



# IPRIS TTIP Review

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- 2 EDITOR NOTE
- 3 TRADE IS FOREIGN POLICY  
*Bruno Mações*
- 4 PORTUGAL AND TTIP: GOING BACK TO THE CORE?  
*Gustavo Plácido dos Santos*
- 8 MORE THAN JUST TRADE – THE STRATEGIC IMPORTANCE OF TTIP  
*Erik Brattberg*
- 10 FURTHER READINGS



# Editor Note

PAULO GORJÃO

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Welcome to the first issue of the TTIP Review. In view of the ongoing negotiations between the United States and the European Union regarding the Transatlantic Trade and Investment Partnership (TTIP), it is my pleasure to introduce you to the latest publication of the Portuguese Institute of International Relations and Security. Going forward, the TTIP Review will be published quarterly. The first regular publication devoted exclusively to the transatlantic partnership negotiations, TTIP Review reaches out to policymakers, think tanks, academics and the media, the private sector, and all those interested in the TTIP.

The TTIP Review will provide its readers with analysis on issues pertaining to the transatlantic relations. Each publication will contain short analytical articles, recommendations for further reading, and other information related to the ongoing negotiations.

I truly hope you will enjoy this first edition and find the TTIP Review useful. If you have any comments or questions, please email me or visit the IPRIS website at <http://www.ipris.org>.

*Desfrute!*

Paulo



# Trade is Foreign Policy

BRUNO MAÇÃES

Secretary of State for European Affairs, Portugal

A lot has already been said on the economic arguments for an ambitious free trade agreement between the European Union and the United States. The Transatlantic Trade and Investment Partnership (TTIP) – as it has been called – promises to deliver on several fronts: it will eliminate tariffs, bring about greater levels of regulatory coherence between the two economic blocs and liberalize rules, including public procurement rules.

What remains significantly less explored are its strategic aspects. We know that the TTIP has political significance. In fact it could hardly be missed. While the United States and the European Union share a broad array of constitutional principles and practices, they remain separated by an ocean of different regulations. But shouldn't regulation be subordinate to the constitutional order? Considerations of this sort would recommend creating the same degree of coherence at the regulatory level that we already know exists in other realms. This is where the discussion should begin. If we want our common constitutional principles to thrive in today's global order, let's make sure that they are strongly supported by a transatlantic regulatory structure. The TTIP will help us shape global regulatory patterns. By moving beyond constitutional principles, the TTIP surpasses theoretical abstraction. The second idea has to do with prudence. We live in a world remarkably vulnerable to shocks. If we limit ourselves to the economy and trade, these will inherently be traditional forms of supply or demand shocks. They may also include protectionism or economic sanctions. The United States and Europe have always been ready to help each other in responding to such jolts. The problem is that they tend to do so after the occurrence. It would be a much better policy to create a large free trade area where external shocks could be smoothed almost immediately and with very few costs. Take the example of economic sanctions. They normally have a cost for those imposing them and yet they have also become an indispensable foreign policy tool for both Europe and the United States.

How would a transatlantic free trade area make sanctions more effective?

Sanctions make it necessary to find new supply routes or new markets for exports. A free trade area including the United States and Europe would create a vast network of new supply chains, ready to be activated almost immediately if necessary. In fact, they would already be established and only fully exploited if and when there was the need for it.

Energy has a crucial role to play. It is a fundamental input for economic activity. Discontinuities in price between the two blocs confirm significant market distortions. Let us not forget the security aspect. In a recent article I argued that energy should probably be dealt with first.<sup>1</sup> It would be possible for the two sides to sign a separate energy pact with three different chapters.

First, the U.S. would commit to lifting all export restrictions on energy. Export restrictions are dangerous for one main reason: they keep prices artificially low, thereby reducing the incentives for new investment and dampening energy production over time.

Second, both the U.S. and Europe would invest in new energy infrastructure, without which a transatlantic energy market would remain a pipedream.

Third, the two sides would try to come closer on regulatory issues, especially environmental and state-aid rules. This is an indispensable part of the TTIP. Energy is no exception. Energy is thus a very good example of how trade has become a decisive foreign policy tool.

There are a number of reasons why this is the case. First, trade policy is really where the rules for global trade are first defined. Trade promotion takes place within a certain framework. If this framework is not the right one, efforts in trade promotion will likely be wasted.

Second, trade negotiations and trade policy are a decisive factor in shaping how politics and the market are ultimately connected. The type of social and political model we will have in the future will no doubt be influenced by trade to a very considerable extent.

We are vividly aware of this in our government. We have now had ten meetings with different stakeholders on the TTIP. The goal is to turn trade policy into a genuinely national project. We need to carefully identify growth areas for our economy. Reflexivity is a powerful force here. While computerized general equilibrium models make it possible to estimate the impact of large trade negotiations for national economies, this is only the first stage in the process. Once we become aware of what the potential gains are, it becomes relatively easy to magnify those gains.

Trade is politics. By insisting that this is the case we will increase the quality of our trade policy but also, I firmly believe, the quality of our politics more generally.

1 Bruno Maçães, "Send a Message to Putin With a Trans-Atlantic Energy Pact" (*The Wall Street Journal*, 22 April 2014).



# Portugal and TTIP: Going Back to the Core?

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## Negotiations: An Overview

In July 2013, the European Union and the United States initiated official negotiations for the creation of a free trade agreement. If implemented, the Transatlantic Trade and Investment Partnership, or TTIP, will represent the world's largest free trade zone. With the deal, the EU and America have set out to liberalize their economies, thus attaining higher levels of job creation and more economic growth, and therefore help avert economic and financial crisis.

In order to accomplish these goals, TTIP not only aims at removing trade barriers such as tariffs – at an average of 5.2% for the EU and 3.5% for the U.S. –,<sup>1</sup> across a range of economic sectors, but also targets a close alignment or harmonization of non-tariff barriers – as the likes of differences in technical regulations, standards and approval procedures over goods and services.<sup>2</sup> Overall, this level of liberalization intends to reduce unnecessary costs and delays for companies, hence facilitating trade of goods and services between the EU and the United States. In addition, both sides aim at opening their economies to services, investment and public procurement.<sup>3</sup>

The negotiating groups are led by Ignacio Garcia Bercero, director of the Directorate General for Trade of the European Commission (DG TRADE), and Assistant U.S. Trade Representative Dan Mullaney. In less than a year the two groups have met four times, with the first round of negotiations taking place in Washington in July 2013. The fifth round will take place in the U.S. from 19 to 23 May 2014.

The initial round of talks served for the groups to set out their respective approaches and ambitions towards a future transatlantic trade and investment agreement. Convergences and divergences in certain areas were identified, and alternative ways to bridge differences were proposed. In addition, the negotiations were based on talks with approximately 350

stakeholders from the civil society – academia, trade unions, private sector and non-governmental organizations – the likes of whom made formal presentations and presented questions to negotiators.<sup>4</sup>

In November 2013, EU and American negotiators met for the second time. The two sides compared their respective approaches to investment liberalization and protection, and also to cross-border and financial services, telecommunications and e-commerce. Negotiators agreed on the importance of horizontal rules, and discussed regulatory coherence and greater regulatory compatibility on a number of sectors – closer alignment or harmonization across as many areas as possible – such as medical devices, pharmaceuticals, pesticides, automobiles, and information and communication technologies (ICT). The two sides discussed the importance of creating a predictable market for energy and raw materials, in order to ensure reliable supplies. Moreover, civil society was again invited to engage with negotiators, and negotiators shared experiences from previous free trade agreements.<sup>5</sup>

The third round of negotiations, which took place in December 2013, was marked by the participation of teams with expertise on trade-related areas, and regulators from both sides. In regards to market access, the EU group reiterated its resolve to reach an ambitious and comprehensive agreement. Regulations, which serve to protect people from risks to their health, safety, environment, financial and data security, were also discussed and regulatory importance upheld. In addition, negotiations included trade-related rules in certain areas such as free and fair competition, access to energy and raw materials, protection of people's rights and environment at work, and trade facilitation via the reduction of import and export-related red tape – itself a non-tariff barrier.<sup>6</sup>

1 "European Union and United States to launch negotiations for a Transatlantic Trade and Investment Partnership" (European Commission Memo, 13 February 2013).

2 "European Union and United States to launch negotiations for a Transatlantic Trade and Investment Partnership" (European Commission Memo, 13 February 2013).

3 "About TTIP" (European Commission, 14 March 2014).

4 "EU and U.S. conclude first round of TTIP negotiations in Washington" (European Commission Press Release, 12 July 2013).

5 "EU and U.S. conclude second round of TTIP negotiations in Brussels" (European Commission Press Release, 15 November 2013).

6 "EU Chief Negotiator says EU-U.S. trade deal not about deregulation, as third round of talks end in Washington" (European Commission Press Release, 20 December 2013).



In March 2014 the fourth round of negotiations concluded. The sides exchanged proposals over tariffs, leaving services and procurement under discussion. Apart from discussions on how to increase regulatory compatibility, the EU and U.S. teams exchanged proposals over Technical Barriers to Trade, while negotiations over Sanitary and Phytosanitary (SPS) measures made some progress. In terms of rules-related issues, the sides discussed a variety of subjects such as sustainable development, trade in energy, and customs facilitation. Furthermore, the chief negotiators on both sides expressed their commitment to find ways to improve the business climate for SME's, in particular by making it easier for them to take advantage of TTIP. In addition, the European Commission reiterated that the civil society's engagement in the negotiations is to be continued and expanded, exemplifying the recently formed TTIP Advisory Group as a case of success.<sup>7</sup>

### Independent Arbitration vs. National Legislation

There are still some apparent stalemates that keep impeding progress on TTIP negotiations. The issue of independent arbitrators settling disputes between investors and governments, dubbed investor-state dispute settlements (ISDS), has been a major point of disagreement. For example, in March Germany announced its intention to exclude ISDS from TTIP negotiations, arguing that adequate legal dispositions for the protection of foreign investors in their national courts are already in place.<sup>8</sup> Prior to Germany's announcement, French trade officials had already raised concerns over the issue.

Reluctance by some countries to include ISDS in the agreement is largely driven by the concern of civil society towards the ISDS panels' lack of accountability and transparency, and also that independent arbitrators might overturn national laws. Consumer groups and environmentalists have highlighted the maturity of legal systems in the EU and United States in dealing with such disputes.<sup>9</sup> In addition, although the TTIP Advisory Group has shown a commitment towards the need for independent arbitration in settling disputes, it argues that an ISDS provision can only be included in TTIP without ever overruling the validity of national laws.<sup>10</sup>

Such a position goes against the intentions of business groups and TTIP negotiators who argue that the failure to implement an ISDS provision would create a precedent for future trade agreements not to include

independent arbitration, leaving companies vulnerable to national courts that might not uphold similar legal rulings, such as those involved in the Trans-Pacific Partnership (TPP) negotiations. In the face of these concerns, the EU has initiated a public consultation on investment protection and ISDS, with the aim to consult all interests groups and the broader public on approaches that achieve "the right balance between protecting investors and safeguarding the EU's right and ability to regulate in the public interest".<sup>11</sup> Nevertheless, the public consultation has been criticized for not contemplating the possibility of excluding an ISDS provision from the agreement.<sup>12</sup>

### Assessing TTIP's Realpolitik

Most public discussion on the TTIP negotiations regards curbing trade barriers, the pact's economic benefits and contentious issues. Regrettably, discussions over economic benefits and the stalemate created by contentious issues – as diverse as ISDS, genetically modified food, financial services, and data-protection, just to name a few – overshadow the geopolitical nature of the agreement. The West's economic and political decline has produced a shift of international attention towards emerging regions, in particular the Asia-Pacific. The long undisputed hegemony in international affairs enjoyed by Europe and America now faces its greatest challenge ever, as the liberal world order – characterized by a market economy, liberal democracy and the rule of law – runs the risk of losing ground in the twenty-first century.

Emerging powers perceive a shaky EU economy, discord among its member-states, and lack of a unified voice in Brussels as signs that the Old Continent is becoming increasingly irrelevant in international affairs. In light of this, developing economies such as China often prefer to deal with individual European countries, giving a special attention to Germany – considered the main European power by Chinese officials.<sup>13</sup> The present unfavorable *statu quo* makes it difficult for the European community to reposition itself at the center of world affairs. Furthermore, although the economic and financial crisis has not hit America as hard, the country has nevertheless lost some of its sway over global affairs. Economic growth has stagnated and President Barack Obama has failed to project U.S. power and influence in important international developments, such as in the on-going violence in Syria, and instability in Ukraine.

7 "EU-U.S. trade negotiators explore ways to help SMEs take advantage of TTIP, as fourth round of talks ends in Brussels" (*European Commission Press Release*, 14 March 2014).

8 Peter Coy, Brian Parkin, and Andrew Martin, "In Trade Talks, It's Countries vs. Companies" (*Bloomberg*, 20 March 2014).

9 Shawn Donnan in Brussels and Stefan Wagstyl, "Transatlantic trade talks hit German snag" (*Financial Times*, 14 March 2014).

10 "TTIP consultation welcome, but arbitrators must not decide on our laws – NGOs" (*Transport & Environment*, 27 March 2014).

11 "Online public consultation on investment protection and investor-to-state dispute settlement (ISDS) in the Transatlantic Trade and Investment Partnership Agreement (TTIP)" (*European Commission*).

12 Reinhard Bütikofer, "Opposition against TTIP is not an outflow of anti-Americanism" (*Young Transatlantic Initiative*, 23 April 2014).

13 Kathrin Hille, "China says Europe must recognise its decline amid trade war" (*Financial Times*, 6 June 2013).



The Asia-Pacific is becoming the world's economic center. U.S. strategic interests are shifting to the region at the expense of the Atlantic, as Obama's "pivot" to the Asia-Pacific makes clear.<sup>14</sup> The region is increasingly vital in U.S. strategic thinking when considering that China is set to become the world's largest economy, perhaps still this decade.<sup>15</sup> In the face of this shift in economic primacy, in 2010 America initiated negotiations for the creation of a free trade agreement with emerging economies in the Pacific Rim,<sup>16</sup> the Trans-Pacific Partnership, which excludes China. On the one hand, the TPP aims to enhance investment and trade between the countries involved, thus fomenting job-creation and economic growth. On the other hand, the agreement is mostly geopolitical, as it intends to provide the United States with the means to contain and compete with China's rising economic and political influence.

Considering Asia's rise and America's strategic response, the EU faces the risk of becoming irrelevant. Therefore, TTIP's implementation becomes all the more urgent as it can restore balance between the Pacific and the Atlantic, keeping Europe within U.S. strategic thinking. Moreover, as recent developments in Ukraine show, the inability by the EU and the United States to create synergies in order to deter Russia from putting its geopolitical ambitions into practice has not only undermined European stability, raising risks of a disruption in energy supply, but also highlights the need for the transatlantic partners to strengthen their ties and strategic objectives. Energy, in particular, is key to understand the TTIP's importance. Currently, the EU imports 80% of its oil and 60% of its gas, and a third of the fuel imports come from Russia. Meanwhile, a boom in U.S. natural gas production has led to a shale gas "revolution" there. Thus, by creating a transatlantic energy market – either within the TTIP or separately – the EU will be able to get access to cheaper natural gas. On the other hand, African countries are expanding their energy production capacity, providing Europe with another source of energy. By 2020, African and U.S. natural gas production will potentially be sufficient to replace natural gas imports from Russia.<sup>18</sup> In sum, by opening the doors to African and U.S. energy, Europe is playing out a bold geopolitical move by reducing its dependency on an unpredictable, ambitious and volatile Russia.

### Portugal at the Core of Transatlantic Relations

Following Portugal's transition to democracy and subsequent EU membership in 1986, the country began focusing the core of its strategic thinking on the European integration project. The end of the Cold War, and in particular the deepening and enlarging EU process, meant that Portugal became more peripheral within the EU in geographical, economic and political terms.

The TTIP might represent an inflection point. Portugal's geography works as a comparative advantage when compared with other European countries. Portugal has unique conditions to benefit from the harmonization of EU and U.S. tariff and non-tariff barriers, which will make commercial relations with the United States more appealing, and will open the way for an increase in trade flows between the two sides of the Atlantic – an estimated increase in exports to the U.S. of around 28% and 90.50% for EU and Portugal respectively.<sup>19</sup> Moreover, when considering the natural barriers to trade – costs related to geographical distance – between the EU and the United States, Portugal is one of the most attractive European countries. In fact, due to the low level of natural barriers to trade, when comparing to other European countries, Portugal has the potential to become a transatlantic shipping hub, assuring the distribution of goods to destinations, either in Europe or the United States.

Portugal has a clear pathway toward becoming a bridge between the EU and the United States. It can take advantage of its renewed commercial *status* and place itself in a position of greater transatlantic influence by contributing to maritime trade security, tackling illegal maritime activities – such as human, drugs and small arms trafficking – and contribute to political stability across the broader Atlantic region. Therefore, one should expect that military collaboration with the EU be certainly deepened with TTIP's implementation.

Portugal can therefore play an important role, in particular via the Lajes Field,<sup>20</sup> a military base strategically located midway between North America and Europe. Despite the American announcement in 2012 that Lajes Air Field would be downsized,<sup>21</sup> the chance for a reevaluation should not be put aside due to the interconnectivity between Portugal's geostrategic relevance in the region, and stability and security in the Atlantic. On the other hand, the fact that some of the major emerging actors in the Atlantic are Portuguese-speaking countries, such as Angola and Brazil, provides Portugal a chance to play an important role in the negotiation of

14 "The Obama Administration's Pivot to Asia" (*The Foreign Policy Initiative*, December 2011).

15 "Crowning the Dragon" (*The Economist*, 30 April 2014).

16 Countries included in the negotiations are: Australia, Brunei, Chile, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

17 See Bruno Mações, "Send a Message to Putin With a Trans-Atlantic Energy Pact" (*The Wall Street Journal*, 22 April 2014).

18 See Ruben Eiras, "EUA-África-Portugal: o novo triângulo do gás alternativo à Rússia?" (*Expresso*, 9 April 2014), and "International Energy Outlook 2013" (*EIA*, 25 July 2013).

19 "Transatlantic Trade and Investment Partnership (TTIP): Who benefits from a free trade deal?" (Bertelsmann Stiftung, 16 June 2013).

20 A multi-use air field located in the Portuguese cluster of islands of Azores. It is home to the Portuguese Air-force and a United States Air Force detachment.

21 Jennifer H. Svan, "Major drawdown planned at Lajes Field as cost-cutting measure" (*Stars and Stripes*, 14 December 2012).



other transatlantic agreements that include the EU, allowing for Portugal to attain greater international prominence.

Furthermore, Iberia is one of the few European regions that does not import energy from Russia, drawing most of its oil and natural gas imports from Africa. With this in mind, geographic proximity with America and the African continent represents an additional advantage. Portugal has the potential to become a stable and secure energy hub to central Europe despite the mammoth investment sums needed for infrastructure and industrial development, such as to improve the deep-water port of Sines and also to strengthen the network of natural gas pipelines that connect to Germany. In short, Portugal is situated to become a major actor in a geopolitical event that may turn Europe's fortunes towards a more stable and secure supply of energy resources.

### **Taking Decisive Action**

If implemented, TTIP will become a powerful soft power tool for the West. As former U.S. State Secretary Hillary Clinton put it, the Transatlantic Partnership is an 'economic NATO'.<sup>22</sup> TTIP will reaffirm NATO's role in the world, giving it greater relevance and therefore serving to promote the liberal world order in a rapidly changing global context. In order to do so, it is fundamental that the EU recaptures U.S. attention as a vital strategic partner. The way to go is for the EU to soften its stance on contentious issues, as – already stated above, – realize the geopolitical nature of the agreement, and show a commitment to a deeper transatlantic relations as well as to the promotion of Western values and interests.

As it concerns Portugal, the country has the opportunity to exit Europe's periphery and move back to the center of trans-Atlantic relations. To do so, Portugal not only has to capitalize on its privileged geographic position, but also make the most out of its close ties with African countries and Brazil. Recent history has shown that a EU-centric Portuguese foreign policy limits the country's potential and pushes it toward international irrelevance. Therefore, a change in approach is essential. The TTIP is an opportunity that cannot be wasted and it is worth the risk.

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<sup>22</sup> David Ignatius, "A free-trade agreement with Europe?" (*The Washington Post*, 6 December 2012).



# More Than Just Trade – The Strategic Importance of TTIP

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The idea of a single Atlantic market is not novel but one that has been around since at least the mid-1990s. The current negotiations over the Transatlantic Trade and Investment Partnership (TTIP), however, are about much more than just a free trade agreement. Ultimately, TTIP is about forging a stronger Western community in an increasingly multipolar world. The initiative could not be any timelier. At a time when U.S. pivots to Asia, EU struggles to get back on its feet economically, and China is quickly rising to global prominence, questions about the strength and vitality of the transatlantic relationship and the future of the liberal order are increasingly raised. One year into the current TTIP negotiations, and with several difficult issues remaining unresolved, it is therefore critical that the EU and the U.S. do not lose sight of the bigger picture.

Indeed, if ambitious and comprehensive enough, TTIP would offer a tremendous opportunity for the West to regain some well-needed momentum on the global stage. Certainly, the economic impact of creating a single market for trade and investment in an area extending from Hawaii to the Baltic Sea is considerable, with potential to drive growth and job creation in the area over the next decade. But TTIP is also about recalibrating the transatlantic relationship to a new, increasingly multipolar era. For a partnership that is still measured mostly its terms of a narrow security agenda, TTIP offers a chance to widen the scope of the transatlantic agenda and to build a more strategic, dynamic and holistic partnership between Europe and the United States. Let's consider three ways of this.

First, TTIP would help make the EU a more strategic actor. While the EU still primarily views itself as a 'civilian power', TTIP may force the EU to have to think more strategically about its economic interests in the world, including how to more forcefully defend these than it is normally used to. Establishing a strong economic partnership between the U.S. and the EU via TTIP could also help change Washington's perceptions of the EU's strategic relevance. While the EU's inability to put an end to the Eurocrisis once and for all may have reinforced the

dominant view in Washington of the EU as a weak actor, TTIP could alter the current U.S. preference for dealing with Europe at a bilateral level rather than directly with the Brussels-based institutions. If successful, TTIP may even serve as a catalyst for a new 'Transatlantic Compact' that involves a new set of leadership structures to promote EU-U.S. strategic coherence and policy coordination across a variety of political and economic issue areas. Thinking about what such new institutional structures might look like is also a timely effort given the upcoming ten-year anniversary of the New Transatlantic Agenda in 2015.

Second, TTIP would promote greater security cooperation between the United States and the EU. In particular, TTIP could counter the growing European narrative of 'U.S. abandonment' by demonstrating the enduring U.S. commitment to the continent. Conversely, as the United States increasingly pivots towards the Asia-Pacific region, and its interest (and ability) to patrol Europe's neighborhood wanes, TTIP could make Europeans more willing to invest in defense and assume responsibility for its own neighborhood. Of course, even if per-capita spending on defense remains constant, overall defense spending would still increase as a result of the added GDP growth generated by TTIP. The question, however, is how far this would go in addressing Washington's concerns over shrinking European defense capabilities? If a successful TTIP agreement is reached we could perhaps see a foundation for a new 'transatlantic bargain' adjusted to 21<sup>st</sup> century realities where the U.S. remains committed to European security in return for robust European security contributions. At the same time, the transatlantic partners must also work to contain the potential risk that TTIP would distract them from security matters by focusing them too heavily on economic issues, thus undermining the strength of NATO.

Third, TTIP would enable the EU and the United States to confront challenges associated with China's and other rising powers' growing role in the global economy. Or in the words of Charles Kupchan, TTIP can help turn the





world's premier security alliance into the world's premier economic pact.<sup>1</sup> TTIP should aim to bring the U.S. and the EU together around the need to agree to advance core Western norms and standards. This could promote a multilateral world order that seeks to set the terms of China's integration rather than attempting to contain it. It is therefore critical that the TTIP structure is inclusive, allowing for other countries (such as Turkey and Mexico) to accede to it. In addition to TTIP, it is also critical that the U.S. completes the separate Trans-Pacific Partnership in Asia. Together, these two initiatives would go a long way towards safeguarding the liberal international system. Clearly, TTIP is about more than just trade. Ultimately, this project has huge geopolitical and strategic implications for the West. Not only in turn of strengthening Europe's and America's economies (a significant achievement in and by itself), but also by forging strong political ties across the Atlantic, and by promoting a rules-based international order that reflects Western values. While TTIP has already brought some well-needed energy back into the transatlantic relationship, the agreement is far from a done deal yet. In fact, several complex negotiation issues remained unresolved. Given what is at stake, it is crucial that EU and U.S. leaders therefore have the political will to complete an agreement that is both ambitious and comprehensive enough even if this takes longer time than originally envisioned.

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1 Marta Dassù and Charles A. Kupchan, "Pivot to a Trans-Atlantic Market" (*The New York Times*, 13 June 2013).



## Further Readings

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