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The Transatlantic Trade and Investment Partnership: Negotiations Status Quo and the Relevance for the Romanian Public Debate

Abstract: The Transatlantic Trade and Investment Partnership negotiations are important not only for the business environment, but also for the society in general, considering that it aims at establishing a new set of rules for trade and investment between the two largest partners in the global economy. Considering the growing regional importance of Romania, but also the socio-economic challenges that the EU is currently facing, we have aimed at providing a framework for understanding the status quo of the TTIP negotiations, as well as their general implications for the EU integration processes in what regards trade and investment and, more generally, the common market. We have also looked at Romanian public debate and, taking into consideration the available data, we have analysed the main concerns stemming from the current discourse. We concluded by outlining some of the main questions that Romania has to tackle before establishing policies in order to make the most of the current TTIP negotiations. The proposed Working Paper does not seek to provide recommendation on policies, but instead to summarize the main concerns for the future in what regards TTIP, in general, and Romania's risks and benefits considering current negotiations, in particular.

Keywords: TTIP, transatlantic negotiations, European integration, ISDS

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Executive Summary

In the first part of our Working Paper, we summarize a selection of key studies that have contributed to the understanding of the factors involved in the negotiations process and the effects the partnership is likely to have on the concerned countries, as well as the global economy at large. While representing standpoints that are relevant to public and political debate on both sides, the publications selected also distinguish themselves through a sharp analysis of contentious topics and innovative suggestions for further action. A study on the welfare effects suggests an increase in per capita income in the US and EU countries, as well as nations that are closely connected to these regions, while other world regions are expected to experience a slight loss (Aichele, Felbermay, Heiland). Several authors working on the legislative aspect of the negotiations argue in favour of more transparency, be it through a more prominent role of the European Parliament and the US Congress (Alemanno) or through measures aimed at building a popular consensus in support of TTIP (Giovannini, Marengo). While financial services have not yet explicitly been part of the negotiations, Karel Lannoo's study of the current situation and the structural similarity on both sides of the Atlantic concludes that including them could strengthen rules and protection. On state procurement regulations, one of the more contentious issues, the two partners could find a consensus through focusing on the similarities in the two respective systems and showing flexibility in sub-central markets, which would set a global precedent (Priess & Yukins). Other studies focus on the shortcomings of the European Commission's impact reports, pointing out the importance of effects for example on the labour market and environmental issues. We also relate to the results of an earlier study of ours, which suggested that the deficient integration of the European market makes the Europeans' negotiating position unnecessarily cumbersome. More, we have also considered that the timing of the negotiations presents both an opportunity and a challenge for the parties.

In the second part, we analyse the current state of negotiations chapter by chapter. At the same time we explain the respective economical structures behind the parties' interests and preferences, which contribute to the differences in ambition level on each topic. The progress made differs substantially from chapter to chapter; in some cases the consolidated text of a final text for agreement is currently being discussed, while in others there has not yet been an exchange of conditional offers. We found the decisive element of the negotiations' success to be a comprehensive agreement on regulatory convergence to eliminate non-tariff barriers. This is a crucial precondition for growth as it contributes to reducing production costs and building trust among investors.

Regarding the key sector of market access, the negotiations are expected to focus on tariff peaks and the liberalization of economic fields that are considered sensitive by the two actors. On other issues the direction that the negotiations are currently taking allows for predictions; e.g. that the chapter on Mutual Recognition Agreement is likely to increase the pressure on the EU's internal labour market. In matters of regulatory cooperation, the most contentious issues lay in the section of sanitary and phyto-sanitary measures (e.g. the EU animal welfare regulations). Another crucial section will define regulations on specific industries; a section that includes sectors that are essential for growth (e.g. chemical and automotive products). However, the EU initiative to create a platform that would allow regulatory bodies to autonomously work towards convergence is likely to create transparency for economic actors. The section on rules also has some major divergences in the parties' ambitions: for instance while the US sees no need to tackle its export restrictions in the energy sector, the EU is expected to stay protective of its agricultural sector on geographical indications. Although investment protection doesn't figure as a section in the agreement, we look at the issues and provisions discussed (e.g. the European Commission's proposal). We assume that the ISDS system of a final agreement will probably offer less protection for investors than bilateral agreements already in place.

In the final part, we use our findings to focus on the Romanian perspectives on TTIP. To begin with, we assess its economic structure and geopolitical position as well as its foreign policy preferences. We have considered the main challenges for Romania in light of the changes that the Agreement would bring, looking both at the public discussions, but also at the analysis made so far in regards to the potential economic impact. As a historical benchmark, we draw lessons from the accession to the European Union, which involved similar processes to what can be expected from TTIP's implementation (reduction of regulatory obstacles, free market etc.). Concerning transatlantic trade, structural and infrastructural hindrances have so far prevented a shift away from the dependence on the European market. Provided Small and Medium enterprises receive assistance to internationalize and the necessary economic reforms are implemented, Romania finds itself in a good position to use this opportunity to expand beyond the continent, albeit this also means competition from US producers. To further illustrate key issues, we include a section on a study carried out on Romania's position in the negotiations. Here an involvement of relevant stakeholders could help to form an inclusive stance for the countries interests in the process. We then widen the scope of the analysis to the public debate on TTIP. Here we find an increased interest in the topic (and more criticism) since this year, as well as the involvement of external actors such as NGOs, European institutions or embassies. On the impact that the agreement will have on the Romanian economy, we draw and elaborate on an analysis conducted early this year (Cernat & Lakatos) which underlines Romania's dependencies towards the US and Europe and the effects on GDP growth an agreement and the resulting structural shifts would have. However, an extensive study on the agreement's impact on the crucial agricultural sector, the labour market, small and medium enterprises and an increase in foreign direct investment by the government would contribute to an informed debate and a comprehensive strategy for the country both in the ongoing negotiations and in pursuing internal reforms.

1. Analysis, policy making and the "What Ifs?" of the TTIP. Literature Review

During the last two years since the negotiations have started between the two major global trade blocks, the EU and the US, a lot of academic work has been focused on analysing the *pros* and *cons* of the Transatlantic Trade and Investment Partnership. The various topics that scholars across the globe have looked at include the worldwide effects of the TTIP in what regards trade and investment flows, the specific sectorial problems that may be encountered by either side of the negotiations both during and after the closing of the agreement, the public's main concerns, but also the specific steps taken and problems arising in finding common ground while the world economy is confronted with multiple crises. We have selected below several standpoints, some which have stood at the basis of the policymaking process both in Europe and the US, considering their importance regarding both the public debate and the negotiation process of the TTIP.

Methodologically, we have used for the documentation and literature review the international data base (Social Science Research Network eLibrary[1] in particular, but not limited to it) and have selected 23 academic papers to examine, all discussing the Transatlantic Trade and Investment Partnership. Furthermore, we decided to summarize the focus of seven of those articles in our paper, as we found they were representative for the debate that is taking place both at academic and policy-making levels. Considering our focus on the Romanian public debate to be presented in the third chapter, we have reviewed the academic work in the region and have found two academic articles on the topic, one of Romanian authors and the other presenting a Bulgarian point of view. We have analyzed the Romanian focused policy briefs and impact analysis in the thrid chapter, considering their intrinsic connection with the public debate in our country.

Alessandro Giovannini and Umberto Marengo[2] support in their research focused on **the trade-in-value-added element of the TTIP**, the idea that the accord equals with not only distribution advantages in terms of production, trade and labour markets, but also with a gain in credibility for the EU. Looking at the negotiation process, they argue that even though commitment is coming from both sides, the negotiation process has "partially lost momentum", focusing on advising for a set of

[1] Social Science Research Network, http://www.ssrn.com/en/.
[2] Giovannini, A., Marengo, U., Boosting TTIP Negotiations: A Value Chain Approach (May 28, 2015). IAI Working Papers 18 - May 2015. Available at http://www.iai.it/sites/default/files/iaiwp1518.pdf.

improvements. First, negotiations have to be built on popular consensus if we are to achieve an agreement by the end of the 2015. Second, they point out the fact that the European Council decided to open to the public the TTIP negotiation mandate represents a step in the right direction in order to secure citizens' support. As the public opinion is one of the key aspects that the authors focus on, they suggest that the Commission should continue to improve the level of transparency, citizen participation and deeper engagement in civil society dialogues. The paper also speaks of the current series of obstacles that the negotiation strategy has faced so far: the number of opened dossiers during the negotiations and the "resistance from specific vested interests that could risk jeopardizing the whole trade deal[3]". The conclusion however, relies on the fact that taking the value chain approach to TTIP could represent a valid argument for filtering the discussion and boosting the negotiations. The research focusing on the trade value chain shows that the sectors where the EU is more competitive than the US are the same where the EU registers relative high competitiveness globally.

Another research focusing on trade and its **welfare effects considering the TTIP** is that of Rahel Aichele, Gabriel Felbermayr and Inga Heiland[4]. This time, the paper is summarizing both quantitative and qualitative analysis related to the preferential trade agreement (PTA) considered by EU and the US starting 2013 when the negotiations over TTIP started. Using a multi-country multi-industry Ricardian trade model with national input-output linkages to quantify its potential economic consequences, the paper shows the structural estimates for the sectorial trade flow elasticity considering the trade costs and the existing PTAs. The authors focus on simulating scenarios for the trade flows, value added and welfare effects of the TTIP, assuming that the agreement would eliminate all transatlantic tariffs and reduce non-tariff barriers as other deep PTAs have. Their research focuses on the investigation of 134 geographical entities. It is believed that the gross value of EU-US trade could triple, but its value added would grow by substantially less. Moreover, trade diversion effects are more pronounced in value added trade than in gross trade, signalling a deepening of the transatlantic value chain. Other potential effects of the TTIP are also substantial: per capita income could go up by between 2% and 3% in the EU and the US. Average per capita income in the world would also increase, but some non-TTIP countries, mostly in East and Southeast Asia would encounter losses. The results suggest that the TTIP would create a truly transatlantic production network, increasing trade flows. Most non-TTIP regions will also slightly benefit from the TTIP and the closer geographically they will be to the TTIP area, the better. Regions close to the EU, like the Former

[3] Ibid, pp. 22.
[4] Aichele, R., Felbermayr, G. J., Heiland, I., Going Deep: The Trade and Welfare Effects of TTIP (December 30, 2014). CESifo Working Paper Series No. 5150. Available at SSRN: http://ssrn.com/abstract=2550180.

Soviet Union countries, the EFTA[5] and MENA[6] countries as well as Turkey stand to gain most, according to the authors. This is because these regions are already deeply embedded in the European production network and therefore they stand to benefit from an increased demand for goods in the EU. For Canada, the increase in real income is small (about 0.1%). The general conclusion of the research paper is that the TTIP is generally beneficial for the world economy, leading to an increase in the world's real income of 1.3%, on average. The authors argue that, considering the spill over effects the TTIP may cause, the adverse effects for other regions of the world can be prevented and instead turned into small welfare increase as well. In this sense, they mention that, especially in the case of developing and emerging countries, it is highly desirable to accompany the TTIP with another round of multilateral trade liberalization. Which will, in turn, raise the global real income level.

Karel Lannoo[7] focused on a sensible topic of the global economic system today – that of **financial services and capital markets and the way the TTIP is influencing** its evolution, if at all. He argues that the inclusion of a process for financial services regulatory cooperation and convergence in the TTIP remains a question mark. The sector's inclusion could be an opportunity not only as regards product choice, but also to improve the consumer or investor protection regulatory environment on both sides of the Atlantic. This will also follow the symmetry with the assessments made by both EU and the US considering G20 agenda – which both negotiating blocks say that has been incorporated in local legislation, both regimes being equivalent. Cross-border provision of retail financial services between the EU and US is most likely not limited to certain products. At the wholesale level, services are much more important, although they have been severely affected by the financial crisis. While a process for financial services regulatory cooperation and convergence will not be formally included in the TTIP negotiations, he highlights, market access will be given as an outcome of the negotiations, for all financial institutions operating in the two main markets under discussion. Considering this, there will likely have to be designed a formal mechanism to seek to address mutual recognition or equivalence of rules, considering that market access given under TTIP framework will actually be equivalent to an explicit agreement between supervisory authorities. In this sense, the EU seeks to have a process for regulatory cooperation included in the negotiations, given that financial services play an essential role in facilitating trade and investment flows between our two regions. Judging by the size of the financial markets on both sides of the Atlantic and the symmetry in the follow-up of the G20 standards, the TTIP provides an opportunity for a more institutionalized framework. Both entities had a similar reaction towards the financial crisis in strengthening their

[5] EFTA - European Free Trade Association - http://www.efta.int/about-efta/the-efta-states.
[6] MENA - Middle East and North Africa.
[7] Lannoo, K., Financial Services and the Transatlantic Trade and Investment Partnership (November 20, 2013). CEPS Policy Briefs No. 302. Available at: http://aei.pitt.edu/46149/1/PB_No_302_Financial_Services_and_TTIP.pdf.

regulatory and supervisory frameworks and incorporating the G20 recommendations into federal law. Moreover, consumer protection has been reinforced, certainly in the US, with the creation of the Consumer Financial Protection Bureau. On the other side of the Atlantic, the EU's Single Supervisory Mechanism (SSM) will radically change banking supervision. This is why the author argues that it should be no reason not to include financial services in the TTIP negotiation process. Even more, he further concludes that including financial services could be an opportunity to strengthen prudential rules and consumer protection provisions on both parties. Fears over levelling protection in this case are unjustified. Rather, it could lead to an examination, exchange and recognition of best practices in regulation and enforcement and a levelling-up process.

August Reinisch and Lukas Stifter[8] focused their research on the **European investment policy and the Investor State Dispute Settlement (ISDS)**, as they are proposed under the TTIP so far. Focusing on the way ISDS are currently implemented under CETA[9], the authors focus on the efficiency of the procedure, predictability and consistency as well as state control over the process, by comparison. The paper also focuses on the public perception versus the cases currently under consideration, taking into account the differences between the practicalities of the clause in CETA and the potential of improvement under TTIP. The authors conclude that looking at specific the way CETA has been agreed upon, it is observable that the treaty negotiators attempted to limit the broad investment arbitrations discretion, a prerogative given to tribunals in the past. This is to facilitate investment flows and facilitate economic integration. The authors criticize the apparent lack of transparency and they particularly point that, in their opinion, the European Commission, as the negotiating body responsible for the European side, was not able to convey this message publicly in an effective way, which has clearly transformed the ISDS into a topic that could easily be used for propagandistic purposes.

Christopher R. Yukins and Han-Joachim Priess[10] focuses on researching the **state procurement policy changes once TTIP is implemented**, considering the current advance in negotiations. The negotiations between the EU and the US have faltered mainly because the EU set high negotiating goals for procurement. As the goals are related to sub-central markets and "Buy American"[11] requirements, they might not be achievable, for practical and political reasons.

[8] Reinisch, A. and Stifter, L., European Investment Policy and ISDS, November 13, 2014. Available at SSRN: http://ssrn.com/abstract=2564018

[9] CETA – EU-Canada Comprehensive Free Trade Agreement – available at http://ec.europa.eu/trade/policy/in-focus/ceta/

[10] Yukins, C. R. and Priess, H.-J., Breaking the Impasse in the Transatlantic Trade and Investment Partnership (TTIP) Negotiations: Rethinking Priorities in Procurement (July 23, 2014). The Government Contractor, Vol. 56, No. 27/July 23, 2014; GWU Law School Public Law Research Paper No. 2014-36; GWU Legal Studies Research Paper No. 2014-36. Available at SSRN: http://ssrn.com/abstract=2471653.

[11] Buy American Act – available at http://www.gpo.gov/fdsys/pkg/CFR-2010-title48-vol2/pdf/CFR-2010-title48-vol2-sec52-225-11.pdf .

Considering this, the authors examine the potential ways in which procurement could be addressed within the TTIP framework. While entering the TTIP negotiations, the EU hoped to achieve broader access to US sub-central procurement markets and a reduction in federal procurement preferences (known as Buy American restrictions). So these are tedious issues the EU vendors face in US procurement markets – plainly, the stubborn domestic preferences at the state and local levels and "an array of Buy American exceptions to the US' general commitments to open federal procurement markets". These key issues helped, in the end, consolidating the European negotiating position. However, the authors suggest that building the agenda in the light of the complaints over US' protectionism may have been a tactical mistake and, considering the EU's more ambitious negotiating demands, it may well have been unattainable. State governments are now less likely to agree to broaden access to their procurement markets. On another front, the authors also state that the European negotiators are not likely to persuade their US counterparts to eliminate many of the Buy American requirements that pock the federal marketplace, arguing that deeply rooted domestic preferences are backed by sophisticated interest groups in the US Congress. Further, the author's argument is that both the US and the European procurement systems are in many ways converging. Cooperation does not mean neutralizing either system. However, regulatory cooperation in procurement would be a revolutionary innovation. In the author's opinion, the EU could press for US assurances that European vendors will not be discriminated against when competing for sub-central procurements funded with federal grants. In the same time, the paper concludes that both the EU and the US could find common ground by incorporating procurement into their broader efforts to coordinate regulations across the Atlantic, as procurement regulations in Europe and the US are already very similar and a negotiated alignment would benefit from a thoughtful sharing of best practices.

In a report for the European Parliament Alberto Alemanno[12] analyses **the roles that the legislative organs of the European Union and the United States (i.e. the European Parliament and the US Congress) have played and may play in the treaty**, both in the negotiation phase and once the treaty will have come into effect. He compares the regulatory, legislative and standardisation process in the two systems, concluding that the role of the legislature is more important in the EU than in the US, (as the European Parliament has the power to intervene into executive action by blocking rules) while the US' legislative process is more transparent in some regards. It is also to note that the US standardisation system is relatively unpredictable, with the US government described not as a "driver of the standardisation process, but a stakeholder"[13], which makes it difficult to overcome the

[12] Alemanno, A., The Transatlantic Trade and Investment Partnership (TTIP) and Parliamentary Regulatory Cooperation, European Parliament Policy Report, Brussels, April 2014. Available at SSRN: http://ssrn.com/abstract=2423562.
[13] Ibid. p 19.

divergence in standards also on a transatlantic level. The main cause of friction that Alemanno identifies between the two highly integrated and globally influential regions is regulatory divergence. He explains that divergence in part through societal preferences as in the EU regulation tends to be passed before problems arise, while the U.S. public tends to demonstrate a higher willingness to wait for problems to arise before regulating them.[14] A number of institutional mechanisms – most importantly the Transatlantic Legislators' Dialogue – exist between the EU and the US, which however only had partial success in harmonizing the regulations in some sectors. The author reviews these attempts at cooperation in detail, as they form the background for the framework included in TTIP for dialogue on regulations: the Horizontal Chapter on Regulatory Coherence. It has not only a wider scope (pertaining to all both legislative and non-legislative measures that impact on transatlantic trade), but will perpetuate the dialogue, making it able for regulators to build binding regulations on areas of convergence.[15] While TTIP is respectful to the parties' regulatory autonomy (e.g. not changing the legislative process) Alemanno states that this chapter may result in fundamental accountability problems,[16] as it may result in regulatory processes that veer away from the policy preferences of those concerned. Here a further involvement of the European Parliament and the US Congress is a possible solution by assuring parliamentary supervision of the regulators' decisions. Additionally, the author argues, the Transatlantic Legislators' Dialogue could play a significant role as a "forum to channel the demand for and identification of relevant policy areas" that need to make the object of regulatory dialogue.[17] EU and US authorities should therefore involve the legislative branch to provide input and scrutiny.

Looking at **possible scenarios that could arise from the negotiations on TTIP**, Yasen Georgiev evaluates a number of reports and studies that have been conducted on the matter[18]. The London Centre for Economic Policy Research[19] lays out four possible scenarios, that go from a mere continuation of the status quo regardless of a the conclusion of an agreement, over scenarios where most duties would be eliminated, 10% of non-tariff barriers on goods, services and public procurement would be reduced, to the far-reaching of a complete elimination of duties and a 25% reduction of non-tariff barriers in goods and services, and 50% reduction of non-tariffs barriers in public procurement. The author enriches his analysis with a study that has been conducted among actors in transatlantic

[14] Ibid. p 23.
[15] Ibid. pp 43.
[16] Ibid. p 57.
[17] Ibid. p 58.
[18] Georgiev, Y., The Transatlantic Trade and Investment Partnership (TTIP) – possible implications and scenarios, published in the seminar proceedings of "Summer Seminar for Young Public Policy Professionals from South-eastern Europe and the Black Sea Region, 2014, pp. 123-130.
[19] Francois Joseph, Reducing Transatlantic Barriers to Trade and Investment - an economic assessment, Centre for Economic Policy Research, available at: http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf.

economic relations. They envisioned either an ambitious, but achievable agreement which avoids some contentious issues, a repetition of the Doha negotiations following lengthy, but fruitless discussions between the transatlantic partners, or a broad-ranging agreement creating a true transatlantic market[20]. The respondents also expressed their views on what would be the most contentious issues, citing labour standards, environmental standards, liberalisation of investments, and geographic indicators of origin as the most difficult policy sectors, with energy exports and common principles regarding third countries at the bottom. The factor of the impact TTIP would have on European economies is added through his evaluation of a report by the German Ifo Institute. Their modelling of regional economies and markets concludes that an agreement that would only eliminate tariffs and leave on-tariff barriers widely untouched would hardly have an impact, while an elimination of the latter could mean significant growth. While Germany and the UK would profit the most due to their transatlantic ties, even smaller economies like Romania could experience an increase in per capita income of around 4,61%. However, Georgiev argues that US will gain more from such an agreement with the EU, for the latter will have to find the right balance between the inflow of competitive US goods, which are manufactured at lower energy costs, and the interest of European stakeholders in exporting to the richer and larger American market.

Another paper[21] that looks into the possible economic effect of TTIP has been commissioned by the European Parliament to **evaluate the impact assessment of the European Commission**. This report has focused on the underlying economic model of the Commission's impact assessment, scrutinizing the premises it relies upon, while also consulting alternative studies on TTIP. Additionally, the matter is put into a historic perspective by comparing the impact assessment with the outcomes on studies on previous EU trade agreements. A core issue of this question is difficult to assess for economists according to the authors: while trade barriers and regulatory heterogeneity lead to trade costs for market access, it is impossible to authoritatively determine their extent.[22] The authors firmly criticise that the risk assessment ordered by the Commission, which is based on projected welfare gains and the simulated flow of goods and services, does not reflect on the limits of the underlying concepts: the Computable General Equilibrium approach (CGE) for example does not take into account the (unrealistically) flexible labour market it is based on, nor the peculiarities of how investments are included or the lack of innovation and productivity-growth effects in enterprises of

[20] Georgiev, Y., The Transatlantic Trade and Investment Partnership (TTIP) – possible implications and scenarios, published in the seminar proceedings of "Summer Seminar for Young Public Policy Professionals from South-eastern Europe and the Black Sea Region, 2014.
[21] Pelkmans, J., Lejour A, Schrefler L., Mustilli F. Timini J. - The Impact of TTIP - The underlying economic model, comparisons, CEPS TTIP series No. 2/ No. 93, October 2014
[22] Ibid pp. 50

different sizes[23]. This becomes particularly important if it is assumed that growth leads to a need in labour allocation, which is usually not modelled by CGE. As it has been corroborated by other studies here presented, the CGE model shows that large gains are to be expected from a drastic cut in actionable non-tariff barriers – a GDP increase of up to € 120 billion in the long term for the EU. If on the other hand only tariffs were removed, the benefits would be insignificant, with US exports particularly favoured.[24] According to the CGE estimates, the ambitious scenario should augment extra-EU exports by €219.27 billion (while for the US the impact is slightly greater).[25] The authors raise a number of points that have not been or cannot yet be adequately considered in the assessment of the trade agreement's impact. The environmental dimension for example, while mentioned in the Commission's report, depends to a large degree on the terms of some sectorial issues that have not yet been disclosed. The planned mutual recognition of testing and certification would lead to a decrease in demand for such activities, which will result in a loss of jobs that the model does not account for. Comparing TTIP with other trade is difficult, considering the different growth models having been used for forecasting and assessing impact. Lastly, the broader impact of TTIP on countries other than those that already have privileged relationships with TTIP members is far from obvious and might need to be boosted via bilateral or multilateral offers.[26]

Focusing on the **challenges for the European Union when it comes to both negotiating and further implementing the TTIP agreement**, Antonia Colibăşanu and Victor Grigorescu[27] argue in their research that the main challenge, but also the main opportunity for TTIP parties is the chosen momentum for conducting such negotiations. A comparison of the considerations made by the main impact studies is being made, with the authors arguing that the unknowns come from the fact that the EU has not completed the integration process, European internal market still needing to be built upon in a situation when the EU is facing a social, an economic and a geopolitical crisis. More, at the technical level, the European Commission (EC) is negotiating over a unified position on foreign investment and investor protection provisions, while the Member States are still acting on the bilateral investment treaties still in force, including those concerning their own intra-EU relations. The authors conclude that in this way, the TTIP has the chance to shape the EU integration process, considering that the negotiation process is also an opportunity for accelerating policy consolidation and delegating more competences at EC level. The authors also emphasize the role of the TTIP in the international

[23] Ibid pp. 51
[24] Ibid pp 60
[25] Ibid pp. 61
[26] Ibid pp. 49.
[27] Colibasanu, A., Grigorescu, V., The Trans-Atlantic Trade and Investment Partnership – A Challenge for the European Union?, Romanian Journal of European Affairs, Vol. 15, No. 2, June 2015. Available at SSRN: http://ssrn.com/abstract=2619591.

arena, as a response to a perceived growing influence of countries like China and India in the world economy. In concluding that the Transatlantic Partnership is as much about trade as it is about global security and political influence, they underline that the agreement would gradually harmonize technical standards for the other countries to follow as well, pull energy resources to reduce dependence on potentially unreliable third party suppliers and maintain a leading position on technological advances compared to the rest of the world. The authors also point out that it is likely that countries enjoying FTA's with the EU and the US lose their preferential status, considering the trade diversion phenomena that would come as a result of the duty free regime among the most important trade partners in the world.

Apart from the information extracted from the articles, there are a sum of views and recommendations that authors have put forward. The agreement would not only bring economic advantages, but it also credibility gains for the EU at a time when it faces multiple challenges. While the TTIP is thought to be generally beneficial for the world economy, considering that the gross value of EU-US trade could triple, the academics seem to agree that its added value would be substantially less.

Considering the level of the integration that the EU currently exposes, some authors argue that the US would gain more from such an agreement, while the Europeans would have to find the right balance between opening the market to the often more competitive US goods and the right amount of protection and support for their producers and society at large. There are also views arguing that the financial services, a key area of concern given the global economic crisis we have recently experienced, should be included on the agenda of the TTIP. In the same time, while ISDS currently exists implemented at the Canada-EU Trade and Investment Agreement level as well as in between countries in the world, either bilateraly or multilateraly, the topic became a subject of controversy, with some authors pointing at the lack of transparency in the negotiation process, arguing that the European Commission was unable to effectively communicate to the public on the issue. This, in turn, transformed the subject of the ISDS into a topic used by the anti-TTIP propaganda.

Taking everything into account, as well as the current economic and security risks that the world is facing, we consider that the main challenge, as well as the main opportunity for the Transatlantic Trade and Investment Partnership is the chosen momentum for conducting such negotiations betweenn the largest and most important partners in the world.

2. The Status Quo – Where are we on the way to... signing?

TTIP currently envisages 24 negotiation chapters, consolidated under the umbrella of 3 overarching sections: *Market Access* for goods and services, *Regulatory Cooperation*, with the so-called horizontal rules (across the board discipline, applied to all sectors), but comprising also certain sector specific provisions (automotive, pharma or cosmetics) and the *Rules* section, potentially dealing with energy, Intellectual Property Rights (IPR), Small and Medium Enterprises (SMEs), trade facilitation or investment protection.

Structurally, the approach on negotiation chapters differs between the EU and US considering the divergence over the usefulness of certain (autonomous) chapters, as it is the case of the energy for instance. The US negotiators stated that the provisions agreed within other chapters might already cover the energy sector. The two sides certainly have different expectations with regard to ”level of ambition” with regard to certain subjects, most notably on public procurement. European companies would like to access US public tenders at sub-federal level, in spite of the current prohibitive legislation (*Buy American Act*[28]).

Negotiations are not proceeding at the same pace within all chapters. In a number of areas the Parties are discussing consolidated text (the text to be found in the final agreement), while in others only initial and conditional offers were exchanged (for example trade in services), without reaching agreement on a common text. In an important number of areas initial offers were not yet exchanged.

A key chapter is the *Trade in Goods*, covering custom duty concessions and tariff rate quotas, with an important upfront contribution in terms of economic gains. The negotiators have just exchanged second tariff offers with regard to trade in goods marking an important step in the TTIP negotiations.

TTIP is as much about trade in goods and services as it is about eliminating trade barriers, mainly nontariff ones. It is about changing current rules but also about how the EU and the US will regulate markets and market access in the years to come, using a platform allowing regulatory bodies to autonomously integrate their work in the future. Therefore, discussing the structure of the TTIP, the state of play of the negotiations and, most importantly, evaluating their potential impact is not an easy endeavor. A more integrated view is needed. The ability of the European automotive industry to

[28] First enacted by Congress in 1933, requires that procurement by the federal government be attributable only to US components. Over the years, Congress has enacted supplementary legislation, as is the case of the Berry Amendment, adopted in 1941, concerning purchases of US products by the Department of Defense.

successfully sell on the US market will depend not only on the actual tariff rate negotiated but also on the convergence of the technical and safety regulations that will reduce production costs significantly. Confidence of the investors to expand and establish across the border, confidence built on an efficient ISDS mechanism, will make the difference between a successful and a mediocre outcome of the TTIP negotiations.

For better understanding of the progress of the negotiations, the chapters are discussed in chronological order, although cross reference to other parts of the agreement are inserted, to guide the reader to additional material that paints the full picture.

Market Access

The *Trade in Goods and Custom Duty* chapter is the big unknown of this section of the Agreement, more so for the trade in agricultural products. It is largely accepted that negotiators will focus on the so-called tariff peaks, where tariffs protection escalates beyond the average rates that the EU and the US have in place for now. Step by step liberalization, over a longer period of time, is taken into account when it comes to the so-called "sensitive" sectors, that are considered strategic or to be largely impacted by the duty elimination process. Although US negotiators would like TTIP to attain full tariff liberalization ("zero for zero" approach), most probably a number of sectors will ultimately remain under tariff protection. European farmers, for example, have expressed particular concern if the EU poultry or pork market open up to receive American products. The technologically intensive production methods used in the US and the relative bigger capacity of the farms would put the Europeans at a disadvantage. Dairy and milk products are to be also affected, while fruits and vegetables are likely to suffer a lesser impact.

The EU negotiators announced that second tariffs offers were exchanged with the US during the 11th TTIP negotiation round, in October 2015[29]. After a disappointing first exchange at the beginning of this year, the Parties seem to have reached an agreement with regard to the number of tariffs lines covered by the liberalization. Although an important step forward, more work remains to be done. It remains to be seen how much trade will be liberalized from the first day of the Agreement and the calendar for custom duty elimination for the more sensitive tariff lines.

Despite the promised tariff reduction, a number of American products will not reach the EU markets, as is the case for Genetically Modified Organisms (GMO). Negotiations on Sanitary and Phyto-Sanitary (SPS) rules will most probably provide a special carve out to this end. To better grasp the full impact of the tariff reductions for the agricultural sector one should also look at the *IPR*

[29] Statement by EU chief negotiator Ignacio Garcia Bercero, TTIP round 11, Miami, 23 October 2015. Available at http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153910.pdf.

chapter, especially in what concerns the level of recognitions that the Geographical Indication (GI) concept, protecting small EU traditional production, will get at US level.

Trade in Services negotiations are certainly more advanced, with negotiators exchanging improved offers for market liberalization. However, EU does not intend to open its public utility market for US companies, neither is it ready to restrict the right of member states to freely regulate this sector. The current EU offer is conditional upon the US reciprocating in a number of important areas: energy services will be liberalized if the US will also take commitments in the energy sector, while important opening of the financial market will only occur if US will agree to take on regulatory cooperation commitments.

Negotiators also discussed concrete text proposals concerning horizontal rules for licensing and authorization procedures, mutual recognition of professional qualifications or future regulatory cooperation, in general. The EU has advanced a consistent proposal regarding the postal and telecommunication sector, including rules for spectrum allocation or the concept of universal service. Important text proposals lay the ground for future negotiations of Mutual Recognition Agreements (MRA) concerning professional qualifications. This is particularly significant since, for example, a EU lawyer cannot practice over the Atlantic as he needs more than just opening up shop; his or her professional credentials need to be recognized automatically or with minimum costs. Same is valid for architects, nurses or engineers. If European Commission (EC) proposal on future MRA is accepted, TTIP will most certainly increase the pressure on the EU internal market. Despite significant proposals in the last ten years, aimed to create a real internal market for services, significant intra–EU barriers still persists today.

Public Procurement continues to be under discussion with no apparent progress yet, at least not at the level that would allow negotiators to exchange offers at this point in time. EU chief negotiator Ignacio Garcia Bercero, stated[30] that offers could be exchanged as late as February 2016. EU still maintains the objective open up US market at sub-federal level too, insisting that the European companies get the same treatment as US ones (*National Treatment clause*). A number of US officials have indicated over time that such level of commitment is not likely to occur. Especially the *Buy American Act* allowing US authorities to grant public contract to US producers only will probably stay in place.

On *Rules of Origin* there is little public information available since this chapter is directly linked with the offer on *Trade in Goods*. Detailed discussion during the 11th round of negotiation touched upon the industrial products, with the agricultural section left for a later stage. Rules of Origin

[30] Ibid.

are essential for preserving current international supply chains, permitting companies to incorporate in their products the raw materials of foreign origin or technical work performed outside the country of origin and still benefit from the same favorable duty treatment as if the production occurred entirely on the national soil. Consequently, rules of origin are of paramount importance for the third countries in the developing world, whose revenues are directly dependent on the indirect access their products get on the developed countries market.

Regulatory cooperation

EU has advanced a revised proposal on *Regulatory Coherence*, aiming to create a platform for regulators to cooperate when discussing future standards. The aim is to significantly reduce the costs incurred by current delays derived from the need to follow different standards on the two markets or the need to certify the product twice, even if the similar technical regulations apply. However, the current EU proposal would mainly reinforce transparency, allowing interested parties from one side to participate in the consultation process initiated by the other, when adopting legislative acts. A number of rules for drafting impact assessments are also provided. Nevertheless, Parties will undertake an obligation to identify new areas of mutual cooperation in the future.

The same ”soft approach" is used when talking about *Technical Barriers to Trade,* where Parties are looking to increase transparency and eliminate redundancies or conflicting regulations when it comes to technical standards, conformity assessments procedures or marketing and labeling requirements. The provisions would not apply to special requirements of public bodies when buying certain goods or to rules concerning agricultural products provided in the SPS chapter.

Sanitary and Phyto-Sanitary negotiations are rather sensitive since a number of longstanding trade disputes between EU and US persist in this area. We are referring in particular to the GMO trade or to a number of US practices that are restricted in the EU, mainly the use of chlorination for chicken meet or the extensive use of growth hormones in animal farming. EU also intends to preserve current welfare standards for the animal farming. A practical implication of accepting the US request would be that EU could be obliged to curtail a significant amount of animal welfare related payments offered to the agricultural sector today, that boost significantly its competitiveness.

Sector rules for *Specific Industries* are under discussion, namely for chemicals, pharmaceuticals, automotive, cosmetics, engineering, medical devices, pesticides, information technology and communications, textiles, medical devices. It is here that real economic growth should occur. It is not so much the cost of production that is preventing goods to be traded across the Atlantic, but nontariff barriers such as burdensome conformity assessments or divergent technical standards. Labeling obligations for textiles (different mandatory icons to indicate that a dress should only be chemically cleaned) or duplicate flammability tests are just a few of the most notorious culprits in case. In the same time, different ways of assessing the production facilities (Good Manufacturing Practices or GMP) for generic, biosimilar, medicines prevent both access of the producers on a wider market as well as access of the final consumer to cheaper and effective medical treatment.

Rules

The last section of TTIP deals with matters that are not directly linked to trade or whose effects are aimed at very specific stakeholders.

The *Sustainable Development* chapter is certainly a deliverable meeting civil society criticisms of the preponderant mercantile focus of the Agreement. No text is yet available, but both the EU and the US negotiators promised to go public with one in the months to come. Main focus of the chapter would be recognizing of the importance of International Labor Organization (ILO) standards, combating forced labor, expanding on the relation between trade and environmental protection, combating climate change or promoting biodiversity. A number of concerns were raised about the labor provisions, namely that their implementation would be subject to arbitration and labor issues would be brought to trial outside the national courts.

Custom and Trade Facilitation chapter is expanding on commitments already undertaken by the Parties under the umbrella of the World Trade Organization (WTO) agreements. Linked to this initiative is the part dedicated to *Small and Medium Sized Enterprises.* Although not a lot of clarity transpires from the documents available publicly, the chapter would mainly be about transparency and front desk assistance, based on the model of the Market Access Database set up by EC to promote European exports on third country markets. The EC also collects information about nontariff barriers from stakeholders and discusses potential resolution within a Committee comprised of EU Member States experts. It is certain that the EU needs to put the emphasis on SMEs since they account for most of its economy and value added produced on the continent.

Negotiators reported before the summer good discussion on the *Competition*, but the general objectives are not necessarily ambitious since current national legislation on state owned enterprises, subsidies and monopolies are outside the scope of the proposed agreement.

An important part of the trade in agricultural products lays actually outside of the Trade in Goods and Custom Duties chapter. Protection of the *Intellectual Property Rights and Geographical Indications (GI)* is, together with the *SPS* chapter, the backbone of the EU agricultural trade offensive. It is, however, difficult to imagine that US would allow the EU small, but extremely valuable traditional agro-food production to get extensive legal protection, on top of the current trade mark system in force in the US. For the EU not to deliver on this long-made promise is not going to worsen the situation of the EU producers on the American market in the short run. Premium European products will fail to dislocate important US market share by banning the use of similar products names by American companies. In the eye of the American consumer, their aura of uniqueness might finally erode over time. This is particularly important for the Italian, Spanish or French producers rather than for the Romanian ones, which, eight years after the EU accession have registered only one GI, on top of the product names agreed in the Accession Agreement from 2007.

The *Energy* chapter is still a contentious issue, with the American negotiators failing to see the need for a separate discussion on the matter. There are opposing views across the Atlantic with regard to certain long standing US export restrictions on gas and crude oil. EU would also like to discuss specific rules for granting indiscriminate access to networks for transport of oil, gas and electricity. Specific rules could be envisaged for the renewable energy, alluding to the current climate change negotiations in Paris as well as to the European Emission Trading System.

Investment Protection

Although not a separate section *per se,* the *Investment Protection* chapter *(*so-called *Investor to State Dispute Settlement* or *ISDS)* chapter deserve a separate discussion if only for the amount of public debate generated around them in the course of the negotiations.

Investment protection in the form of ISDS mechanisms has been around for years. Investors sued host states numerous times, either in courts designated by specific agreements or using pre-established international arbitration systems such as the International Centre for Settlement of Investment Disputes in Washington or the International Chamber of Commerce Court in Paris. What is new this time? A number of concepts developed in the NAFTA[31] jurisprudence or in the EU law over the years, such as indirect expropriation or capital control restrictions imposed by a Monetary Union reached full maturity both in terms of jurisprudence and validation by academic literature. Investors are demanding that their benefits be fully extended to all interested stakeholders and their area of application be expanded to cover most of the regulatory situations the investors may face in a foreign country.

The concept of indirect expropriation recognizes the fact that legislative bodies can regulate in such manner that an investor cannot recover the cost of his investment or his expected profits anymore. As opposed to expropriation or nationalization, in case of regulatory risks, no automatic compensation is awarded. The new ISDS concept is about paying compensations to investors that are

[31] North American Free Trade Agreement between Canada, Mexico, and the United States, entered into force on January 1, 1994.

subject to discriminatory, unexpected or unfair legislation that prevent them from attaining their initial business goal. ISDS is not about preventing states to legislate, but about asking them to legislate better, to avoid discrimination and arbitrary decisions. Most importantly, it is about moving the competence of scrutinizing national legislation from the hands of national courts into the hands of international arbiters, that will judge the case base on *ex aequo ex bono* principles, rather than based on the national legislation of the State concerned.

Following extensive public discussions, EC put forward a new proposal to address some of the concerns raised by the civil society. Although international arbitrators will be deciding on claims raised by investors against the host state, arbitrators themselves will have to meet specific professional qualification requirements. The judicial process would not be expedite, but go through three phases: mediation, Tribunal and subsequently an Appeal Court, functioning the same way as the Appellate Body under the umbrella of the WTO, a rather cumbersome procedure, but more reassuring for the States concerned. More importantly, the reasons for going to arbitration would be restricted to issues such as discrimination (based on gender, race etc.), denial of justice or expropriation without compensation and equivalent measures. Both the EU and the USA offer significant legal protection against discrimination or denial of justice, less so for the indirect expropriation, as long as nation states can regulate without having to take into account the impact that the regulation would have on a foreign investor.

It is to be noted that the new ISDS proposal offers explicit protection to shareholders and investors to the capital market, in line with the EU and the US intentions to further open up the financial services market and enhance the capital flows over the Atlantic. Romania has never been confronted with claims in relation to the capital market but the listing of important state owned companies on Bucharest and London Stock Exchange may increase the probability for such claims in the future.

In parallel with the TTIP endeavors, EC announced a commitment to work towards establishing an International Investment Court. Presumably, the new arbitration body could be accepted by others such as China, Russia or the Latin American countries.

ISDS system is here to stay. Existing investment protection agreements already allow for more and more sophisticated cases to be brought to international arbitration. The current ISDS system agreed, for example, between US and certain EU Member States or among EU Member State themselves, might prove to be more favorable to investors than projected ISDS mechanism to be inserted in TTIP.

3. A Romanian perspective on TTIP – what is to be debated and what is to be important?

Romania is one of the largest economies in Central Europe. According to recent estimations, its near-term growth perspectives are positive, as the latest statement of the IMF says that "the economy is growing at a healthy clip with real GDP projected to advance by 3.4 percent in 2015, reflecting broad-based contributions from consumption, investment, and exports"[32]. However, Romanian economy remains exposed to volatility in the financial markets. The global economic crisis proved, generally, that those countries with a positive current account balance and a diverse export structure of goods and services have managed to be better off and have handled the negative consequences of the crisis way better than those countries relying mostly on commodities exports.

The crisis has had relatively little effect on Romania considering the level of integration in the global economy and its slowly developing economic structure. Therefore, it is agreed that Romania has the chance to become a major economic player if sustained growth is founded on macroeconomic stability. The national economy enjoys little dependence on energy imports, something that could support the efficiency of the internal production. In the same time, the country's geographic location could also benefit its economic perspectives, considering the access to one of the main navigable rivers of Europe – even if Romania has yet to develop the Danube's naval infrastructure to the full extent of its potential. From a geopolitical standpoint, as Romania is a part of the Euro-Atlantic security framework, a member of both NATO and the EU. Recent events in the Eastern neighborhood have made Romania work towards extended interoperability with the US and Poland, considering the strategic partnerships that the three countries have signed. These partnerships are to be supported and enhanced through the economic cooperation, as Romania's administration is looking to support growth through foreign investment.

The Transatlantic Partnership for Trade and Investment is therefore enjoying a complex framework for debate in Romania. Thus, we have considered the main challenges for Romania in light of the changes that the Agreement would bring, looking both at the public discussions, but also at the analysis made so far in what regards the potential economic impact.

[32] Statement at the Conclusion of an IMF visit to Romania – press release nr. 15/474, Oct. 2015, available at: http://www.imf.org/external/np/sec/pr/2015/pr15474.htm.

The starting point: historical benchmarks

Before 2007, when Romania joined the European Union, it enjoyed preferential access to the US market, through the so called "Generalized System of Preference". The system translated into duty free, quota free access for the majority of industrial exports. Agricultural goods were also enjoying a better treatment to access the US market than what Romania enjoys now, as an EU Member State. However, Romanian exports lagged far behind the potential on paper, due to structural reasons. At the time, the Romanian economy lacked the efficiency needed to sustain a viable trade route over the Atlantic. On the other hand, the US also imposed significant regulatory norms translated into burdens for most foreign exporters, including the Romanian ones: expensive verification procedures, specific technical and labeling requirements.

Since 2007, Romania's focus has mostly been the EU and the continuous integration of its trade flows within the common market has been sustained, with trade with the US losing momentum. The financial crisis has decreased the appetite for commercial expansion. Thus, the TTIP could be seen by Romania both as a potential tool for diminishing the dependence on the traditional European market and as an opportunity to seek understanding its key competitive advantages while reforming those areas needing improvement, supporting socio-economic development on medium to long term.

Current concerns

Romania's exports have supported the economic growth registered during the last two years. In particular, it is the agricultural exports that have enjoyed a growing trend, which is anticipated to be maintained, considering the high rate of absorption of EU funds that the sector is sustaining. The development outlook for agriculture in the coming years in Romania is completed by the forecast that the EU support schemes will contribute to rebuilding the large scale irrigation system, which is needed especially in the South of the country. The IMF estimates[33] that Romania's GDP will grow with 3.9% in 2016, with a budgetary deficit, albeit higher than in 2015, still within EU benchmarks. Taking into account current macroeconomic data, it could be considered that Romania is better equipped today to look at new export markets outside EU. Romania's extra-EU trade accounts for about 4% of total trade[34], with about half of it in the US[35]. Considering the ambitious trade deal negotiated at the EU

[33] * Statement at the Conclusion of an IMF visit to Romania – press release nr. 15/474, Oct. 2015, available at: http://www.imf.org/external/np/sec/pr/2015/pr15474.htm.

[34] Eurostat data – dependence percentage takes into account both imports and exports between the actors: see Colibasanu A., Grigorescu V - The Trans-Atlantic Trade and Investment Partnership – A Challenge for the European Union?, Romanian Journal of European Affairs, Vol. 15, No. 2, June 2015. Available at SSRN: http://ssrn.com/abstract=2619591.

[35] Romania's trade dependence on the US was at 1.81% in 2013 and at 1.97 in 2012 (authors' calculation, based on Eurostat data).

level, the Romanian exporters, especially SMEs, need significant additional support to internationalize and be able to take advantage of the new market access opportunities.

In the same time, in certain areas of the agriculture sector, but also in services, one should pay attention to the inevitable increased competition coming from the US. The American products will not only take up the Romanian market, but also have the potential to dislocate a number of Romanian exports from the EU market, replacing them with cheaper, more competitive American ones[36].

A policy study in this regard has been commissioned by the Romanian Center for European Policy in May 2015[37], also bringing, for the first time in the public debate, the main findings of the European Commission's analysis with regard to the effects on the Romanian economy.

FOCUS BOX 1

Romania and the trade negotiations between U.S. and EU
– synthesis of the CRPE policy brief –

In May 2014, Romanian Centre for European Policy (CRPE) published a policy brief concerning the trade negotiations between USA and EU, with a focus on Romania`s position towards the Transatlantic Trade and Investment Partnership (TTIP). At the same time, the macroeconomic impact analysis done by Lucian Cernat and Csilla Lakatos, and published under CRPE framework, was brought to public attention. The main aspects addressed in the policy brief by Cristian Ghinea are: the context of negotiations, transparency issues, Romanian exports to America, investor state dispute settlement (ISDS) provision, Romania and its ISDS lawsuits and specific interests for Romania in regards to TTIP.

Following the European Commission`s forecasts, the author points out that the TTIP will add, once to be enforced, a 0.5% growth for the European GDP, meaning 120 billion euros. Under this circumstance, he argues that Europe needs more this trade agreement than America does and gives as example an article published in 2015, which underlines the fact that Europe is seeking to connect America to its standards, rules and models. As he is saying, it is preferable to have a common architecture built upon European and American standards, with which the rest of the world will have to comply with.

Concerning the transparency in negotiations, Ghinea says that MEPs have access to most of the documentation, whereas members of the European Parliament Committee on International Trade have access to all of them, as monthly meetings with the negotiators are taking place. It is a case of double democratic surveillance, done both by the governments and the MEPs.

Addressing one of the biggest debates in the field - to which only the corporations would be the main winners of TTIP, the author brings to our attention the fact that this partnership is not about creating a framework to the disadvantage of the European economy. Instead is about tackling the non-tariff barriers, to align different standards for measuring quality and different procedures for evaluating goods and services. Also, in terms of small and medium-sized enterprises, the author states that there are now approximately 150 000 European SMEs which export to the USA, meaning 88% of the total export enterprises and 28% of the entire exporting volume. As for Romania, the author quotes

[36] Cernat L., Lakatos C., Impactul economic al Parteneriatului Transatlantic pentru Comerţ şi Investiţii (TTIP) asupra României. Available at http://www.crpe.ro/wp-content/uploads/2015/05/CRPE-Policy-Memo-63-Final.pdf.

a report of the European Commission, which says that there are 600 small and medium-sized enterprises that export to USA, which hold 24% share of the volume.

In terms of investments protection, the author argues that ISDS provision was initiated by West-European governments that wanted to protect their investors from potential abuses made by third countries. In return, these countries agreed upon the mechanism to convince the investors of their goodwill and commitment to market economy principles. EU Member States mandated the Commission to negotiate an investments protection mechanism within TTIP, but as the author underlines, there were second thoughts, especially those coming from German and French officials. For the time being, the political support for this provision doesn`t seem to be as strong as in the beginning of the negotiations. He also brings to our attention the fact that the European Commission has drafted a concept paper for establishing a new public international right system which, on long term, should replace the current one, considered less transparent. Romania, the author points out, concluded 82 bilateral investment protection treaties, some of which were signed before the 1989 Revolution, with countries such as Cuba, North Korea or Bangladesh. However, Romania holds a positive track record regarding its international litigations. At the ICSID Court there were 10 cases registered against Romania, out of which the state won 8.

For the last part of the policy brief, Cristian Ghinea speaks about the fact that Romania is less integrated in the global value chain than the European average and that mostly explains the smaller share of transatlantic commerce to total external commerce for Romania. The main argument in this field is actually related to the nature of foreign direct investments, most of them being 1st generation (Western companies came to Romania to produce for the local market).

Nonetheless, the 2nd generation of investments should include the Romanian production in a value chain of import/added value/re-export. On matters regarding energy, the author talks about the discussion about introducing a chapter on energy and making the connection with the hot debates on exploiting the shale gas resources, that took place in Romania, he says that in the USA the decision is made at a state level. Where's in the EU every country decide on its own, so the negotiations between the Federal Government and the European Commission cannot affect the legal status of the extraction through hydraulic fracking. As energy sector is a delicate subject, the European Union has to be prepared to offer strong arguments in the negotiations, the author argues. A win-win situation in his view would be for the US to allow energetic exports in exchange for access to strategic investments in the EU.

The TTIP appears to be a very complex technical and political exercise. Decision makers should not underestimate the numerous hurdles such an agreement will pose before the eventual approval, ratification and enter into force. Nor, because of the same potential hurdles, one should desist from actively and properly engaging the negotiation process. Romanian authorities, as EC negotiating team, should continue to encourage all stakeholders' contributions in order to better shape its national positions and increase effectiveness in Brussels negotiations. Lack of adequate public debate is not going to help the economic operators to better adapt to the future opportunities and challenges. A survey of the websites of Romanian governmental institutions reveals that the Ministry of Foreign Affairs is particularly active when it comes to TTIP. A number of concrete steps have been taken by the Ministry of Economy, the Department of Foreign Trade and International Relations. The

Export Council[38], a consultative body working alongside ministry, bringing together a wide spectrum of public institutions and business associations, discussed or was briefed on TTIP in half of the meetings that took place in 2015. Active discussions have also been organized by the civil society representatives.

FOCUS BOX 2

Romanian civil society stances and debates over TTIP
– observation based synthesis –

The Romanian civil society has increased interest into debating over the developments of the TTIP negotiations. Starting September 2013, a number of discussions focusing on the impact and opportunities of the agreement were organized by the Romanian Chamber of Commerce. They aimed at promoting dialogue between the national entrepreneurs and representatives from the Ministry of Economy, Tourism and Trade together with other national and international trade authorities.

Similar debates, at regional level, were hosted, for example, by the Bucharest or Prahova Chambers of Commerce or by academic institutions, sometimes involving US trade experts advocating the benefits of the proposed trade deal. The U.S. Embassy in Romania was supportive of such events, as they were usually bringing American experts to be speakers on specific topics. Online initiatives, like the one put forward by ”Fiscalitatea.ro” were reportedly synced with the European Commission public consultation calls. While very few Romanian organizations and academics were concerned with the topic of TTIP prior to 2015, their number and interest grew higher as the negotiations in Brussels and Washington intensified.

Table: Main events focusing on the topic of the TTIP, organized or attended by the Romanian civil society representatives, home or abroad

Date of event	*Location, Organization*	*Type of event*
2013, September	Bucharest, Romanian Chamber of Commerce	Series of consultations – public - private sector
2014, March	Ploieşti, Prahova Chamber of Commerce and Industry and the U.S. Embassy Bucharest	Conference – guest speaker Kimberly A. Benson
2015, January	Craiova, County Library “Alexandru şi Aristia Aman”	Conference – guest speaker Ravi Buck
2015, March	Iaşi, Iași Chamber of Commerce and Industry and the U.S. Embassy Bucharest	Conference – guest speaker - Elena Bryan
2015, May	Bucharest, Aspen Romania together with Europuls Association	Debate on “TTIP and the commercial future of the EU - Romania's expectations”
2015, May	The European Commission Representation in Romania	Debate on the first impact analysis of TTIP on Romania`s economy
2015, May	Bucharest, MEP Maria	Consultation – public – private

[38] Information about the Export Council are available of the website of the Ministry of Economy, Department of Foreign Trade and International Relations (www.dce.gov.ro) under the heading *Export Council*.

	Grapini	sector
2015, July	Rome (IT), Aspen Institute Romania at Aspen Forum at Expo	Debate on ”The case for TTIP: how, when and what?”
2015, September	Krynica (PL), Antonia Colibăşanu and Foundation Institute for Eastern Studies at the Krynica 25th Economic Forum	Debate on “TTIP – the Strategic Opportunities and Tactical Challenges”
2015, September	Bucharest, Friedrich Ebert Foundation	Debate - "Transatlantic Trade and Investments Partnership: Facts and Fiction"
2015, October	The European Commission Representation in Romania	Debate/Consultation on Romania’s priorities for TTIP
2015, October	Bucharest, MEP Sorin Moisă	Conference/Debate – full day event: “TTIP: Romania’s Voice”

Source: authors

Most debates were focusing on the relevance of the TTIP for national and regional stability, having in mind the current processes within the EU but also those at the national level. During May 2015, the Romanian Aspen Institute hosted a TTIP debate within the larger civil society event Eurosfat, at the premises of the Romanian Parliament, focusing on the role Romania should play in the context of the new geopolitical and global spectrum. The main questions asked were related to the most vulnerable economic sectors for Romania in the context of the negotiations and the issues Romania should advance on the European Council`s agenda concerning TTIP. During the same month, the Romanian Center for European Policies and the Commission Representation in Romania (ECR) organized a debate on the impact of TTIP for Romania`s economy, based on the analysis authored by Lucian Cernat and Csilla Lakatos. The analysis as well as the event were aiming at sharing information on TTIP and help ”translate” it in a comprehensive manner for the Romanian citizens. During October 2015, the ECR organized another debate on the transatlantic partnership together with Romanian Centre for European Policy. The debate pointed out the concerns of the European Affairs Commission in the Romanian Parliament, given the fact that the impact of the TTIP on Romania is still not fully understood. Representatives of Cartel Alfa, one of the main union associations in Romania, pointed out that the US has only ratified two out of the eight international conventions on the labour law, for example. It was also noted that the same applies to Kyoto Protocol[39] on climate change. Similar concerns, including the request to carve-out labour issues from the scope of the ISDS, were voiced by the union associations during an event hosted by MEP Sorin Moisă, during the same month.

Some Members of the European Parliament (MEPs) were also leading the effort to increase the civil society participation in the TTIP debate. The most notable is the event hosted in Bucharest in October 2015 by MEP Sorin Moisă enjoying a large media coverage considering the high-level participation: Trade Commissioner Cecilia Maelstrom, the EU chief negotiator for TTIP, TTIP negotiator Ignacio Garcia Bercero and the US ambassador to EU, Anthony Gardner. MEP Maria Grapini also hosted a similar event, less mediatized and dedicated mainly to SMEs and the business sector in general, in May 2015.

[39] The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change. More information is available at http://unfccc.int/kyoto_protocol/items/2830.php.

The current anti-TTIP debate going on across Europe[40] is also visible in Romania. The arguments against the transatlantic partnership are centred around the ISDS theme (states will have to give up the right to legislate in the interest of the consumer or the environment, for example), the consultations with the business environment on negotiations (seen as the back door for ″big business″ to lobby the government), loss of labour right in Europe (the US workers seem to have less leverage against their employer than their EU counterparts), the risk for EU to adopt ″risky technologies″ (GMO or fracking) or privatisations of public services such as waste collection, water utilities or hospitals. Other concerns regard foodstuff standards and consumer protection for cosmetics and medical products which would presumably be ″threaten″ by the less demanding relevant legislation of the US.

It is also notable that a number of German NGOs opposed to TTIP are active in Romania. In 2014, the anti-TTIP alliance called "TTIPUnfairhandelbar" proposed starting a European citizens' initiative (ECI) on TTIP and CETA. Initially (spring 2014), a citizens` committee was put in place and a few months later (July 2014), they applied for registration within the European Commission. By the end of the summer, other 200 organisations from various parts of Europe joined this movement. The European Commission refused the registration of "Stop TTIP" ECI, in September 2014, motivating that "the proposed citizens' initiative falls manifestly outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties[41]". Jürgen Maier, the president of the Environment & Development Forum in Germany and coordinator of "Stop TTIP" coalition has travelled through Romania early 2015 visiting and speaking in Bucharest, Braşov, Cluj-Napoca and Constanţa against the TTIP, focusing on the lack of transparency in the negotiations and the harmonisation of standards, without using the highest level possible.

When the Friedrich Ebert Foundation organized in Bucharest, the debate on the "Transatlantic Trade and Investments Partnership: Facts and Fiction" in September 2015, having Pia Eberhardt from Corporate Europe Observatory as a special guest, members of the Terra Mileniul III Foundation were also present. Terra Mileniul III is the main anti-TTIP civil society voice, gathering since its founding in the fall of 2014 more than 20 Romanian NGOs, most of them environmental groups, speaking against the agreement. During the public events that were organized in Romania in 2015, the representatives of Terra Millennium 3 Foundation often stated that there is no real need for an ISDS clause in the trade agreement (given the fact that Romania already signed a bilateral trade agreement with the U.S.) and that the European Union should never agree to lower its standards.

As the debate over TTIP intensified in 2015, the anti-TTIP rhetoric also seemed to have gained more public support. The Romanian organizers of the European Citizen Initiative collected over 24 000 signatures that were added to the 3,284,289[42] signatures from the European Union. In total, 23 Member States met their country quorum turning "Stop TTIP" into a movement with millions of European supporters. For this fact, the European coalition decided to close the signatures on 6 October 2015 and to continue gathering signatures under a new name - *European Initiative*[43].

However, there is no government sponsored study on the impact of the TTIP. The GDP growth scenarios linked to TTIP implementation need to be clarified, so that the impact of eventual tariff

[40] More information about the "STOP TTIP″ initiative available at https://stop-ttip.org/press/.
[41] Refused request for registration, available at: http://ec.europa.eu/citizens-initiative/public/initiatives/non-registered/details/2041, seen on 30 October 2015.
[42] The number was valid for 6 October 2015.
[43] ECI is closed – Signature gathering continues, available at: https://stop-ttip.org/blog/eci-is-closed-signature-gathering-continues/, seen on 30 October 2015.

reductions and the elimination of non-tariff barriers be clearly anticipated, as well as the potential positive effects of additional foreign direct investments. Considering the importance of the agricultural sector in the country's economy a particular focus should be put on analyzing the positives and negatives of the TTIP signing for the sector. The agreement's potential impact regarding labor market and SMEs performance also needs to be taken into account[44]. The benefit of such a study not only relies in the measuring of the impact of the agreement, but it could also spur an informed public debate on the real trade and economic growth priorities for Romania, as well as on the main structural reforms that the country needs.

Lucian Cernat's TTIP study focusing on Romania[45] shows the complex picture of the trade and investment dependencies between Romania, the EU and the US. Only 10% of our exports go the American market, while the average for the EU is at 20%. Subsidiaries of US companies established in Romania contribute 3% to the national GDP, while the EU average is 13%. Moreover, about half of the transatlantic trade is actually ″intra-corporate″, between the subsidiary and its mother company on either side of the Atlantic. In other words, the conservative recipe for Romania to benefit most out of TTIP would lie in the country's capacity to attract US direct investments that would, in turn, drive up exports to the US market. Although the ISDS is not the only ingredient for attracting more investments, it is certainly a key component. Romania and the US already offer significant investment protection through a bilateral investment treaty concluded just before the country's EU accession[46]. However, the current treaty does not provide Bucharest with the additional regulatory guarantees and limitations for the state's right that the European Commission intends to put forward in the context of TTIP negotiations.

FOCUS BOX 3

The Economic Impact of Transatlantic Trade and Investment Partnership on Romania
– synthesis of the study done by Lucian Cernat and Csilla Lakatos –

Lucian Cernat (Chief Trade Economist of the European Commission) together with Csilla Lakatos (Economist at World Bank in Washington) published an impact analysis of TTIP on Romania's economy. The study was released under CRPE framework and brought to public attention in a special debate organised at the European Commission Representation office from Bucharest, in May 2015. The main finding of this study is related to the estimations based on a computable general

[44] Ministry of Economy, managing the dialogue between Romania and the EU in what regards TTIP negotiations has issued a series of informative events as well as published status reports on SMEs – available at http://www.dce.gov.ro/poli_com/ttip/negUE-SUA.htm.
[45] Cernat L., Lakatos C., Impactul economic al Parteneriatului Transatlantic pentru Comerț și Investiții (TTIP) asupra României. Available at http://www.crpe.ro/wp-content/uploads/2015/05/CRPE-Policy-Memo-63-Final.pdf
[46] Treaty on the mutual promotion and protection of investments (signed in Brussels on September 22, 2003, entered into force on February 9, 2007)

equilibrium model (CGE), that suggest a positive economic effect of the TTIP agreement on the Romanian economy (Romania's GDP may grow by approximately 0.25% per year, once the agreement is fully implemented). Regarding the structure of the study, the authors presented the following aspects: the trade relationship between Romania and US, an overview of the tariff and non-tariff barriers, economic modelling of the agreement: general framework, parameters and spill over effects; the economic impact of TTIP for Romania as well as a number of policy recommendations.

By speaking of the trade relationship between Romania and US, the authors argue that the total value of bilateral trade of goods and services was amounted to 3.2 billion dollars, in 2014, on which 2 billion represented Romanian exports and 1.2 billion dollars came from imports. In this matter, they highlight the fact that the Romanian exports towards the U.S. are focused on some key areas (machinery, transportation equipment and components, chemicals, metal and industrial products), which accounted for more than half of the total exports. Furthermore, they acknowledge that the main economic areas with strong imports from the U.S. are sectors such as machine tools and other industrial products, followed by financial services, chemicals and commodities.

Coming to the majority of imports, the authors show that the industrial products represent merely 75% of the total Romanian imports from the U.S. An important conclusion drawn by Cernat and Lakatos in this field relates to the idea that Romania is more dependent on the Single Market for exports than on third countries (such as the U.S., China, Japan etc.), which makes the potential benefit of new European trade initiatives to contribute to the Romanian economic dynamics to a lesser extent.

Taking into account the structure of tariff and non-tariff barriers, the authors mention that the tariffs applied by the EU member states are generally a bit higher than those that European products face on the U.S. market: on average, the European tariffs are around 3% compared to the 2% applied by the U.S. to European products. On this matter, the authors drafted a comparative analysis (using statistics from the Global Trade Analysis Project) in regards to the tariff barriers that exist in Romania, the rest of the EU and tariff barriers that U.S. holds for Romania and the rest of the EU. For example, it is shown that the barriers U.S. is using for processed food coming from Romania are amounted to 4.3, while for the rest of the EU is 2.5. The difference comes from the fact that the share of the products exported by Romania, for each aggregate trade sector, is different by the one exported by the rest of the European Union, meaning products that have a higher tariff.

Next, authors state that if this agreement will be fully implemented by 2027, TTIP could increase Romania's GDP by approx. 0.25% annually, meaning 400-500 million dollars each year in terms of GDP growth (depending on the exchange rate in the next 12 years). They also argue that the trade balance between Romania and the U.S. is expected to improve, due to the fact that bilateral exports could increase by as much as 35%, and imports 25%. The sector holding the most positive effects is expected to be the automobile one, despite having a slight decrease in production due to spill-over effects. Other sectors estimated to see an important increase of exports towards the U.S. concern metallic products and the agro-alimentary sector (with an estimated increase of over 50% of bilateral exports). Another sector that will strongly benefit from this agreement is the one of textiles, bilateral exports being estimated to develop up to 70%.

What is important to remember from this study is the fact that it offered the first tailored analysis for Romania regarding TTIP economic effects. The authors showed the grounds on which the GDP growth rate would start increasing and the specific sectors that can develop in the field of bilateral trade. Moreover, they emphasised that an important element is the fact that over 90% of the estimated economic benefits for Romania would derive from the efforts to reduce non-tariff barriers.

Another prominent feature of the Cernat's analysis is the fact the TTIP benefits for Romania are mostly generated by the elimination of non-tariff barriers and related cost[47]. A recent public consultation initiated by Sorin Moisă, MEP, showed[48] significant impact of NTBs on exports of textiles, pharmaceuticals or automotive. Current progress of the negotiations between the EU and the US with regard to labeling and flammability tests for textiles are reportedly good news for Romanian producers, who are now covering a significant proportion of the EU production. Not the same optimism was shared in the discussion when talking about cars, especially since the EU and the US negotiators will not use UNECE vehicle standards as a point of reference, when talking about technical equivalence. The parties are likely to seek standard to standard equivalence, a difficult and long-term endeavor.

There is a lot of talk about the potential of the Romanian ITC sector. However, its development is linked to further liberalization of key provisions in the trade in services provisions, especially mode 1 (cross-border supply of services, without the need to establish a legal presence – a Romanian company can supply services in US without the need to set up a branch, subsidiary, or get authorization in US) and mode 4 (sending qualified personnel to supply services on the territory of another country, without the burden related to work permits, visa issues), coupled with a serious discussion on recognition of professional qualifications[49]. Romania could continue to pressure EC for an ambitious outcome to this end, although the EU position in the negotiations is still hampered by the restrictions that the EU Members States impose yet between themselves.

Sorin Moisă's consultation event has shown a particular interest on the side of energy intensive sectors like the chemical industry or the aluminum sector with regard to greenhouse gases emissions. Romanian producers were worried that, unless a level playing field was ensured, the American producers, already benefiting from lower energy prices in the US, would become more competitive.

Last but not least, the agricultural sector deserves a particular attention since its contribution to Romania's GDP is larger than the EU average, while its structure is far from aligned to the Western Europe model. Land fragmentation and the apparent lack of interest for the concept of Geographical Indications are just a few of the more striking characteristics. No large scale irrigation systems are in place, although the Ministry of Agriculture and Rural Development[50] laid out plans to ensure EU support and funding to this end until 2020. Although far from optimal, the consolidation of agricultural

[47] Ibid, p. 14.
[48] Moisa S., "Results of TTIP National Consultation "TTIP: Romania's Voice" May- October, 2015, published for the attendees at the "The Transatlantic Trade & Investment Partnership. Romania's Voice", held on October 16, 2015, available at http://www.ttip-romania.ro/results-of-ttip-national-consultation-ttip-romanias-voice/.
[49] Ibid, pp. 2
[50] Agerpress, Nica M., "Constantin vrea consens politic pe infrastructura principala de irigatii daca nu obtine fonduri prin planul Junker", available at: http://www.agerpres.ro/economie/2015/08/02/constantin-vrea-consens-politic-pe-infrastructura-principala-de-irigatii-daca-nu-obtine-fonduri-prin-planul-juncker-10-25-25

production is steady, both for the vegetal as well as for the animal sector. As a consequence, exports of grains have significantly increased over the years, with significant quantities delivered on markets outside EU, including US market, especially in 2014[51].

As far as the animal farming is concerned, the EU funds helped building up production capacities, while money for animal welfare programs ensure a clear increase in the quality of meat production, for example. Romanian producers will continue to rightly advocate strict SPS[52] standards, especially when it comes to importing meat with growth hormones or allowing US farming practices that are banned in the EU, such as chlorination for the chicken meat. Some of producers also fear increased competition on the lower price market segments of frozen meat for example.

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[51] Agerpres, Nica M., Retrospectivă – exporturi record de produse agricole în 2014; probleme în zootehnie. Available at: http://www.agerpres.ro/economie/2014/12/19/retrospectiva-exporturi-record-de-produse-agricole-in-2014-probleme-in-zootehnie-12-28-24.

[52] Moisă S., "Results of TTIP National Consultation "TTIP: Romania's Voice" May- October, 2015, published for the attendees at the "The Transatlantic Trade & Investment Partnership. Romania's Voice", held on October 16, 2015, pp. 3 – 4, available at http://www.ttip-romania.ro/results-of-ttip-national-consultation-ttip-romanias-voice/.

Conclusions: the essence of questioning

The Transatlantic Trade and Investment Partnership, currently under negotiations between the EU and the US, offers a unique opportunity for establishing a new norm in global economic flows. The agreement would establish a better coordination between the two main trading blocks of the world, aiming at establishing the global standards for both trade and investment. Third parties would have to either align or establish competing alliances, forming new poles of influence.

Looking at the status quo of the negotiations, we have observed the differences of approach between the US and the EU, considering their specific "ambition levels" on each of the chapters. We have also emphasized the fact that while for some chapters the current discussions focus on the final text, on others the parties are still at the very beginning with initial offers having to be submitted. For a better understanding of where we are on the agenda, we have looked at each chapter and, where possible, highlighted the key elements considered by the main stakeholders. Further on, taking into account Romania's current economic conditions as well as the regional challenges, we have established several key concerns for all stakeholders, also considering the public debate and analysis available.

We have concluded that the administration (Government) should invest in the realization of an impact study that covers all key sectors of the economy, clearly stating what are the scenarios for the Romanian economy if (and when) TTIP enters into force. Such a study would complete the analysis that are currently available on Romania's specific sectoral interests, considering the bilateral trade and investment flow with the US. A key element to be considered when scenario drawing and planning is the macroeconomic stability factors for the Romanian economy. This is the common concern to be found in the public discourse, considering the fragile global economy stability and structural reforms still needed in Romania. Another concern comes from the fact that the EU is currently facing its own socio-economic and political problems and doesn't have yet a fully integrated market. The key sectors mentioned in the public debates, to be of particular interest when it comes to the implementation of the TTIP are, among others, agriculture, the energy intensive sectors, the IT&C sector, manufacturing (textiles) sector but also the automobile industry. Of all, agriculture has the largest growth potential and currently dominates the Romanian GDP – therefore, a deeper, unbiased look into what the TTIP means for both Romanian producers and consumers is needed not only for the negotiation phase but also for when the agreement will enter into force.

A particular attention needs to be given to the SMEs. They are supporting not only the EU's economy, but for Romania, they are the most sensible to change – especially when it comes to implementing new international agreements. Looking into how Romanian SMEs will be affected by the implementation of the TTIP is of paramount importance in order to understand the policies needed to protect and make the most of the transatlantic partnership. The exercise should also be seen as an opportunity to better understand the challenges for the sector, taking into account Romania's stated priority to develop the economic dimension of the partnership with the US as well as wanting to find alternative markets to the traditional European one.

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