of such an intrinsically "non-discriminatory" liberalization of services. Rather, the evidence on the still highly fragmented EU services markets (section 3 above) suggests the contrary.

The second case where non-TTIP countries could get benefits from the TTIP will happen every time that the TTIP negotiators adopt mutual equivalence as a negotiating tool. Full harmonization or mutual recognition are biased in favor of discrimination since they require bilateral negotiations of common rules (in their entirety or limited to the core). They could be

particularly damaging for non-TTIP countries if the TTIP negotiators adopt the vision of the US and EU as 'norm-setters' while paying little attention to the rest of the world.

By contrast, under mutual equivalence, if the exports from a non-TTIP country meet a given norm or regulation of one TTIP country, they will by the same token meet the norm of the other TTIP partner. Such a situation has several positive and self-reinforcing impacts:

- The US and the EU have less incentives to produce new more costly norms or regulations in the TTIP context since they will be less attractive to the rest of the world. They will do that only if there are economically sound reasons (that is, clear net benefits from the new regulations, including their implementation).
- The US and in the EU have more incentives to produce norms or regulations which are appealing to the largest possible number of third-countries producers. As a result, mutual equivalence generates *de facto* some competition among US and EU norms or regulations for achieving at lower costs the level of quality and safety that these two countries have considered as equivalent in their mutual evaluation exercise. It is key to stress that mutual equivalence limits strongly the risk of a "race to the bottom" for achieving such lower costs because, in case of such a race, the TTIP partner which does not play this race can suspend the mutual equivalence agreement.
- In such a context, third countries will be induced to adopt the norms or regulations of the TTIP partner which achieve at lower costs (for the non-TTIP countries as well as for the TTIP partner in question) the objectives considered as equivalent by the US and the EU.

In short, mutual equivalence has the huge benefit to transform the EU and the US as "norm-attractive" countries for their own best and for the best of the world. This approach is totally different from "norm-setting" because it is intrinsically multilateral.

A final remark on trade and geo-politics

TTIP raises questions the answer to which goes beyond this paper but that, nevertheless, deserves to be raised. To which extent is the TTIP a trade endeavor or a geo-political maneuver? Is it a genuine transatlantic liberalization exercise or is it building the eastern flank of a TPP mostly conceived as a China-containment operation? The EU is certainly

deeply interested in a trade-focused TTIP, while a China-containment TTIP is not in its long term interests [Messerlin 2014a, 2014b]. Could the TTIP be dragged into more geo-political action, as suggested by its use in the context of Ukraine's destabilization by Russia?

Our presumption is that trade and geo-politics are rarely mutually supportive. They can overlap in some cases, but only to a limited extent. For instance, a freer Transatlantic energy market would reduce Gasprom's market power, hence would possibly make Russia more careful in its political decisions while making EU consumers better-off. But so would do—even more strongly—the completion of the EU energy Internal Market (Table 3.1 illustrates how fragmented the EU energy market still is). Such measures aim fundamentally at improving European consumers' welfare—not at imposing economic sanctions. They are above all decisions of regulatory reforms needed for running a more efficient economy.

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Annex 1
A synopsis of the HLWG report and the KOREU and KORUS texts

	HLWG recommendations	Korea-US: US commitments	Korea-EU: EU commitments
1. INDUSTRIAL GOODS (Agro-business goods excluded): Technical barriers to trade (TBT) and Patent protection (PP)			
TBT	call for a 'TBT-plus' chapter aiming for: * greater openess and transparency * convergence in regulatory processes * streamlining testing and certification * enhancing cooperation on global conformity assessement and standardization call for specific provisions or annexes containing additional commitments to regulatory compatibility for certain sectors auto-regulations not specifically mentionned	re-affirms WTO TBT Agreement, includes provisions on TBT in cars * a temporary 'low volume seller exemption' whereby Korea accepts the lower US auto safety regulations if US imports per carmaker in Korea does not exceed 25,000 vehicles. * a 'leniency rate' considering all US cars compliant with 2015 Korean environmental standards if they achieve 119% of Korean standards.	re-affirms WTO TBT Agreement, annexes outlining regulatory compatibility in * cars * chemicals * consumer electronics * pharmaceuticals convergence within the UNECE framework * energy efficiency. * environmental standards * vehicles safety
PP	no mention	data exclusivity protection (5 years after marketing approval: * pharmaceuticals: 3 years after submission of clinical information * 10 years for agricultural chemicals patent term extension for delays related to issuing patents (4 years) or requesting to apply (3 years)	data exclusivity protection after marketing approval: * pharmaceuticals: 5 years * 10 years for plant protection products patent term extension not to exceed 5 years
2. AGRICULTURAL GOODS: Sanitary and phyto-sanitary measures (SPS) and Geographical indications (GI)			
SPS	call for a 'SPS-plus' chapter based on WTO: * based on science * applied only to the extent necessary * developed in a transparent manner * without undue delay.	re-affirms WTO SPS Agreement, stresses role of the 'relevant regulatory agencies' no recourse to KORUS dispute settlement procedur	commitment to international standards no explicit language about science and risk no recourse to KOREU dispute settlement procedur special attention to: * animal welfare standards * designation of eligible areas for exports * procedures for animal & plant health status
GI	no mention	included under the trademark protection does not distinguish among registration, administrative process and legal provisions.	distinguishes GI rules from trademark rules specifies a GI registar (with 160 EU products and 64 Korean products) expands legal protection to all foodstuff (from wines and spirits under TRIPs).
3. SERVICES: Market access (MA) and Copyright protection (CP)			
MA	call for binding the highest level of liberalization that each side has achieved in FTAs to date call for addressing remaining long-standing barriers call for transparency, impartiality, due process in licensing, enhance regulatory disciplines	negative list for defining commitments US got 'meaningful market access' in: * financial services * legal services * telecom services * express delivery services * audiovisual services	positive list for defining commitments EU concessions not applicable to all EUMS most comprehensive treatment of any EU-PTA in: * financial services * legal services * telecom services * environmental services * TV & radio signals transmission services * shipping and maritime services
CP	no mention	for all works (photographic, phonogram and performances) set at 70 years. provisions to protect right management information. provisions to protect against circumvention of technological measures that control access to protected works, against piracy and unauthorized internet distribution	for authors rights set at 70 years for broadcasting organizations set at 50 years protvisions for protecting registered designs and TRIPs-plus protection for unregistered designs provisions to protect right management information. provisions to protect against circumvention of technological measures
4. INVESTMENT			
	liberalisation and protection based on the highest levels negotiated in PTAs to date	extensive investment protections includes investor-state dispute settlement proced.	no provision (this topic is covered by Korea-EUMS BITs)
5. GOVERNMENT PROCUREMENT			
	improve access at all levels of government and on the basis of national treatment	WTO rights and obligations new market access by lowering GPA thresholds	WTO rights and obligations new market access by lowering GPA thresholds for build-operate-transfer contracts and public works concessions. new market access to Korean local authorities.
6. INTELLECTUAL PROPERTY RIGHTS			
	calls for a 'high level of IP protection, including enforcement and cooperation, on a limited number of significant IPR issues	criminal enforcement (and border measures) apply to IPR infringements, including counterfeit and pirated copyrights goods. does not mention explicitely GI provisions on liability of internet services providers for copyright infringements.	criminal enforcement applies to trademark, copyright IPR, GI and design counterfeiting border measures allow suspending the release of goods involved in IPR infringement, including patents, plant variety rights, GI and registered designs. provisions on liability of internet services providers for copyright infringements.