

# Transatlantic General Counsel Summit

## Format

Tuesday, June 7, 2016

- **4:00 pm - 4:15 pm. Closing Address: TTIP** - More than trade: rules, regulatory cooperation and geopolitics: **José Manuel González-Páramo**, *EU Chair, Trans-Atlantic Business Dialogue*. [See Document 1. Speech JMGP](#)
- **4:15 pm - 5:00 pm. The 2016 Transatlantic General Counsel Exchange.** The guest speakers are encouraged to share current priorities and challenges, with an open exchange of questions. [See Documents 2 and 3.](#)

**Nota:** hemos consultado con la organización, y las preguntas sobre temas jurídicos se dirigirán a los representantes del sector legal, centrándose tus preguntas en temas geoestratégicos.

### Moderators:

- Jeremy Barton, General Counsel, KPMG
- Debra Valentine, Group Executive, Legal & Regulatory Affairs, Rio Tinto

### Guest speakers:

- **José Manuel González-Páramo**
- Haibin Xue, General Counsel, Greater China, Hexagon AB
- Belinda Doshi, Chief Privacy Officer, Pearson
- Adam Smith, Former Group General Counsel, Safran Group

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- ✓ Annex 1: “Brexit Brief: if it were done” (June 4<sup>th</sup> 2016, The Economist)
- ✓ Annex 2: “Brexit and the union: tug of war” (June 4<sup>th</sup> 2016, The Economist)

## 1. JMGP Speech (duración máxima de 15 minutos): “More than trade: rules, regulatory cooperation and geopolitics”

El Speech se estructura de la siguiente manera (se incluyen los mensajes trasladados por Tim Bennett):

### Introduction

1. TTIP key negotiation issue: Rules and regulatory cooperation (non-tariff barriers)
2. The importance of the TTIP for geopolitics
3. State of play of the negotiations

### Conclusion

It is an honour to be included with you today and to contribute to ensure that the transatlantic relationship be recognised as a truly strategic partnership.

### Introduction:

- **Since World War II, Europe and the United States** have worked hard to create the most cooperative and successful **multilateral partnership** that the world has ever seen. What we accomplished through the Marshall Plan, the founding of NATO and the European institutions favoured an unprecedented period of transatlantic prosperity and security. This successful pairing of market capitalism with political freedom has served as a global model for securing progress and prosperity. Crucially, these past accomplishments point to a partnership that we can use to address the challenges we face today.
- **EU and US** represent together the **largest** and wealthiest **marketplace** in the world, accounting for three-quarters of global financial markets and over half of world trade. It accounts for over 50% of world GDP in terms of value and 40% in terms of purchasing power.
- **TTIP is first** and foremost an economic negotiation seeking **agreement** in **three areas**. The first one addresses market access issues such as tariffs and rules of origin. The second one seeks to reduce, where feasible, non-tariff barriers and to find coherence, convergence or recognition of essential equivalence on regulatory issues. The third area seeks common agreement on a range of norms and standards regarding issues such as

investment, intellectual property rights, discriminatory industrial policies and state-owned enterprises.

- **Reducing unnecessary differences in regulation and foster cooperation** will make **EU-US trade easier** and at a lower cost. Why the **difference** of the **TTIP** with **previous Trade Arrangements**? **Pascal Lamy**, who served as the EU's trade commissioner before running the WTO from 2005 to 2013, distinguishes between the "old" and "**new**" **world of trade deals**. The old world, dominated by national producers, was about opening markets and cutting tariffs. Trade negotiators were battling producers who were seeking protection from international competition. The new one aims to reduce differences between sets of national or regional rules that hinder trade in a world of transnational production and long supply chains.

I've divided my presentation into three parts. First, I'll explain most of details of the non-tariff barriers or rules and regulatory cooperation aspects of the negotiation. Then, I'll share with you why TTIP is of vital importance from a geostrategic point of view. Next, and before concluding, we will revise the state of play of the negotiations

#### 1. TTIP key negotiation issue: rules and regulatory cooperation (non-tariff barriers)

- **Globalisation** means more and more export companies face similar challenges to comply with **different countries' rules and regulations**. To export to the US, EU firms must comply with US regulations. This can be costly, especially for smaller firms, considering many cases where EU and US rules are very different.
- Given the low average tariffs (under 3%) between EU and US, the **key** issue of the **TTIP** is to tackle **non-tariff barriers**. The non-tariff barriers come from diverging regulatory systems (standards definitions notably), but also other non-tariff measures, such as those related to certain aspects of security or consumer protection.
- What the agreement will aim to do is to **identify** where **unnecessary regulatory differences** and overlap exist, and to **reduce**, where it's possible, such differences by establishing mutually recognised rules, standards and testing procedures. Where this isn't possible, other solutions will be sought. For example, if separate EU and US tests must still be carried out, it may be possible for the same testing facility to carry out both tests.

It's good to highlight that the trade deal is **not about weakening existing laws or standards**. The negotiators have a great respect of differences in the cases of food safety, environment, health or labour rights.

*Guiño empático al público:* In this forum of legal experts, I would like to make a brief regarding about one of the key points of the negotiation, the system for resolving disputes between investors and states. The **European Commission** has proposed in the negotiation a **new and transparent system for resolving disputes between investors and states**, the Investment Court System (**ICS**), which would replace the existing investor-to-state dispute settlement (ISDS) mechanism in all ongoing and future EU investment negotiations (*ver más detalles en Document 3. Background Q&A*)

- More consistent and straightforward product and trade regulations will benefit all exporting businesses, but **small and medium-sized businesses** stand to **gain the most**. Currently, many smaller businesses do not have the time or budget to navigate the complex rules and regulations required to export to the US. Simplified regulations will make it easier for them to start exporting there. For those that are already exporting it will become easier and cheaper.
- **Developments in technology and innovation** mean new products are entering the market all the time. As well as looking at existing rules and regulations, a successful trade deal between the EU and the US will also influence the way tests and standards for these new products are developed. Processes will be set up to help regulators from the EU and US work together to **agree common standards**.
- Some of these standards are likely to extend prevailing WTO standards; others could go beyond existing multilateral norms. TTIP is essentially a process whereby negotiators seek a **'living agreement'** consisting of new consultative mechanisms regarding regulatory and non-tariff issues as they evolve in response to developments in trade, technology or other changes. Taken together, these elements underscore that **TTIP** is not just another trade agreement, it is a **new-generation negotiation** aimed at repositioning the US and European economies for a more diffuse world of intensified global competition.
- **Finally**, I would like to remark that the ongoing **digital revolution** is starting to **disrupt** the entire fabric of **world commerce**. Surely, this new commerce model will need new rules.

The usual combination of preferential agreements based on tariffs and quotas is inadequate for Internet-driven trade, where moving bytes are slowly supplanting moving physical goods.

- Services and “behind-the-border” regulations such as standards, intellectual property rights, and investment regimes are the main issues facing the **digital economy**. It is therefore unsurprising that the United States – the most advanced “digital player” – is the one pushing for new “deep integration” trade pacts covering these regulatory questions, especially the Transatlantic Trade and Investment Partnership (TTIP), the Transpacific Partnership (TPP), and the Trade in Services (TiSA) talks.
- And as a **conclusion of the digital issue**, I want to **remark** about this issue the importance of having a **Privacy Shield** which replaces the questioned Safe Harbour and it serves to drive trade flows that support data providing, increasing safety and operational efficiency in all economic economic sectors on both sides of the Atlantic. (*ver más detalles en Document 3. Background Q&A*)

**Let’s move on to the importance of the TTIP for geopolitics.**

## **2. The importance of the TTIP for geopolitics**

- **Firstly, TTIP is about more than just trade.** It is also about creating a more **strategic**, dynamic and holistic **EU-US relationship** that is better positioned with regard to third countries to open markets and to strengthen the ground rules of the international order. TTIP is politically important to the EU-US relationship itself. The bilateral relationship encompasses a diffuse array of issues, but many are mired in process without overarching purpose.
- Actually, the **transatlantic engine** is sputtering and **needs** some **fuel**. TTIP offers a framework for a concrete set of ambitious objectives to forge a more global partnership. It is the first real transatlantic initiative for the ‘post-post’ Cold War world and would be the first congressionally ratified agreement between the United States and the European Union. It could give the US-EU relationship new life, new focus, and new direction. In this sense TTIP could be both a symbolic and practical assertion of transatlantic renewal, vigour and commitment, not only for the US and the EU towards each other but also to

high rules-based standards and core principles of international order. **It is an initiative that could be assertive without being aggressive:** it challenges fashionable notions about a 'weakened West,' that are prevalent in the context of the 'rise of the rest'.

- **Secondly**, TTIP is rooted in a core truth: the **Europe and US remain the pivot** of the **world economy**, each other's most important and profitable market and source of onshore jobs, each other's most important strategic partner, and still a potent force in the multilateral system - when they work in concert. The **EU-US relationship** remains a **foundational** element of the global economy and the essential underpinning of a **strong rules-based international order**. Americans and Europeans literally cannot afford to neglect it. **However**, the center of **gravity** of the global economy is moving towards the East attracted by **Asia Pacific's** raising.
- **Additionally**, TTIP could also be an operational reflection of **basic values shared by democratic societies** across the Atlantic, even if differences on specific values exist (e.g. GMOs, ISDS). Surely, the values dimension should be extolled, not suppressed, for it is certain to have broader resonance.

**TABC Message (Tim Bennett):** The foundations upon which major trade agreements are built, especially the fundamental belief that increased **liberalization** in the **flow of goods**, services, and capital, furthers a country's national economic welfare more than could occur without such liberalization, are now **under attack in both Europe** and the **U.S.** Comments made by candidates for the Republican and Democratic nominations for President of the United States are prime examples of the attacks on trade agreements and are most worrisome. Many NGOs in Europe view TTIP as a threat to what they consider the European way of life, as if opposing this one trade agreement will stop the process and impacts of globalization. However, we believe free trade paves the way for prosperity and restrictions favor impoverishment and confrontation, as we have seen across the history.

- **Thirdly**, is important to highlight the **Impact of TTIP on others Powers**. TTIP is **important** in terms of how the transatlantic partners together might best relate to rising powers, especially the **emerging growth markets**. Whether those powers choose to challenge the current international order and its rules or promote themselves within it

depends largely on how the US and the EU engage, not only with them but also with each other.

- TTIP has **particular meaning** for U.S. and EU relations with **China** and Russia. TTIP is lazily portrayed as an effort to confront and isolate China. Yet it is less about containing China than about the terms and principles guiding China's integration and participation in the global economy. China's burgeoning trade with both the United States and Europe attests to U.S. and EU interest in engaging China, not isolating it. TTIP, TPP and related initiatives are important instruments to help frame Beijing's choices, by underscoring China's own interests in an open, stable international system as well as the types of norms and standards necessary for such a system to be sustained.
- TTIP is also important with regard to U.S. and EU relations with Russia and Eurasia. TTIP presents a huge challenge to the Kremlin's efforts to divide Europeans from Americans. It offers something that the Kremlin cannot match: a transparent, mutually beneficial agreement that creates a rules-based framework for international cooperation. The Kremlin is conducting "active measures" in Eastern Europe, and in the EU itself, to derail the TTIP. But the fact is not that the West is excluding Russia, but that Russia is excluding itself from this promising dynamic.
- **Finally**, the rise of the US as a global **energy power** has given the **TTIP negotiations** added **importance**. Energy-dependent European allies, particularly in Eastern Europe, as well as energy-dependent Pacific partners such as Japan are looking to the US as a new energy source. US law, however, currently limits natural gas exports to countries with which the United States has a free trade agreement. This gives some partners considerable motivation to move quickly to such an agreement with the US.

### 3. State of Play of the negotiations

- The **TTIP negotiations** kicked off in **July 2013**. Since then negotiators from both sides have gathered for **13 rounds** of discussions, covering all components of the future agreement. The last round took place in New York the week of 25 April The **next round** will take place the week of **11 July** in **Brussels**.

- **Discussions** during the **13th Round** of negotiations **covered all three pillars** of the negotiations, i.e. market access, the regulatory cluster and rules. As during the previous Round, discussions under the regulatory pillar took centre stage. In particular, negotiators made headway in discussing their respective texts on regulatory cooperation and good regulatory practices. As for regulatory cooperation in sectors, work of technical consolidation started and further proposals will be presented before the next Round planned for July. On rules, progress was made in text consolidation on several issues, particularly in the SME chapter and with regard to customs and trade facilitation. Thirdly, the EU and US discussed market access areas. Talks in the realm of industrial tariffs were positive, bringing negotiations well under way to exceed 90 per cent of tariff lines that would be eliminated by both sides upon entry into force of TTIP.
- **Finally, Parties** reiterated their **commitment** to accelerating the work between Rounds in order to end up with a very limited number of open issues that can ultimately be **resolved at political level during 2016** and before the end of the Obama Administration.

**TABC Message (Tim Bennett):** And I would be remiss to not emphasize that the **historic conclusion** should **include** an obligation for the two sides to consult during the development stage of future regulations on **financial services**. The most pressing impediments to cross border finance between U.S. and EU capital markets are the result of insufficient regulatory cooperation. Those are what TTIP can most usefully address: not a requirement to change any existing regulations, but a requirement to consult and consider the transatlantic impact while future regulations are still being developed.

## CONCLUSION

- We must **seize** this **moment** to enhance and reinvigorate the transatlantic partnership. But the success of the Trans-Pacific Partnership talks will not necessarily make the hefty task of getting Americans and Europeans to agree on a similar project any easier.
- This is the time for stay engaged to **push** for **political momentum** at the **highest level**, because if we lose the focus on the big picture, on why this is important geopolitically and we start going into the weeds about GMOs (Genetically Modified Organisms) or public procurement, or all the nasty, difficult issues where trade policy meets domestic sensitivities – if we're fighting on those battlegrounds, we lose.



**TABC Message (Tim Bennett):** when initiated in 2016, TTIP was viewed as an **historic opportunity**. It still is. If TTIP cannot be concluded this year when it has the enthusiastic support of the U.S. President and most heads of government in the EU Member States, I believe it will be exceedingly risky to leave it to the uncertain agenda of a new U.S. President and the changing political tides facing Europe. Leaders on **both sides** of the Atlantic **must elevate the pace**, set aside the acrimony being expressed in the press, recognize that each side must make difficult concessions at this point, and bring this important endeavor to a historic conclusion.

- The **TTIP is a once-in-a-generation opportunity** to strengthen the competitiveness of the transatlantic economy and then improving the lives, and economic opportunity of individuals on both sides of the Atlantic. The biggest challenge that we face is to keep the political momentum going. We have an **opportunity**. We have a **window of time in 2016, before the end of the Obama Administration, Get action.**

## 2. Biographies



**Jeremy Barton, General Counsel, KPMG in the UK**

- Jeremy Barton joined KPMG UK as General Counsel in 2015. He is a member of the Executive Committee and is responsible for the legal affairs of the firm. His team provides strategic and technical advice to the Board, the Executive Committee and the Partners on matters relating to governance, regulation, practice protection, deals and contracts.
- His previous positions have been as both regional and global general counsel in other large international accounting and consulting organisations.
- Bachelor in Arts (Law) at Cambridge University.



**Debra Valentine, Group executive, Legal & Regulatory Affairs General Counsel, Rio Tinto**

- Debra was appointed Group executive, Legal & Regulatory Affairs in 2009 having joined Rio Tinto as global head of Legal in 2008. She previously worked at United Technologies Corporation in the US where she was vice president, deputy general counsel and corporate secretary. Before then, she was a partner with the law firm O'Melveny & Myers, in Washington D.C. Debra served as general counsel at the US Federal Trade Commission from 1997 until 2001.
- She was appointed non-executive director of Lamprell plc in 2015 and has been a member of the board of the Extractive Industries Transparency Initiative since 2012, the North American Advisory Council at Chatham house since 2013, the UK-Japan 21st Century Group since 2014 and the 'Your Life' Corporate Advisory Council Board since 2014.
- Bachelor in Arts (History)



**Haibin Xue, General Counsel, Greater China, Hexagon AB**

- He is also Partner of the Zhong Lun Law Firm. Previous work experiences: 2006-2011 (Zhonglun W&D Law Firm, Founding Partner of London Office); 2003 -2006 (Anglo Chinese Lawyers LLP, Founding Partner); 1998 - 2003 (CIAC, Head of Legal Department) ; 1996 -1998 (A London based Canadian Law Firm, Senior Counsel); and 1990 - 1995 (The Supreme Prosecution Service of the P.R. China, Prosecutor )
- Mr. Xue has published dozens of articles and a number of books/guidance both in the UK and in China,
- Master Degree in Studies in Intellectual Property Law Management at the University of London.

**Hexagon AB:** Swedish company that is a leading global provider of information technologies. Hexagon's sales amounted to a record 3.0 bn € in 2015.



**Belinda Doshi, Chief Privacy Officer and Associate General Counsel, the Pearson Group**

- Associate General Counsel of Pearson since January 2015. Previously he worked in: Nabarro LLP; Fieldfisher; Brobeck Hale; and Lawrence Graham.
- She is an expert on the data protection compliance aspects of IT outsourcing transactions and is the author of the 'Managing Risk' chapter of the 2011 UK Law Society book, "Outsourcing: Law and Practice".



**Adam Smith, General Counsel, Safran**

- Named General Counsel of Safran in 2014. Previously he has been: Group General Counsel and Chief Compliance Officer of DCNS; General Counsel of Cassidian, recently renamed Airbus Defence and Space (Munich); and Head of M&A Legal Affairs at EADS (Paris).
- Adam Smith started his career in 1988 as a solicitor at Lovells (London), then became an investment banker at Dresdner Kleinwort Benson (London).
- He holds a degree in law from University College London and an MBA from London Business School (1996).

**Safran:** Safran is an international high-technology group and supplier of systems and equipment in its core markets of Aerospace, Defense and Security. Operating worldwide, Safran has over 70,000 employees and logged sales of 17.4 billion euros in 2015.

### 3. Background for Q&A

1. Impact of Brexit on Trade
2. EU-US Privacy Shield (replace US-EU Safe Harbor)
3. TTIP:
  - 3.1. Investor's rights (EU Proposal: Investment Court System)
  - 3.2. SMES (How can TTIP help SMES?)

#### 1. Impact of Brexit on trade

- **As an EU member**, the UK and companies based here can sell their goods freely to customers anywhere else in the EU without those customers having to pay additional taxes to import those goods. British consumers and companies can also import from elsewhere in the EU without tariffs. The EU also has agreements allowing free trade with countries such as Norway, Switzerland, South Africa and South Korea.
- **Outside the EU**, the **UK** would need to strike **new deals** in order to have free trade.

#### If Brexit wins

- Exit would almost certainly mean invoking **Article 50 of the Lisbon Treaty**, which provides for members leaving the EU. It gives the departing country **two years to agree terms** with the EU, the membership lapses. The timing here is crucial to the trade question. **Note:** see annex 1 "Brexit: if it were done" for additional information.
- The Vote Leave campaign says the Government would have "informal talks" with EU leaders before invoking Article 50, to help bring about a new free trade relationship with the EU quickly and smoothly before exit. The Government says Article 50 would be invoked straightaway. In a document published earlier this year, the **Cabinet Office** suggests that a **new agreement with the EU** is very **unlikely** to be done **in two years** and Britain could face a decade of economic uncertainty because of the absence of trade deals.

- After decades of EU membership **UK business regulations** are already **heavily harmonised with Europe**, meaning that the UK could probably strike a very quick deal if – and it’s a big ‘if’ – it was prepared to go on applying those rules in exchange for access to the EU single market, much as Norway does today.
- In practice, the UK would be more likely seek to negotiate a novel form of Free Trade Agreement, but as Pawel Swidlicki of Open Europe notes, the trade-off is between “speed and scope”. If the UK wants a broad deal, particularly one covering services, including financial services, it could take some time. Past precedent for other deals suggests negotiations might take anywhere from four to 10 years. How long precisely might depend more on politics than economics.

#### **In the absence of a deal between the UK and the EU**

- Then the **UK** would then be required to **follow World Trade Organisation rules** on tariffs. The UK would pay tariffs on goods and services it exported into the EU, but since the UK would pay ‘most favoured nation’ rates, that would prohibit either side imposing punitive duties and sparking a trade war.
- These WTO tariffs range from 32 per cent on wine, to 4.1 per cent on liquefied natural gas, with items like cars (9.8 per cent) and wheat products (12.8 per cent) somewhere in between. John Springford, an economist with the Centre for European Reform, the total cost of those tariffs would be large, ranging from a 2.2 per cent of GDP (£40 billion) to 9 per cent.
- **Business for Britain**, which campaigns **for exit**, **estimates** that at worst, tariffs would cost British exporters just £7.4 billion a year and says the UK would save enough on EU membership fees to be able to compensate exporters for that.
- Damian Chalmers, professor of European Union law at the London School of Economics, says the bigger threat to the UK exports would not be from WTO tariffs, but other EU states imposing new regulations and other “non-tariff barriers” to keep UK services out.

## UK trade deals with other big economies

- This is eminently possible, but is likely **to take time**. Having ceded responsibility for trade policy to the EU, the UK civil service may lack the capacity to strike major trade deals quickly. It is also possible, as David Cameron argues, that **other countries** will want **to see** what **terms** the UK receives in Europe before committing to their own deal, potentially leading to further delays.
- A larger question will be about the UK's bargaining power with countries whose domestic politics push them towards protectionism, not free trade. Professor Chalmers warns that striking **trade deals** with **major economies** such as the **US, China and India** would be "tough" for Britain.
- **Brexit campaigners** note that the EU has so far failed to secure such free trade deals, and suggest the **UK** would have a **better chance negotiating** in its own right with politicians in Washington, Beijing and New Delhi.

## 2. EU-US Privacy Shield (replace US-EU Safe Harbor)

- On **2 February 2015** The European Commission and the United States agreed on a new framework for transatlantic data flows: the EU-US Privacy Shield (replace US-EU Safe Harbor)
- The **new arrangement will provide** stronger obligations on companies in the U.S. to protect the personal data of Europeans and stronger monitoring and enforcement by the U.S. Department of Commerce and Federal Trade Commission (FTC), including through increased cooperation with European Data Protection Authorities. The new arrangement includes commitments by the U.S. that possibilities under U.S. law for public authorities to access personal data transferred under the new arrangement will be subject to clear conditions, limitations and oversight, preventing generalised access. Europeans will have the possibility to raise any enquiry or complaint in this context with a dedicated new Ombudsperson.

## 3. TTIP

### 3.1 Investor's rights

- **The European Commission has approved its proposal for a new and transparent system for resolving disputes between investors and states - the Investment Court System.**
- The Investment Court System **would replace** the existing investor-to-state dispute settlement (ISDS) mechanism **in all ongoing and future EU investment negotiations**, including the EU-US talks on a Transatlantic Trade and Investment Partnership (TTIP).
- The proposal for an Investment Court System builds on the substantial input received from the European Parliament, Member States, national parliaments and stakeholders through the public consultation held on ISDS. It is intended to ensure that all actors can have full trust in the system. Built around the same key elements as domestic and international courts, it enshrines governments' right to regulate and ensures transparency and accountability.
- *"The ICS is a new, modernised system of investment courts, subject to democratic principles and public scrutiny," said Trade Commissioner Cecilia **Malmström**. "What has clearly come out of the debate is that the old, traditional form of dispute resolution suffers from a fundamental lack of trust. However, EU investors are the most frequent users of the existing model, which individual EU countries have developed over time. This means that Europe must take the responsibility to reform and modernise it. We must take the global lead on the path to reform." She added: "We want to establish a new system built around the elements that make citizens trust domestic or international courts. I'm making this proposal public at the same time that I send it to the European Parliament and the Member States. It's very important to have an open and transparent exchange of views on this widely debated issue."*
- **Main elements of reform.** The proposal for the new court system includes major improvements such as:



- A public Investment Court System composed of a **first instance Tribunal and an Appeal Tribunal** would be set up;
- Judgements would be made by publicly appointed **judges with high qualifications**, comparable to those required for the members of permanent international courts such as the International Court of Justice and the WTO Appellate Body;
- The **new Appeal Tribunal** would be operating on similar principles to the WTO Appellate Body;
- The ability of investors to take a case before the Tribunal would be **precisely defined** and limited to cases such as targeted discrimination on the base of gender, race or religion, or nationality, expropriation without compensation, or denial of justice;
- **Governments' right to regulate** would be enshrined and guaranteed in the provisions of the trade and investment agreements.
- This builds on the EU's existing approach which ensures:
  - Proceedings will be transparent, hearings open and comments available on-line, and a right to intervene for parties with an interest in the dispute will be provided;
  - Forum-shopping is not possible;
  - Frivolous claims will be dismissed quickly;
  - A clear distinction between international law and domestic law will be maintained;
  - Multiple and parallel proceedings will be avoided.
- In relation with the ICS, the **European Commission and the Canadian Government** have agreed to include a **new approach** on investment protection and investment dispute settlement in the **EU-Canada** Comprehensive Economic and Trade Agreement (**CETA**). This agreement is a clear break from the current ISDS system and shows the commitment to work to establish a multilateral investment tribunal. The revised CETA text includes a new article which ensures that the right to regulate for public policies is fully preserved.

## 3.2 SMES

### How can TTIP help SMES?

- Smaller firms and start-ups power Europe's economy and create most of its new jobs.
- The Transatlantic Trade and Investment Partnership (TTIP) has **significant potential** for **small and medium sized enterprises**, according to a report released in Brussels today. It presents the results of a survey of small and medium-sized enterprises (SMEs) carried out in 2014 on challenges they face when exporting to the United States. It also uses newly available data to look at the scale of exports by EU SMEs to the United States.
- **Cecilia Malmström**, European Commissioner for Trade said: "Small and medium-sized enterprises are the backbone of the European economy. These companies will channel the benefits of TTIP back to their local communities. That's why the EU and the US are working to deliver an ambitious agreement that meets their concerns. This report helps us do that, by pointing out the concrete obstacles and the problems that we have to solve. This is one of the issues to be discussed when our negotiators are meeting this week."
- **Elżbieta Bieńkowska, Commissioner** for Internal Market, Industry, Entrepreneurship and SMEs added: "SMEs stand to benefit most when we reduce non-tariff barriers and cut red tape. We are working on that in the EU Single Market and here we can see why it is so important to do the same thing in the TTIP negotiations."
- **SMEs** are already **big winners** from **transatlantic trade**. 150,000 SMEs exported to the United States in 2012, accounting for 28% of all EU exports there. SMEs in sectors linked to food, beverages & agriculture; clothing, textiles & leather; as well as chemicals had an above-average share of EU exports
- **However**, EU SMEs have **challenges** in **exporting** to the **US market**, many of which can be eased by a TTIP agreement that is ambitious and comprehensive and maintains our high standards of regulatory protection. The issues raised include:

- Complying with technical rules and regulations for all goods, which is the most frequently cited issue;
  - Accessing information about what regulation applies to their product. Close to a third of the respondents were unable to identify the actual source (i.e. the US federal government or US states) of the regulatory issue they face.;
  - Being legally excluded from the market, as in many parts of public procurement;
  - Compliance with customs rules, which can become very costly and act as de facto trade barriers;
  - Differences in regulation between US states
- 
- TTIP will be “the **first EU trade agreement which includes a specific SME** (small- and medium-sized enterprises) chapter,” and there has been “significant progress” made with “few remaining outstanding issues.”