



Crafting a Transatlantic Trade and Investment Partnership: What Can Be Done

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INTRODUCTION

On February 13, 2013, President Barack Obama and leaders of the European Union committed themselves to launching negotiations on a Transatlantic Trade and Investment Partnership (TTIP). The negotiations are scheduled to start in the second half of 2013 following domestic consultations and will be based on intensive preliminary work undertaken during 2012 by trade envoys in what was known as the US-EU High Level Working Group (HLWG) on Jobs and Growth. The negotiators aim to deepen what is already the world's largest commercial relationship, "promoting greater growth and supporting more jobs," and to look beyond this particular accord "to contribute to the development of global rules that can strengthen the multilateral trading system."¹

1. Office of the United States Trade Representative, "US, EU Announce Decision to Launch Negotiations on a Transatlantic Trade and Investment Partnership," February 13, 2013, www.ustr.gov (accessed on February 13, 2013).

US-EU trade in goods and services totals about \$1 trillion annually (table 1). Each side is heavily invested in the other's market with nearly \$3.7 trillion in two-way foreign direct investment (FDI) at year-end 2011 (table 2).² Trade growth has been sluggish in recent years, however, because of the effects of the financial crisis of 2008–09 and competing subsidy and regulatory policies that impede commercial activity.³ A trade accord is not a magic potion for prosperity, but it can contribute to economic recovery by removing even relatively low barriers across a large volume of bilateral trade. Contrary to concerns that another broad-based bilateral accord would further dampen prospects for an international trade agreement, this Policy Brief argues that a TTIP could generate new US-EU initiatives to break the deadlock over the Doha Round negotiations in the World Trade Organization (WTO) and also spur new global trade reforms. A successful effort to resolve disagreements across the Atlantic could become a template for the stalled global trade talks in several difficult areas, from agriculture to cross-border rules on services, investment, and regulations.

To be sure, disagreements over these issues have confounded transatlantic officials for almost two decades. One of the reasons for past failures has been that negotiators tried to break down barriers in a piecemeal fashion. Attempts to achieve limited "mutual recognition" deals on specific products or sectors foundered because of strong resistance from independent regulatory agencies pressing their own agendas in response to political pressures. Trying to reach a more comprehensive deal offers the opportunity to garner sufficient political support to offset those political obstacles. Indeed, Max Baucus, chairman of the Senate Finance Committee, emphasized this point in a recent *Financial Times* op-ed, noting that "any bilateral trade and

2. As shown in table 2, the stock of US FDI in the EU-27 exceeds \$2 trillion or about 50 percent of US global FDI abroad, with about 70 percent in the financial sector. EU FDI in the United States is valued at \$1.6 trillion and accounts for 62 percent of total FDI in the US economy. FDI in the manufacturing sector comprises more than one-third of EU FDI in the United States, which is twice as large in value as US investment in EU manufacturing.

3. Since 2006, US-EU trade has been growing at an average annual rate of only 3.8 percent (see table 1).

Table 1 US-EU bilateral trade in goods and services, 2006–12 (billions of dollars)

Year	US exports to the European Union				US imports from the European Union				Two-way goods and services trade ^a	Goods and services trade balance
	Goods	Services	Total exports		Goods	Services	Total imports			
			Billions of US dollars	Percent of US global exports			Billions of US dollars	Percent of US global imports		
2006	216	146	362	24.8	333	128	461	20.8	822.8	-99.8
2007	249	176	425	25.7	359	142	501	21.3	926.0	-75.9
2008	277	194	471	25.6	372	153	526	20.7	996.9	-54.2
2009	225	175	400	25.3	284	137	420	21.5	820.2	-20.4
2010	243	175	418	22.7	322	139	461	19.7	878.8	-43.2
2011	273	190	463	22.0	373	150	523	19.6	986.2	-59.8
2012 ^b	270	194	463	21.1	384	150	534	19.5	997.5	-70.6

a. Two-way trade calculated as the sum of exports and imports of goods and services.

b. 2012 aggregate trade figures include preliminary data for quarter IV.

Note: Trade figures are revised as of March 2013 and not seasonally adjusted.

Source: US Bureau of Economic Analysis.

Table 2 Foreign direct investment (FDI) stock by industry, 2011 (billions of dollars and percent)

Industry	Stock of US FDI in EU-27		Stock of EU-27 FDI in the United States	
	Billions of dollars	Percent of global US FDI, by sector	Billions of dollars	Percent of FDI in the United States, by sector
Mining	15	7.8	n.a.	n.a.
Manufacturing	245	41.6	563	67.2
Food	24	45.6	19	45.4
Chemicals	68	51.5	147	72.7
Primary and fabricated metals	9	45.2	28	64.0
Machinery	20	41.4	67	89.7
Computers and electronic products	27	31.1	31	47.9
Electrical equipment, appliances, and components	12	55.8	13	55.7
Transportation equipment	23	38.5	47	50.7
Other manufacturing	61	36.9	211	71.7
Wholesale trade	69	35.4	148	47.7
Retail trade	n.a.	n.a.	33	64.4
Information	66	51.9	123	83.4
Depository institutions	56	51.6	81	53.0
Finance (except depository) and insurance	375	48.2	253	67.2
Real estate and rental leasing	n.a.	n.a.	22	46.2
Professional, scientific, and technical services	52	57.9	55	62.2
Holding companies (nonbank)	1,085	60.0	n.a.	n.a.
Other industries	133	48.4	296	55.2
All industries total	2,094	50.4	1,573	61.8

n.a. = not applicable

Notes: US direct investment position reported on a historical-cost basis. 2011 preliminary figures revised as of August 2012.

Source: US Bureau of Economic Analysis.

investment agreement must be comprehensive and address the full range of barriers to US goods and services if it is to receive broad, bipartisan congressional support.”⁴

One way to avoid past mistakes and indeed to overcome the understandable skepticism of many would be for the two sides to learn from the success of several recent comprehensive bilateral free trade agreements (FTAs)—most notably the accords that the European Union and the United States each have with South Korea. These two agreements successfully liberalized trade and investment in goods and services in a manner that shows a path to success for the TTIP, which as we discuss below, is essentially what the HLWG has recommended. If the United States and the European Union follow this path, they could achieve a transatlantic accord in the next few years that both contributes to stronger economic growth and establishes a 21st century rulebook for trade that can provide a benchmark for new regional and multilateral trade agreements.

THE HLWG REPORT: HIGHLIGHTS AND LOWLIGHTS

At the US-EU Summit in November 2011, the leaders commissioned a HLWG to develop a strategy for new transatlantic trade negotiations. The prospects for negotiations gained momentum when the HLWG issued its interim report in June 2012, outlining seven broad areas that should be covered by the prospective pact: reducing or eliminating tariffs with provisions for sensitive sectors; regulatory issues and nontariff barriers (e.g., sanitary and phytosanitary [SPS] issues); services; investment; government procurement; intellectual property rights; and rule-making for the 21st century, e.g., trade facilitation, competition policy, and labor and environment issues (HLWG 2012).

To pave the way toward a transatlantic deal, EU and US officials pursued several “confidence building” measures involving specific SPS regulations, which sought to demonstrate that each side will invest sufficient political capital in the talks to get to the finish line. Some interpreted these efforts as “de facto preconditions” for entering into trade negotiations. EU officials addressed two of the three US priority items—approving lactic acid as a pathogen reduction treatment for processing beef and amending regulations for determining the disease status of US hogs exported for breeding.⁵ The third

issue, involving conditions for the use of tallow or animal fat in the production of EU biofuels, is still under discussion. On the European side, the main demands involved regulations designed to (1) open the US market for European beef cleared of “mad cow” disease, (2) facilitate the import of apples and pears, which are currently prohibited due to the lack of official

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pest-free status, and (3) apply “regionalization” to animal and plant disease determinations, which would allow the continuation of overall EU agricultural exports to the United States in the event exports from a certain region were restricted due to disease outbreak. Reportedly, US officials intend to address these issues in the coming months while preparing for the formal launch of negotiations.⁶

On February 11, 2013, the HLWG issued its final report, confirming and expanding upon its interim recommendations. The report outlines general recommendations for the structure and content of a prospective TTIP. Though the report lacks detail in some areas, it offers an initial framework for the prospective agreement. By endorsing the ambitious agenda for the TTIP detailed in the HLWG’s final report, transatlantic leaders implicitly committed to bridging basic differences in key programs and regulatory philosophies. Absent such commitments, new trade talks would be difficult and unproductive. The following summarizes notable aspects of the report.

First, the HLWG recommends “a comprehensive agreement that addresses a broad range of bilateral trade and investment issues, including regulatory issues.”

Second, the report calls for ambitious market access reform “that goes beyond what the United States and the European Union have achieved in previous trade agreements.” In particular, the HLWG calls for

- eliminating most tariffs immediately and “phasing out all but the most sensitive tariffs in a short time frame,” which

4. Senator Max Baucus also posited that a limited deal that “sets aside tough issues in order to conclude a quick deal on the easier ones” is a “recipe for failure.” See “Transatlantic trade deal is a US priority,” *Financial Times*, March 4, 2013, www.ft.com (accessed on March 4, 2013).

5. “De Gucht Says US-EU Trade Deal May Require ‘Hard Look’ At Rules,” *Inside US Trade*, November 16, 2012, www.insidetrade.com (accessed on January 30, 2013).

6. The United States has indicated it will address these issues in the “course of 2013,” but some sources say they are unlikely to be addressed until late fall. See “Senior Administration Officials Signal Hesitancy on US-EU Trade Deal,” *Inside US Trade*, February 1, 2013, www.insidetrade.com (accessed on February 7, 2013).

means that some products could be accorded longer phaseouts or partial liberalization or even exemptions from tariff reforms;

- services commitments that “bind the highest level of liberalization that each has achieved in trade agreements to date,” which is like a most favored nation (MFN) commitment, and go further by “seeking to achieve new market access”;
- investment reforms and protection that incorporates the most comprehensive obligations and standards of existing US and EU accords;
- expanding coverage of government procurement commitments “at all levels of government on the basis of national treatment.” In general, this reflects the EU interest in exemptions from “Buy American” restrictions and legal commitments with regard to procurement by US states; and
- developing WTO-plus rules on SPS and technical barriers to trade. This means, *inter alia*, seeking to bridge the gap between the application of sound science and precautionary principles, as well as new efforts to either harmonize or agree to mutual recognition of each other’s test and certification requirements.

Third, the HLWG calls for other rulemaking initiatives in trade-related areas like customs and trade facilitation, competition policy, and raw materials and energy—basically an expanded rulemaking agenda comparable in many respects to that under negotiation in the Trans-Pacific Partnership (TPP). These recommendations cover, *inter alia*,

- a. several specific areas where US and EU policies diverge or conflict, e.g., intellectual property rights (IPRs). Though the report does not make specific reference to the most sensitive problems, officials will have to address differences related to geographical indications (GIs) and data privacy issues among others (as we discuss in the next section) and
- b. “new forms of anticompetitive behavior and policy,” e.g., state-owned enterprises (SOEs) and local content requirements.

Fourth, the report recommends the development of new trade disciplines and rules that “would not only be relevant to bilateral commerce, but would also contribute to the progressive strengthening of the multilateral trading system.” Responding to criticism that past bilateral efforts threatened to undercut the multilateral trading system, US and EU offi-

cialists intend to craft TTIP provisions on services, investment, and new trade issues in a manner that also sets important precedents for new multilateral initiatives and encourages WTO countries to revive and complete long-stalled trade negotiations.

Fifth, while the HLWG encourages comprehensive coverage of important trade and investment issues, there are also notable limitations in its recommendations. In particular, there is a lack of clarity as to whether the environmental agenda will include specific reference to trade-related climate change policies, including the European Union’s aircraft emissions charges, and a lack of ambition to redress agricultural subsidies and the Boeing-Airbus subsidy disputes—two areas where a US-EU compromise would be of significant value to the multilateral trading system.

Tackling these issues would truly demonstrate their common commitment to working together to resolve important distortions to bilateral trade and investment. Resolving differences over aircraft emissions policy would establish an important milestone for future cooperation on broader climate change initiatives, another key priority that President Obama cited in his State of the Union address on February 12, 2013, which was clearly noted and well received by European leaders. So, too, would ending the “30 years war” over aircraft production subsidies. Each side has pursued and won WTO litigation condemning subsidies provided to Boeing and Airbus, but nothing meaningful has been resolved—the WTO legal system has produced a political stalemate. Settling these cases “out of court”—with agreed constraints on subsidies by both parties—would show that leaders were committed to transatlantic comity and were serious in their intent to break down longstanding barriers distorting trade and investment.⁷

WHAT THE TRANSATLANTIC PARTNERS SHOULD DO

Essentially, US and European leaders are seeking a transatlantic counterpart to the TPP. To facilitate the construction of such a pact, the two sides agreed to draw on the most comprehensive free trade template currently in force as the foundation for an initial transatlantic trade deal. For the United States, the most elaborate FTA is the Korea–United States or KORUS FTA.

7. Such an initiative is fully consistent with the intent and operation of the WTO’s dispute settlement process, contrary to comments by EU officials who argued that aircraft subsidies were off limits in the new trade talks due to the ongoing WTO adjudication process. See “De Gucht Says Airbus-Boeing Fight Is Outside Potential US-EU Trade Deal,” *Inside US Trade*, February 21, 2013, www.insidetrade.com (accessed on February 22, 2013).

For the European Union, the most comprehensive pact is the Korea-EU or KOREU FTA.

Consolidating the KORUS and KOREU pacts could yield a framework agreement within months because a good portion of the substantive provisions could be taken “off the shelf.” While there are a few notable differences, the provisions of the two pacts are very similar (see table 3); indeed, negotiations on the KOREU pact started from the KORUS baseline. Most of the differences between the two pacts can be bridged, though doing so may require the development of a hybrid approach.

In table 3, we outline how the two sides could draw on their respective FTAs with Korea to craft TTIP provisions in the key areas highlighted in the HLWG report: market access, regulatory issues and nontariff barriers, and rules addressing shared global trade challenges and opportunities. Table 3 summarizes (1) the key recommendations of the HLWG’s final report; (2) where the greatest overlap and differences lie between the US and EU pacts with Korea; and (3) our recommendations for crafting a viable transatlantic partnership. Our recommendations, put forward in the following section, focus on both issues outlined in the HLWG report and additional areas that we believe should be covered in the TTIP.

The first step should be to broadly align the FTA template; US and EU negotiators should craft a common trade rulebook by harmonizing their respective pacts with Korea—in other words, giving each other what each gave to Korea. The second step should aim to deepen the market access commitments covering both traditional border and behind-the-border barriers to trade in agriculture, goods, and services. In addition, the TTIP should supplement the consolidated FTA provisions with further negotiations in new areas akin to those under development in the TPP (e.g., disciplines on SOEs). Some liberalization could be implemented quickly (e.g., most tariff cuts); other reforms could be designated for expedited attention in ongoing talks once the pact enters into force.

Of course, crafting a TTIP out of the whole cloth of the KORUS and KOREU FTAs will require effort and some alteration; it will not be a seamless process nor will it facilitate the resolution of every longstanding problem in the bilateral relationship.⁸ But the basic design is sound and applicable to the heftier US-EU economic relationship.

To craft a deal as comprehensive as that outlined by the HLWG and that provides impetus to economic growth over the near-to-medium term, both sides will have to undertake specific market access commitments starting with eliminating tariffs. As noted in the HLWG report, most tariffs should be

eliminated quickly, while levies on the most import-sensitive products could be phased out over a 5-to-10 year period. Rules of origin should be less controversial than in the Korea pacts and preferably should follow the least restrictive requirements of the KORUS and KOREU FTAs.

Though most levies are relatively small, the removal of tariff peaks and low tariffs imposed on high volumes of trade should yield substantial dividends: An ECIPE study (Erixon and Bauer 2010) estimates that eliminating tariffs would boost EU exports by \$28 billion or 7 percent, and US exports by \$23 billion or 8 percent within a few years.⁹ These gains would be even higher with the concurrent reduction of nontariff barriers: ECORYS (2010) estimates that a scenario of ambitious liberalization involving a 50 percent reduction in the restrictiveness of “actionable” nontariff measures (NTMs) would boost annual EU exports by 2 percent and annual US exports by 6 percent by 2018.¹⁰ A substantial share of these gains derives from services reforms, underscoring the importance of progress in this area of the talks.

In agriculture, cutting tariffs needs to be coupled with streamlining NTMs to facilitate comprehensive agricultural market access.¹¹ Unlike past FTAs, the TTIP could break new ground by covering farm subsidies. Building on the tentative accord reached in the Doha Round, the two sides could agree to eliminate farm export subsidies, which have largely been phased out in recent years but could be revived if commodity prices soften. New disciplines and limits on domestic agricultural subsidies also need to be considered, since commodity programs for key products often involve a

9. The ECIPE study uses general equilibrium analysis to simulate the GDP and trade gains from tariff elimination over the period 2010 to 2015. The results reported here are the “static gains” or short-term effects from tariff elimination. The study also reports “dynamic gains” or long-term effects of tariff elimination, based on broad assumptions that take into account additional gains from trade facilitation and productivity improvements. For more detail on results and methodology, see Erixon and Bauer (2010, 9–11).

10. The ECORYS study uses gravity regressions and computable general equilibrium modeling to calculate the effect of various scenarios of NTM reductions on US and EU trade and investment flows over the period 2008 to 2018. The study defines NTMs as “all non-price and non-quantity restrictions on trade in goods, services and investment, at federal and state level. This includes border measures (customs procedures, etc.) as well as behind-the-border measures flowing from domestic laws, regulations and practices” (ECORYS 2010, 8). “Actionable NTMs” are “those that can realistically be addressed if the political will exists.”

11. In past FTA negotiations, the European Union has generally been selective in its inclusion of agricultural products, e.g., beef, dairy, and some fruits and vegetables, and KOREU’s comprehensive coverage with few exclusions has been noted as more of an exception. For this reason, Grueff (2013) suggests that the prospective outcomes in agriculture in ongoing EU-Canada FTA negotiations may be more illustrative for the US-EU relationship, i.e., challenges facing the European Union in regards to potential US demands on beef and EU concerns about better access for dairy products in the United States.

8. For a detailed overview of some of the key issues in the US-EU bilateral relationship, see Ahern et al. (2008).

Table 3 Provisions in a Transatlantic Trade and Investment Partnership (TTIP)

Key area	Recommendations of US-EU High Level Working Group (HLWG) on Jobs and Growth ^a	Provisions in Korea-US FTA	Provisions in Korea-EU FTA	PIIE recommendations for TTIP
		Market Access		
Tariffs	<ul style="list-style-type: none"> * Substantial elimination of tariffs upon entry into force, and a phasing out all but the most sensitive tariffs in a short time frame. * Possible other options for the most sensitive products. 	<ul style="list-style-type: none"> * US eliminated tariffs on 91 percent of industrial products within 3 years, with an additional 4 percent in 5 years and all remaining tariffs within 10 years. 	<ul style="list-style-type: none"> * EU eliminated tariffs on 99 percent of industrial products within 3 years and all remaining tariffs within 5 years. 	<ul style="list-style-type: none"> * Eliminate tariffs with quick phaseout for import-sensitive products over a 5-to-10-year period with limited exceptions. * Rules of origin could follow the least restrictive requirements of the KORUS and KOREU FTAs.
Agriculture tariffs and subsidies	<ul style="list-style-type: none"> * Elimination or reduction of tariffs and “behind the border” nontariff barriers. * No specific mention of subsidies. 	<ul style="list-style-type: none"> * US to eliminate tariffs on 59 percent of its agricultural products within 2 to 3 years, an additional 27 percent within 6 to 7 years, and all remaining tariffs within 10+ years. * Beef tariff phased out over 15 years. * Tariff rate quotas (TRQs) for specified dairy products. * Rice excluded. 	<ul style="list-style-type: none"> * EU to eliminate tariffs on 92 percent of agricultural products within 2 to 3 years and all remaining tariffs within 5 years. * TRQs for specified dairy products. * Rice excluded. 	<ul style="list-style-type: none"> * Cut tariffs and streamline nontariff measures. * Eliminate farm export subsidies and set ceiling on domestic agricultural subsidies linked to progress in World Trade Organization (WTO) negotiations.
Services	<ul style="list-style-type: none"> * Highest level of liberalization in FTAs to date. * New market access that addresses long-standing market access barriers. * Commitment to transparency, impartiality and due process in licensing and qualification requirements and procedures. * Enhance the regulatory disciplines in existing FTAs. 	<ul style="list-style-type: none"> * Negative list approach to scheduling services commitments. * Offers “meaningful market access commitments across virtually all major service sectors” (USTR); includes improvements in financial and legal services, telecom services, express delivery services, and audiovisual services. 	<ul style="list-style-type: none"> * Positive list approach to scheduling services commitments, which are not applicable to all EU member states. * Provides the most ambitious and comprehensive treatment of services of any EU FTA; includes improvements in financial and legal services, telecom and television and radio signals transmission services, shipping and maritime services, and environmental services. 	<ul style="list-style-type: none"> * Draw on the “hybrid framework” of the International Services Agreement, which would combine a negative list approach to national treatment with a positive list approach to market access commitments. * Seek to open new market access opportunities and harmonize regulatory policies across different sectors, including financial services.
Investment	<ul style="list-style-type: none"> * Liberalization and protection provisions based on highest levels negotiated in FTAs to date. 	<ul style="list-style-type: none"> * Extensive investment protections, including investor-state dispute settlement procedures. 	<ul style="list-style-type: none"> * Does not contain investment chapter; investment protections are covered through EU member states bilateral investment treaties (BITs) with Korea. 	<ul style="list-style-type: none"> * Draw on the provisions of the KORUS FTA for the initial framework, while the US and EU can draw from the EU-wide investment positions as set in investment chapters of its recent FTAs.
Government procurement	<ul style="list-style-type: none"> * Improve access at all levels of government and on the basis of national treatment. 	<ul style="list-style-type: none"> * Affirms existing rights and obligations under the WTO Government Procurement Agreement (GPA) and improves market access through lowering the minimum threshold set in the GPA. * Improves access to central government procurement. * Sets threshold of 5 million special drawing rights (SDRs) for procurement of construction services. 	<ul style="list-style-type: none"> * Affirms existing rights and obligations under the WTO GPA and maintains GPA thresholds. * Improves access to sub-federal and local levels of government procurement in Korea (e.g., Seoul, Incheon, Busan, Gyonggi-do province). * Sets threshold of 15 million SDRs for build-operate-transfer (BOT) contracts and public works concessions. 	<ul style="list-style-type: none"> * Agree on WTO-plus GPA commitments as done in the KORUS and KOREU FTAs. * TTIP reform should liberalize US federal “Buy American” preferences as part of a broader deal to expand coverage of federal and subfederal procurement.

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Table 3 Provisions in a Transatlantic Trade and Investment Partnership (TTIP) (continued)

Key area	Recommendations of US-EU High Level Working Group (HLWG) on Jobs and Growth ^a	Regulatory Issues and Nontariff Barriers		
		Provisions in Korea-US FTA	Provisions in Korea-EU FTA	PIIE recommendations for TTIP
Sanitary and phytosanitary (SPS) measures	<ul style="list-style-type: none"> * “SPS-plus” chapter with mechanism for improved dialogue and cooperation. * Build on the WTO SPS Agreement, including the requirement that SPS measures “be based on science and on international standards or scientific risk assessments, applied only to the extent necessary... developed in a transparent manner, without undue delay.” 	<ul style="list-style-type: none"> * Affirms existing rights and obligations under the WTO SPS Agreement. * Emphasizes that the resolution of SPS issues must rely on science and risk-based assessment and that this “shall be conducted and evaluated by the relevant regulatory agencies.” * No recourse to the FTA’s dispute settlement mechanism. 	<ul style="list-style-type: none"> * Commitment to international standards and import requirements of the WTO SPS Agreement and other multilateral agreements. * Special attention to animal welfare standards, designation of eligible areas for exporting products, procedures for determining animal/plant health status. * No explicit language committing to science and risk-based assessment. * No recourse to the FTA’s dispute settlement mechanism. 	<ul style="list-style-type: none"> * A consultation mechanism should give priority to ensuring increased transparency and timely notifications of SPS determinations, i.e., focusing on improving the process for implementing “sound science” rulings and less on substantive efforts to harmonize or agree to mutual recognition of SPS requirements.
Technical barriers to trade (TBT)	<ul style="list-style-type: none"> * Ambitious “TBT-plus” chapter aiming for greater openness, transparency, and convergence in regulatory and standards-development processes; streamlining testing and certification requirements; enhancing cooperation on global conformity assessment and standardization. * Provisions/annexes containing additional commitments to regulatory compatibility for certain sectors. * Auto regulations not explicitly mentioned. 	<ul style="list-style-type: none"> * Affirms rights and obligations under the WTO TBT Agreement. * Includes provisions on automotive standards and technical regulations in TBT chapter. * Includes a temporary “low volume seller exemption,” whereby Korea accepts US auto safety regulations if US imports per automaker does not exceed 25,000 vehicles. * Establishes a “leniency rate,” where US auto imports comply with fuel economy and emissions standards if vehicles do not exceed 119 percent of current Korean emissions limits. 	<ul style="list-style-type: none"> * Affirms rights and obligations under the WTO TBT Agreement. * Four sector-specific annexes outlining regulatory compatibility for consumer electronics; motor vehicles; pharmaceuticals; and chemicals. * Regulatory convergence approach within the UNECE framework for vehicle safety, environmental standards, and energy efficiency. * All vehicles in Korea must be equipped with on-board diagnostics (OBD); Euro 6 OBD-equipped gasoline-powered vehicles comply with Korean OBD standards. 	<ul style="list-style-type: none"> * Reconcile different regulatory approaches to auto safety and other standards and global conformity assessment.

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mix of subsidies and border measures working hand-in-glove. Both sides have sharply reduced these payouts in recent years in response to budget pressures and in anticipation of a WTO deal, but binding obligations in this area have been put off pending resolution of WTO negotiations. The conventional wisdom is that disciplines on domestic agricultural subsidies must be achieved through multilateral pacts. However, in the transatlantic context, involving two of the biggest providers of farm subsidies in the world, bilateral commitments could be viable and set precedents for a broader multilateral deal. The transatlantic partners should agree on a temporary ceiling for domestic subsidies (both overall and by product sector), which would be useful for domestic budgetary purposes and should

provide a big impetus to parallel WTO negotiations in which commitments to new farm subsidy disciplines are needed to unblock long-stalled efforts to liberalize manufactures and services trade.

In services, liberalizing trade and investment will require extensive work to open new market access opportunities and harmonize regulatory policies across different sectors like finance, insurance, and telecommunications. To that end, US and EU officials should draw on the new “hybrid” approach to scheduling services commitments under development in negotiations on an International Services Agreement, recognizing some areas will likely require protracted negotiations under the common TTIP framework posited above.

Table 3 Provisions in a Transatlantic Trade and Investment Partnership (TTIP) (continued)

Key area	Recommendations of US-EU High Level Working Group (HLWG) on Jobs and Growth ^a	Provisions in Korea-US FTA	Provisions in Korea-EU FTA	PIIE recommendations for TTIP
Rules Addressing Shared Global Trade Challenges and Opportunities				
Intellectual property rights (IPRs)	<ul style="list-style-type: none"> * Promote a high level of IP protection, including enforcement, and cooperate extensively. * Address a limited number of significant IPR issues. 	<ul style="list-style-type: none"> * Criminal enforcement and border measures apply to IPR infringements including counterfeit trademark goods and pirated copyright goods but do not include explicit mention of GIs. * Provisions on terms of liability of internet service providers (ISPs) for copyright infringement. 	<ul style="list-style-type: none"> * Criminal enforcement applies to trademark and copyright IPR infringements; also includes consideration of criminal liability for GI and design counterfeiting. * Border measures allow suspending the release of goods due to IPR infringements, including patents, plant variety rights, registered designs, or GIs. * Provisions on terms of liability of ISPs. 	<ul style="list-style-type: none"> * A TTIP should aim to establish a common IP rules regime, including GIs.
<i>Copyright protection</i>	<ul style="list-style-type: none"> * Not explicitly mentioned. 	<ul style="list-style-type: none"> * Term of protection for all works (photographic, performance, or phonogram) set at 70 years. * Provisions to protect rights management information. * Provisions to protect against circumvention of technological measures that control access to protected works and protect against piracy and unauthorized internet distribution. 	<ul style="list-style-type: none"> * Term of protection for authors rights set at 70 years; rights of broadcasting organizations set at 50 years. * Provisions for the protection for registered designs and TRIPS-plus protection for unregistered designs. * Provisions to protect rights management information. * Provisions to protect against circumvention of technological measures. 	<ul style="list-style-type: none"> * Agree on common copyright terms.
<i>Patent protection</i>	<ul style="list-style-type: none"> * Not explicitly mentioned. 	<ul style="list-style-type: none"> * Data exclusivity provisions (5 years after marketing approval and 3 years after submission of clinical information for pharmaceuticals; 10 years for agricultural chemicals). * Patent term extension for delays issuing a patent 4 years+ after filing or 3 years after requesting to apply. 	<ul style="list-style-type: none"> * Data exclusivity provisions (5 years for pharmaceuticals; 10 years for plant protection products). * Patent term extension not to exceed 5 years. 	<ul style="list-style-type: none"> * IP protection and coverage concerning patents are broadly similar and can be the basis for establishing a common rules regime. * Build on bilateral progress made in the Cooperative Patent Classification system issued in January 2013, which aims for greater international harmonization.
<i>Geographical indications (GIs)</i>	<ul style="list-style-type: none"> * Not explicitly mentioned. 	<ul style="list-style-type: none"> * GIs included under trademark protection and all specified rights and limited exceptions to rights. * Does not separately distinguish and expand on the terms and scope of GI protection, e.g., registration, administrative process, legal provisions. 	<ul style="list-style-type: none"> * Distinguishes provisions for GIs from rules broadly applicable to trademarks. * Specifies a GI registrar and designates GI protection for 160+ EU products and 64 Korean products. * Expands legal protection for all GIs including foodstuffs, replicating the extended protection applicable only to wines and spirits under TRIPS. 	<ul style="list-style-type: none"> * Register compound terms for GI protection; negotiate an exceptions list for specific generic terms; and a third list of GIs subject to future negotiations under the TTIP.

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Table 3 Provisions in a Transatlantic Trade and Investment Partnership (TTIP) (continued)

Key area	Recommendations of US-EU High Level Working Group (HLWG) on Jobs and Growth ^a	Provisions in Korea-US FTA	Provisions in Korea-EU FTA	PIIE recommendations for TTIP
Rules Addressing Shared Global Trade Challenges and Opportunities (continued)				
Environment and labor provisions	* Commitment to high levels of protection drawing on work done in Sustainable Development chapter of EU FTAs and Environment and Labor chapters of US FTAs.	* Commitment to upholding the core standards of the International Labor Organization (ILO) as well as relevant multilateral environmental agreements. * Disputes related to labor and environment are subject to the agreement's general dispute settlement mechanism.	* Commitment to the core standards of the ILO as well as relevant multilateral environmental agreements. * Explicit commitment to "trade promoting sustainable development," including cooperation over trade-related aspects of the international climate change regime. * Disputes subject only to government consultation; no recourse to the general dispute settlement procedures and implicitly to trade sanctions or other countervailing measures.	* The TTIP should cover climate change issues, including the ongoing dispute over airplane emissions, and should complement global regulatory approaches under review by the International Civil Aviation Organization. * TTIP obligations in these areas should be covered by the pact's dispute settlement mechanism.
New rulemaking	* Reach a bilateral agreement on globally relevant rules, principles, or modes of cooperation on customs and trade facilitation, competition policy, state-owned enterprises (SOEs), localization barriers, raw materials and energy, transparency, and small and medium enterprises, etc.	* Commitment to maintain laws that protect the competitive process. * Provisions applicable to privately owned or government monopolies and SOEs. * Extensive provisions on cross-border consumer protection and enhancing consumer welfare.	* Commitment to maintain effective competition laws and respect the principles of due process, broadly applicable to SOEs and monopolies. * Eliminates two types of state subsidies that can distort competition and trade; applicable to goods (except agriculture and fisheries) with a rendezvous clause included for services.	* Break new ground on competition policy, including WTO-plus disciplines that help "level the playing field" between private firms and SOEs. * Find common ground in disputes over privacy and the cross-border transfer of data. * Settle the Boeing-Airbus subsidies disputes "out of court" with agreed constraints on subsidies by both parties.

PIIE = Peterson Institute for International Economics; FTA = free trade agreement; USTR = United States Trade Representative; UNECE = United Nations Economic Commission for Europe; TRIPS = WTO Agreement on Trade-Related Aspects of Intellectual Property Rights

a. Recommendations for selected provisions are drawn from HLWG (2013).

That said, the guts of the TTIP negotiations are likely to revolve around important but politically sensitive regulatory issues. While the TTIP should be able to follow the Korea FTA precedents in many areas, in some the KORUS and KOREU provisions differ. Some issues pose problems that we believe can be bridged through compromise or a hybrid approach; others reflect differences that upon further inspection are not fundamentally different in practice; and a few pose seemingly intractable political problems. The latter, however, involve relatively discrete issues that can continue to be discussed while the broader TTIP is implemented. It is important to note that negotiating a comprehensive TTIP deal will not—and need not—facilitate the resolution of every problem in the bilateral relationship. But the initial agreement must make substantive progress that allows existing policies to

change in key areas; then continuing negotiations can build on those results in subsequent years.

KEY CHALLENGES

We recognize that several issues have impeded transatlantic initiatives in the past and will have to be resolved to achieve the comprehensive deal sought by both sides. KORUS and KOREU FTA precedents are instructive but will need to be supplemented or adjusted in three areas if the TTIP is to succeed: intellectual property issues, sanitary and phytosanitary measures, and the environment. In several others, KORUS-KOREU differences are easier to bridge (e.g., services, investment, and government procurement). The following sections examine these key issues.

Intellectual Property Rights

Both US and EU officials have used FTAs to expand the scope of IPRs beyond the baseline level of protection provided by the WTO and its Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Both KORUS and KOREU offer copyright provisions and extend the coverage of patent protection for pharmaceuticals and agricultural chemicals through patent term extension to compensate for regulatory delays and data exclusivity provisions. KORUS also includes a drug approval patent linkage system, which goes beyond KOREU obligations. Regarding trademarks,

KORUS and KOREU FTA precedents are instructive but will need to be supplemented or adjusted in three areas if the TTIP is to succeed: intellectual property issues, sanitary and phytosanitary measures, and the environment.

KOREU includes more extensive provisions defining the terms and procedures for the protection of GIs, reflecting the European Union's negotiating priority on enhanced protection for certain foodstuffs and agricultural products (e.g., wine, cheeses, and ham).

The KORUS and KOREU agreements include some similar provisions on copyright protection and patent protection for pharmaceuticals, agricultural chemicals, and other plant varieties.¹² However, the HLWG interim report in June 2012 concluded that a comprehensive accord on IPRs is beyond the pale of a transatlantic trade pact: "Both sides agree that it would not be feasible in negotiations to seek to reconcile across the board differences in the IPR obligations that each typically includes in its comprehensive trade agreements. Before the launch of any negotiations, both sides would further consult on possible approaches to deal with IPR matters in a mutually satisfactory manner" (HLWG 2012). Though the report does not specify the exact areas where there are substantive gaps between the US and EU positions, part of the inability to reconcile IPR issues stems from longstanding differences over protections for GIs. While the HLWG's final report does not explicitly mention the GI issue, it recom-

12. In the case of pharmaceuticals, the United States has cited concerns that relate more to nontariff barriers and regulatory policies affecting market access in the European Union, including government pricing and reimbursement systems. For more detail, see USTR (2012a).

mends that "both sides explore opportunities to address a limited number of significant IPR issues of interest to either side" (HLWG 2013).

Copyright Protection

KORUS establishes the exclusive rights of the creator through which authors, performers, and producers of phonograms have the right to authorize or prohibit the reproduction of their work and the right to the communication (including wireless or not) of their work to the public. The term of protection of all works, including photographic, performance, or phonogram, is set at the life of the author and 70 years after the author's death, or 70 years after the first publication or creation of the work.¹³ In KOREU, copyright protection is also set on the duration of the author's life and 70 years after death; however, the rights of broadcasting organizations last only for 50 years after the first transmission. Both agreements also include provisions to protect rights management information and to protect against the circumvention of effective technological measures used to restrict unauthorized access to works.¹⁴

Unlike KORUS, KOREU also includes a separate section for the protection of registered designs, in which the design owner has similar exclusive rights as creators or authors of a work. This section also includes provisions on unregistered designs, which is a TRIPS-Plus provision. KOREU establishes the term of protection at 15 years for registered designs and 3 years for unregistered designs.¹⁵

Patent Linkage, Data Exclusivity, and Patent Extension

The KORUS FTA reflects the United States' broad negotiating priorities concerning IPRs: greater IPR enforcement, the exportation of US law and protections, higher standards

13. Office of the United States Trade Representative, "Chapter Eighteen Intellectual Property Rights, Article 4 Copyright and Related Rights" in Free Trade Agreement between the United States and the Republic of Korea, www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text (accessed on October 12, 2012).

14. "Rights management information" refers to any information that identifies a copyrighted work, the owner or author, information about the terms and conditions of use of the work, or any numbers or codes that represent that information (KORUS FTA, Article 19.4.8c). "Technological measures" refers to "any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright" (KORUS FTA, Article 19.4.7f).

15. Council of the European Union, "Chapter Ten Intellectual Property, Sub-section D Designs" in Free Trade Agreement between the European Community and Its Member States and the Republic of Korea, <http://eur-lex.europa.eu/en/index.htm> (accessed on October 22, 2012).

abroad, and the protection of digital content (Maskus 2012, 121). In particular, these priorities are reflected in the extensions to patent coverage and scope.

IPR protection in Korea has been an important issue for both US and European pharmaceutical firms. For patented pharmaceuticals and agricultural chemical products, KORUS includes provisions regarding a drug approval patent linkage system, data exclusivity, and patent term adjustment. A Bloomberg Law Report asserts, “the KORUS FTA will significantly impact the Korean patent laws, in contrast to the EU-Korea FTA which has few provisions relating to patent rights” (Corless et al. 2011, 1). Indeed, the patent linkage system and data exclusivity provision are considered new additions to Korea’s IPR regime, while the patent term extension is similar to existing law as established by the Korean Patent Act (*ibid*, 2).

The patent linkage system in the KORUS FTA limits the government from approving the marketing of a generic drug while the original patent is still in effect. This “linkage rule” precludes approval of a generic drug before the government verifies that no existing patent is violated (Maskus 2012, 126) and aligns the Korean generic drug approval process with the US Drug Price Competition and Patent Term Restoration Act. Specifically, when a generic manufacturer submits a new drug application that relies on safety or efficacy data of a previously approved product, it will be prevented from marketing the product until the original patent holder is notified and provides prior consent (Corless et al. 2011, 2).

Additionally, data exclusivity provisions are included to protect against the unfair use of confidential test data based on IPR concerns stemming from the “the failure of the South Korean government to protect from competitors proprietary data that manufacturers must submit for market approval... [and] in some cases, approved marketing of some pharmaceuticals before [determining] that the applicant is the rightful owner of the patent and trademark” (Cooper et al. 2011a, 28). Data exclusivity thus restricts generic manufacturers from submitting a new drug application or marketing a pharmaceutical using safety and efficiency data or new clinical information. This restriction is effective for five years from the date of marketing approval and three years from submission of clinical information. The KORUS FTA also provides ten years of data exclusivity for agricultural chemical products under similar provisions.¹⁶

Data exclusivity is also covered by the KOREU FTA. Specifically, Article 10.36 establishes that “data concerning

16. These IPR provisions were originally to be invoked after the KORUS FTA was in effect for 18 months; however, the supplemental agreement concluded in December 2010 extended the timeline for implementation to three years (see Schott 2010).

safety and efficacy submitted for the first time by a patent holder to obtain marketing authorization for a new product is not used for granting another marketing authorization for a product, without explicit consent of the original patent holder.”

¹⁷ Similarly, the period of data protection is for five years, while data exclusivity for plant protection products is ten years.

In addition, both KORUS and KOREU provide patent term adjustment through extensions. Each accord requires both parties to extend the length of the “effective period” for pharmaceutical patents to account for delays resulting from the patent and marketing approval process. Specifically, KORUS asserts, “each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent,” where an “unreasonable delay” is considered a delay in issuing a patent more than four years from the date of filing or three years after a request to apply (Article 18.8.6). KOREU establishes extended patent protection to “compensate for the reduction in the effective patent life as a result of the first authorization to place the product on their respective markets,” which will not exceed five years (Article 10.35). In particular, the European Union’s inclusion of patent extension and data exclusivity in FTAs with developing countries is seen as evidence of a recent shift toward advancing TRIPS-Plus rights and obligations (Maskus 2012, 131).

Intellectual property protection and coverage concerning patents are broadly similar and can be the basis for establishing a common rules regime. Indeed, US and EU officials recently made bilateral progress toward this end; in January 2013 they jointly released the Cooperative Patent Classification system, which aims to achieve greater international harmonization in the patent system.¹⁸

Geographical Indications

Compared with KORUS, KOREU includes expansive provisions on GIs, which refer to marks that “identify a good as originating in a territory, region or locality of either Party, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin” (Article 10.18.6b). While GIs fall under trademark protection in both FTAs, KOREU establishes the right of use, scope,

17. Council of the European Union, “Chapter Ten Intellectual Property, Article 10.36 Protection of Data Submitted to Obtain a Marketing Authorization for Pharmaceutical Products” in Free Trade Agreement between the European Community and Its Member States and the Republic of Korea, <http://eurlex.europa.eu/en/index.htm> (accessed on October 22, 2012).

18. US Patent and Trademark Office, “USPTO and EPO Announce Launch of Cooperative Patent Classification System,” press release, January 2, 2013, www.uspto.gov (accessed on January 16, 2013).

and enforcement of protection, relationship to trademarks, and the role of a working group on GIs—thus distinguishing provisions for GIs from the rules broadly applicable to trademarks. More significantly, KOREU expands the legal protection for all GIs including foodstuffs and agricultural products, which replicates the extended protection applicable only to wines and spirits under the TRIPS Agreement.¹⁹

KOREU specifies a GI registrar for foodstuffs, wines, and spirits and designates GI protection for more than 160 products covered for the European Union (e.g., cheeses, hams, and wines), and 64 products covered for Korea (e.g., teas, spices, vegetables, and fruits). The KOREU FTA protects GIs against

“(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) the use of a geographical indication identifying a good for the like good not originating in the place indicated by the geographical indication in question[...];

(c) any other use which constitutes an act of unfair competition within the meaning of Article 10 *bis* of the Paris Convention.”²⁰

In comparison, KORUS confirms that GIs are eligible for protection as trademarks and that all rights and limited exceptions to rights as specified for trademarks are upheld for GIs. However, the agreement does not separately distinguish and expand on the terms and scope of protection. Furthermore, unlike KOREU, KORUS does not cover GIs within criminal procedures and remedies and cross-border measures. While both FTAs provide that criminal procedures and penalties apply in cases of trademark counterfeiting or copyright-related piracy on a commercial scale, KOREU also states each party “shall consider adopting measures to establish criminal

liability for counterfeiting geographical indications and designs” (Article 10.55). Similarly, while both FTAs establish the authority to suspend the release of goods in the case of IPR infringement, KOREU also applies suspension procedures to GIs, in addition to patents, plant variety rights, and registered designs (Article 10.67).

US dairy farmers expressed concerns over GI provisions in the KOREU FTA that Korea’s new regulations on GI protection, particularly with regard to European cheeses, could undermine the terms in KORUS that were negotiated for US cheeses with identical, generic names.²¹ To that end, they requested that US officials “combat European efforts to carve out the sole right for their producers to use...cheese names most familiar to consumers around the world (e.g., feta, gorgonzola, munster, parmesan, provolone)”; and “act to safeguard against possible limits to the use of such generic cheese names ‘that could arise as a result of recent EU legal precedents’ to protect the names of some EU wines and spirits” (Jurenas 2011, 12). In June 2011, Korea’s trade ministry clarified that GI provisions in KOREU would not limit the United States from using generic terms to identify cheeses and from exporting these varieties of cheese to Korea. Specifically, Korea assured that the GI requirements specified in the KOREU FTA would apply to the entire “compound terms” and not to the “individual components” that form many of the generic descriptive product names of concern to the United States.²²

However, US-EU differences over GIs remain a nettlesome issue on the transatlantic trade agenda amid concerns that the European Union is locking in its policy agenda for broader GI protections through its bilateral trade agreements with other countries, especially Korea. The transatlantic debate over GIs may be further affected by developments on the multilateral level. Differences remain between the United States and European Union over reconciling two main issues that have become conflated under the Doha mandate: (1) creating a multilateral register for wines and spirits and (2) extending

19. Under TRIPS, a basic level of protection is extended to all GIs (Article 22) while extended protection is ensured for wines and spirits (Article 23). This “extended protection” includes (1) ability to prevent the use of GIs for wines and spirits not originating in the place indicated by the GI; (2) ability to refuse or invalidate the registration of a trademark for wines or spirits which consists of a GI; (3) if there are homonymous GIs for wines, protection will be accorded to each indication and members must determine product differentiation to ensure equitable treatment of producers and to ensure consumers are not misled; (4) future negotiations to establish “a multilateral system of notification and registration of geographical indications for wines eligible for protection” (Article 23.4).

20. Council of the European Union, “Chapter Ten Intellectual Property, Sub-section C Geographical Indications” in Free Trade Agreement between the European Community and Its Member States and the Republic of Korea, <http://eur-lex.europa.eu/en/index.htm> (accessed on October 4, 2012).

21. Many of the cheese varieties with generic names comprise a significant share of US cheese production. In 2011, Italian-type cheeses (e.g., mozzarella, parmesan, provolone, ricotta, etc.) accounted for 43 percent of total US cheese production, while mozzarella alone accounted for 34 percent (USDA 2012). For more detail on the US dairy sector concerns, see “U.S., South Korea Seek Compromise on Dairy GIs, US Floats Auto Ideas,” *Inside US Trade*, October 14, 2010, www.insidetrade.com (accessed on January 22, 2013).

22. For example, while the compound term “Provolone Valpadana” is protected under KOREU terms of GI protection, the generic term “provolone” is not, including its translation or transliteration. This applies to other terms like “mozzarella,” such that the use of such generic terms by third parties is not restricted by the KOREU FTA. However, this would not apply to some individual names, e.g., feta, asiago, and gorgonzola, which do not comprise compound terms but are protected as GIs by the European Union and in the KOREU FTA GI registrar. See Minister for Trade, Jong-Hoon Kim letter to USTR Ron Kirk, June 20, 2011, available at www.ustr.gov/webfm_send/3604.

the higher level of protection beyond wines and spirits to all products.²³ The European Union is pressing for a multilateral agreement on a system of notification and registration of GIs that has legal binding and extends product coverage beyond wines and spirits. In contrast, the United States supports a proposal for a nonbinding, voluntary GI registrar only for wines and spirits and without product extension.

We believe there is room for compromise along the lines of proposals vetted in the TPP negotiations. A green light could be given to countries to register compound terms for GI protection; an agreed list of generic terms (e.g., mozzarella) would be excluded (“red light”) from trademark protection; and another list would be subject to future negotiations under the prospective US-EU pact.²⁴

Sanitary and Phytosanitary Measures

KORUS and KOREU FTAs both establish SPS commitments and processes to address human, animal, and plant health issues that may arise in the trade of agricultural products. In KOREU, issues that require special attention include animal welfare standards, designation of “pest or disease-free” areas and “low pest” or “disease-prevalence” areas that are eligible for exporting products, and procedures for determining animal and plant health status. Similar to KORUS, KOREU also commits the European Union and Korea to international standards and import requirements that are in accordance with the WTO SPS Agreement, the Codex Alimentarius Commission, the World Organization for Animal Health (OIE), and the International Plant Protection Convention (IPPC) guidelines. In addition, SPS obligations are not covered by the dispute settlement mechanism in either of the Korea pacts.

However, the two pacts differ in a crucial area: the application of sound science and precautionary principles in managing risk in their respective agricultural and food systems.²⁵ The

KOREU SPS chapter does not include explicit language committing to reliance on science and risk-based assessment. In contrast, KORUS emphasizes that the resolution of SPS matters “must rely on science and risk-based assessment and is best achieved through bilateral technical cooperation and consultation,” and further that “scientific risk analysis shall be conducted and evaluated by the relevant regulatory agencies of each Party.”²⁶

Differences in the fundamental basis for determining SPS measures will be a major challenge for negotiating a transatlantic partnership and for resolving longstanding problems in agricultural market access and regulation. In particular, WTO trade disputes over the European Union’s prohibition of imports of growth hormone–treated meats and approval process for biotechnology products like genetically modified organisms (GMOs) date back to the mid-1980s and 1990s (see Hufbauer and Neumann 2002).²⁷ The United States and Canada have filed claims with the WTO that the European Union’s regulatory process and import restrictions are discriminatory and not based on scientific evidence and consumer risk assessment, and thus in violation of the WTO SPS Agreement. The US Trade Representative (USTR 2012b, 15) reports that the status of more than 70 applications for US agricultural products (derived from biotechnology or genetic engineering techniques) remain pending in the European Union’s approval system, which effectively blocks significant volumes of US exports to Europe.

In bilateral efforts to resolve such problems, the United States has pressed the European Union to adopt a more “science-based approach” that relies heavily on the findings of the European Food Safety Authority (EFSA), which conducts scientific assessments on product risk and safety. The EU approval process for agricultural products involves two steps: an initial scientific evaluation by the EFSA is followed by a “comitology process” or consultations with an EU regulatory committee comprising representatives from all member states (USTR 2012b, 41). Even if a biotechnology product gains EFSA approval, member states can still institute a ban by invoking a “safeguard clause” or simply delay the application by failing to reach a majority vote for approval or disapproval. While EFSA scientific assessments have yet to deem a US biotechnology product as unsafe, the EU regulatory committee remains reluctant to approve new products.²⁸ As

23. A draft text was issued in April 2011. For more detail, see “Doha GI Papers Reveal Little Progress, GIs Will Not Form Part of ‘Plan B,’” *Inside US Trade*, April 28, 2011, www.insidetrade.com (accessed on January 30, 2013).

24. A coalition of US agriculture and food groups, led by the US Dairy Export Council, has argued that “GIs should only protect compound indications such as ‘Parmigiano Reggiano,’ and should only protect GIs in their original language or in transliteration.” The group wants GIs excluded from a transatlantic deal and instead handled through a separate undertaking. See “New Initiative Aims to Expand Reach of Fight to Counteract EU on GIs,” *Inside US Trade*, March 29, 2012, www.insidetrade.com (accessed on January 29, 2013). For more detail on the US coalition’s concerns, see also Consortium for Common Food Names et. al (2012).

25. The European Union has made the “precautionary principle the cornerstone of its approach to risk management in the SPS area” and defines the principle as stating “where the possibility of a harmful effect exists, but where scientific uncertainty regarding the risk persists, provisional, non-scientific risk management strategies may be adopted.” See Grueff (2013, 10).

26. Office of the United States Trade Representative, “Chapter Eight Sanitary and Phytosanitary Measures” in Free Trade Agreement between the United States and the Republic of Korea, www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text (accessed on October 12, 2012).

27. For more detail on the history and current status of these specific issues, see USTR (2012b).

28. In essence, EU member states have the power to approve or deny certification for biotechnology products like GMOs, which already had been assessed as safe by the EFSA. US officials have criticized this system as essentially

USTR reports, “In 2011, the EU approved only six biotech products with an average approval time of 57 months...with respect to approval for cultivation use, the EU has not approved a single biotech product of commercial significance to the United States in over 12 years” (USTR 2012b, 42). However, there also remains staunch public skepticism in Europe over biotechnology products, which severely constrains the range of EU policy options for addressing regulatory disputes.²⁹

Squaring these political realities with the requirements of existing WTO obligations will test the skill and patience of US and EU negotiators. The challenge will be to manage the fallout from SPS disputes, including biotechnology and GMOs, while efforts are made under the new TTIP framework to craft a politically feasible approach for implementing “sound science” determinations. Recognizing this challenge, the HLWG recommends an “SPS-plus” chapter that seeks “to build on key principles of the WTO SPS Agreement, including requirements that SPS measures be based on science and on international standards or scientific risk assessments, applied only to the extent necessary to protect human, animal, or plant life or health,” as well as “establishing a mechanism for improved dialogue and cooperation on addressing bilateral SPS issues” (HLWG 2013). This consultation mechanism should give priority to ensuring increased transparency and timely notifications of SPS determinations, i.e., focusing on improving the process for implementing “sound science” rulings, and less on substantive efforts to harmonize or agree to mutual recognition of SPS requirements. If properly constructed, these consultations could provide a “rapid response” mechanism for defusing disputes before restrictions are imposed that unduly disrupt trade (Grueff 2013).

Environment and Labor Provisions

The KOREU FTA specifies the provisions on trade-related aspects of labor and the environment under one chapter entitled, “Trade and Sustainable Development,” while the KORUS FTA expands on each issue separately.³⁰ The terms and conditions under KOREU are generally similar to those under the KORUS—both commit to upholding the core stan-

dards of the International Labor Organization (ILO) as well as relevant multilateral environmental agreements. Indeed, labor groups in the United States view the potential US-EU trade pact as an opportunity to elevate certain US labor standards to the level of EU standards.³¹

Unlike KORUS, language in KOREU is more explicit in prioritizing the commitment to “trade promoting sustainable development”; specified areas of cooperation include trade-related aspects of the international climate change regime, including issues related to global carbon markets and ways to promote low-carbon technologies and energy efficiency (Annex 13). In particular, regulatory divergences between the United States and Europe on climate change policy have emerged in the ongoing dispute over airplane emissions and should be addressed in a TTIP.³² The European Union’s new airplane emissions rule will be effective for international flights in and out of Europe by fall of 2013 and prompted US legislation exempting US airlines from compliance.³³ However, joint US-EU efforts aim to negotiate a global approach to aviation emissions regulations through the International Civil Aviation Organization by the end of 2013 and before the EU regulation enters into effect for non-EU airlines. A TTIP should build on such efforts to resolve climate change issues through global regulatory approaches.

The major difference between the KORUS and KOREU FTAs involves coverage of labor and environment issues under each pact’s general dispute settlement procedures. KORUS chapters on labor and environment are subject to the agreement’s general dispute settlement mechanism unlike earlier US FTAs where enforcement relied largely on consultations and fact-finding reports and where the range of potential remedies was limited. These constraints were lifted in KORUS so as to “expand and further integrate labor and environmental obligations into the US FTA structure” (Grimmett 2012, 9). In contrast, KOREU stipulates that disputes concerning labor and the environment will be subject only to government consultation; there is no recourse to the trade agreement’s general dispute settlement procedures and implicitly to trade sanctions or other countervailing measures. We see no reason to differentiate enforcement procedures for these chapters and recommend that the TTIP provide that obligations in these areas be covered by the pact’s dispute settlement mechanism.

“hijacking science with the political process.” See “Froman Says US-EU Effort to Deepen Trade Still Faces Major Obstacles,” *Inside US Trade*, June 7, 2012, www.insidetrade.com (accessed on October 16, 2012).

29. For more detail on the types of constraints that may impact an outcome on agriculture in the TTIP negotiations, including US-EU approaches to domestic agricultural policy, and important political and cultural constraints, see Grueff (2013).

30. In the KORUS FTA, see Chapter 19 for labor provisions and Chapter 20 for environment provisions.

31. For more detail, see “Unions See US-EU Deal as Opportunity to Raise US Labor Standards,” *Inside US Trade*, January 4, 2013, www.insidetrade.com (accessed on January 24, 2013).

32. For more detail, see ICTSD (2012).

33. As part of the European Union’s Emissions Trading System, an airplane emissions rule requires that all airlines, regardless of nationality, buy permits for 15 percent of their carbon emissions, with the remaining 85 percent allocated as emissions allowances.

Auto Regulations and Emissions Standards

Auto trade was a major concern in both the KORUS and KOREU FTAs because of the growing competitiveness of Korean automakers in the US and EU markets and nontariff measures that affected access to the relatively small Korean market. The KORUS FTA includes provisions on automotive standards and technical regulations within the chapter on technical barriers to trade, while the KOREU FTA establishes provisions on regulatory compatibility in a sector-specific annex on motor vehicles. Except for the regulatory issues involving safety and emissions standards, transatlantic trade and investment in autos should have a lower profile in the transatlantic pact. A TTIP should reconcile different regulatory approaches to auto safety and other standards and global conformity assessment and maintain high-standard setting for emissions.

Reducing nontariff barriers to auto trade between the European Union and Korea involves a regulatory convergence approach within the framework of the United Nations Economic Commission for Europe (UNECE), which aims to align standards to globally harmonized regulations on motor vehicles in the areas of vehicle safety, environmental standards, and energy efficiency. Other safety standards in Korea related to vehicle safety (e.g., seat belts, passenger seats, headlamps, and rearview mirrors) will incrementally be brought into line with UNECE standards over five years (Cooper et al. 2011b, 11). By contrast, the United States does not recognize UNECE standards. However, the KORUS FTA includes a temporary “low volume seller exemption,” whereby Korea accepts US safety regulations without additional modifications, if the number of US imports per automaker does not exceed 25,000 vehicles (see Schott 2010).

The KORUS and KOREU agreements also specify auto emissions standards. In KORUS, originally signed in 2007, Korea agreed to match California’s emissions standards, which required manufacturers meet a ULEV (Ultra Low Emissions Vehicle) standard of 0.025g/km under the fleet average system.³⁴ The US-Korea supplemental agreement in December 2010 dealt with Korea’s new and tougher emissions standards, introduced as part of Korea’s Low Carbon Green Growth legislation in 2010. In that accord, Korea agreed that US imports would comply with fuel economy and emissions standards if the cars do not exceed 119 percent of current Korean emissions limits. This “leniency rate” applies to each US manufacturer, which sold no more than 4,500 vehicles in the 2009 base year and thus covers GM, Chrysler, and Ford.³⁵

34. Korea also allowed exemptions for small volume importers, thereby easing the emissions standards to 0.047g/km for up to 4,500 cars and 0.037g/km for between 4,500 and 10,000 cars.

35. The supplemental agreement recognizes that imported cars in Korea are

Korea’s fuel efficiency standard will require automakers to reduce greenhouse gas emissions to 140g/km and improve fuel economy to 17km/liter by 2015, which translates into an effective standard of 40 miles per gallon. By contrast, the United States requires automakers achieve 36 miles per gallon by 2016. These standards are for fleet averages.

Under the KOREU FTA, Korea will eventually use the same emissions standards outlined in the KORUS FTA. However, until KORUS went into force in 2012, a supplemental agreement for European manufacturers contained slightly tougher emissions standards.³⁶ In addition, the KORUS FTA stipulates that all vehicles sold in Korea must be equipped with on-board diagnostics (OBD) starting in 2009. Korea agreed to accept Euro 6 OBD (a new standard effective in Europe by 2014) equipped gasoline-powered vehicles as complying with Korea LEV and ULEV OBD standards. Until then, a transitional measure determines the number of imports of Euro 5 OBD-equipped vehicles on an annual quota basis.³⁷

Services

The United States and European Union aim to negotiate market access in services that matches the “highest level of liberalization captured in existing FTAs,” and their FTAs with Korea meet that standard (HLWG 2012). But they will need to harmonize their approach to scheduling services commitments.

The KORUS FTA uses a negative list approach to scheduling commitments, where all services are liberalized, including new services not yet in existence, except for specified nonconforming measures/exceptions. In contrast, the KOREU FTA uses a positive list approach, which requires each country to schedule the services covered by the agreement. Because of this approach, not all of the European Union’s commitments on services apply to all of the member states. Some reforms are applicable only to specific countries.³⁸ For each services sector, Annex 7-A outlines the reservations related to market

generally larger and less fuel efficient than the subcompact vehicles that dominate Korea’s domestic market and that fleet average requirements favor Korean producers. The leniency rate effectively remedies that discrimination until the new regulations are fully implemented in 2015. See Schott (2010, 2).

36. Specifically, EU manufacturers faced emissions standards of 0.047g/km for sales of up to 250 vehicles, 0.039g/km for sales between 250 and 4,000 vehicles, and 0.030g/km for sales between 4,000 and 10,000 vehicles.

37. These import volumes are outlined in Appendix 2-C-3 in the KOREU FTA.

38. For example, in insurance, 21 of the EU-27 member states opened markets for direct insurance in maritime shipping, commercial aviation, and space launching and goods in international transit, while in banking and financial services, 20 members allow the provision and transfer of financial information and data across borders, as well as the provision of advisory and other auxiliary services (Cooper et al. 2011b, 17).

access and national treatment limitations pertaining to each EU member.

Nonetheless, the KOREU FTA provides the most ambitious and comprehensive treatment of services of any EU pact (European Commission 2010). The KOREU FTA covers a broad range of sectors including legal services, banking and financial services, telecommunication services, shipping and maritime services, and environmental services. The European Commission claims that the KOREU FTA “will not only offer commitments on services on a par with those offered by South Korea in the draft FTA with the US, but also go beyond those in sectors of specific EU interest” (European Commission 2011c, 1). USTR affirms that KORUS “will provide meaningful market access commitments across virtually all major service sectors” (USTR 2012a, 239). However, variations in the commitments to market access also exist, which reflect the respective negotiating priorities of US and EU officials.

In a transatlantic pact, inclusion of the negative list for services may be a challenge for the European Union, which has yet to follow a negative list approach in any of its regional trade agreements or economic partnership agreements (see Hufbauer, Jensen, and Stephenson 2012). However, in recent negotiations on an International Services Agreement, US and EU officials reached a compromise on a “hybrid framework,” which would combine a negative list approach to national treatment disciplines with a positive list approach to market access commitments.³⁹

In both agreements, most exemptions from services coverage primarily relate to issues of national security. KOREU applies cross-border services trade provisions to all sectors except audiovisual services,⁴⁰ national maritime cabotage, domestic and international air transportation services, and services related to the exercise of traffic rights; and similarly, in KORUS air and maritime services and related support services are not covered by the services chapter. The right of establishment is restricted in similar terms. Thus, overall the coverage and scope of services liberalization is comprehensive and generally comparable.

Liberalizing transatlantic trade and investment in services will still require extensive work to open new market access opportunities and harmonize regulatory policies across different sectors like finance, insurance, and telecommunications. In particular, financial services will be one of the most difficult challenges for transatlantic regulatory cooperation and coherence and is likely to evolve only slowly over time

39. “Positive List’ in Services Deal Requires Periodic Renegotiation Says CSI President,” *Inside US Trade*, February 5, 2013, www.insidetrade.com (accessed on February 5, 2013).

40. Audiovisual services are covered in a supplemental annex, “Protocol on Cultural Co-operation.”

as both sides grapple with the ongoing management of the European financial crisis.⁴¹

Investment

Investment protections and investor-state dispute settlement are extensive in KORUS; no comparable procedures exist in KOREU.⁴² The KOREU FTA does not include an investment chapter since prior to the Lisbon Treaty in 2009, the European Commission shared competency for investment matters with individual members states, and Korea had already concluded bilateral investment treaties (BITs) with most EU member states.

However, the standards of protection vary in the BITs negotiated by individual members; in July 2010 the European Commission issued communications to define a more comprehensive EU-wide international investment policy and proposed transitional arrangements for BITs to be gradually replaced by agreements on the EU level.⁴³ As such, investment provisions are included in the EU-Singapore FTA, signed in December 2012, and will be part of the European Union’s FTA with Canada, which is currently under negotiation. US and EU officials have committed to negotiating investment provisions “based on the highest levels of liberalization and highest standards of protection” to date in their respective FTAs, and as such, the KORUS FTA offers this initial framework (HLWG 2012).

Government Procurement

Both KORUS and KOREU affirm their existing rights and obligations under the WTO Agreement on Government Procurement (GPA). However, KORUS improves market access with lower minimum thresholds than those applied under the GPA, while KOREU maintains the existing thresholds. In addition, KOREU improves access to subfederal and local levels

41. EU officials have also noted that the revision of services legislation, including financial services, currently under way in the European Union could make it “a little bit more difficult to see on the regulatory side where and how fast we can interact with the US.” See “Tiered US-EU FTA Could Yield Market Access Before Regulatory Outcome,” *Inside US Trade*, February 1, 2013 www.insidetrade.com (accessed on March 4, 2013).

42. KOREU briefly addresses a mutual commitment to FDI liberalization in Article 7.16 of the agreement’s services chapter, calling for joint review of the countries’ investment legal framework, investment environment, and FDI flow within three years.

43. A USTR (2012a) report on barriers to US trade and investment in the European Union notes that the policies and practices of individual member states, such as prior approval, licensing, and permit requirements, often have a more significant impact on US investment than EU-level policies (USTR 2012a).

of government procurement in Korea, while KORUS focuses primarily on federal government procurement.

Specifically, in KORUS, the threshold applied to central government entities is reduced from \$203,000 as set under the GPA to \$100,000, thus increasing market access. KORUS sets the threshold for procurement of construction services at 5 million special drawing rights (SDRs) or \$7.4 million. In addition, US suppliers can bid on procurements of 51 Korean central government entities, which is nine more than covered under the GPA, while Korean suppliers have access to 79 US central government entities.

In the KOREU FTA, a threshold of 15 million SDRs is set for build-operate-transfer (BOT) contracts and public works concessions. This covers BOT contracts from all central and subcentral entities of the European Union and Korea under the GPA; the pact also extends Korea's procurement commitments to cover BOT contracts of all local government procuring entities within the cities of Seoul, Incheon, and Busan, as well as Gyonggi-do Province.⁴⁴ The European Commission reports that this additional coverage will represent over 50 percent of Korea's GDP and population.⁴⁵ Further, while KORUS emphasizes procurement on the central level of government, KOREU reflects the European Union's negotiating priority for increasing market access on subcentral and local levels of government.

An expressed goal of the US and EU negotiations is improved access to government procurement "at all levels of government through the principle of national treatment" (HLWG 2013). In particular, the European Union has pressed for more open access to local- and state-level procurement.⁴⁶ The European Commission identifies the low level of openness of US government procurement markets to foreign bidders as one of the primary barriers to trade and investment with the United States, noting the scope of GPA commitment made by the United States covers only 3.2 percent of its government procurement market, while by contrast, the European Union has opened 15 percent of its market (European Commission 2011b, 10).⁴⁷ USTR has limited leverage to get individual

44. Council of the European Union, "Chapter Nine Government Procurement, Annex 9 BOT Contracts and Public Works Concessions" in Free Trade Agreement between the European Community and Its Member States and the Republic of Korea, <http://eur-lex.europa.eu/en/index.htm> (accessed on October 22, 2012).

45. The European Commission further notes this is an important provision for EU suppliers, many of which are considered "global leaders" in infrastructure and construction projects, and particularly as BOT contracts and public works are not yet covered by the WTO GPA (European Commission 2011c, 3).

46. "Froman Says US-EU Effort to Deepen Trade Still Faces Major Obstacles," *Inside US Trade*, June 7, 2012, www.insidetrade.com (accessed on October 16, 2012).

47. According to a report by BusinessEurope (2012), the European Union's larger commitment in coverage and thresholds translates to 340 billion euros of open procurement market versus only 40 billion euros in the United States.

states to undertake such commitments. While a large number of states have accepted WTO GPA obligations on specific types of contracts, they are generally reluctant to forego preferences that could benefit local industries and workers. A more fruitful avenue for TTIP reform might be to liberalize federal "Buy American" preferences that are attached to a wide range of spending bills in Congress. Such provisions have proliferated since the 2009 stimulus legislation, which required states to use US-manufactured steel and iron for infrastructure projects (see Hufbauer and Schott 2009).⁴⁸

Competition Policy

The notable aspects of competition policy that diverge in KORUS and KOREU reflect a different emphasis: the United States' emphasis on protecting consumer welfare and the European Union's attention to leveling competition through enhancing disciplines on state subsidies. However, both KORUS and KOREU prohibit and sanction anticompetitive practices that affect competition and trade, so there should be ample common ground on competition disciplines that could be replicated in a transatlantic pact.

The KOREU FTA commits the European Union and Korea to maintain effective competition laws and respect the principles of due process, noting such law is broadly applicable to SOEs and monopolies. In particular, KOREU includes a notable section on eliminating certain types of state subsidies that can distort competition and trade. The agreement prohibits (1) subsidies that cover debts or liabilities of an enterprise without limitation in the amount or duration and (2) subsidies to ailing enterprises without a credible restructuring plan that it could return to long-term viability without further reliance on the state (Article 11.11). These subsidy rules apply to all goods with the exception of agriculture and fisheries and are enforceable by the dispute settlement mechanism. The agreement also contains a "rendezvous clause" for services, which states that three years after the FTA enters into force, the European Union and Korea will discuss extending the obligations to apply to services (European Commission 2010). The KORUS FTA does not specifically outline prohibited state subsidies like the KOREU FTA.

KORUS similarly commits the United States and Korea to "maintain and adopt competition laws that promote and protect the competitive process in its market by proscribing anticompetitive business conduct" and "maintain an authority or authorities responsible for the enforcement of its national competition laws."⁴⁹ KORUS provisions similarly apply to

48. See also Transatlantic Task Force on Trade and Investment (2012, 28).

49. Office of the United States Trade Representative, "Chapter Sixteen

privately owned or government monopolies and SOEs. KORUS also includes articles on cross-border consumer protection and enhancing consumer welfare, which is distinct from KOREU, committing both countries to consultations on consumer protection policies, exchanging information related to the administration of consumer protection laws, and strengthening cooperation in detecting and preventing fraudulent commercial practices against consumers.

Both KORUS and KOREU broadly prohibit anticompetitive practices, and a transatlantic partnership could provide further opportunity for breaking new ground on competition policy, including introducing WTO-plus disciplines geared toward “leveling the playing field” between private firms and SOEs.⁵⁰ However, other contentious regulatory issues will require some degree of resolution in a bilateral deal, including transatlantic disputes over regulations on data privacy affecting cross-border service providers and technology companies, in particular. The European Union has addressed its broader concerns over privacy and the cross-border transfer of data through upgraded consumer protections and corporate regulatory policies. Specifically, proposals in 2012 to amend EU regulations would install stricter privacy laws that apply to all “personal data handled abroad to companies that are active in the EU market and offer services to EU citizens,” thus affecting US companies doing business in the European Union as well as internet-based companies.⁵¹ In seeking increased disclosure from companies on the processing, usage, and storage of data, the European Union’s tougher standards have spurred resistance from US companies and officials concerned that policies would hinder both commercial and cross-border services supply and innovation more generally.⁵² However, some EU member states have disagreed with “the level of prescriptiveness of a number of the proposed obligations in the draft regu-

lation” and are seeking revisions that could lessen the burden of data protection rules for US companies.⁵³

Moreover, the EU commitment to privacy protection in KOREU requires that the general services provisions of the FTA will not prevent compliance with regulations relating to “the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts” (Article 7.50). By contrast, KORUS emphasizes the free flow of information: “recognizing the importance of the free flow of information in facilitating trade, and acknowledging the importance of protecting personal information, the Parties shall endeavor to refrain from imposing or maintaining unnecessary barriers to electronic information flows across borders” (Article 15.8).⁵⁴

The HLWG’s final report does not explicitly mention cross-border transfer of data and privacy issues, though recommends more broadly that a transatlantic agreement should also address localization barriers to trade.⁵⁵ However, EU officials have stressed that the United States must agree to “adequate protections” if both sides are to make progress on new measures concerning the free flow of data.⁵⁶ The US-EU Safe Harbor Framework, dating from 2000, establishes a voluntary certification process by which US companies can take steps to ensure it has “adequate” privacy protections that comply with EU privacy laws and is seen as offering a potential springboard for the talks. Indeed, in March 2012 both sides reaffirmed their commitments to the agreement and suggested it could be a “useful starting point for [achieving] further interoperability” of the United States and European Union commercial data privacy regimes.⁵⁷

Competition-Related Matters” in Free Trade Agreement between the United States and the Republic of Korea, www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text (accessed on October 12, 2012).

50. “EU, US Still Trying to Bridge Differences on How to Deepen Trade Ties,” *Inside US Trade*, September 27, 2012, www.insidetrade.com (accessed on October 18, 2012).

51. Enhanced protections include requiring consumer consent to companies’ use of data or so-called opt-in data collection; the consumers’ right to the management and deletion of personal data or “right to be forgotten”; and the requirement that data breaches be reported in 24 hours. See “Commission proposes a comprehensive reform of data protection rules to increase users’ control of their data and to cut costs for businesses,” *Europa*, January 25, 2012, europa.eu/newsroom/index_en.htm (accessed on January 9, 2013).

52. For more detail on companies concerns, see “Businesses Wary as EU Unveils Sweeping Data Privacy Reform Proposal,” *Inside US Trade*, February 3, 2012, www.insidetrade.com (accessed on February 9, 2013).

53. For more detail, see James Fontanella-Khan and Bede McCarthy “Brussels to soften data protection rules,” *Financial Times*, March 6, 2013, www.ft.com (accessed on March 7, 2013).

54. The free flow of information has also been a key priority of the United States’ proposal under debate in the TPP negotiations, which seeks to prevent countries from blocking cross-border data transfers or requiring companies to locate servers in a particular location.

55. Localization barriers are defined as “measures designed to protect, favor, or stimulate domestic industries, services providers, or intellectual property at the expense of imported goods, services, or foreign-owned or foreign-developed intellectual property” (HLWG 2013, 6).

56. “EU Officials Want US to Bolster Data Privacy Protections in Trade Talks,” *Inside US Trade*, February 21, 2013, www.insidetrade.com (accessed on February 22, 2013).

57. US Commerce Department, “US-EU Joint Statement on Privacy from EU Commission Vice-President Viviane Reding and US Commerce Secretary John Bryson,” March 19, 2012, www.commerce.gov (accessed on February 22, 2013).

CONCLUDING REMARKS

US and EU officials have concluded that the TTIP has to be a big deal covering all major components of the commercial relationship. Both sides can achieve the TTIP's ambitious agenda by (1) broadly aligning their respective pacts with Korea and (2) deepening market access commitments covering both tariff and nontariff barriers to trade in goods, agriculture, and services. While KORUS and KOREU FTA precedents are instructive, we identify key differences between the two pacts that must be bridged through compromise or the development of a hybrid approach if the TTIP is to succeed. To briefly summarize, we recommend that the pacts with Korea be supplemented or adjusted in three areas:

- *Intellectual property rights*: Aim to establish a common IPR regime that includes provisions on GIs. Room for compromise exists in a three-tiered approach: register a list of compound terms for GI protection; negotiate an exceptions list for specific generic terms; and a third list of GIs subject to future negotiations.
- *Sanitary and phytosanitary measures*: Establish a consultative mechanism to ensure increased transparency and timely notifications of SPS regulatory proceedings and determinations. Priority should be given to improving the process for implementing “sound science” rulings more than to harmonizing or agreeing to mutual recognition of SPS requirements.
- *Environment and labor provisions*: Obligations in these areas should be subject to the pact's dispute settlement mechanism, and provisions should cover trade-related aspects of climate change policies, including the ongoing dispute over airplane emissions.

The task of building the TTIP requires more minor restructuring in several other areas, where KORUS and KOREU precedents should be easier to bridge:

- *Services*: Harmonize the approach to scheduling services commitments, drawing on the “hybrid framework” discussed in the International Services Agreement negotiations; and seek to expand new market access opportunities and harmonize regulatory policies across sectors like finance, insurance, and telecommunications.
- *Investment*: Build on KORUS as an initial framework for the “highest levels of liberalization and protection,” while drawing from the EU-wide investment positions as set in the investment chapters of recent FTAs.

- *Government procurement*: Agree on WTO-plus commitments on federal and subfederal procurement as in the KORUS and KOREU FTAs. TTIP reform also should liberalize US “Buy American” preferences as part of that broader procurement deal.
- *Competition policy*: Break new ground on WTO-plus disciplines that help “level the playing field” between private firms and SOEs and establish common ground on privacy issues and cross-border data transfers.
- *Aircraft subsidies*: Settle the WTO cases brought by Boeing and Airbus out of court with constraints on subsidies provided to both firms.

A comprehensive TTIP has important implications for both bilateral trade and the world trading system. If successful, it could strengthen transatlantic economic relations while also spurring trade reforms that both sides could jointly put forward to reinvigorate flagging multilateral trade negotiations.

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