

TTIP: Switzerland at the Table or on the Menu?

*The Impact of the
Transatlantic Trade Agreement
on Switzerland and its
Relations with the EU*

Die Transatlantische Handels- und Investitionspartnerschaft (Transatlantic Trade and Investment Partnership, TTIP) ist kaum eine beschlossene Sache. Dennoch hat sich das Abkommen bereits auf die Beziehungen zwischen der EU und der USA ausgewirkt. Dieses Papier erforscht den aktuellen Stand des komplexen TTIP-Dossiers aus schweizerischer Sicht. Es zeigt die Hintergründe der umstrittenen Verhandlungen auf, aber auch wie das Abkommen die demokratische Teilhabe an der EU-Handelspolitik verändert hat. Falls TTIP erfolgreich verhandelt werden kann, wird es den Welthandel ebenso grundlegend beeinflussen wie den Schweizer Aussenhandel.

Die Schweiz ist mit einer einzigartigen Herausforderung konfrontiert. TTIP ist kein traditionelles Freihandelsabkommen. Die Komplexität des Abkommens bedeutet, dass der traditionelle liberale Konsens zum Freihandel in der Schweiz nicht mehr ausreicht. Neue Formen des globalen Handels, globalisierte Wertschöpfungsketten und Investitionen sind heute durch umfassende internationale Abkommen gesteuert, die weit über eine Öffnung der Grenzen für ausländische Waren hinausgehen. Diese neue Generation von Handelsabkommen wird in der EU und den USA heiss diskutiert: TTIP ist nämlich ein zutiefst politisches Abkommen, das eine Debatte verdient. Diese Debatte ist in der Schweiz (noch) nicht angekommen - einem Land, das vom TTIP-Abkommen unausweichlich betroffen sein würde.

Die Bedeutung des TTIP-Abkommens für die Schweiz darf nicht untertrieben werden. Falls das Abkommen zustande kommt, wird es die wirtschaftliche, regulatorische und politische Lage der wichtigsten Nachbarn und Partner der Schweiz ver-

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ändern. Die Schweiz verfügt über umfangreiche wirtschaftliche Beziehungen mit den TTIP-Ländern; ihre

Exportindustrie hängt entscheidend vom TTIP-Markt ab. Diese wirtschaftliche Bedeutung für die Schweiz steht im krassen Gegensatz zur Wichtigkeit der Schweiz im TTIP-Abkommen. Ohne verlässliche Partner wird es der Schweiz kaum gelingen, sich in den Verhandlungsprozess einzubringen. Wie in den Beziehungen zur EU muss die Schweiz einmal mehr wirtschaftliche Interessen und eine schwache Verhandlungsposition miteinander vereinen.

Die Möglichkeit einer Schweizer Debatte zu TTIP wird momentan von der hängigen Umsetzung der Masseneinwanderungsinitiative vom 9. Februar 2014 überschattet. Die Forderungen der Initiative haben die Schweiz-EU-Beziehungen beeinträchtigt, insbesondere weil durch ihre Annahme das Grundprinzip der uneingeschränkten Personenfreizügigkeit im Europäischen Wirtschaftsraum in Frage gestellt wurde.

Genauso wie die Schweiz-EU-Beziehungen könnte denn auch TTIP institutionelle Konsequenzen mit sich bringen. In diesem Sinne stellt das TTIP-Abkommen die Schweiz gleich vor zwei Probleme: Den möglichen wirtschaftlichen Abschwung und weitere Komplikationen in den EU-Schweiz-Beziehungen.

Angesichts dieser komplexen Lage empfiehlt dieses Diskussionspapier folgende Punkte:

1. Die Schweiz könnte zuwarten und somit zum simplen *rule taker* verkommen. Dies hätte aber negative Auswirkungen für die Schweizer Exportindustrie und würde wohl vom Bundesrat flankierende Massnahmen erfordern. Alternativ könnte die Schweiz versuchen, **dem TTIP beizutreten oder ein paralleles Freihandelsabkommen entweder über die Europäische Freihandelsorganisation (EFTA) oder über ein USA-Schweiz-Parallelabkommen abzuschliessen**, das das TTIP-Abkommen in seinen wesentlichen Teilen widerspiegelt. Ein TTIP-Beitritt ist indessen sehr unwahrscheinlich, da dies die Schweizer Teilnahme an supranationalen Wirtschaftsregulierungsprozessen voraussetzen würde.

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2. Alternative **Parallelabkommen zum TTIP erfordern Partner im Ausland**. Die drei EFTA-Staaten sind hierzu sicherlich die naheliegendsten Verbündeten; momentan sind die vier EFTA-Staaten bloss lose miteinander verbunden, um über TTIP informiert zu bleiben. Auch wenn die substantiellen Interessen der EFTA-Staaten divergieren, haben sie ein gemeinsames Interesse, die Relevanz des EFTA-Formats aufrecht zu erhalten. Darum sollte die Schweiz eine ambitionierte, politische Allianz mit ihren EFTA-Partnern anstreben, um ihre Verhandlungsposition zu stärken.
3. In einer globalisierten Welt ist politische Isolation kein Garant für wirtschaftliche Unabhängigkeit und Wohlstand. **TTIP verdient darum eine Debatte und eine angemessene Vorbereitung in der Schweiz**. Diese Diskussion kann nicht wie anlässlich anderer Freihandelsabkommen, zum Beispiel jenem mit China, geführt werden. Der Bundesrat sollte klare Szenarien entwickeln und sowohl mit den EFTA-Partnerstaaten als auch mit den USA und der EU diskutieren.

4. **Eine allfällige Assoziierung an TTIP wird auch die Zustimmung der EU benötigen.** Angesichts der gegenwärtig abgekühlten EU-Schweiz-Beziehungen und bis zur Umsetzung der Masseneinwanderungsinitiative bleibt eine konstruktive TTIP-Debatte zwischen der EU und der Schweiz also unwahrscheinlich.

5. Nebst den wirtschaftlichen Folgen sollte auch über die politisch-institutionellen Auswirkungen des TTIPs debattiert werden. **Das altbekannte Mantra «mehr oder weniger Europa» reicht schlichtweg nicht mehr aus.** Traditionellerweise europafreundliche Mitte- und Linksparteien sind mit einem komplexen Dilemma konfrontiert: ihre traditionelle proeuropäische Haltung steht im Gegensatz zu den neoliberalen «behind the border»-Massnahmen des TTIP-Abkommens. Darum ist es für diese Akteure schwierig, eine Haltung einzunehmen, die zugleich proeuropäisch und gegen TTIP ist.

Die Schweizer Politik hat unterschätzt, welches Potential das TTIP-Abkommen hat, die EU-Schweiz-Beziehungen zu verändern. Zum Beispiel würde die ‚Regulatorische Zusammenarbeit‘ innerhalb des TTIP-Abkommens den Kontrast zu den nicht-dynamischen bilateralen Abkommen der Schweiz noch weiter vergrössern. Darum kann die Schweiz das Thema TTIP nicht länger aufschieben und zuerst die Frage der EU-Schweiz-Beziehungen

separat lösen. Das TTIP-Abkommen ist nämlich integrierter Teil (und Verschärfung)

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der festgefahrenen EU-Schweiz-Beziehungen. Die schweizerische Wirtschaftsdiplomatie und institutionalisierte Partnerschaften mit den engsten Partnern wachsen immer enger zusammen. Ob man TTIP mag oder nicht – das Abkommen widerspiegelt das Ende des klassischen liberalen Freihandels, denn institutionalisierte, ambitionierte Partnerschaften werden zunehmend zum *courant normal* der globalen Handelspolitik.

Dieses Papier ist folgendermassen aufgebaut: Der erste Teil führt in den Kontext und die wichtigsten Aspekte des TTIP-Abkommens ein, insbesondere für Drittstaaten. Der zweite Teil zeigt auf, welche Auswirkungen das TTIP-Abkommen auf die Schweiz hätte und welche Optionen die Schweiz und andere EFTA-Länder anstreben könnten. Der dritte Teil unterscheidet zwischen zwei wichtigen Herausforderungen des TTIP für die Schweiz: eine substantielle, thematische Herausforderung und eine Komplizierung der Schweiz-EU-Beziehungen.

Le partenariat transatlantique de commerce et d'investissement (Transatlantic Trade and Investment Partnership, TTIP) est loin d'être conclu. Néanmoins, la négociation de ce traité a déjà fortement façonné les relations entre les Etats-Unis et l'Union européenne (UE) ainsi que les politiques européennes. Ce papier de discussion explore l'état actuel de ce dossier complexe d'un point de vue suisse. Il décrit les négociations difficiles en cours entre les différentes parties et démontre comment le TTIP a modifié la participation démocratique au sein de l'UE. En cas d'entrée en vigueur, ce traité va probablement influencer sur le commerce mondial et aura également un impact important sur l'économie suisse.

Le TTIP n'est pas un accord de libre-échange traditionnel. Sa nature complexe implique que le consensus libéral traditionnel suisse sur le libre-échange ne suffit pas. De nouvelles formes de commerce global, des chaînes de valeurs et des investissements mondialisés sont aujourd'hui favorisés par de larges accords qui vont bien au-delà de la simple ouverture des frontières aux produits étrangers. Cette nouvelle génération d'accords commerciaux a été l'objet d'intenses discussions entre l'UE et les États-Unis: le TTIP est par essence un accord politique qui mérite d'être débattu et soumis à délibération. Ce type de débat n'existe actuellement pas en Suisse – un pays qui va pourtant être affecté considérablement par cet accord.

L'importance du TTIP ne doit pas être minimisée. En cas de conclusion, cet accord changerait le paysage économique, réglementaire et politique des pays voisins de la Suisse et de tous ses principaux partenaires économiques. La Suisse profite de ses nombreux liens économiques avec les pays du TTIP

Ceci étant dit, tous les débats qui concernent les relations extérieures suisses passent au second plan face au défi actuel posé par l'application du vote populaire suisse du 9 février qui vise à limiter l'immigration.

; ses exportations de produits industriels dépendent largement de ce marché. Cependant, le poids politique individuel de la Suisse est relativement faible par rapport à un accord économique de cette importance. Sans alliés de son côté, la Suisse restera trop isolée pour imposer ses priorités ou simplement influencer le processus de prise de décision au sein du TTIP. Tout comme dans le cas de ses relations avec l'UE, les intérêts économiques de la Suisse sont en jeu, mais son pouvoir de négociation est faible.

Ceci étant dit, tous les débats qui concernent les relations extérieures suisses passent au second plan face **au défi actuel posé par l'application du vote populaire suisse du 9 février qui vise à limiter l'immigration.** Cette initiative a crispé les relations Suisse-UE. En effet, la Suisse pourrait devoir abolir le principe de libre-circulation des personnes, un principe fondamental du marché

intérieur européen. Le TTIP aurait aussi des implications institutionnelles pour le gouvernement suisse. Le TTIP implique donc un double défi pour la Suisse : le détournement des flux commerciaux, et une difficulté politique supplémentaire pour les relations Suisse-UE.

Face à ce contexte, ce papier de discussion avance les recommandations suivantes :

1. La Suisse pourrait rester inactive et adopter passivement les règles issues du TTIP. Une telle (non-)politique aurait néanmoins des conséquences préjudiciables sur l'industrie d'exportation suisse et exigerait la mise en place des mesures d'accompagnement par le gouvernement. Elle pourrait aussi tenter **de rejoindre le TTIP ou de conclure un accord parallèle par le biais de l'Association européenne de libre-échange (AELE) ou éventuellement au travers d'un accord similaire entre la Suisse et les États-Unis** qui reprendrait les composants essentiels du TTIP. En effet, à l'heure actuelle, il est peu probable que la Suisse rejoigne le TTIP. Quant aux autres approches, elles sont politiquement sensibles, car elles impliqueraient la participation de la Suisse à des formes de gouvernance économique supranationale.

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2. Des accords parallèles exigeraient également de **trouver des alliés politiques à l'étranger**. Les partenaires les plus logiques pour accroître le pouvoir de négociation de la Suisse seraient certainement les autres pays membres de l'AELE, actuellement ceux-ci se sont déjà organisés sans la Suisse pour rassembler des informations sur le TTIP. Même si la Suisse peut avoir des intérêts divergents avec ces pays, il n'en demeure pas moins que les membres de l'AELE ont un intérêt commun à sauvegarder la stature de leur organisation dans le commerce mondial. À cette fin, le gouvernement suisse devrait aspirer à conclure **un partenariat politique ambitieux avec les autres membres de l'AELE pour accroître son pouvoir de négociation**.
3. L'isolation politique ne garantit plus l'indépendance économique et la prospérité dans un monde globalisé. **Le TTIP mérite donc de faire l'objet d'un réel débat en Suisse**. Ce débat ne devrait pas prendre le même cheminement que ceux pris pour les autres accords de libre-échange étant donné la nature ambitieuse de ce traité. Tout d'abord, le gouvernement suisse devrait développer une communication transparente pour expliquer

les implications du traité pour le pays. Dans un second temps, il devrait chercher à **convaincre ses partenaires de l'AELE et certains pays parmi les signataires du TTIP.**

4. **Une potentielle association de la Suisse au TTIP exigerait une approbation de la part de l'UE.** Jusqu'à ce que l'impasse actuelle dans les relations Suisse-UE soit résolue, un débat suisse significatif et productif avec l'UE sur le TTIP sera donc difficile à atteindre. **Le gouvernement suisse devrait donc incorporer le TTIP dans sa stratégie de mise en œuvre de l'initiative d'immigration de masse.**
5. Outre l'impact économique du TTIP, **le débat classique s'articulant autour de la question voulons-nous « plus ou moins d'Europe » n'est pas pertinent pour discuter le TTIP en Suisse.** En fait, les partis centristes pro-européens et les partis de gauche font face à un dilemme : s'opposer aux mesures néolibérales au-delà des frontières du TTIP, ils ne peuvent pas raisonnablement critiquer le TTIP mais devraient promouvoir des relations constructives avec l'UE.

À ce jour, les décideurs politiques suisses ont sous-estimé le potentiel d'influence du TTIP sur les relations Suisse-UE. Par exemple, l'UE pourrait considérer les accords bilatéraux de nature non-dynamique encore plus problématique à la lumière

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TTIP et ce alors même que les relations suisses avec l'UE sont dans une étape cruciale. **Repousser le débat suisse sur le TTIP et résoudre « un problème à la fois » relève d'une stratégie imparfaite.** Un potentiel TTIP est indissociable de l'actuelle impasse des relations de la Suisse avec l'UE. La diplomatie économique et les profondes relations politico-institutionnelles avec les plus proches partenaires de la Suisse ne peuvent plus être dénouées. Qu'on apprécie ou non le TTIP, l'accord pourrait très bien bétonner la fin du libre-échange désengagé, pour lequel la diplomatie économique sans concessions institutionnelles n'est plus possible. Ce papier de discussion est structuré comme suit : la première partie introduit le contexte et les points clefs du TTIP, en particulier ses implications pour les États tiers. La seconde partie montre comment le TTIP aurait un impact sur l'économie suisse et quelles options précises la Suisse ainsi que les autres pays membres de l'AELE pourraient poursuivre, étant donné les liens économiques significatifs avec l'UE. La troisième partie distingue deux défis sous-jacents pour l'UE – l'effet exact sur les États non-européens n'est toujours pas clair.

The Transatlantic Trade and Investment Partnership (TTIP) is hardly a done deal. Nonetheless, it has already shaped US-EU relations and EU politics at large in undeniable, powerful ways. The following paper explores the state of play of this complex dossier from a Swiss point of view. It lays out the contentious negotiations currently underway between the contracting parties and shows how TTIP has altered democratic participation in the EU. If concluded, TTIP is likely to shape global trade and also impact the Swiss economy.

TTIP is not a traditional free trade agreement. Its complex nature means that the conventional liberal Swiss consensus on free trade does not suffice. New forms of global trade, globalised value chains and globalised investment are today steered by comprehensive agreements that go far beyond opening borders to foreign goods. This new generation of trade agreements has been intensely discussed in the EU and US: TTIP is a deeply political agreement that deserves debate and deliberation. That level of debate cannot be found in Switzerland – a country that will invariably be affected by the agreement.

TTIP's significance cannot be understated. If concluded, it will change the economic, regulatory and political landscape of Switzerland's immediate neighbours and of all of its key economic partners. Switzerland enjoys extensive economic ties with TTIP countries; its export industries crucially depend on the TTIP market. But Switzerland's individual political weight in TTIP is at stark odds with the agree-

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ment's economic importance. Without committed allies, Switzerland will remain too weak to im-

pose its priorities in the decision-making process. Akin to its relations with the EU, Switzerland's stake in TTIP is thus one of economic relevance but yet a weak bargaining power.

Any debate about Switzerland's external relations is currently **overshadowed by the pending implementation of the Swiss popular vote on February 9th 2014 to cap immigration**. This initiative strained EU-Switzerland relations, as Switzerland may have to abolish the principle of free movement of persons – a core principle of the EU's Internal Market. Yet just as Switzerland-EU relations do, TTIP has institutional implications too. TTIP promises double trouble for Switzerland: diversion of trade flows from the agreement, and additional political hardship for Switzerland-EU relations.

In light of this complex background, this discussion paper makes the following recommendations:

1. Switzerland has the option of remaining inactive and becoming a TTIP rule-taker. This would have detrimental effects on the Swiss exporting industries and would arguably require flanking measures by the government. Alternatively, Switzerland could seek **to join TTIP or conclude a parallel agreement either via the European Free Trade Association (EFTA) or through a Swiss-US parallel agreement** that replicates TTIP in its essential parts. Indeed, it is highly unrealistic that Switzerland will join TTIP. The other approaches are also politically contentious, as they could implicate Swiss participation in supranational economic governance.
2. Any parallel agreements will **require political allies abroad**. The most natural partners to enhance Swiss bargaining power are certainly other EFTA states, yet currently EFTA states only are organised to gather information on TTIP. While substantial interests are perhaps divergent at times, EFTA countries have a shared interest in keeping the EFTA format relevant in EU foreign trade. To that end, the Swiss government should aspire to **an ambitious political partnership with its EFTA partners to enhance its bargaining power**.
3. Political isolation cannot guarantee economic independence and prosperity anymore in a globalised world. **TTIP needs discussion and preparation on its own merit**. The debate cannot follow those on other free trade agreements: TTIP is a new-generation agreement with political and institutional implications. The Swiss government should develop and disseminate clear scenarios for dealing with an eventual TTIP, and also **actively reach out to its partners in EFTA and among TTIP signatories**.
4. **A potential Swiss association with TTIP will require the approval of the EU**. Until the current general stalemate in EU-Switzerland relations is resolved, a meaningful and productive discussion on TTIP will be hard to come by. The Swiss government should therefore **factor TTIP**

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into its implementation strategy of the mass immigration initiative.

5. Besides TTIP's economic impact, **the «more or less Europe» debate is insufficient for Swiss relations with TTIP.** Traditionally pro-European centrist and leftist parties face a dilemma: opposing the neoliberal behind-the-border measures of TTIP, they cannot reasonably criticise TTIP while at the same time welcoming constructive relations with the EU.

To date, Swiss policy makers have underestimated TTIP's potential to alter Switzerland-EU relations: for example, the EU could consider the Swiss-EU bilateral agreements' non-dynamic nature as even more problematic in light of TTIP's on-going regulatory governance. Swiss

relations with the EU are at a crucial stage. Postponing the Swiss discussion of TTIP and solving «one problem at a time» is a flawed strategy. The potential TTIP agreement is part and parcel of

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the current, deeply political impasse of Switzerland and the EU. Economic diplomacy and deeply institutionalised political relations with Switzerland's closest partners can no longer be disentangled. Whether one likes TTIP or not, the agreement may very well cement the end of noncommitmental free trade, where economic diplomacy without institutional concessions is no longer possible.

The paper is structured as follows: the first part introduces the context and key discussions about TTIP, especially its implications on third states. The second part shows how TTIP would impact the Swiss economy and what options Switzerland and other EFTA countries might pursue, given their significant economic ties with the EU. The third part distinguishes two discrete challenges for EU-Switzerland relations that will prevail in the Swiss debate on TTIP.

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1 The Context and Contentions of TTIP

TTIP is arguably among the most-debated international trade agreements of the last two decades. Its history lies in post-Cold War efforts to revive and modernise transatlantic economic ties. TTIP builds on a number of gradual rapprochements between the EU and US in economic affairs, most importantly the 1995 New Transatlantic Agenda and the 2007 Framework for Enhancing Transatlantic Integration, which established the Transatlantic Economic Council (TEC). With the multilateral process at the World Trade Organisation (WTO) stalling since the late 1990s, the EU and US opted to advance their trade relationship bilaterally. Talks about a TTIP truly only gained steam in the 2010s. Since then,

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negotiations have only advanced slowly. European and American civil society organisations have staged an unprecedented show of opposition to this potential agreement, making its failure a possible scenario, even if most European governments support TTIP's general thrust.

1.1 What TTIP Aspires to

TTIP aims at establishing a **new-generation trade agreement between the EU and the US**. Whilst certainly grounded in the principles of liberal free trade, its ambitions reflect the stalling discussions in the Doha Development Round at the WTO and will likely include new, more modern issues and approaches of economic governance. TTIP aspires to create a critical trade mass that

would lead other countries to adopt Euro-American norms. Together with the Trans-Pacific Partnership (TPP), which the US recently concluded with 11 countries, the majority of global trade would thus be governed by TPP and TTIP norms. Clearly, the economic rise of China is driving this geoeconomic dimension of TTIP.

Substantially, TTIP is not just about free trade, but would **advance the global governance of trade into a neoliberal, 'behind-the-border' era**. Preferential free trade agreements are not just about liberalising trade 'at the border', but have a considerable impact on the national economic governance. The EU already holds agreements of such depth, for example the Canada-EU Comprehensive Economic and Trade Agreement (CETA).

TTIP's Negotiation Chapters: Material Scope

<p>Market Access <i>«Traditional» preferential free trade</i></p>	<p>Regulation <i>Concrete «new generation» behind-the-border liberalisation measures</i></p>	<p>Rules <i>Setting the «rules of the game»: international standards and institutional framework</i></p>
<p>Tariffs Rules of Origin Trade in Goods Agriculture Market Access Services and Investment Public Procurement</p>	<p>Sanitary and Phytosanitary Measures (SPS) Regulatory coherence and cooperation Technical barriers to trade (TBT) Cars Chemicals Pharmaceuticals & Medical devices Textiles Cosmetics ICT Engineering Pesticides</p>	<p>Trade and Sustainable Development Energy and raw materials Customs and trade facilitation Intellectual Property Rights (IPR) and Geographical Indicators Small and Medium Enterprises (SMEs) Dispute settlement (ISDS) Competition Subsidies & State-owned Enterprises (SOE) Legal and institutional issues</p>

Source: author's compilation

As economic heavyweights and global leaders in trade, the EU and US have a shared interest in boosting trade, but the two sides disagree considerably on the scope and depth of TTIP. For example, in financial services, the EU has offensive (i.e. liberalisation) interests, while the US is on the defensive (i.e. protectionism). Namely, the US has introduced stricter financial regulation of Wall Street activities in 2010 following the Financial Crisis. The Dodd-Frank Act stands at odds with the EU's approach to financial regulation and complicates a

single transatlantic regulatory environment for financial services. However, with a view to increasing their trade in financial services abroad, the financial industry on both sides of the Atlantic supports an ambitious TTIP chapter on financial services. In turn, the European Commission only underlines the merits of a framework for regulatory cooperation, while the White House fears such a TTIP chapter will undermine its recent stricter regulation. Further disagreements exist regarding agricultural liberalisation, GMOs, public procurement, geogra-

phical indications (GI) of specialty produce, welfare services, and many more. It is thus the depth and scope, not the overall aspiration of intensified transatlantic trade that is unresolved between the EU and the US. .

1.2 Public Opposition to TTIP

TTIP negotiators face a tough technocratic battle that just concluded its 13th round. Much stronger opposition however comes from outside the negotiation room. Civil society opposition first gathered momentum in light of criticism of the secretive nature of the negotiations. This is somewhat paradoxical, as TTIP negotiations are *relatively* well-publicised trade negotiations com-

pared with other on-going negotiations, such as the plurilateral Trade in Services Agreement (TiSA) which are negotiated largely without pub-

lic engagement. The anti-TTIP campaign, however, successfully galvanised the European public into discussing an issue previously left to the experts of the European Commission. It is furthermore fair to say that civil society has also been mobilised due to the new-generation scope and ambition of this agreement. Many civil society organisations oppose both the liberalisation within the material scope of TTIP, as well as its institutional implications. The European Commission has been increasingly reactive. With a new generation of free trade agreements come new requirements of transparency and legitimacy.

TTIP would put in place institutional arrangements that were criticised by its opponents. First, TTIP would introduce reinforced **Investor-State Dispute Settlement (ISDS) mechanisms**. These

mechanisms allow investors to request a confidential arbitration procedure against foreign states if they feel their rights were violated. Again, such provisions are fairly common in free trade agreements and the number of ISDS cases is on the rise globally, but their confidential nature precludes governments from publishing precise figures and assessments.¹ TTIP opponents have successfully stimulated public opposition to such arbitration outside publicly accountable courts. Besides ISDS, TTIP's requirement to harmonise new economic regulation is **likely to result in so-called 'regulatory cooperation' through a Regulatory Cooperation Council**.² This body would enable

regular coordination of regulation, and give relevant interest groups privileged access to the transatlantic regulatory process. Its ambitions surpass the regulatory

mechanisms of other FTAs considerably.³ TTIP opponents have criticised the potentially undemocratic nature of regulatory cooperation. However, these would apply less to reforms of existing regulation and focus on new regulatory sectors. Nonetheless, here lies the crux of a «living agreement» that would «harness [...] the outcome of subsequent regulatory discussions into the overall Agreement»,

Civil society opposition first gathered momentum in light of criticism of the secretive nature of the negotiations. This is somewhat paradoxical, as TTIP negotiations are relatively well-publicised trade negotiations

1 UNCTAD, «Investor-State Dispute Settlement: Review of Developments in 2014,» 2 (Geneva, May 2015), 5, http://unctad.org/en/PublicationsLibrary/webdiaepcb2015d2_en.pdf.

2 European Commission, «Initial Provisions for CHAPTER [] Regulatory Cooperation. Textual Proposal,» February 10, 2015, http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153120.pdf.

3 Peter Chase and Jacques Pelkmans, «This Time It's Different: Turbo-Charging Regulatory Cooperation in TTIP,» Paper No. 7 in the CEPS-CTR project «TTIP in the Balance» and CEPS Special Report No. 110 (CEPS, 2015), <http://www.ceps.eu/publications/time-it%E2%80%99s-different-turbo-charging-regulatory-cooperation-ttip>. The EU's negotiation offer has been published at http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153120.pdf.

as it was stipulated in the EU negotiation directives.⁴ TTIP is not just a liberalisation agreement, but also puts mechanisms in place for further liberalisation.

Finally, the call for more transparency in TTIP negotiations ought to be contextualised in a prospective assessment of who stands to benefit from TTIP. When considered from the perspective of different interest groups (rather than countries), **big business stands to gain more from the agreement than citizens or Small and Medium-sized Enterprises (SME).** SMEs would, for example, struggle to launch expensive ISDS cases

Big business stands to gain more from the agreement than citizens or Small and Medium-sized Enterprises (SME).

against governments. The European Commission has been criticised by SMEs for focusing overly on the interests of big business, leading to the publication of several studies backing up the Commission's position on why SMEs would benefit from TTIP.⁵

More generally, the EU has not put forward truly convincing forecasts that would predict sound economic growth due to TTIP. Different studies based their calculations on optimistic forecasts between 0.48% and (an unrealistic) 5% GDP growth in the EU by 2027.⁶ Both the vast difference between various predictions, and their controversial methodolo-

gy have been criticised.⁷ Amidst the broader imperative of European post-crisis economic stabilisation and growth, realistic TTIP forecasts are relatively marginal. Against such fairly unconvincing numbers, the Commission's resistance to make TTIP negotiations more transparent quickly vanished. Compared to the US administration, the European Commission has been relatively reactive, for example by publishing its negotiation offers and lists of lobbying meetings.⁸ Much of this transparency initiative is the result of proactive civil society opposition on social media and elsewhere. One of the biggest leaps towards more transparency of the European Commission, the publication of its negotiation directives, had to be forced on the Commission by a leak. Only months later, after wide distribution of the document, it was formally declassified.⁹ TTIP opposition has indeed the potential to render EU trade policy more democratic, with the new Com-

The EU has not put forward truly convincing forecasts that would predict sound economic growth due to TTIP

mission under Jean-Claude Juncker's repeated insistence on transparency.¹⁰ Amidst the many other issues troubling European leaders in 2015, this newfound focus on transparency has, however, been slightly on the retreat. Nonetheless, the Com-

4 Council of the European Union, «Directives for the Negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America,» June 17, 2013, <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>.

5 European Commission, «Small and Medium Sized Enterprises and the Transatlantic Trade and Investment Partnership,» 2015, http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc_153348.pdf.

6 European Commission, «Transatlantic Trade and Investment Partnership. The Economic Analysis Explained,» September 2013, http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151787.pdf.

7 Ferdi De Ville and Gabriel Siles-Brügge, «The Transatlantic Trade and Investment Partnership and the Role of Computable General Equilibrium Modelling: An Exercise in 'Managing Fictional Expectations,» *New Political Economy* 20, no. 5 (September 3, 2015): 653–78.

8 <http://ec.europa.eu/trade/policy/in-focus/ttip/documents-and-events/#transparency>

9 <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>

10 Ueli Staeger, «Understanding Civil Society and European Parliament Contention with the TTIP Negotiation,» in *The Atlantic – A Bridge Too Far? TTIP's Provenance, Prospects and Pitfalls*, ed. Jonatan Thompson (College of Europe, 2015), 48–55, <https://www.coleurope.eu/news/eu-diplomacy-paper-2/2015-atlantic-bridge-too-far-ttip-provenance-prospects-and-pitfalls>.

mission's new trade strategy, published in October 2015, fully recognises the need for more transparent trade policy and sets TTIP transparency provisions as the new standard for EU FTAs.¹¹

1.3 The West and the Rest? The Role of Third States

If the EU and US stand to benefit from a potential TTIP, what about the rest of the world? Those most fervently opposed to TTIP are surely developing countries in the Global South. Developing countries are affected to different degrees; TTIP will lead to job losses in developing countries. With some variation corresponding to the depth and scope of the agreement, TTIP's global impact is negative: increased demand for goods and services in developing countries is smaller than its effect of increasing trade costs and eroding developing countries' preferences. The advantageous trade relations they formerly had with the EU and US will lose value.¹² This prospect adds to developing countries' general opposition to Western leadership in global trade governance. The Doha Development Round at the WTO, which has progressed only at a glacial pace since 2001, stalled precisely because of a deep rift between developing countries and the West, namely the US and the EU. The WTO's members negotiate agreements as a 'single undertaking' requiring the full approval of all parties to all aspects of a deal, stalling progress in the last decade. In this regard, developing countries see TTIP as a Western break out of multilateral negotiations. Using bila-

teral agreements for breakthroughs at the multilateral level is however a rather typical phenomenon of global trade policy: many multilateral achievements in trade policy, for example the WTO's Intellectual Property rules and trade in services agreements were only possible due to prior bilateral agreements.¹³ Undoubtedly, TTIP would set regulatory precedents that small players from other parts of the world would struggle to circumvent. Particularly for countries with a high share of trade with the EU and US, TTIP thus sets a crucial precedent. **Non-EU European countries face a further significant challenge.** Grouped in EFTA, Iceland, Liechtenstein, Norway and Switzerland make for 11% of the EU's foreign trade volume. Iceland, Liechtenstein and Norway participate in EU's Internal Market through the European Economic Area (EEA). Switzerland chose a non-dynamic association to the EU Internal Market through its bilateral agreements. The EEA enables the participation in the EU's Internal Market, whose governance is led by the European Commission's work. Today, the internal market policy is linked to EU common trade policy considerably, which has gained importance as a EU foreign policy.¹⁴ The EEA would thus be si-

Iceland, Liechtenstein, Norway and Switzerland make for 11% of the EU's foreign trade volume.

gnificantly impacted by TTIP, and EFTA members have no choice but to prepare for an eventual TTIP. Turkey would inevitably be affected too. Making for 3.8% of the EU's trade volume, it concluded a

11 European Commission, «Trade for All. Towards a More Responsible Trade and Investment Policy» (Brussels, October 2015), 19, http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf.

12 Ifo Center for International Economics, «Potential Impact of TTIP on Developing and Emerging Countries» (München, 2014), http://www.cesifo-group.de/ifoHome/research/Projects/Archive/Projects_AH/2014/proj_AH_ttip-entwicklungslaender.html.

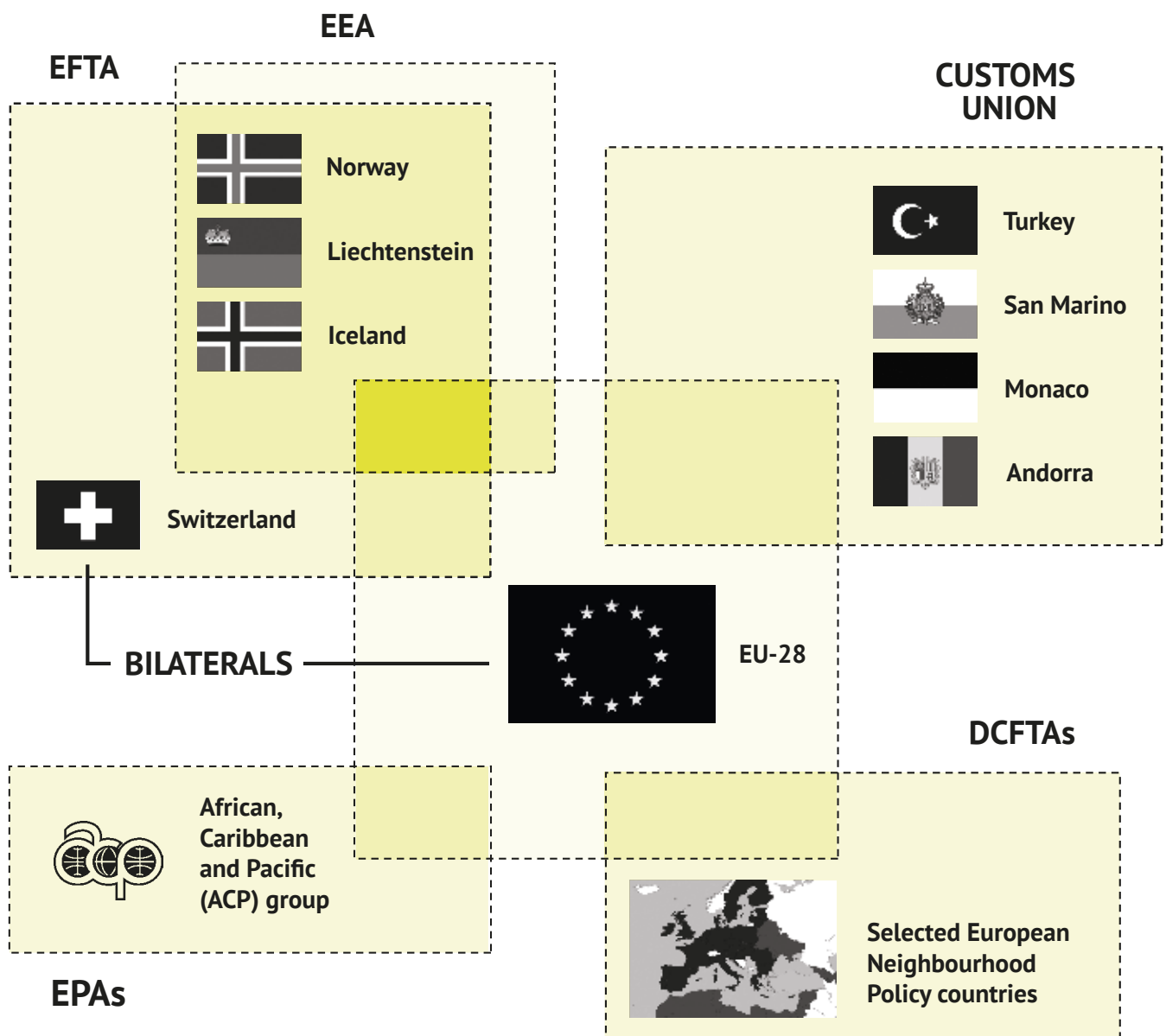
13 Thomas Cottier, Charlotte Sieber, and Gabriela Wermelinger, «The Dialectical Relationship of Preferential and Multilateral Trade Agreements,» in Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreement World Trade Forum, ed. Andreas Dür and Manfred Elsig (Cambridge: Cambridge University Press, 2015), 465–96.

14 Jacqueline Breidlid and Marius Vahl, «Current and Future Challenges for the EEA,» *EFTA Bulletin*, July 2015, 35.

Customs Union (CU) with the EU in 1995 that removes tariffs on all goods from the EU and is affected by all of the EU's FTAs. Turkey is thus the «opposite» of the EEA: while not formally associated with the Internal Market, it is part of the EU's Customs Union. Finally, the EU also has concluded or is negotiating trade Economic Partnership Agreements

(EPA) with the African Caribbean Pacific (ACP) group as well as with a number of European Neighbourhood Policy (ENP) countries. These Deep and Comprehensive Free Trade Agreements (DCFTA) are ambitious in scale and scope and aspire to a close economic interrelation of ENP countries with the EU Internal Market.

Institutional and legal arrangements of European trade governance



Source: author's compilation

TTIP's precise effect on non-EU European states is still unclear. Simply put, the EU and US will need to reconcile their intensified preferential trade with a WTO-compatible, 'open' regulatory arrangement that third countries willingly align with in pursuit of positive spill-overs.¹⁵ TTIP's signatories will thus

In a global economy with highly internationalised value chains, third countries' alignment with TTIP are part and parcel of TTIP's strategy.

have to balance between neo-mercantilist preferentialism and the signatories' continued reliance on other markets. In a global economy with highly internationalised value chains, third countries' alignment with TTIP are part and parcel of TTIP's strategy. Switzerland and the EEA EFTA states will hence invariably be affected by a potential TTIP – the question is therefore not *if*, but *how* to react to this fact.

2 What is Switzerland's Relationship with TTIP?

Both the US and EU are crucial economic partners for Switzerland: 59% of Swiss exports and 79% of Swiss imports in goods are exchanged with the EU and US combined.¹⁶ There is thus a strong interest of the Swiss government in the on-going negotiations. The question of Switzerland's relation with TTIP is of a twofold nature: first, it is an **issue of econo-**

mic diplomacy to maximise Swiss economic interests in the EU and US. Second, given TTIP's ambition to transcend the limited scope of traditional free trade through regulatory cooperation, TTIP will inevitably have **institutional consequences for economic governance**. Switzerland is in a paradoxical situation: it relies heavily on international trade, but has limited bargaining power on its own. This section first discusses the economic relevance of TTIP for Switzerland, then presents the state of play of the TTIP dossier at EFTA and discusses the prospect of non-EU European states'

Switzerland is in a paradoxical situation: it relies heavily on international trade, but has limited bargaining power on its own.

ability to influence TTIP. It concludes by presenting three potential scenarios for Switzerland's relation with TTIP: third state, a flanking US-Switzerland FTA, and an accession to TTIP.

2.1 Economic Repercussions

Today, Swiss economic relations with the EU and EEA are highly elaborate and function well thanks to the bilateral agreements packages. However, liberalising trade with the US has failed before. In the early 2000s, the **US and Switzerland launched exploratory talks of a US-Swiss FTA, which Switzerland halted in 2006** due to disagreements regarding the liberalisation of the agricultural sector. The US and Switzerland nonetheless enjoy a vibrant relationship; for example, Switzerland is a leading investor in the US.¹⁷ A potential TTIP presents yet a different challenge of liberalised trade between Switzerland's closest trade partners. A

15 Arjan Lejour et al., «Economic Incentives for Indirect TTIP Spillovers,» TTIP Series (Brussels: Centre for European Policy Studies, October 2014), <http://www.ceps.eu/publications/economic-incentives-indirect-ttip-spillovers>.

16 European Commission, «Switzerland – Trade Statistics» (Brussels, October 27, 2015), ec.europa.eu/trade/policy/countries-and-regions/countries/switzerland.

17 Bureau of Economic Analysis, «Foreign Direct Investment in the United States: Selected Items by Detailed Country, 2008–2014,» 2016, <http://www.bea.gov/international/xls/fdius-current/FDIUS%20Detailed%20Country%202008-2014.xlsx>.

recent study by *economiesuisse* corroborates the US side of TTIP posing more problems in a potential TTIP. In a qualitative self-assessment of different sectors, all economic actors with a large share of US and EU exports said they «would have to anticipate

There is a tangible risk of trade diversion of US imports from Swiss to EU producers with TTIP, albeit with considerable variation between sectors

direct or indirect disadvantages if the TTIP negotiations were to be brought to a successful conclusion».¹⁸

A quantitative, macroeconomic assessment of TTIP's impact on Switzerland is more difficult, pending TTIP's conclusion. Generally, there is a **tangible risk of trade diversion of US imports from Swiss to EU producers with TTIP**, albeit with considerable variation between sectors.¹⁹

As a study by the World Trade Institute Berne shows, Swiss firms' market positions in the EU

could be affected more than the respective market shares in the US, particularly in procurement and foreign investment.²⁰ The same study however also identifies regulatory benefits, for example spillovers in Intellectual Property Rights (IPR) that could benefit the Swiss economy. «Finally, TTIP's

rules of origin regime, deciding on the degree to which a product has to be produced within the TTIP space to fall under the free trade regime, is not clear yet. With a strict TTIP rules of origin scheme, Switzerland would lose its attractiveness as a production site». In essence, the close intertwining of the Swiss, EU and US economies will inevitably influence Swiss exports regardless of how Switzerland associates itself to TTIP (or not), but to yet unknown extents. The Swiss Parliament called upon the government to develop a strategy regarding TTIP and its opportunities for the Swiss economy.²¹

2.2 EFTA Countries and TTIP

Switzerland is not alone in following TTIP negotiations closely. EFTA has taken interest in the TTIP negotiations and receives briefings on the develop-

ments of negotiations.²² EFTA states also put in place a Trade Policy Dialogue with the US. There is no consolidated

Norway, Iceland and Liechtenstein are formal members of the EEA – they can influence the EU legislative process by providing input to the EU from the early stage through 'decision-shaping'

EFTA position except that TTIP-related exchange with the EU and the US should be continued. EFTA members are evaluating their stance on a potential TTIP individually. Importantly, **Norway, Iceland and Liechtenstein are formal members of the EEA** – they can influence the EU legislative process by providing input to the EU from the early stage through 'decision-shaping'. In turn, EFTA-EEA countries are required to adopt EU legis-

18 *economiesuisse*. «TTIP and Its Significance for Switzerland.» Zürich: *economiesuisse*, Verband der Schweizer Unternehmen, September 21, 2015. http://www.economiesuisse.ch/sites/default/files/downloads/dp10_TTIP_e_o.pdf, 12

19 Manuela Balestrieri, «Transatlantic Value Chains with Swiss Participation and Rules of Origin: Is Trade Creation Dominating Trade Diversion?» (Geneva, July 2014), <http://www.news.admin.ch/NSBSubscriber/message/attachments/35612.pdf>.

20 World Trade Institute, «Potential Impacts of a EU-US Free Trade Agreement on the Swiss Economy and External Economic Relations» (Bern: University of Bern, July 2014), http://www.wti.org/fileadmin/user_upload/wti.org/institute/pdfs/Economic_Impacts_of_TTIP_on_Switzerland_-_Final_Study_WTI_-_09_July_2014.pdf.

21 Gerhard Pfister, «Freihandel Zwischen Der EU Und Den USA. Opportunitätsstrategie Der Schweiz,» Postulat 14.4186, (February 29, 2016), <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefit?AffairId=20144186>.

22 Council of the European Union, «Conclusions of the 43rd Meeting of the EEA Council» (Brussels, May 18, 2015), para. 17, <http://www.consilium.europa.eu/en/press/press-releases/2015/05/18-eea-43rd-meeting/>.

lation related to the EEA dynamically. Switzerland, on the other hand, chose a more rigid, non-dynamic approach through its 'bilateral agreements' regime where changes in legislation pertaining to the Internal Market are not transposed automatically.

Norway is a good example for EFTA-EEA discussions of TTIP. A study by the Norwegian Institute of International Affairs concludes that the country would be invariably affected by changes in EEA legislation caused by TTIP regulatory governance, and further suggests a parallel US-Norway FTA that would economically benefit Norway, not least the oil sector.²³ Another report by the Norwegian government argues that regulatory cooperation would perhaps lower technical barriers to trade for Norwegian products in

the US, but it would also **lower the Norwegian government's ability to influence relevant legislation in the EU.**²⁴ As

an EFTA-EEA State, Norway is however still better situated than Switzerland: it sits on the EEA Joint Committee that meets the European Commission on a monthly basis. As changes in EEA legislation due to TTIP regulatory cooperation would occur on a very regular basis, the current EU-Switzerland bilateral agreements would not be able to account for the consequences of the 'living agreement' that TTIP aspires to become.

Even as a EFTA-EEA non-member, **Switzerland's EFTA membership has a number of**

advantages to tackle the TTIP challenge.

Switzerland has observer status in the EFTA Standing Committee and participates in EFTA-internal meetings, also those related to the EEA. The Swiss participation in the Standing Committee's working groups and sub-committees also helps Switzerland stay up-to-date on EFTA-EEA positions on TTIP. Furthermore, the Swiss government can already foresee important EEA legal acts and can learn from the three EFTA-EEA members' political and legal relations with the European Commission.

Besides the governance of the EEA agreement, **EFTA's second important task is to conclude free trade agreements with third countries such as the US.** An EFTA-US parallel FTA to TTIP

is precisely such an agreement. In 2013, EFTA and the United States Trade Representative (USTR) established a Trade

Policy Dialogue with expert and ministerial-level meetings.²⁵ This dialogue focuses on institutional scenarios, not the scope and depth of TTIP or on the content of the negotiations. Hence, the dialogue considerably shapes an eventual TTIP accession clause and will matter for Switzerland, whether it concludes a flanking FTA through EFTA or on a mere bilateral basis with the US.

2.3 Options for Swiss Action Regarding TTIP

A Swiss position on TTIP is inevitable, since economic repercussions will occur in any case. The extent of economic repercussions today is specula-

23 Hege Medin and Arne Melchior, «Økonomiske Virkninger Av En Frihandelsavtale Mellom EU Og USA» (Norsk utenrikspolitisk institutt, October 2013), https://www.regjeringen.no/contentassets/528f8ba592584822af816c271ec3d0e1/nupi_okonomiske_virkninger_av_en_frihandelsavtale.pdf.

24 Nærings- og fiskeridepartementet, «Konsekvenser for Norge Av et Handels- Og Investeringspartnerskap Mellom EU Og USA,» April 4, 2014, 6, <https://www.regjeringen.no/no/aktuelt/--Viktige-konsekvenser-for-Norge/id755310/?id=755310>.

25 EFTA, «EFTA Continues Trade Policy Dialogue with US,» June 10, 2014, <http://www.efta.int/free-trade/news/efta-continues-trade-policy-dialogue-us-2796>.

tive, as it depends on the negotiation outcome and varies strongly between Swiss sectors. **Switzerland should therefore develop and discuss options on how to react to a potential TTIP without waiting for the conclusion of the agreement.** All of the potential options have economic and political aspects: First, an economic aspiration to ensure the same legal standards as TTIP signatories to ensure that Swiss economic ties with the EEA and the US can be continued. A Swiss stake in TTIP will require the liberalisation of Swiss trade with the USA, especially in the agricultural sector. Second, any third country also needs to consider whether to be included in the institutional structure and the governance of TTIP by accessing TTIP as a full member. TTIP could therefore initiate a new era of globalisation in which economic diplomacy and free trade necessarily have institutional consequences. Depending on the depth of integration of TTIP signatories and the resulting market discrimination for Switzerland, one can thus identify the following three scenarios:

1. **Switzerland remains a third country and is unaffiliated with TTIP.** Business groups are likely to lobby the Swiss government to introduce unilateral measures to replicate EU-US regulatory frameworks to ensure the competitiveness of Swiss exports in the EEA and US. This replication would be similar to the ‘autonomous implementation’ (*Autonomer Nachvollzug*) by Switzerland that transposes considerable parts of EEA legislation without a contractual obligation to do so since 1988. Left-wing and centrist parties might request social ‘flanking measures’

Switzerland should therefore develop and discuss options on how to react to a potential TTIP without waiting for the conclusion of the agreement.

to account for the detrimental economic effects of TTIP, similar to the flanking measures for the Switzerland-EU bilateral agreements. Particularly the liberalisation of agriculture would require costly flanking measures. Economically, this option fits well with a fairly unambitious TTIP without extensive regulatory cooperation, i.e. a TTIP with limited macro-economic impact. Politically, Switzerland would become a pure rule-taker and could not influence transatlantic regulation in the least. It would for example be extremely difficult to make Swiss interests heard in the EU-US regulatory cooperation process. The mutual recognition of Swiss standards in TTIP signatory countries is not guaranteed without an overarching agreement. Other countries, particularly Swiss key trade partners, would likely lament the legal uncertainties that this third-state status brings about. Switzerland would presumably lose attractiveness as a headquarter location for multinational companies.

2. **Switzerland adopts a parallel FTA with the US.** Such an agreement would need to replicate TTIP in its essential parts to ensure the continued competitiveness of Swiss companies in the US. There is however no guarantee that the US would grant the same concessions as it would grant in TTIP. To replicate as many parts as possible, a parallel FTA would presumably also include a Swiss-US regulatory dialogue that would establish parallel institutions for EU-US regulatory cooperation. This parallel agreement would also need to include provisions to cumu-

late rules of origins, so that Swiss products and services are treated equally as EU or US products. **A parallel FTA could also be concluded through EFTA.** Both of these possibilities would require a long mandate drafting process in Switzerland, during which Swiss firms' access to the EU and US would deteriorate. Politically, Switzerland would equally be entirely excluded from regulatory cooperation and other institutional mechanisms, but legal certainty would be guaranteed for US and Swiss companies in the respective foreign markets. The US has not yet publicly expressed an opinion on this option.

3. **Switzerland joins TTIP.** This 'docking on' to TTIP would make it a full signatory to the international agreement, just like the EU member states and the US. TTIP membership would require the dynamic adoption of economic regulation in Switzerland. Such dynamic international agreements have seen increasing opposition in Switzerland. While WTO law requires all regional FTAs, like TTIP, to be open for third states to join, the EU clarified in its 2015 trade strategy that third countries could join TTIP «provided they are ready to meet the high level of ambition».²⁶ The details of how and under what standards third countries may join TTIP are not yet part of US-EU negotiations. Neither the US nor the EU have taken a position on such an accession clause – it will likely only be included at the very end of negotiations, once the scope and depth of TTIP is known. This option is highly unlikely.

Switzerland's accession to TTIP or a parallel FTA will require an unusual legislative procedure in the

Swiss political system.²⁷ The specific nature of TTIP beyond a classic trade agreement complicates the domestic process, should Switzerland opt for the second option of a parallel FTA or the third option of joining TTIP. Usually in the Swiss legislative process, FTAs are exempted from the 'optional referendum' that is available for other international agreements. However, since TTIP is an atypical FTA that requires new domestic regulation, it would have to be submitted under an optional referendum. Such a referendum can be called through 50'000 citizens' signature or by eight cantons within 100 days.

While the second and third scenario above grant some flexibility regarding Switzerland's liberalisation of trade, TTIP's provisions on institutionalised regulatory cooperation and ISDS will likely not be negotiable. For Switzerland, the challenge at hand is essentially: to what extent should the inevitable

The challenge at hand is essentially: to what extent should the inevitable economic effects of TTIP's on Switzerland be reflected in altered political structures?

economic effects of TTIP's on Switzerland be reflected in altered political structures? This question concerns the core of EU-Switzerland relations in a similar way as the Swiss popular vote on the EEA has done in 1992. The Swiss government is unlikely to publicly express support for any of these options until TTIP is concluded. Swiss political parties have however already taken some limited positions on TTIP:

- **The Green Party and Social Democrats are against Switzerland joining TTIP in**

²⁶ European Commission, «Trade for All. Towards a More Responsible Trade and Investment Policy,» 30.

²⁷ For a detailed explanation of this point, see Charlotte Sieber-Gasser, «TTIP and Swiss Democracy,» *European Yearbook of International Economic Law (EYIEL)*, forthcoming.

any way. Both reflect the position of their respective sister parties in EU countries which generally oppose TTIP: The Social Democrats' delegate assembly called for a referendum against an eventual TTIP membership.²⁸ The Greens submitted several parliamentary questions and postulates in opposition to TTIP, and Swiss membership in it.²⁹

- The **Liberal Democrats (FDP) favour a TTIP parallel agreement via EFTA.** In an interview, FDP-member Karin Keller-Sutter expressed that a parallel Swiss-US FTA is unrealistic given the collapse of exploratory talks in 2006.³⁰ The Christian Democrats (CVP) seem interested in this option too.³¹
- The **Swiss People's Party (SVP) generally supports trade liberalisation,** but has reservations regarding the liberalisation of Intellectual Property Rights (IPR) and agriculture.

An 'unholy alliance' between the Left and Right could dominate a potential vote on TTIP by the Swiss Parliament and people for rather different reasons.

The party is also likely to take issue with any institutional consequences of joining TTIP. If accepted, the party's «initiative for self-determination» (*Selbstbestimmungsinitiative*) would render Swiss membership in international, dy-

namic agreements like TTIP unconstitutional. A SVP member of parliament also aligned with the Liberal Democrats' proposal for a parallel EFTA-US FTA, but «without conditions from the EU».³²

Options for Switzerland's relation with TTIP are already contentious before realistic options exist (i.e. after the eventual conclusion of an agreement). While the liberal centre is in favour of TTIP, an 'unholy alliance' between the Left and Right could dominate a potential vote on TTIP by the Swiss Parliament and people for rather different reasons. An eventual popular referendum on a parallel FTA with the US is therefore a very realistic scenario. It should however not be forgotten that Switzerland's accession to TTIP, or a parallel FTA with the US does not depend on Switzerland's intention only – the TTIP signatories are ultimately in the driver's seat in deciding how third states may partake in transatlantic free trade.

28 Sozialdemokratische Partei der Schweiz, «Delegiertenversammlung Bern,» April 25, 2015, www.sp-ps.ch/sites/default/files/documents/vorlage_online_tisa_d.pdf.

29 Grüne Partei der Schweiz, «Kein Freihandel Zu Lasten von Umwelt Und Gesellschaft,» May 2, 2014, http://www.gruene.ch/gruene/de/positionen/wirtschaft/globalisierung/medienmitteilungen/ttip_abkommen.html.

30 FDP Schweiz, «TTIP - Wo Steht Die Schweiz?,» *Schweizer Freisinn*, May 15, 2015, 4.

31 Schweizer Parlament, «15.3638 – Interpellation. Transatlantische Handels- Und Investitionspartnerschaft. Interessenwahrung Der Schweiz,» June 18, 2015, http://www.parlament.ch/d/suche/Seiten/geschaefte.aspx?gesch_id=20153638.

32 Schweizer Bauer, «Nationalrätinnen Lobbyieren Für Freihandel,» May 3, 2015, <https://www.schweizerbauer.ch/politik--wirtschaft/agrarpolitik/nationalraetinnen-lobbyieren-fuer-freihandel-22197.html>.

2.4 Giving Third States a Say? Insights from the EU-Turkey Customs Union Update

Turkey is a very different partner of the EU than Switzerland: As a member of the EU's Customs Union (CU), it is not an EEA member. Nonetheless, the upcoming update of the EU-Turkey CU hints at some trends in EU trade politics that are useful for Switzerland's positioning vis-à-vis TTIP.

The EU-Turkey CU was launched in 1995 and therefore belongs to an era of free trade regimes long before TTIP. **Turkey trades with the EU on a tariff- and quota-free basis, but in turn has to transpose trade-related EU regulatory standards into national law.** Up until now, the CU covers manufactured goods only. Both sides have recently expressed their intent to update their agreement to include services, public procurement and services.

Beyond the extended scope of the EU-Turkey CU, **Turkey also hopes for upgraded institutional arrangements for its participation in the EU Internal Market.**

Given the increasingly improbable EU membership of Turkey, the Commission has recognised Turkey's position that the CU should be updated.³³ It is likely to give Turkey proportional access to the decision-making process for those areas covered by the CU. It is yet unclear how this access to decision-making would compare to 'decision-shaping' through the EEA agreement, but the potential arrangement is illuminating: as a matter of principle, **the EU only seems to grant consultative and early access to decision-making if partners agree to a dynamic transposition of EU Internal Market legislation.** Decision-shaping access wi-

thout the legal certainty of implementing future acts is therefore not a realistic scenario for third state association to TTIP. Thus, Switzerland cannot currently hope for decision-shaping access for EFTA countries without a parallel EFTA-US agreement.

Turkey has also sought to become an intrinsic part of the EU international trade set-up. A 2012 World Bank report suggested a **«Turkey Clause» in all of the EU's FTAs that would require the EU's counterpart to negotiate a parallel FTA** with Turkey in order to prevent trade diversion effects for it.³⁴ This Turkish demand is considered controversial in Brussels. If accepted before the conclusion of TTIP, the US would have to conclude a parallel US-Turkey agreement to replicate its agreement with the EU. While a general 'Switzerland Clause' in EU FTA negotiations is not realistic, it is also unlikely that EFTA-EEA states will push for such a clause.

Overall, the update of the EU-Turkey CU demonstrates an **institutionalisation trend in the EU's trade governance.** The EU increasingly shifts towards a «dynamic adaptation to the *acquis*, its uniform interpretation, as well as an independent surveillance and judicial enforcement» with its neighbours.³⁵ Starting with the EEA in 1992, the European Commission strives to create institutional arrangements for its external trade policy. The EU's overhaul of relations with European microstates, its current demands for an institutional framework for EU-Swiss relations and the EU-Turkey CU update all show how the EU is moving away from tailor-made solutions to institutionalised, general arrangements for external trade.

33 European Commission, "EU and Turkey Announce Modernisation of Custom Union" (Brussels, May 12, 2015), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1307>.

34 European Commission, "EU and Turkey Announce Modernisation of Custom Union" (Brussels, May 12, 2015), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1307>.

35 Sieglinde Gstöhl, "Models of External Differentiation in the EU's Neighbourhood: An Expanding Economic Community?," *Journal of European Public Policy* 22, no. 6 (July 3, 2015): 866.

3 Double Trouble: TTIP's Two Challenges for EU-Switzerland Relations

While the EU and US controversially and intensely discuss TTIP, the very nature of the partnership as a EU-US agreement complicates political deliberation considerably. All third countries that are affected by TTIP, including developing and EFTA countries, have to trade off the unclear economic impact and the possible institutional participation in TTIP. For Switzerland this results in a dual challenge for EU-Switzerland relations.

3.1 TTIP's Structural Challenge

First, a **structural challenge**: TTIP demonstrates the EU's trade weight and its ability to set standards without consulting Switzerland, who is an economic heavyweight with paradoxically little political bargaining power. TTIP therefore is the latest proof

Switzerland is an economic heavyweight with paradoxically little political bargaining power.

that Switzerland's economy needs stable access to the EU market, but politically Switzerland wishes a non-binding participation in that market. This is also the core problem of the current impasse in EU-Switzerland relations. Opposition to TTIP following this line of argument is likely to come from traditionally eurosceptic parties, above all the Swiss People's Party (SVP). Provisions such as ISDS and automatic transposition of new TTIP regulatory acts will struggle to find majorities.

3.2 TTIP's Substantive Challenge

Second, a **substantive challenge**: the vibrant debate among EU political parties on the scope and depth of TTIP merits more discussion. TTIP's neoliberal, sweeping effects for European citizens and the relatively opaque regulatory cooperation provided for by TTIP, as well as the secretive nature of ISDS, have been criticised by centrist, populist and leftist parties in the EU. In Switzerland, opposi-

The vibrant debate among EU political parties on the scope and depth of TTIP merits more discussion.

tion to TTIP for these reasons is likely to come from the Green Party and Social Democrats. The SVP will particularly oppose agricultural liberalisation. Substantially, TTIP will therefore require a difficult trade-off between Switzerland's economic competitiveness and substantial issues that many stakeholders oppose.

These two challenges are not disparate. **The general impasse in EU-Switzerland relations prevents a potential debate on the substantive issues of TTIP.** The binary 'more or less Europe' dominates public discourse in Switzerland, but it fails to account for the complexity and the contentious nature of TTIP. A differentiated position *in favour* of constructive relations with the EU but *against* the neoliberal thrust of TTIP is practically impossible. This challenge is not entirely unique to Switzerland. Many leftist parties across Europe today argue over opposition to the EU at large, or the EU's current policies. But the crucial impasse of EU-Switzerland relations will persist until the implementation of the 'mass immigration' initiative of 9 February 2014 is resolved. This will likely continue to hold any constructive debate hostage of its binary discourse.

A possible TTIP agreement is perhaps one of the best contemporary examples of how **political isolation cannot guarantee economic independence and prosperity anymore in a globalised world**. It is therefore not a question of *whether* to have a Swiss relation with TTIP, but how to approach TTIP. The Swiss political scene would thus do well to position itself in the debate about third state accession to TTIP early and prominently. Negotiating an accession to TTIP, or a parallel agreement, ultimately will not just be a matter of Swiss interest. **Switzerland's accession or parallel FTA also depends on the EU's readiness to accommodate the structural and substantive preferences of Switzerland**. Until the conclusion of negotiations on the institutional framework of the EU-Switzerland bilateral agreements, the EU will conclude no new agreements with Switzerland. This condition precludes all forms of Swiss participation in TTIP that require EU approval. The overall problematic EU-Switzerland relations will then make it harder for Switzerland to fulfil its goals regarding TTIP, whatever they may be.

4 Conclusion

TTIP is a contentious, far-reaching undertaking. As this *foraus* discussion paper demonstrated, Switzerland cannot avoid the reality of TTIP's inevitable impact on its economy and people. If concluded, the agreement will change the face of global trade, and will overhaul trade policy in Europe to an extent comparable to the EEA in 1994. Those in favour of a Swiss accession to TTIP would do well to learn from the failed Swiss campaign to join the EEA in 1992, but even more so from the hard-learned lessons of the European Commission. TTIP will find no ma-

ajorities without rigorous, transparent and proactive campaigning. Hoping for TTIP to 'fly under the radar' would feed into the pro-transparency cam-

Political isolation cannot guarantee economic independence and prosperity anymore in a globalised world

paign of TTIP opponents. Those opposed to TTIP and a Swiss accession should carefully distinguish opposing TTIP as an EU-US *policy* but favouring constructive relations with the EU *overall*. An interesting way of overcoming this deadlock would be effective transnational civil society alliances with EU-based opponents of TTIP.

Swiss options regarding TTIP revolve around the question **whether Switzerland wants to be more of a rule-taker or rule-maker**: Participation in TTIP's governance would be opposed by many political factions in Switzerland. Ultimately, any Swiss accession to TTIP depends on the good will of the EU. **Using EFTA's collective bargaining leverage would benefit Switzerland undoubtedly**, also as a non-member of the EEA. As the update of the EU-Turkey CU demonstrates, Swiss access to decision-shaping in TTIP regulatory cooperation is unlikely without Swiss dynamic transposition of EU Internal Market legislation.

A proper debate on TTIP would do Switzerland well. Substantially, it needs to be clarified who stands to gain and lose from the agreement. The interests of citizens and SMEs are not at the forefront of TTIP's ambitions. Refocusing the Swiss debate on the EU on actual policy that influences Switzerland would inevitably redress the simplistic discourse of 'more or less Europe' from the Swiss Right. With TTIP too, the Swiss government cannot count on the EU's generosity in accommodating Swiss demands readily.

TTIP is not just another FTA. It is **more important, more modern and more controversial** than traditional FTAs and the Swiss government should not underestimate its domestic and European political relevance. If the Swiss government shows a ‘wait and see’ attitude, **TTIP will be an additional problem in EU-Switzerland relations.** To maximise its interests, Switzerland cannot go alone; formalising an ambitious EFTA alliance that advocates an adequate institutional arrangement for EFTA countries, for example, will be necessary to convince TTIP signatories to admit

If the Swiss government shows a ‘wait and see’ attitude, TTIP will be an additional problem in EU-Switzerland relations.

an EFTA-US parallel FTA. The Swiss government should aspire to an **ambitious political partnership with its EFTA partners to enhance its bargaining power.** The time to formulate a Swiss position is ripe.

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